



PORTUGUESE OMBUDSMAN

REPORT TO THE PARLIAMENT

2010



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2010

Lisbon
2011





O PROVEDOR DE JUSTIÇA

President of the Parliament

Excellency,

In compliance with article 23, paragraph 1, of the Statute of the Portuguese Ombudsman,
I am honoured to present to the Parliament the Annual Report of Activities for 2010.

Yours faithfully,

THE OMBUDSMAN,

A handwritten signature in dark ink, consisting of a stylized 'A' followed by a vertical line.

Alfredo José de Sousa



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The Ombudsman



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

PROFESSIONAL CAREER

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

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

Elected on 22 January 1987 by the Parliament as member of the Supreme Council of Administrative and Fiscal Courts. Nominated, after a competition, as 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.

The Ombudsman

Publications and Speeches

The Ombudsman 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 Organizations. 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

The Ombudsman 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 EURO-RAI (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).

Third Vice President of the «Federación Ibero-Americana de Ombudsman» (2009-2011).

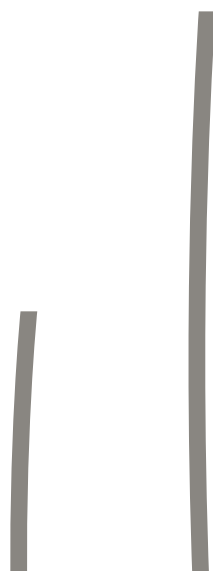
First Vice President of the «Federación Ibero-Americana de Ombudsman». (2011-)

Decorations and Awards

The Ombudsman was awarded the Minister José Maria Alkmin 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 (Brasília); 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 Article 23, paragraph 1, of the Statute of the Portuguese Ombudsman (Law 9/91, of 9th April) I have the honour to present to the Parliament the 2010 Annual Report of Activities.

2010 marks the beginning of the second half of my mandate as Ombudsman. It was preceded by a transition year, with a change of mandate holder following a lengthy process of electing a new Ombudsman that engulfed the institution in an undesirable situation of uncertainty.

During the first half of my mandate, in 2009, this situation of uncertainty inevitably affected the functioning of the Office of the Ombudsman, although the situation was normalized during 2010.

2010 in large numbers

In 2010 the Ombudsman opened 6505 cases following 6488 complaints. These complaints were presented by 7849 claimants.

About 800 people brought to my knowledge facts or general situations that did not contain a specific request, and thus did not lead to further proceedings.

In addition to the cases opened pursuant to a complaint, I decided to open on my own initiative 17 other cases. Out of these, 4 relate to actions of inspection, namely to the Homes for Children and Young People and the Temporary Placement Houses of the Autonomous Region of Madeira; detention centres for foreigners who have not been admitted into the country or are in the process of being removed from it; homes for elderly people; and employment centres. Also as regards inspections, mention should be made to the 21 visits made to prisons, in the context of cases opened on the basis of a complaint.

Of the 6505 cases that were opened, 4502 were closed in the same year. In total, in 2010 6790 cases were closed (14% more than in 2009). At the end of 2010 there were 2282 pending cases (less than 11% in 2009). Of the 6790 closed cases, 4,932 (3/4) were closed within six months.

Of the 6505 cases that were opened, 3318 resulted from written complaints and 2559 were submitted electronically, revealing an increasing trend of using these facilities.

Issues related to social rights, worker's rights and the administration of justice lead the chart of complaints issues. Central public administration is targeted in 50% of cases.

Within central public administration, the Ministry of Labour and Social Solidarity is at the top of the table. Concerning local government, the Municipality of Lisbon is the most targeted entity, with 10% of the overall number of complaints.

In relation to constitutionality reviews, after having examined 39 requests, I decided to present 2 to the Constitutional Court. In one of the cases, a judgment has already been issued, considering my request well-founded and thus declaring the unconstitutionality of the provision of the Regulation of the Portuguese Bar Association that forced candidates to pass an examination before entering the traineeship. On this issue I also addressed a Recommendation to the Parliament, so as to clarify the academic qualifications required for access to that traineeship.

In 2010, I issued 22 Recommendations, of which 10 had been accepted by the end of October 2010.

Those figures allow me to conclude that the normal activity of the Ombudsman increased the number of closed cases, reducing the backlog in the previous year.

The reorganization of the Office of the Ombudsman

To ensure the continuity of the activity of the Ombudsman, after forming my Cabinet and filling vacant posts in the Legal Advice Service, I started recruitment procedures in order to fill 12 vacant posts, which resulted from the non-renewal of the nominations of 12 staff members that the Court of Auditors had considered illegal. I also proposed an amendment to the Statute of the Portuguese Ombudsman in order to include an identical provision to that of the Law on Ministerial Cabinets, which came to be accepted by the Law on the State Budget for 2010, allowing me to appoint three experts to my office.

After the first semester of my mandate, based on the work already carried out, I realized some changes were needed in the functioning of the Legal Advice Service. Therefore, on 29th April I started a reorganization of the work of the Departments, including the matters assigned to each one, having proceeded to a redistribution of cases and subjects. Within the specialized hotlines, in addition to continuing the regular operation of the Children's Hotline and the Elderly Citizens' Hotline, the necessary conditions were created for the entry into operation, in 2011, of the Citizens with Disabilities' Hotline.

Project of modernization of the ICT infrastructure

In 2010, I continued to pursue my goal of reshaping the Ombudsman's information systems, taking into account the crucial role that the institution has in society, particularly in establishing dialogue with citizens.

Based on the budget assigned for these purposes, a project of modernization of the ICT infrastructure, designed to improve the organizational and managerial practices, was developed. Initially I renewed the IT resources, acquiring new computers and updated software and 3 new servers.

The second phase of the project, which depends on the existing budgetary resources, aims to improve the website of the Ombudsman. The website is intended to be more friendly, but also to have additional features and greater capacity to store essential information about the Ombudsman's activity, making it accessible to all citizens, allowing the citizens to conduct free text searches and enabling them, beyond the already existing possibility of filing an electronic complaint, to obtain online information on the status of their complaints. The second phase of the project also aims to improve the case registration system and work flow services of the Ombudsman.

The facilities of the Portuguese Ombudsman

When I started my duties I found structural problems to exist in the main building, so I asked the National Laboratory of Civil Engineering (LNEC) for an inspection to the building and its stability. The opinion of the LNEC, from July 2010, concluded that structural problems affected the stability of the wooden floors while also detecting an infestation by subterranean termites. Before initiating the necessary work to ensure the safety of the building, I asked for further technical review of the Parliament. An opinion was prepared setting out the priorities for the construction work to be carried out.

The on-going work on the building is essential for the safety of people who work there and for the maintenance of the facilities.

The need for amendments to the Statute of the Ombudsman

Following the establishment of a working group to modify the Organic Law of the Ombudsman (Decree-Law 279/93 of 11th August, as amended by Decree-Law 15/98, of 29th January, and Decree-Law 195/2001, of 27th July), on 8th April 2010 I presented to His Excellency the Prime Minister a project for amending this Law, adapting the support structure of the Ombudsman to the current realities and demands of his/her mission. This draft Decree-Law is being finalized and a revision of the Rules of Procedure of the Legal Advice Service is being prepared.

Dissemination of information and promotion of the Ombudsman's action

In order to foster dynamisation of and dissemination of information on the activity of the Ombudsman, the means of action available to him and the ways to appeal to him, on 19th March 2010 a Protocol of Cooperation was signed between the Ombudsman and the National Association of Portuguese Municipalities. The aim was to have joint and concerted action to disseminate information to the population regarding the mission and competences of the Ombudsman.

Under this Protocol, the adhering municipalities (up to the present day approximately 90) provide free use of computers to their respective residents, enabling access to the Ombudsman's website with a view to presenting an electronic complaint via the available form. Leaflets on the Ombudsman's mission and duties, on the theme «The Ombudsman and the Defence of the Citizen», were also sent to these municipalities.

More specifically, aiming at the dissemination of information on children and human rights, I celebrated the World Children's Day (1st June) with a group of students from a first cycle school that visited the Office of the Ombudsman and participated in an event called «Don't let go of your rights». There was an interactive approach to the rights of the child, with a symbolic moment of release of balloons inscribed with such rights.

I also initiated proceedings with the Minister of Education in order to pursue initiatives intended to disseminate information about the Ombudsman and citizens' rights, freedoms and guarantees, to be conducted by members of my staff in primary, middle- and secondary schools, and proposed the signing of a Protocol for this purpose.

Regarding the protection and promotion of the rights, freedoms and guarantees of foreign immigrants, I proposed the celebration of a Protocol of Cooperation with the High Commission for Immigration and Intercultural Dialogue (ACIDI).

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

At the invitation of the Minister of Justice (paragraph 4 of Article 3 of Decree-law 1871/2000, of 12th August), I participated in the meetings of the Consultative Council for Justice, on 11th January, 12th July and 20th October 2010.

International Relations

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

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

As part of my participation in Portugal's evaluation under the Universal Periodic Review mechanism established by the Human Rights Council of the United Nations, I stressed my willingness to take on the function of the National Prevention Mechanism for the Prevention of Torture, following Portugal's ratification of the Optional Protocol to the United Nations Convention Against Torture, based on the powers conferred on this body and the extensive work carried out on the penitentiary system and inmate rights. I made efforts to further promote the establishment and effective appointment of Ombudsman in all countries of the Community of Portuguese-Speaking Countries, in cooperation with the Ombudsman of Angola, in order to foster cooperation between counterpart institutions in the area of Portuguese language and enhance their participation in other international *fora*.

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.

The Ombudsman and the Parliament

Collaboration with the Parliament is essential for the development of the activity of the Ombudsman. The Ombudsman is elected by the Parliament and in order to deal with matters within his competence, may take part in the work of parliamentary committees when he deems it appropriate and where his/her presence is requested. His recommendations are not binding, so, if the Administration doesn't act according to them or in case of refusal of requested collaboration, the Ombudsman may address the Parliament, stating the reasons for his position. I did so in the case of the Church of Santo António de Campolide, confiscated by the State on 8th October 1910, drawing the attention of the Parliament to its state of degradation and the justice of its restitution to the parish.

In compliance with Article 23 of the Statute of the Ombudsman, on 2nd June 2010 I personally presented to the President of the Parliament the Annual Report of the activity of the Ombudsman for 2009, while expressing my entire availability to be present before the Parliamentary Committee for Constitutional Affairs, Rights and Liberties, during the discussion and assessment of the Report.

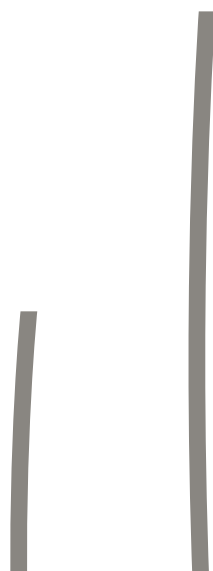
In order to improve administrative action, in the context of the recognition of the right to good administration, under Article 41 of the Charter of Fundamental Rights of the European Union, on 19th April 2010 I also proposed to the Parliament the adoption of the Code of Good Administrative Behaviour, inspired by a similar initiative of the European Ombudsman. I hope, that following the hearing held on the

Committee on Labour, Social Security and Public Administration, on 14th July, to pursue this project.

An example of good cooperation between the Ombudsman and the 1st Commission of the Parliament, was the joint organisation of the Conference «The Ombudsman: The Protector of Fundamental Rights», which took place on the Grand Hall, on 27th April.



THE OMBUDSMAN TEAM



Ombudsman, Deputy Ombudsman and Department Coordinators



João Portugal

Nuno Simões

Elsa Dias

Armanda Fonseca

André Folque

Miguel Coelho

Helena Vera-Cruz Pinto

Alfredo José de Sousa

Jorge Silveira

Deputy Ombudsman



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 Ombudsman



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, Oporto, 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



ENVIRONMENT AND LIFE QUALITY RIGHTS

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 the Department that handles issues of the environment and life quality rights. He coordinated 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).



RIGHTS OF TAXPAYERS, CONSUMERS AND ECONOMIC OPERATORS

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 of the Department, and coordinated the Department between 1998 and 2000. Between 2001 and 2005, while continuing to provide advisory services to the Department, 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 the Department, that handles with rights of taxpayers, consumers and economic operators, and currently exercises this position.

Department Coordinators



SOCIAL RIGHTS

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 the Department, that handles social rights, 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.



WORKER'S RIGHTS

Armada 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 the Department that handles issues of worker's rights since, 3 August, 2009. In recent years, she has served as deputy director 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 Coordinators



RIGHT TO JUSTICE AND SECURITY

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 the rights of the children, elderly persons, 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 the Department that handles the right to justice and security.



OTHER FUNDAMENTAL RIGHTS

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 the Department that handles other fundamental rights. 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 Geraldês – born in Lisbon (9 December, 1977).

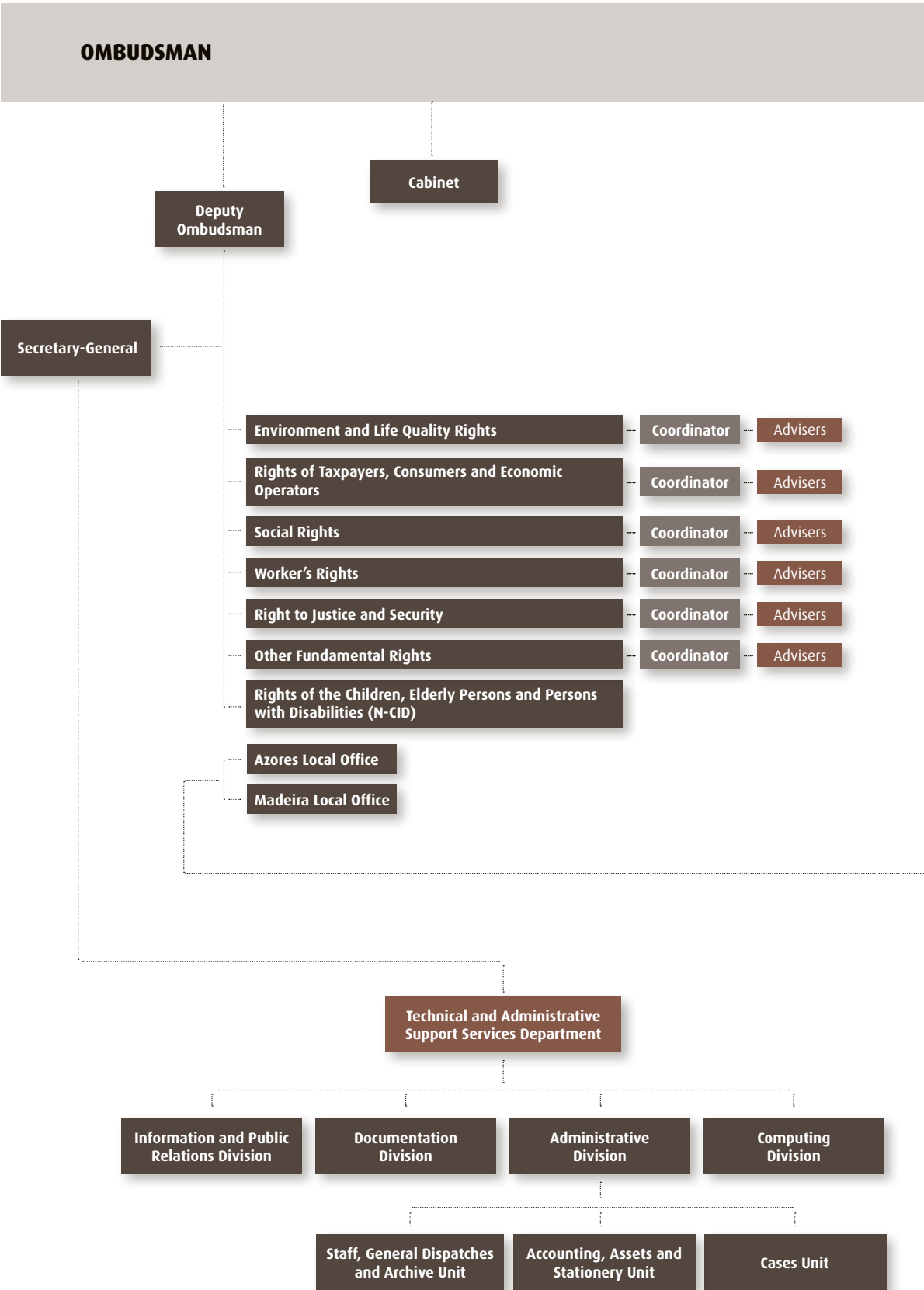
B.A. Hons degree in Law from the Catholic University of Portugal, Lisbon (2000). Master's degree in Law (Area of Legal-Political Sciences) from the Faculty of Law of the University of Lisbon (2005). Registered in the Bar Association (registration suspended from 1 October, 2005). Worked as an attorney 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.

The Ombudsman and his Team



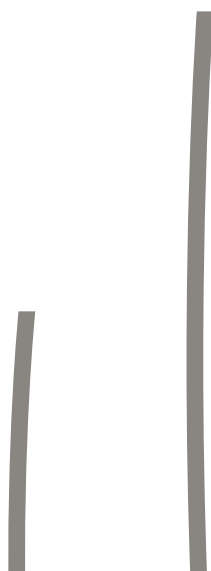
THE HEADQUARTERS OF THE OMBUDSMAN

Organisational Chart





1. THE OMBUDSMAN'S MANDATE AND ACTIVITY



1. The Ombudsman's Mandate and Activity

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

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

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

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

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

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

The Ombudsman's main function is to defend and promote the rights, freedoms, guarantees and legitimate interests of citizens, guaranteeing, through informal means, the

justice and legality of the exercise of public powers (Articles 23 of the Constitution and Article 1 of the Statute).

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

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

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

The Ombudsman acts, as a general rule, pursuant to citizens' complaints (Article 23, paragraph 1, of the Constitution and Article 3 of the Statute). Nonetheless he/she may also act on his/her own initiative (Articles 4 and 24, paragraph 1 of the Statute), in response to facts that he/she becomes aware of by any other means, either via: the media; alerts issued by a NGO's and reports from International Organisations; his/her sensitivity in diagnosing more problematic situations of national scope and also by the special depth with which he/she analyses complaints and withdraws the common denominator that resides therein, classifying and analysing issues or questions that require more in-depth analysis³. The Ombudsman therefore has complete autonomy to act on his own initiative, investigate, inspect, denounce irregularities and recommend changes, aimed at improving public services. In this context, the Ombudsman may guide his/her activity in order to prevent incorrect conduct by the

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

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

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

public powers and instil an administrative culture, and also monitor the public policies.

The Ombudsman's activity is independent of any acts of grace or legal remedies specified in the Constitution and in the laws (Article 23, paragraph 2 of the Constitution and Articles 4 and 21, paragraph 2 of the Statute).

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

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

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

The Ombudsman is a member of the Council of State.

The right to present a complaint to the Ombudsman

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

The right to present a complaint to the Ombudsman is therefore also subject to same 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 19/95, of 13th July and by the Law of National Defence, approved by the Organic Law 1-B/2009, of 7th 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, on his own initiative, to appraise this issue, due to the fact that he disagreed with this regime, in light of the relevant constitutional provisions, above all Article 270 of the Portuguese Constitution. On the

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

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

same topic, in 2010, he issued a recommendation to Parliament, to eliminate negative discrimination against military personnel, which constitutes a barrier to the Ombudsman's activity as the protector of justice, rights and freedoms of all citizens⁶.

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/her function and the powers conferred to him/her 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, paragraph 1, indent c) of the Statute).

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

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

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

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

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

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

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

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

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 control body based on the principle of cooperating, 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 investigation of the case, the Ombudsman may conclude that the complaint is unfounded, due to lack of due grounds, in which case the case will be closed, and the complainant will be informed of the reasons underlying this decision, highlighting the justice and legality of the position assumed (Article 31, indent b) of the Statute).

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

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

⁶ Recommendation 1/B/2010, of 3rd February.

In this context, he/she 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 what 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.

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

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

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

When a complaint is incorrectly submitted its replacement will be ordered (Article 25, paragraph 4 of the Statute).

The Ombudsman as National Human Rights Institution

The concept of National Human Rights Institution designates a multitude of administrative institutions (i.e., non-judicial or parliamentary) aimed at the promotion and protection of human rights. *Grosso modo*, we can speak of two types of institutions: Commissions and Institutes of Human Rights and Ombudsman.

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

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

The international community recognizes the National Human Rights Institutions accredited with A status as hav-

ing a key role in the implementation of national systems of protection and promotion of human rights.

Like the Ombudsman, they are also considered key partners by human rights international agencies.

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

The Portuguese Ombudsman has been accredited with a status of National Human Rights Institution since 1999.

It should be noted, as mentioned by academics, it is nowadays recognized the existence of a human rights component in the Ombudsman's core activity, although not always in an explicit and direct way. Even in more classic institutions with a mandate related mainly to administrative justice, attention is paid to the international legal framework of human rights as a guiding and interpretative element.

In the case of the Portuguese Ombudsman, the human rights dimension is expressed in several ways, namely through the inclusion of the power of recommending - *maxime* legislative recommendation - and the power to request the Constitutional Court a review of the constitutionality.

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

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

It is therefore in the combination of these two roles - that of Ombudsman and that of National Human Rights Institution - that we can find the exact measure of his involvement in the international system of human rights.

At national level, the role of the Ombudsman as Portuguese National Human Rights Institution in full conformity with the Paris Principles gives him/her the right to participate in the work of the newly established National Commission for Human Rights⁷. This governmental entity works under the Ministry of Foreign Affairs and aims at ensuring better coordination between ministries, both regarding the preparation of Portugal's position in international organizations on human rights, and the fulfilment of its obligations on this matter.

⁷ Resolution of the Council of Ministers 27/2010, de 8 de April.

Principles relating to the Status of National Institutions (The Paris Principles)⁸

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

1. Competence and responsibilities

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

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

2. Composition and guarantees of independence and pluralism

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

⁸ <http://www2.ohchr.org/english/law/parisprinciples.htm>

organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

- (b) Trends in philosophical or religious thought;
 - (c) Universities and qualified experts;
 - (d) Parliament;
 - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

3. Methods of operation

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

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

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

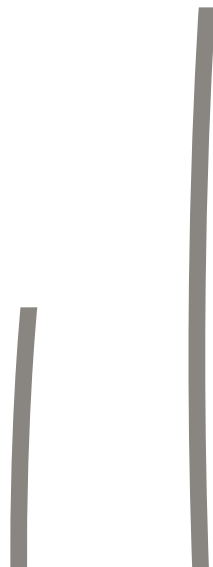
A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations.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

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



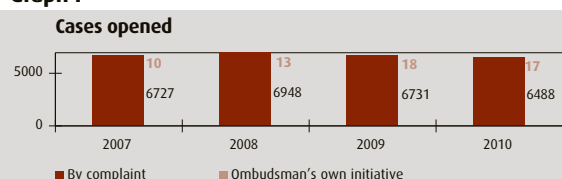


2. THE OMBUDSMAN'S ACTIVITY



2.1. Statistical Comment on Global Data

Graph I



6505 cases were opened in 2010, including 17 by the Ombudsman's own initiative. This figure represents a decline of 3,6% compared to 2009, namely less 243 open cases through complaint and one less initiated by the Ombudsman himself. It should be noted, regarding the cases opened by the Ombudsman initiative, that the 2009 figures included the renovation of several instances of non-compliance of recommendations, which at the outset of the current incumbent were reinstated to the entities concerned.

Table 1 – Complainants in 2010

Natural persons	7423
Legal persons	426
Total number of Complainants	7849

Regarding the number of claimants, there were 7423 individuals and 426 legal persons, making a total of 7849 claimants. In 2009 the number of individual claimants was 23,270. As it was then duly noted, this figure was built through a single mass complaint.

Regarding legal persons, the value of 2010 represents a decrease of 10% over the previous year, continuing, albeit more moderately, the downward trend observed since then.

It should be noted that in addition to the claimants listed in Table 1, about 800 other people addressed themselves to the Ombudsman, sometimes jointly with other entities, but merely to give notice of certain facts or considerations of a general character, without formulating a specific request or presenting situations colliding with rights and legally protected interests of citizens. Such communications were not considered as complaints and did not required further action.

Table 2 – Number of open cases

Per written complaint	3318
Per verbal/in person complaint	611
Per electronic complaint	2559
Ombudsman's own initiative	17
Total number of open cases	6505

The complaints were mainly presented by writing, in a total of 3318 cases. The electronic complaint was used in 2559 cases (40%), retaining, albeit more slowly, the upward trend of previous years.

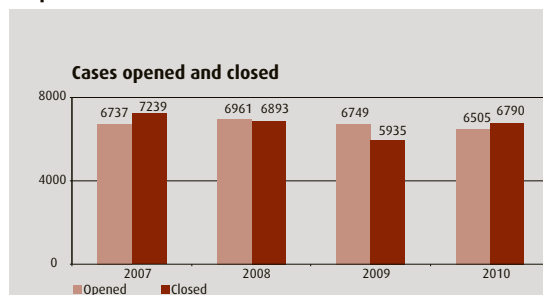
Table 3 – Number of cases closed

Cases forwarded prior to 2008	121
Cases forwarded from 2008	237
Cases forwarded from 2009	1930
Sum of cases prior to 2010	2288
Cases opened in 2010	4502
Total number of cases closed	6790

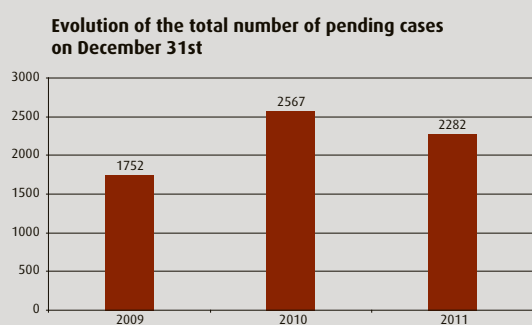
Table 4 – Number of pending cases as of 31 December

Principal cases forwarded prior to 2008	12
Principal cases forwarded from 2008	23
Principal cases forwarded from 2009	244
Sum of cases prior to 2010	279
Cases opened in 2010	2003
Total number of pending cases	2282

Graph II



Graph III



The stability achieved in 2010 allowed a return to normalcy in the number of cases filed, which stood at 6790 (14% more than in 2009). In the same vein, a decline in backlog was obtained at the end of the year, with 2282 cases (11% less).

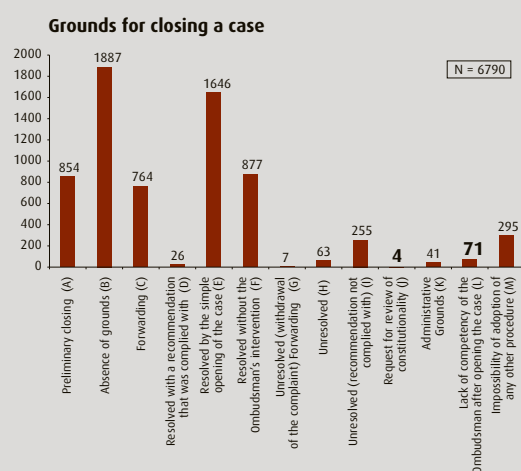
Table 5 – Summary

Total number of cases forwarded from 2009	2567
Total number of cases opened	6505
Total number of cases closed	6790
Cases opened and closed in 2010	*4502
Pending cases as of 31 December	2282

*Representing 69,2% of the total number of cases opened

In 2010, 4502 cases were opened and closed in the same year, recovering well, albeit moderately, from the decline felt in the previous year (62% of complaints entered).

Graph IV



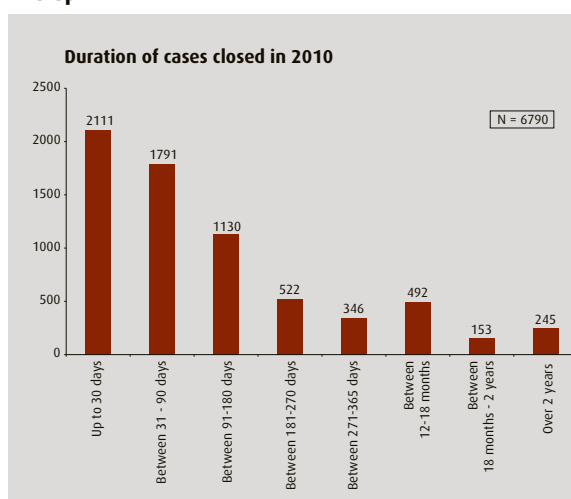
Regarding the grounds for closing a case, 1672 cases were solved with an essential participation of the Ombudsman (277 more than in 2009). In 26 cases, this intervention involved a formal recommendation (12 in 2009).

854 cases were closed on a preliminary basis and 1887 complaints were deemed unfounded. The weight of these two types of decision, considered together, fell 2% in total volume of closed cases, compared to 2009.

As stated in the last year report, this is significant because it represents a steady break, in 1/5, of the proportion ever met in recent decades.

These data show that there is an increasing overlap between the subject of complaints and the scope of intervention of the Ombudsman and a greater degree of convergence between the views of those complaining and those of the Ombudsman.

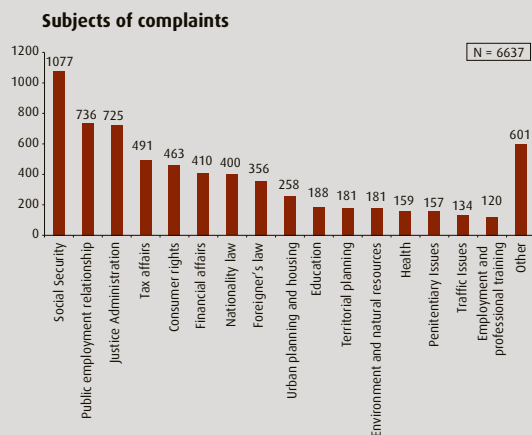
Graph V



About three quarters of the cases closed in 2010 (4932 cases) lasted less than six months, just under a third of the total not to exceed the first 30 days after being received.

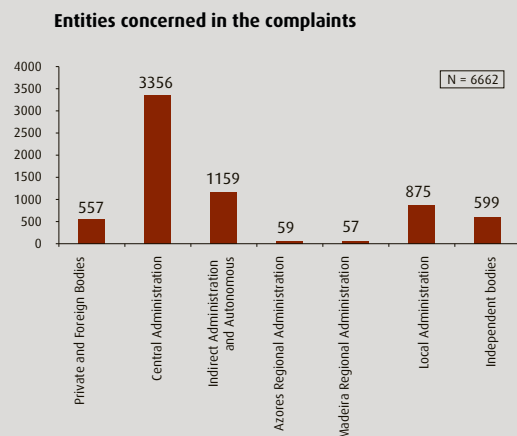
As in previous years, one year after the end of 2009, it is possible to calculate the percentage of the new cases opened during that year that met their final decision before twelve months were completed, which was 88,5%.

Graph VI



The issues related to Social Security, Public Employment and Administration of Justice head the table. The hierarchy of the entities most targeted in complaints has remained thus substantially the same as in the previous year. The most significant change occurs, once again, in proceedings concerning Nationality (in general, issues related to citizens from the former Portuguese State of India), now in an increasing trend, a phenomenon that focused primarily in the second half of 2010.

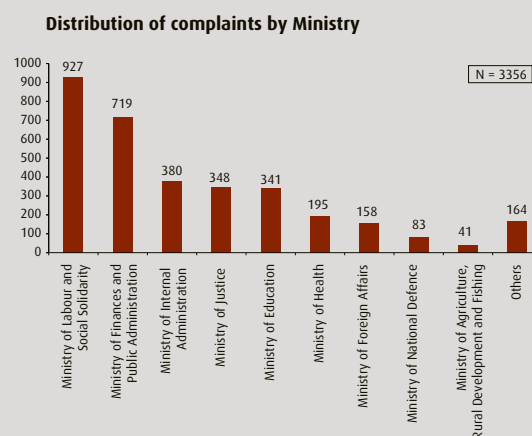
Graph VII



3356 complaints were received against the Central Administration (50,4% of total), which implies a decline both in absolute terms and in relative terms, in this case by about 10% compared to 2009.

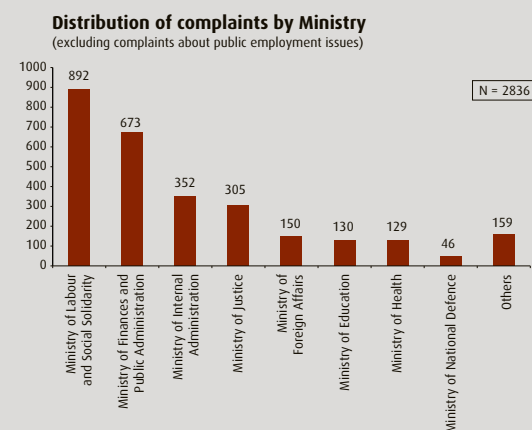
This decline was offset by slight increases in the complaints against foreign entities and individuals, against the Azores Regional Administration and, especially, in the Autonomous and Indirect Administration.

Graph VIII



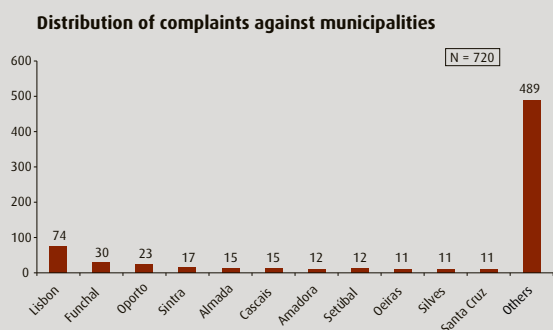
The Ministries of Labour and Social Affairs and Finance and Public Administration remained on the top of the list, with a rise in relative terms of the former and a decline of the second. The descent of the weight of complaints against the Ministry of Justice led the move to the third place of the Ministry of Internal Affairs. It is also worthy to note, the growth of the figures concerning the Ministry of Education and the Ministry of National Defense, by comparison with the previous year.

Graph IX



This graph refers to the complaints of users of each government department, not including claims on the public employment relationship. There is a distribution very similar to the previous chart, with an increased representation from the Ministries of Labour and Social Affairs, Finance and Public Administration, Interior and Foreign Affairs. In the opposite direction, it should be noted a lower weight of the complaints against the Ministries of Health, National Defense, Agriculture, Rural Development and Fisheries and, quite pronounced, the Ministry of Education.

Graph X



Some novelties arising from the list of most targeted municipalities, with minimal relevance one should underline the increase in complaints against the municipalities of Porto and Cascais, as well as the decline in the cases of Oeiras and Sintra.

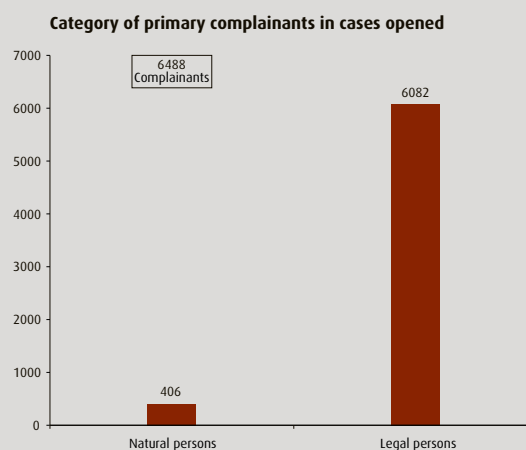
Once again, the Municipality of Lisbon is the most targeted, counting about 10% (74 complaints) of the total complaints against local authorities.

Graph XI



Consistent with the previous trend, there was a further increase in the number of complaints against banks, with an increase of 23% (plus 37 complaints). There was also an increase in complaints against insurance companies (over 54%, or 20 complaints more), reversing the tendency occurred last year.

Graph XII



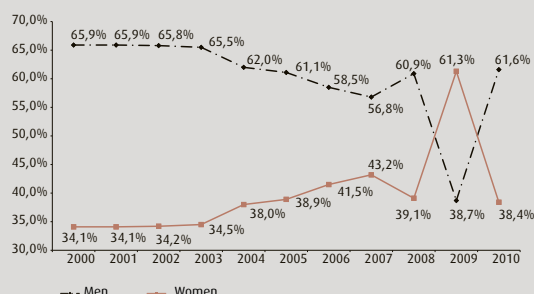
Graph XIII



The proportion of legal persons, in the universe of the first subscribers of the complaints received, being virtually identical to the figure observed in 2009, there was a decline, absolute and relative, in complaints presented by companies, with a slight increase in the complaints made by associations. Although without significant expression, the number of complaints by political parties has doubled. The complaints from trade unions remained the same as in 2009.

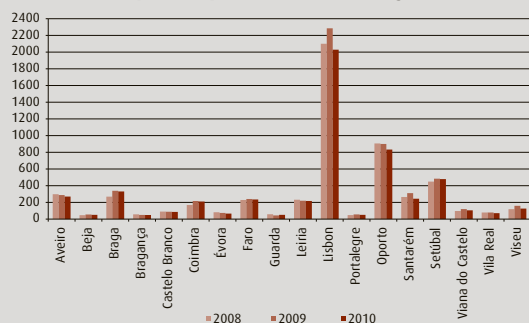
Graph XIV

Evolution of individual complainants by gender



Graph XV

No. of complaints by districts of the Portuguese mainland



As every year, with the exception noted in 2009, there is a predominance of complaints presented by men, by a *ratio* of 62% of the universe of individuals.

The number of replies to the questionnaire sent to complainants, upon receipt and acceptance of the complaint, was weaker than previously noted, this information being only fulfilled in about a third of the cases.

Within the universe of answers received (with the largest representation in the case of individuals who, in relative terms, doubled the response rate observed by legal persons), about three quarters were appealing for the first time to the Ombudsman's intervention.

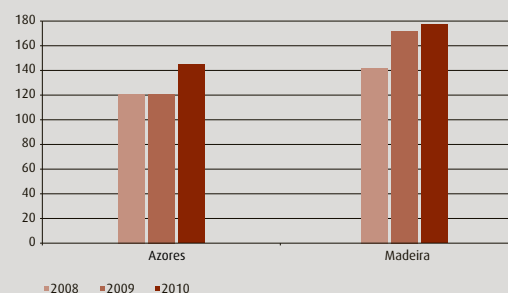
The age distribution of respondents was very similar to that seen in previous years. More than 30% were aged over 60 years.

The qualifications declared are in a continued improvement. The percentage of those with a college degree rose three points (and almost doubling the number of bearers of a PhD).

Regarding the employment status, there is a decrease in the number of unemployed claimants and those working in the private sector. On the opposite direction, there was an increase in the number of responses that indicated to work on the public sector or having a liberal profession.

Graphs XVI

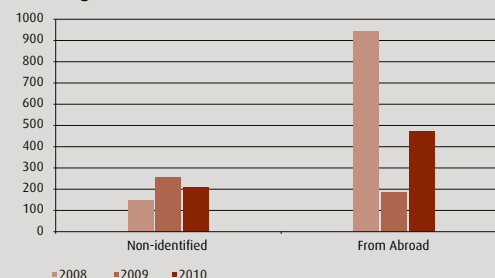
No. of complaints from the Autonomous Regions



The district of Guarda (with a 16% increase) and the Azores (an increase of 24 complaints, that is over 20%) were the only districts/regions where the number of complaints grew (with the exception of a very slight increase occurred in the Autonomous Region of Madeira).

Graph XVII

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



Once again reflecting the specific issue of citizens from the former Portuguese State of India, the number of complaints coming from abroad has increased one and a half over the 2009 figure, a situation that has shown considerable volatility over the last decade.

Graph XVIII

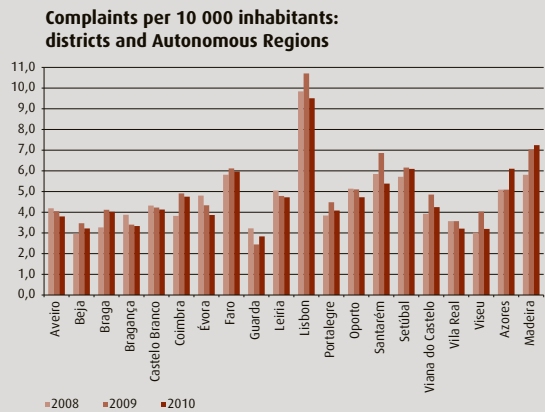


Table 6 – Complaints in function of the population

The five higher figures

	2006	2007	2008	2009	2010
1.º	Lisbon	Lisbon	Lisbon	Lisbon	Lisbon
2.º	Santarém	Azores	Santarém	Madeira	Madeira
3.º	Azores	Santarém	Faro	Santarém	Azores
4.º	Évora	Setúbal	Madeira	Setúbal	Setúbal
5.º	Setúbal	Faro	Setúbal	Faro	Faro

The districts of Portalegre, Vila Real, Évora, Viana do Castelo, Viseu and Santarém felt relative decreases below the average for mainland Portugal.

Observing only the five highest values, in relative terms compared to the resident population, the district of Lisbon remains in the first position, followed by Madeira. The districts of Setúbal and Faro were overcome, thanks to the increase in complaints already noted above, by the Azores, this last Region nearing the peak registered in 2007



2.2. Fundamental Rights

| Environment and Life Quality Rights | Rights of Taxpayers, Consumers and Economic Operators |

| Social Rights | Worker's Rights | Right to Justice and Security | Other Fundamental Rights |

| Rights of the Children, Elderly Persons and Persons with Disabilities |

2.2.1. Environment and Life Quality Rights

Most plaintiffs in complaints concerning environmental and building matters express their concern about the indifference or unreasonable permissiveness on the part of public authorities towards the violators of rules protecting natural resources, quality of life or land management instruments. They ask the Ombudsman to persuade authorities to use coercive means whether to close a noisy industrial plant, enforce the demolition of an illegal work or to replace the developer on the completion of urbanization works.

Although the institutional profile of the Ombudsman is traditionally associated with the limitation of power and authority, the expansion of environmental rights and the development of the specific tasks of this State organ in order to safeguard the so-called diffuse interests¹ have long

changed this role. The Ombudsman is now requested to recommend the exercise of public authority.

Complainants in environmental, construction and land management subjects continue to point out the poor performance of the public authorities (53.2%), the failure to comply with the duty to act in view of the public interest and, reflexively, to protect their rights affected by third parties.

The number of complaints against acts, regulations and operations in the exercise of authority powers, especially against the adoption of administrative police measures or administrative sanctions is lower than the number of complaints against omissions². Typical complaints against the actions of public authorities are complaints against expropriation for public utility and against administrative rights of way.

ISSUES	NO. OF CASES OPENED
Building	178
Building works	76
Use of buildings	22
Land allotments	7
Building maintenance and rehabilitation	18
Illegal urban areas	5
Specialty projects and connection to public networks	18
Public housing and controlled rent housing	17
House renting	8
Buildings owned by floors	4
Professional qualifications	3
Environment and Natural resources	136
Water	10
Soil and subsoil	3
Noise	73
Forest	11
Fauna	1
Air quality	9
Radiation	1
Salubrity	13
Landscape	2
Waste management	7
Flammable, toxic or explosive products	5
Others	1
Land development	167
General	49

Planning	7
Special land regimes	16
Public works	25
Public domain	70
Public street (kiosks, terrace, advertisement outdoors, complaints, parking, Public lighting)	37
Public roads	19
Coastal sea and water resources	6
Others (cemeteries, green areas, etc.)	8
Expropriation	29
Procedures	18
Ultra vires	10
Reversal rights	1
Administrative rights of way	14
Others (allotments, preemptive rights)	5
Culture	21
Architectural and archaeological heritage	10
Museums, archives and libraries	3
Arts and performing arts	2
Copyright	6
Leisure	41
Hunting and angling	7
Tourism	12
Game	1
Pets	5
Boating and recreational aviation	3
Entertainment	1
Sports	10
Total	543

¹ Article 20, 1, paragraph 1, indent e) of Law 9 / 91, 9 April.

² 42,5%, in 2010, 42,1%, in 2009 and 44,7% in 2008.

The analysis of complaints by subject shows almost equal weight between building and land management complaints, followed by environmental based complaints and finally by complaints on culture and leisure issues, with a much lower expression.

Within these themes, the major causes of complaints are the following:

- a) **Construction works and use of buildings:** the majority of complainants oppose construction works that somehow damage environmental or safety conditions while municipal authorities refrain from acting promptly in order to restore the law.
- b) **Environment and natural resources:** most complaints are against excessive noise, especially industrial noise and noise resulting from restaurants and similar activities. However, There is an increase in the number of complaints concerning water quality and forest defense.
- c) **Land management and planning:** public domain management gives cause to the greatest number of disputes with the departments of Public Administration, including the use of city roads and the vast field of municipal and secondary roads whose registration remains to be completed in most municipalities.
- d) **Culture:** complainants seek protection of architectural and archaeological heritage sites and copyright.
- e) **Leisure:** tourism (including public accommodation units and municipal camping) is the main issue of leisure-based complaints.

In 2010, the Ombudsman has issued seven Recommendations on environment and life quality rights, two of them pointing out shortcomings in legislation.

In regards of **urban rehabilitation** the Ombudsman recommended an amendment to the Rented Building Subvention Law (*Recria*) to the Ministry of Environment and Land Development. The Recommendation was to suppress the rule that regardless of the time since the first financial aid was granted prevented more than one subvention of renovation works in a building. This narrow sense has been confirmed by the administrative courts (ruling of the Supreme Administrative Court, 1st Sub. of 23/11/2005³). Since this subvention program refers to the Decree-Law 4/88, of 14th January, there are buildings whose renovation works were supported by Recria but are presently in need of further maintenance. By the end of 2010, the Government had not yet reported its position on the matter.

Another legislative Recommendation, this time referring to regulations, had been made to the Mayor of Mogadouro on **recreational aviation** based upon a complaint against arbitrary imposition of requirements for the

use of the Municipal Aerodrome. It was confirmed that the users of the aerodrome who were not members of a given local association were forced to book its use in much earlier than others, which was not compatible with either because of the nature of aeronautics or and the unpredictability of forecasted weather. The Ombudsman concluded that two basic principles of public services were offended: equality and universality principles. The Mayor of Mogadouro accepted the Recommendation.

In the matter of the alienation by the Government of the *Convento de Santa Joana* in Lisbon, the Ombudsman made a new Recommendation⁴ to the Minister of State and Finance. The Recommendation was that ownership the church of *Santo António* in *Campolide*⁵ should be transferred to the Brotherhood that manages the said church. The church of *Santo António* was confiscated on 08.10.1910. The Government insists the transfer of the church be made upon payment of € 230.000.00. Despite having acknowledged the **public interest** of the property due to its **artistic and architectural value** in 1993 the Government never provided for it. Notwithstanding, the Brotherhood, who had been judicially recognized rights over the *Convento de Santa Joana*, is faced with the profound dilapidation of the church of *Santo António* which endangers the safety of people and goods. The opinion of the Ombudsman in relation to both confiscated properties was that the Government enjoyed unfair financial benefits: it received the property value of the convent through confiscation, it has not spent any funds for conservation and restoration of the church and also gain revenue from its sale. The Government maintains it can not dispose freely of any of the assets included in public domain. Nevertheless, the Ombudsman noted that Decree-Law 280/2007, of 7th August, does not apply in this situation, which occurred earlier and should be governed by the Concordat with the Holy See. The position of Minister of State and Finance was reported to the Parliament⁶.

The Mayor of Grândola was recommended⁷ to exercise powers over **public roads**, namely self-declarative and enforcement powers⁸. The case involved the removal of a device obstructing traffic on public roads within a private development. Despite the fact that these roads allowed access to the seashore and that there was a public parking area, the management of the development acted as if it was private property. The Recommendation was accepted.

The Ombudsman addressed a Recommendation⁹ in respect of the environmental pollution caused by a **cow farm** whose activity the Municipality of Vila Nova de

⁴ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=266

⁵ Recommendation 9/A/2010, of 28th June.
http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=459

⁶ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=326

⁷ Recommendation 10/A/2010, of 12th August.

⁸ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=314

⁹ Recommendation 6/A/2010, of 29th March.

³ Proc. 0484/05, www.dgsi.mj

Famalicão acknowledged as illegal. The Ombudsman recommended that the farm should be compulsorily closed considering that twelve years of numerous administrative procedures and subpoenas had achieved no result whatsoever. In addition, it was explained the transitional provisions of Decree-Law 214/2008, of 10th November, were not to be applied in cases where legalization is clearly impossible. The Recommendation was accepted¹⁰.

A Recommendation to the Mayor of Tomar¹¹ in order to restore the **name of a street** that had been arbitrarily changed by the Parish of Asseiceira, with no powers on the matter, was not complied with. Although the Municipality was willing to compensate the losses suffered by the complainant due to the change of personal and property documents, it will not modify neither the designation nor the numbers of the street, which benefits another resident.

We are presently waiting for the Municipality of São João da Madeira to report the position taken on a Recommendation¹² objecting to the deposit of € 500.00 as a guarantee to **noise measurements**. The Ombudsman considers the requirement of Regulation 326/95, of 4th October, was expressly revoked by Decree-Law 292/2000, of 14th November. Furthermore this measure would threaten municipal powers in the pursuit of public interest and would prevent citizens with fewer resources from having their complaints against noisy activities answered.

In 2010 the Municipalities of Cascais and Mafra reported their position on Recommendation 11/A/2008, of 25th November, and on Recommendation 13/A/2008, of 16th December. The Municipality of Mafra complied with the Recommendation and acknowledged that the increase of **taxes for legalization of construction works** diverges from the purpose for which the power to create municipal taxes is granted. The Municipality of Cascais did not comply with the Recommendation, on grounds of wrongful qualification of the construction works. The said works were not to be deemed as a building, but a simple covering, and therefore its areas should not be considering upon calculation of construction parameters. In accordance with Article 38, paragraph 6 of Law 9/91, of 9th April (the Ombudsman's Statute) the non-compliance was reported to the Municipal Assembly of Cascais.

Despite the fact that recommendations to public authorities in order to redress unfair or illegal situations correspond to the archetype of the Ombudsman's intervention, the vast majority of complaints were settled throughout the investigations carried by the Ombudsman staff (43,8%). An important service rendered by the Ombuds-

man is that of informing plaintiffs in respect of complaints with no grounds (34%) or that become useless (10,7%).

Asking the right questions to the right public bodies is a task the Ombudsman undertakes upon investigating the complaints and it assumes growing importance as administrative law and organizations become more complex.

As in previous years, it is important to focus on some lines of action and positions taken by the Ombudsman that reveal its legislative and administrative role.

A paradigmatic example of the significant Ombudsman action is the intervention in the construction of the **Circular Interna Regional de Lisboa** – CRIL (internal circulation road in the Lisbon region). Since 1994, the Ombudsman receives complaints about this public work for various reasons namely its layout, the project implementation and, in 2010, the inconveniences arising out of the construction works. The objections to the layout and to technical solutions made by the residents of Lisbon and Amadora were submitted to the Ombudsman for an impartial prospective. It was determined if the solutions had been chosen on rational grounds, which proved to be a difficult balance between the autonomy of public authorities – guided by reasons of expediency and convenience – and legality – reflecting general principles of the administrative activity.

Regarding the **location of public works**, the Ombudsman actively monitored the activity subject to a complaint against the *Via de Caparica* (Caparica Road) and urged the public company EP – *Estradas de Portugal SA* (public company responsible for the management of national roads) to explain why work had not been suspended in face of the Regional Department of Agriculture and Fisheries position, that deemed mandatory the preservation of a vast area of land with high agricultural potential¹³.

After suggestions made in 2009 by the Ombudsman to the Government on non-agricultural use of lands classified in the **National Agricultural Reserve**, the Secretary of State for Forestry and Rural Development informed that many of the proposals would be followed in the regulation of Decree Law 73/2009, of 31st March.

A note of concern with the eventual pursuing industrial and trade activities on agricultural soils, as long as they are deemed to be related to agriculture or to forestry resulted on a suggestion that the regulation should define these situations in precise terms. In addition, the Ombudsman stressed out the lack of resources for inspection and replacement operations of soils within the National Agricultural Reserve.

Complaints relating to **expropriation for public purposes** are often directed towards EP- *Estradas de Portugal SA* as well as at the concessionaries of highway construction and operation and are often linked to the payment of compensation. There are significant delays in fulfilling obligations arising out of the agreements established with the owners, but

¹⁰ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=365

¹¹ Recommendation 5/A/2010, of 23rd March.
http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=477

¹² Recommendation 13/A/2010, of 17th November.
http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=482

¹³ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=318

is it important to acknowledge that most concessionaires is willing to solve matters informally, saving courts costs and cooperating with the Ombudsman.

If new binding **administrative rights of way**, especially on behalf of transportation and electricity distribution facilities, inspires concern to the Ombudsman, it is fair to acknowledge the commitment of EDP, SA (electric company) in reviewing its practices in order to reinforce the safeguard of property owners' rights.

A special reference to the implementation of new acts on **water resources**, particularly to the Decree-Law 226-A/2007, of 31st May, is due. The successive extensions for the settlement of water resources permits, especially those concerning groundwater abstractions (boreholes and wells) have allowed a certain degree of distension. Also, the five Hydrographic Regions converged in the interpretation and application of legal provisions. These entities have been committed with the water management powers that were previously held by the CCDR (coordination and regional development committees). The committees, despite the transference of water resources management powers, reveal a considerable disproportion between their means and the multiple tasks they are required to ensure, namely monitoring the updating procedure of hundreds of land management instruments.

It should also be pointed out that the Secretary of State for Land Management has welcomed an interpretive suggestion made in respect of the rules concerning changes to the specifications of licenses in areas within the **National Ecological Reserve**. The Ombudsman argued that any request for the amendment of a license should not be rejected by the CCDR without considering its object, extent and scope. In fact, the owner of a property complained (justly) against the rejection of a request that actually decreased the damaging effect on the Ecological Reserve by reducing the area of construction.

As to the monitoring of **air quality**¹⁴ the Ombudsman reported to the Parliament his concerns that resulted from the analysis of a particular industrial activity: coffee roasting. Prompt measures are now expected in order to improve the efficiency of self-inspections, to enforce obligations and to restore the competitive conditions of equality between those who meet strict legal requirements and those who obtain an illegal gain by an illegal reduction in production costs.

Also in respect of air pollution, it is worth mentioning the positive effect that resulted from the concerted action of the Municipality of Caminha, the Committee for Coordination and Regional Development (North) and the Regional Offices of the Ministry of Economy (North) in order to relocate a **bituminous central** that was installed near family houses. This reveals that the Ombudsman, due to its inde-

pendent position, often plays an important role in joining different agencies and services, central and local, general and special that share duties and responsibilities. Moreover, the Ombudsman, by submitting to a particular institution the content of information, opinion, or data gathered by other entities and by continuously trying to resolve negative conflicts between public powers acquires a new role in the field of intra-administrative relationships, which exceeds his original expected functions.

A favorable comment is to be made to the position of the Secretary of State for Trade and Consumers Rights concerning the need to revise the Decree-Law 119/2009, of 19th May. This Decree-Law had imposed some unjustified requirements to **playgrounds and recreation facilities** and it raised serious doubts in terms of compliance with European law on standards of quality. Furthermore, it would result in the closure of many facilities due to the failure to comply with the new provisions¹⁵.

The jurisprudence namely the Supreme Administrative Court (Judgment of the 2nd Sub., of 09.06.2010) also followed the position of the Ombudsman by specifically quoting the Recommendation n.º 6/A/20066, according to which: « the rule of Article 72, paragraph 3, of Decree-Law 380/9, of 22nd September, on soil classification is not self-enforceable.». This means all revisions and changes of municipal development plans involving an **increase of urban areas** were not to be admitted until the Decree 11/2009, of 29th May (established the *criteria* for extraordinary reclassification of rural soil as urban) was in full force.

In matters of planning and building law the Attorney General's Office¹⁶ followed the Ombudsman position on the illegality of the so-called «**corrections**» introduced by the Lisbon Municipality in the **allotment permit** for the division of the «*Urbanização Norte do Sport Lisboa e Benfica*» that would have allowed a higher building coefficient with far greater impact on other buildings.

The Ombudsman has continuously insisted with several municipalities on the understanding that the generic commercial use of buildings, or fractions, does not enable, without public authorization, the installation of **restaurants and drinking establishments**. As a matter of fact, this special use is not limited to the purchase and sale of goods and has a significant effect on the conditions of the environment.

Likewise, the Ombudsman has stressed out the need to ensure the compliance of **property regime** provisions in the case of changes to the incorporation title. Contrary to construction permits and licenses, this act affects private legal relationships, in accordance with Article 1418, paragraph 3, of the Civil Code.

The interpretation and application, whether by public authorities or by courts of law, of rules on **distances**

¹⁴ <http://www.provedor-jus.pt/Imprensa/noticiadetalle.php?ID_noticias=339>

¹⁵ http://www.provedor-jus.pt/Imprensa/noticiadetalle.php?ID_noticias=311

¹⁶ Legal Opinion 10/2010, in *Diário da República*, 2.ª série, 14/10/2010.

between buildings and between windows and other openings - Articles 59. and 73 of the General Regulation of Urban Construction – remains highly controversial. This has not prevented the Ombudsman from insisting on the understanding he has been giving to these provisions. For instance, the Municipality of Fundão changed a land development plan according to the Ombudsman suggestion. In this case, as in many others, the advice of the expert on architecture, which assists the Ombudsman, has proven to be decisive.

The uncertainty about the classification of roads as municipal, under parish management or private raises serious difficulties and gives cause to numerous complaints. Considering there is a general conviction that **atruessadouros** (pathways through private properties, abolished in 1967 by the Civil Code) and **private passageways** must obtain municipal guardianship and that it is extremely hard to prove the nature of these roads, many complaints are referred to the courts of law.

A last reference to three files opened by the Ombudsman based on issues often raised in complaints:

- monitoring insalubrities caused by citizens suffering from disease known as Diogenes Syndrome, characterized by the accumulation of waste within their home;
- special needs of disabled citizens in public parking areas;
- guarantees of residents and local traders against the inconvenient resulting from the use of public domain (streets and sidewalks) in audio-visual productions.

Summary of some interventions of the Ombudsman

Case R-1058/06 and R-5252/06

Entity addressed: Porto Municipal County/ Vila Real Municipal County

Subject: Environment and natural resources. Noise. Concentration of bars and nightclubs

Summary:

The Ombudsman reported to the municipal authorities of Oporto and Vila Real an important set of observations aiming at the improvement of administrative control of noise and security conditions in bars and nightclubs. In both cases, municipal authorities failed to act promptly against the high concentration of noisy nightlife establishments whose activity was not licensed. To the Ombudsman regard these situations not only harm the legitimate authority of administrative authorities but also create a discriminatory treatment to residents and to business owners who have establishments in strict conformity with the law. As far as Oporto Municipal County is concerned, the Ombudsman noted difficulties in the operation and coordination of several

council departments that resulted in granting excessive delays for the legalization of establishments without ensuring an effective decrease of noise. In the case of Vila Real, the main reason for complaint seemed to be the noise produced by clients in the street. This justified the limitation of the opening hours as well as a joint action with the security forces in order to ensure the safeguard of public order.

In this matter, the Ombudsman considers it is imperative to bring together the revitalization of historic centers and the improvement of economic activities with the respect for the rights of residents, namely their right to rest, which is an essential condition for good professional and scholar performances. In both cases, local councils were reminded that lack of administrative measures might be a source of liability.

The Oporto Municipal County acknowledged the relevance of the suggestions made by the Ombudsman and informed on the improvement of administrative procedures allowing a more rigorous exercise of its powers.

Case R-3476/09

Entity addressed: Secretary of State for Forestry and Rural Development / Lisboa Municipal County / REN - National Energy Networks, SA (concessionaire for the national electric infra-structures network) / National Forest Authority / Commission for the Coordination and Regional Development of Lisbon and Tagus Valley

Subject: Land development. Special territorial regimes. Forestry.

Summary:

Regarding a complaint against the location of an electrical substation in the Lisbon Forest Park of Monsanto, the Ombudsman concluded that the legal regime on forest had not been complied with. The rules of the Decree of 24th December 1901 and of the Decree of 24th December 1903 did not allow neither changes to public ownership of the land nor the partial suspension of the Lisbon Master Plan.

The Ombudsman reported to the Minister of Agriculture, Rural Development and Fisheries that any change to lands under the forestry regime could only be achieved through a legislative act by the Council of Ministers.

At the same time, the Ombudsman noted that the successive postponement of a new Forest Code is giving cause to harmful effects specially because legislation on this matter is fragmented and has been randomly changed.

Case R-4286/06**Entity addressed:** Sintra Municipal County**Subject:** Building. Land division. Principle of legality. Development plans.**Summary:**

The Ombudsman conducted a complex analysis of several topographic, administrative and legal elements relating to the licensing, by the Sintra Municipal County, of a vast and complicated land division operation. At the end of this search, the Ombudsman concluded the licensing act to be null and reported his position to the public prosecutor.

According to the provisions of the Sintra Master Plan, either a previous development plan or a detailed plan was required to legitimize the operation. Since this requirement had not been fulfilled the license issued by the municipal county should be deemed null.

Although the developer had committed to meet all obligations arising out of future land development plans, this commitment proved to be contrary to the principle of administrative legality and corresponds to an unlawful administrative practice.

Case R-1177/08**Entity addressed:** Lisboa Municipal County**Subject:** Land development. Public domain. Streets. Parking fares.**Summary:**

The Ombudsman investigated a complaint against the Lisbon Municipal Parking Company (EMEL) challenging the fare charged for the issuing of a new resident card (title exempting residents from parking fares) in case of replacement of vehicle while the initial title was still valid. EMEL proceeded as if it was a second vehicle and charged a higher rate. Finally, the Municipal Company acknowledged that in the case of replacement of a car there was no increase in the ratio number of cars/house and limited the payment to the material costs of issuance of a new card.

Case R-6733/08**Entity addressed:** Mafra Municipal County/ Regional Department of Agriculture and Fisheries of Lisbon and Tagus Valley/ Commission for the Coordination and Regional Development of Lisbon and Tagus Valley**Subject:** Environment. Salubrity. Livestock farms. Urban area.**Summary:**

Since 2008, the inventory and the legalization of thou-

sands of non-licensed livestock farms is being carried out, under Decree-Law 214/2008, of 10th November (livestock farming regime). The Ombudsman considers that this transitional regime, already extended, cannot justify that farms which are harmful to the environment and to public health and clearly do not fulfill all legal requirements may remain in activity.

Pig farms, dairy farms poultry houses are often the cause of water, soil and air contamination, either because they are improperly located within urban areas or due to the non-use of new environment-friendly technologies. Public authorities refrain from determining the closure of such farms, except in cases of serious risk to human or animal health, due to lack of resources to enforce their decisions and due to the lack of facilities to store the seized animals.

Moreover this is a matter of major environmental justice: third parties are severely disturbed and do not get any benefit or advantage.

The Ombudsman persuaded public authorities to impose the closure of an illegal farm of considerable size located in an urban area in Azueira, in Mafra county.

Case R-1044/10**Entity addressed:** Parliament**Subject:** Building and construction. Professional qualifications. Architecture and engineering technicians (ATAE).**Summary:**

Law 31/2009, of 3rd July, revoked Decree 73/73, of 28th February, and expanded the professional acts of architects, engineers, technical engineers and landscape architects.

The Ombudsman expressed his opinion on complaints from several architecture and engineering technicians (ATAE) pleading the unconstitutionality of Decree 73/73 provisions and demanding it should be revoked. The Ombudsman also concluded that the Decree 73/73, despite having been in force for 36 years, should be deemed as a temporary legislative measure adopted as a response to the lack of architects and engineers.

It was also noted that the new Law 31/2009, resulting from the demands of the market and the need for higher standard projects and building operations, kept a five-year transitional regime providing ATAE with the necessary time for retraining.

2.2.2. Rights of Taxpayers, Consumers and Economic Operators

Complaints related to the rights of taxpayers, consumers and economic operators gave rise in 2010 to 989 new cases¹.

Economic and financial, taxation and consumer problems represented 87,77% of total, and therefore continue to be the core of matters in this thematic area. The slight decrease in the total of complaints received was a bit reflected at each of these three major themes, having the fall been more marked in the economic and financial group of matters² and less pronounced in the consumer sector.

The remaining complaints – on Civil Liability, European and Nacional Funds and Public Procurement – have been accounted for in a similar number to that reached in the previous year³.

As regards the cases closed, 1063 was the number of cases of this thematic group whose investigations ended in 2010 with a final decision of the Ombudsman. 279 cases were pending in this area on 31 December 2010⁴.

ISSUES	NO. OF CASES OPENED
TAXATION	462
Tax benefits	9
Fiscal enforcements	116
Municipal Property Tax (IMI and CA)	31
Stamp Duty and Gift and Inheritance Tax	17
Municipal Property Transfer tax (IMT and Sisa)	16
Fiscal infringements	17
Corporate Income Tax (IRC)	5
Personal Income Tax (IRS)	116
VAT	35
Land registration and evaluation	19
Duties and tariffs	38
Car taxation	11
Miscellaneous	32
CONSUMER	245
Water	43
Post	14
Electricity	36
Gas	14
Internet	10
Satisfaction book	8
Telephone	31

Transport and communication routes	68
Tourism	9
Miscellaneous	12
ECONOMIC AND FINANCIAL	161
Banking Industry	105
Trade	7
Capital market	4
Insurance	22
Other economic activities/Professions	7
Miscellaneous	16
CIVIL LIABILITY	58
For providing public services	15
For accidents	29
For losing correspondence/luggage	7
Miscellaneous	7
EUROPEAN AND NATIONAL FUNDS	52
Agriculture	24
Education and professional training	10
Employment	10
Miscellaneous	8
PUBLIC PROCUREMENT	11
Public tenders	10
Miscellaneous	1
TOTAL	989

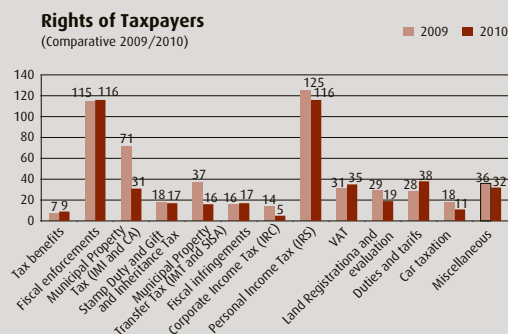
¹ Less 190 than the complaints received in 2009.

² As has been said in the Report 2009 (see page 46), it should be remembered that record levels of complaints on financial affairs have been reached in that year. These complaints have therefore merely taken up in 2010 the usual level of previous years.

³ All the three matters gave rise in 2009 to 135 cases opened and originated 121 cases opened in 2010.

⁴ Less 74 than on 31 December 2009.

Rights of taxpayers



The year 2010 consolidates the idea formed over the past years regarding the issues that most concern the citizen taxpayer that addresses the Ombudsman: problems related to Personal Income Tax and, more recently, problems of fiscal enforcements, are occupying the top places in the table of the most recurring subject of complaint. As also traditionally, the problems of taxation of real estate appear in the 3rd place of this table.⁵

Although in 2010 a problem that the Ombudsman monitors for some time was taken back and object of attempt to be settled, this aim was not, regrettably, reached: it respects to the problem of taxation in the year of receipt and jointly with the income earned in that year, of salaries and pensions of previous years («retroactive»).

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

The efforts of the Ombudsman for changing the statutory system that provides cover to such a situation, namely through the reiteration of a legislative Recommendation formulated in due time (and not accepted)⁶, were not welcomed by the Minister of State and Finance, to whom a message of disagreement was sent on the occasion of the case closure, including the intention of the Ombudsman to retake the issue if and when possible new complaints show the relevance of such intervention.⁷

⁵ Which, in the comparative table «rights of taxpayers 2009/2010», emerge desegregated into Municipal Property Tax + Municipal Property Transfer Tax + Land registration and evaluation.

⁶ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=238

⁷ In 2010 were received 20 new complaints about this tax regime of income reported to prior years.

Notwithstanding the increasing difficulties in finding consensual solutions with General Directorate of Tax («DGCI») on the interpretation and application of rules governing Personal Income Tax, a case was closed in 2010 where it was achieved the cooperation of the Directorate of Personal Income Tax to clarify – towards the position of the Ombudsman – questionable areas of the tax regime and deduction of alimony paid to minor children as well as the procedures to be adopted by each parent for the purpose of deducting relevant tax expenses incurred by each of them, with these minor.

With regard to problems related to fiscal enforcements, the recurring is most certainly a violation of the limits of unseizability of the assets, either by some deficiencies in the issuance of attachment orders, or, overwhelmingly, by serious deficiencies in the implementation of those orders.

It is fair to mention at this point, the good receptivity that the intervention carried out with the Chairman of the Board of Instituto da Segurança Social, I.P. [Social Security Institute] on improving the standard model of notification letter for the attachment of bank account balances, sent to credit institutions in connection with fiscal enforcements pending before the Social Security's Sections, by including reference to rules of the Civil Procedure Code regarding the limits of seizability of bank account balances of those debtors. In fact, although the text previously in use do not suffer from serious inaccuracies, it is thought that the best practice established as a result of this change will strengthen the guarantees of the debtors.

More complex to settle is the problem of poor implementation of orders of attachment issued correctly. More complex, since the recipients of the orders of attachment of bank account balances are credit institutions with which deposits were made, whose large majority of whom has a private nature and are therefore outside the competence of the Ombudsman. Attempts dating from previous years, to involve the Bank of Portugal in solving this problem proved to be not very effective and the practice of investigation such cases with Caixa Geral de Depósitos, S.A. has not created in 2010, expectations for settling the issue in the short term.

In short, the inquiries of the 34 cases that were opened in 2010 to test the regularity of attachment of bank account balances, advises that in 2011 it is considered a generic intervention in the matter.

Still for fiscal enforcements purposes, it should be highlighted in 2010, the thorough study⁸ prepared under the Ombudsman's own-initiative case opened following media reports, as regards attachment of copyright in terms that can affect the livelihoods of debtors, particularly when these earnings are their only means of livelihoods.

⁸ http://www.provedor-jus.pt/recomendarvore_sum.php?refPasta=347

The conclusions of the study point to be considered legislative amendment so that it can be conferred to the attachment of income which is the only means of livelihood of the debtor, similar protection that presently enjoy salaries, pensions and similar income. Thus, following such study, cooperation with the Ministries of State and Finance, Justice, and Culture was requested, and it is expected that their replies will lead to an increased protection of the rights of taxpayers. In this respect, it should be mentioned that the correspondence exchanged in late 2010 between the Ombudsman and the Minister of Justice on the Draft Reform Enforcement Procedure Act indicates good perspectives of solving the problem.

In respect of taxpayers' rights, another reply that was awaited by the end of 2010 refers to the stated problem to the Secretary of State for Fiscal Affairs, regarding fees charged by DGCI for inspections aimed to allow the refund of the corporate special payment on account («PEC»).

The Ombudsman disagrees with the understanding as well as with the interpretation in which the services of DGCI are based to sustain it. Hence, the Ombudsman suggested the Secretary of State for Fiscal Affairs to review the case complained and issue instructions preventing DGCI from charging any fees in these cases. Also, the fee charged is often manifestly disproportionate to the service provided (sometimes even higher than the amount of the PEC refund that the taxpayer is seeking).

Suggestion concerning the rights of taxpayers in 2010 and that had a positive outcome still during the course of this year relates to the Recommendation No. 3/A/2010, 11 February, addressed to the Mayor of Sesimbra. It relates to the fees of conservation and sewage treatment charged by the city council, for the period prior to the availability to users of the wastewater public system.

The Recommendation was partially accepted. In fact, the suggestions for the adoption in future of the procedure whereby the city council is prevented from charging any fees in such cases, were welcomed. However, the city council has not accepted to refund the amounts unduly charged in the past.

The assessment and collection of taxes by local authorities is a matter that is being the subject of increasingly number of complaints¹¹, and therefore interventions in this area have naturally increased over the year. Among them, and in addition to the already referred Recommendation, it is worthy of note the study carried out on the *time-barred debts to local authorities, regarding fees charged for water supply, collection and wastewater treatment services and*

*management of municipal solid waste*¹², whose findings have since been brought to the attention of two targeted local authorities. In one case the local authority accepted these conclusions, in the other a definitive reply was still being awaited by the end of the year.

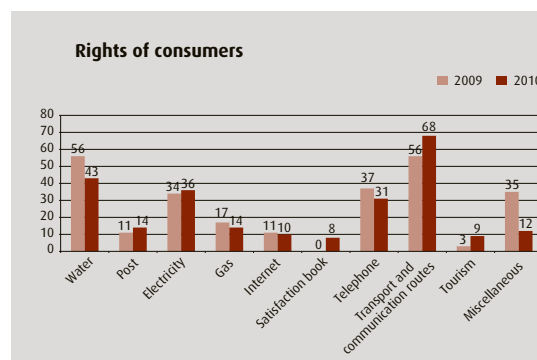
To close, three positive notes on the rights of taxpayers:

First, it was welcomed the intervention carried out by the Ombudsman aiming the amendment of the text of notifications in use by DGCI (Wealth Area). In the case of a first evaluation of real estate, the notification text should be amended in order to include, clearly, the reactive means of the taxpayer against the act notified.

Secondly, it should be highlighted the cooperative attitude of some of the Tax Offices and the Directorate for Tax Justice on the review of decisions imposing fines. In some cases, it has been determined to close the fiscal infringement procedure, including cancelling the respective fine imposed and in other cases applications for extraordinary revocation of the fines was accepted.

Finally, it was possible to close in 2010 cases whose investigation was prolonged for quite a long time, due to the delay in providing software that allows achieving repayments of stamp duty, some of them already decided for years but which were still awaiting implementation. As the investigation of these cases revealed, it was secured the payment of default interest due to this exceptional delay, which was not at all the fault of the taxpayers.

Rights of consumers



As is evident from the above graph, transport and communication routes were the matters that caused more cases.

The most recurring issues were the problems arising from the new ticketing scheme of the collective passenger transport and the way in which it was implemented the decision

⁹ http://www.provedor-jus.pt/restrito/rec_ficheiros/Oficio_SEAF_PEC_30122010.pdf

¹⁰ http://www.provedor-jus.pt/recomendarvore_sum.php?refPasta=76

¹¹ As is evident from the comparison chart «Rights of taxpayers 2009/2010», this was one of the few sub-issues of Taxation that, in 2010 registered more complaints than in 2009.

¹² http://www.provedor-jus.pt/restrito/rec_ficheiros/PAR_14102010.pdf

to charge tolls on the ancient «routes without cost to the user» (SCUT).

As regards the first of these two issues, it was even issued, and still during 2010 accepted, recommendation addressed to the TIP – Transportes Intermodais do Porto, ACE¹³, to ensure the recognition of a 2-year guarantee period for all¹⁴ «Andante» cards. Following the intervention of the Ombudsman, this solution was previously adopted in relation to «Lisboa Viva» cards.¹⁵

Without the need of formal recommendation, good cooperation was still obtained from the TIP - Transportes Intermodais do Porto, ACE in order to solve problem revealed by complaint to the Ombudsman, realizing the impossibility to perform the loading of travel passes¹⁶ with social signature at ATM. During the case's inquiry and in response to the Ombudsman, that entity reported it had entered in negotiations with SIBS [operator of payment systems], to allow cards with social tariff to be charged at ATM.

As for toll collection in the former SCUT, 11 cases were opened in the last quarter of the year, whose complaints prompted the sending of a request for clarification to the Ministry of Public Works, Transport and Communications in order to assess the need / usefulness of intervention on the questions most frequently addressed in these complaints. These are the alleged disproportionate nature between the length of (sub)sections of motorways driven and the amount of toll rate charged, the difficulties experienced in the acquisition and operation of equipment needed for the electronic collection of toll rates and also the difficulties related to the practical implementation of those fees' exemption system. The request for clarification was outstanding by the end of the year.

Continuing on the subject of public passenger transport, the Ombudsman opened an own-initiative case in order to intervene in the process of revising the penalty system applicable to collective passenger transport infringements. This is so because various recurring cases examined by the Ombudsman showed a marked disproportionate nature between the amount of fines and the severity of the infringements or a manifest injustice arising from the lack of possibility of the defendant to present a defense for having, meanwhile, paid the fine. The case was still in the inquiry phase by the end of the year.

As in the previous year, the problems with the public water supply system and billing thereof gave rise to a significant number of cases (43). They also gave rise to background interventions on recurring themes, namely the decision by some providers of this essential public service to condition the water supply contracts with the tenants to the

prior acceptance by the landlord of liability for the payment of debts arising from those contracts or, on another level of the same problem, the requirement from both the landlord and the tenant of a dwelling to pay the debts of previous occupiers of the place as a condition for concluding a new contract.

All interventions made in 2010 with the various targeted entities in the complaints of this nature¹⁷ enabled to overcome the problem, which in some cases involved the amendment of the rules of municipal regulations that unduly allowed such a practice.

In 2010, having solved, it was possible to close two cases, under which were found serious irregularities in the invoicing of water in the municipality of Santiago do Cacém as well as the collection of fees related to its consumption in the city of Reguengos de Monsaraz.

The settlement of these cases had the good co-operation of the targeted entities and is of particular relevance insofar as the decision to recognize the reason behind the Complainants in these cases was accompanied by the extension, to all citizens from each of those counties, of the corrective measures of mistakes (i.e., in both cases the amounts paid in excess were reimbursed to all the citizens affected by the same invoicing errors subject of complaints to the Ombudsman).

The complaints related to the electricity supply and the provision of telephone service reached the same levels as in previous years and the co-operation provided by EDP and PT in its settlement continued to deserve a frankly positive note.

On the contrary, the conduct of inquiries before the Turismo de Portugal, I.P. [Tourism Institute] – as a rule, in cases involving complaints related to the actions of travel agencies and other tour operators – is still excessively lengthy. In fact, the requested clarification arises only after implementation of various reminder arrangements and not always the depth of the responses is proportional to the waiting time.

¹³ http://www.provedor-jus.pt/recomendarvore_sum.php?refPasta=103

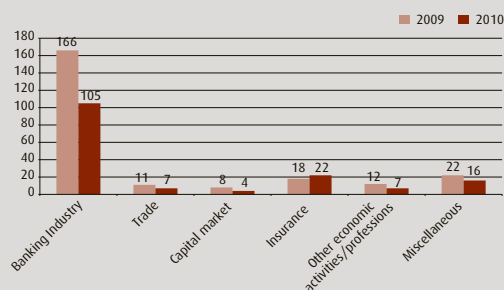
¹⁴ New and respective replacement cards.

¹⁵ See page 48 of the Report 2009.

¹⁶ Once again, the «Andante» cards in use at the Porto's collective passenger transport were at stake.

¹⁷ Municipalities of Óbidos and Mora, Águas do Porto, E.E.M., Águas de Gaia, E. E.M.

Rights of economic and financial operators



Despite the decrease in the number of complaints related to the banking activity (on charges, bank cards, deposits, transfers), this remains the most targeted subject of complaints that make up the sub-group in question. It should be noted that the 105 cases revealed by the above graph have as targets Caixa Geral de Depósitos, S.A. and Banco de Portugal. Indeed, the private nature of the vast majority of credit institutions operating in the market places them outside the scope of intervention of the Ombudsman. That is why complaints against their actions do not generate as a rule, inquiries.

A similar situation occurs in the insurance and capital markets, where the inquiries takes place mainly with the regulators from each of these sectors, the Instituto de Seguros de Portugal (ISP) [Insurance and Pension Funds Supervisory Authority] and the Comissão do Mercado de Valores Mobiliários (CMVM) [Securities Market Commission], respectively. It is fair to point out that in both cases good cooperation was obtained – excellent, even in the case of CMVM, both as regards speed in the provision of clarification, both in rigour and depth of its contents.

In the chapter on financial affairs has been made recommendation on the re-privatization process of the BPN, suggesting to the Minister of Finance to take measures to ensure that the operation included a capital reserve on behalf of small investors, meeting the requirements of the Framework Privatization Law.¹⁸

In late 2010, once the tender procedure had no response at all, the case was closed. In fact, there was no further need to proceed with the Recommendation formulated.

¹⁸ Full text of the Recommendation available at: http://www.provedor-jus.pt/recomendafich_result.php?id_recomendacoes=463&documento=Recomendação nº 8/B/2010

Other issues

Citizens continue to lodge complaints with the Ombudsman on a frequent basis, regarding civil liability of the state and other public or utility entities.

Notwithstanding the difficulties in evidence gathering of disputed facts that often are felt, it should be noted that some suggestions directed to those entities were well received. This included the recovery of damages from traffic accidents (namely, verified evidence of signaling deficiencies of roads in a poor state of conservation or subject to works), tree falling and also loss of registered correspondence or luggage.

Particular attention has been paid in 2010 to the management, allocation and monitoring of the use of European and national funds, in a very specific way – in the last quarter of the year began the preparation and implementation of several inspections visits to job centres to ascertain on the spot situations that, for some years, had been brought to the attention of the Ombudsman. This related to support projects for the creation of jobs, as well as monitoring and control of the implementation actions of such projects.¹⁹

Summary of some interventions of the the Ombudsman

Case R-1148/10

Entity addressed: Municipal Services of Loures

Subject: Consumer. Suspension of public water supply.

Summary:

In February 2010, the Ombudsman received a complaint against the municipal services of Loures («MSL»), which, for about 20 days ago, had suspended the public water supply to the Complainant, for late payment of an invoice.

According to the complaint, the required value respected, almost totally, to consumption made between 12/04/2006 and 18/09/2008, being this accumulation exclusively attributable to the managing entity, who was required to meter reading (placed in an accessible position to the reader) at a maximum interval of four months and make the corresponding billing adjustments after each reading cycle. Otherwise, it forfeits the right to receive the price difference, in terms of paragraph 2 of Article 10 of Law 23/96, 26.07.

Given the nature of the problem posed, the case was classified as urgent, in order to quickly clarify the situation and, where appropriate, to the reestablishment of the essential public service. Not having informal contacts, promoted in the days immediately afterwards, led to a due co-operation of the targeted entity, a visit was made to MSL premises and

¹⁹ See Chapter Cases and Ombudsman own-initiative inspections – Proc. P-13/10.

to the site of consumption, in order to collect the evidence and testimony considered essential for the inquiry.

This inquiry confirmed that the meter, placed on the outer wall of the user's property, had a glass that allowed the meter reader to collect the registration of consumption. Hence, MSL concluded by the undue interruption of the public service and restored it immediately.

Case R-3650/10

Entity addressed: Direcção-Geral dos Impostos (General Tax Directorate).

Subject: Taxation. Fiscal enforcement required to the Director of a company.

Summary:

The Complainant had been a managing partner of a company inactive for several years. Several fiscal enforcement cases against the company were pending, for debts of corporate income tax (assessed by tax authorities) and fines, from years prior to 2000.

In the absence of corporate assets, the liability was transferred to the managing partner, as subsidiary liable, having the tax authorities seized him part of the salary. Also, taking into account his debt situation, tax authorities have cancelled his tax benefits and issued additional assessments of personal income tax.

On the basis of the information contained in the complaint, the head of the tax office of the company's head office was asked to report on the dates of the enforced tax assessments as well as the dates of their notification to the managing partner. Also, he was asked to consider that the statute of limitations has expired if the notifications were shipped more than five years after the dates of the assessments, pursuant to paragraph 3 of Article 48, of the General Tax Law.

The Ombudsman's intervention allowed the termination of the fiscal enforcements, since the statute of limitations has expired, and the situation prior to the liability transfer restored. This included the immediate termination of the attachment of his salary, the repayment of seized amounts and cancellation of the additional assessments of personal income tax, which were originated by the cancellation of tax benefits.

Case R-4656/09

Entity addressed: Lisbon City Council.

Subject: Taxation. Occupancy fee in municipal ossuary.

Summary:

The Complainant requested the exhumation of the remains of his mother, which took place on 22 March 2004.

The bones were placed in the Municipal Ossuary of Carnide Cemetery, the Complainant chose the mode of occupation of 5 years, and for that purpose he paid the fee for that period.

Upon renewal of the contract, and in terms of calculating the time, the Complainant learned that the understanding of the Lisbon Municipal Council (CML) was that the start-date and the end-date always corresponded to January 1 and December 31 respectively, regardless the day and month in which it was charged, and/or the date on which the tax act occurred.

According to this interpretation, the contract with the Complainant ended on 31 December 2008. In turn, the Complainant was of the opinion that in calculating the time the rules laid down in the Civil Code (CC) should be applied, ending therefore the contract on 22 September 2009.

The Ombudsman has addressed the CML, arguing that the interpretation it was making was neither in line with the Fee Chart nor the CC. Also, there is no real consideration for the payment of the fee when there was no coincidence between the period of the contract and the calendar year(s). This could lead it to degenerate from fee into tax, the last being within the competence of legislative powers of Parliament.

The CML has undertaken the arguments made by the Ombudsman and upheld the claim of the Complainant. As a result of this intervention, the understanding adopted by the targeted entity may in future be able to benefit more citizens. Finally, according to the information provided by the CML, the heeded interpretation is incorporated in the new Regulation of Fees, Prices and Other Receipts.

Case R-4845/09

Entity addressed: Postal Services of Portugal (CTT); Inspectorate-General of Finances; Directorate of Treasury.
Subject: European and national funds. Social mobility allowance.

Summary:

The presentation of the complaint was motivated by the fact that the complainant, as a resident in Madeira and thus receiving the mobility allowance for return flights between this archipelago and the mainland, has seen the granting and payment of the allowance refused. In fact, CTT considered that the deadline was exceeded by the time it was requested.

With the analysis and preliminary inquiries on the issue, it was found that the computing platform used by CTT in this matter – created under the technical instructions of the Directorate of Treasury – not only started the calculation of the time on the day of the trip to subsidise (when it should be from the day following this event), but also did not transfer the expiry of the period to a working day, when the expiration occurred on a non-working day. This was in breach of the general rules on deadlines.

The ascertainment of that computing platform mistakes/weaknesses, has led the Ombudsman to convene a third entity – the Inspectorate-General of Finance, responsible for ensuring compliance with the legislation concerned.

After several inquiries with the three entities involved, in a concerted effort, the case was concluded as follows:

- The acknowledgement (and payment) of the claimed allowance;
- The commitment to give the same treatment to all cases in the meantime verified; and
- The new computing platform, to become operational in early 2011.

Case R-3557/10

Entity addressed: Postal Services of Portugal (CTT)

Subject: Consumer. Priority service right at post offices.

Summary:

A complaint was lodged with the Ombudsman whereby a CTT user complained that a particular post office refused to acknowledge the right of priority service to a lady carrying a newborn.

Heard by the Ombudsman, CTT started to deny any obligation to comply with the provisions of Decree-Law 135/99, of 22.04, which enshrines the right of priority attendance for certain individuals, including «elderly, patients, pregnant women, disabled people and caregivers of infants». CTT argued that the scope of the rule is restricted to central, regional and local government services and public institutes, while admitting that, when so requested by these people and without creating nuisances among other clients, priority treatment could be granted to people with certain physical limitations, on a case by case basis.

Given the public nature of the service provided by CTT and based on the understanding that the suggested procedure did not constitute a solution capable of preventing and resolving conflicts between its users, the Ombudsman's office has insisted on their being adopted internal rules which can impose on local post services genuine respect for the principles of the priority service.

As a result of this intervention, CTT approved the implementation of internal rules and signage to allow the enforcement of the priority service at post offices.

Case R-58/10

Addressed entity: General Directorate of Tax.

Subject: Taxation. IMI. Tax benefits. Low-asset value property belonging to a taxable person of low income.

Summary:

A taxpayer has requested, in 2010, the Ombudsman's intervention with the tax authorities by not having recognized exemption from Municipal Property Tax (IMI) for the years 2005 and 2006, under the provisions of Article 48 of the Statute of Tax Benefits, on the grounds of late submission of the request.

The rule in question requires that requests for exemption should be submitted by 30 June of the year in which the benefit should start. Hence, although meeting the requirements for the benefit to be taken into account, property owners, which made the acquisitions after that date, as was the case of the Complainant, were harmed.

By order of 15.12.2008, the Deputy Director General of Taxes for the Wealth Area has recognized a gap and set the understanding that in those situations, the deadline to apply for the benefit should be 60 days from the date of acquisition of the building. The Ombudsman informed the competent Tax Office of that position. So this entity has cancelled the IMI assessments for the years 2005 and 2006, promoted the refund of the amounts collected, meanwhile, in the scope of the fiscal enforcements as well as their termination.

2.2.3. Social Rights

Concerning social rights complaints, the intervention of the Ombudsman focused on several subjects related to the different social security regimes, social housing and professional training.

In 2010 continued the trend of a large number of cases in these issues (1004), similar to what has been happening over the last years.

The high number of complaints received is mainly due to the impact of legislative changes that have occurred in the recent years, either within the social security schemes or in the system of social protection scheme for State employees. This impact occurred namely with regard to the access conditions and calculations of pensions and other social benefits, but also in the organization and operation of the managing services.

Within 1004 new cases, 805 were completed in the same year, which means that 80% of total cases had an investigation in less than a year, being a good indicator of the speed in processing them. This fact clearly demonstrates the effort made in order to get closer the moment when the citizen requests the intervention of the Ombudsman and the time of approximate final decision about his claim.

The following table provides a breakdown of the main issues for which complaints were presented in 2010:

ISSUES	NO. OF CASES OPENED
1. SOCIAL SECURITY	948
1.1. SOCIAL SECURITY SYSTEM	698
1.1.1. Old age pension	133
1.1.2. Invalidity pension	34
1.1.3. Death benefits	16
1.1.4. Unemployment benefits	101
1.1.5. Parental benefits	21
1.1.6. Sickness benefits	47
1.1.7. Family Benefits (e.g. family allowance)	50
1.1.8. Insertion social income and social action	93
1.1.9. Other benefits	23
1.1.10. Social establishments	33
1.1.11. Social security registration, contributions and debts	126
1.1.12. Several affairs	21

The breakdown of Social Security-related complaints is virtually unchanged in comparison to 2009, maintaining practically the same relative weight of each sub-issue. It is nonetheless important to emphasize a slight increase of complaints in relation to unemployment benefits and citizenship social protection benefits (in particular social action, insertion social income and family protection). There was also an increase in the number of complaints related to social security registration, contributions and debts at the social security system.

It is important to note that a large proportion of complaints takes an emerging social nature, 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

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1.4. SOCIAL SECURITY OTHER ISSUES	6
2. SOCIAL HOUSING	18
3. PROFESSIONAL TRAINING	17
5. SEVERAL	21
TOTAL	1004

to rapid means of consulting the entities addressed (e.g. telephone contact, fax and e-mail). 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. 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). In other cases, the Ombudsman may consider that an alteration to the law is just and appropriate and 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, the Ombudsman achieves an advantageous viewpoint, which enables him 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.

Regarding the recommendations of the Ombudsman that, after reiteration, were awaiting final answers from the government, it is important to mention the following: **(a)** the legislative recommendation 8/B/2008 addressed to the Minister of National Defence – concerning the problem of

counting the period imposed registered leave, for the purpose of retirement or pension¹ – come to be accepted and the Ombudsman has been informed that was under way the legislative process to amend; **(b)** already with regard to legislative recommendation 4/B/2007, addressed to the Secretary of State Adjunct and of the Budget – which focused on separate issues: the termination of the award of the Lifetime Allowance (under Decree-Law 134/79, 18th May) by the Civil Servants Pension Office; and the relevance of length of service in the former Overseas Public Administration under the unified pension by amending the Decree-Law 361/98, 18th September – it was found that it has not obtained a definitive answer yet.

Social Security

Regarding the subject of complaints about Social Security (in a broad sense²), the Ombudsman's intervention focused in particular on: **(a)** lack of merit of acts refusing, terminating or suspending pensions and other benefits; **(b)** errors in social security earnings records and insurance careers relevant for access and calculation of pensions and other benefits; **(c)** inaccuracies and delays in the granting of benefits; **(d)** lack of decision, insufficient or inadequate information provided to stakeholders; **(e)** delays from the regional Disability Determination Services in the treatment of disability claims; **(f)** inaccurate information provided by the social security information system, with consequences on areas such as allocation of benefits, collection of social security taxes or debt notifications; **(g)** improper debt enforcement actions; **(h)** delays in the repayment of overpaid social security taxes; **(i)** untimely or incorrect claims for refunds of benefits paid wrongfully by the services; **(j)** lack of coordination between the several services within the structure of the Institute of Social Security, IP; **(k)** lack of coordination between the National Pensions Centre and the Civil Servants Pension Office in the attribution of the so called «unified pensions» causing delays in the granting of such pensions; **(l)** delays in the analysis of claims under the Portuguese Armed Forces Compensation Scheme; **(m)** operating conditions of nursing homes for the elderly (private as well as public-private partnerships «IPSS»). For a better overview of the Ombudsman's action in this vast field of Social Security, we will point out some of the interventions made in this area:

Given the general concern about the rights of institutionalized elderly, the Ombudsman undertook on its own initiative an investigation concerning the quality of service provided by social establishments for the elderly (nursing homes),

¹ www.provedor-jus.pt/restrito/rec_ficheiros/R565_08.pdf

² Including complaints about benefits granted by the Institute of Social Security («*Instituto da Segurança Social, IP*») and benefits granted by the Civil Servants Pension Office («*Caixa Geral de Aposentações*»).

including the corresponding public inspection services integrating the Institute of Social Security, IP³. Considering the need for preservation of the **dignity of institutionalised elderly persons** and considering in addition that the public services are both service providers (owning their own equipment managed directly or indirectly) and supervisory bodies in this field, their activity is deemed to serve as an example, since the public entities should only require from individuals what they themselves are able to fulfil. Therefore, the first part of the inspection focused on public nursing homes (managed directly by the State) and on the so-called integrated establishments (nursing homes managed by Private Social Solidarity Institutions, true public-private partnerships) and the second part included the control of the activity of the Social Security supervisory bodies responsible for the surveillance of private and public-private nursing homes. Moreover, the Ombudsman has also addressed with particular attention and concern the delay from the Government (in particular from the Secretary of State for Social Security) in promoting the adoption of legislative measures towards the regulation of the activity of private childminders, the regulation of family protection in the field of disability and dependence and the changes to the system of the special education benefit. The Ombudsman is awaiting definitive answers to the suggestions made in due time on these issues of major importance, given the rights and interests at stake. In the case of **childminders**, the intervention focused rather on the absence of legislation governing the licensing of the activity of these so called «private nannies» who look after children (up to 5) in their own homes in return for a payment, in order to assure the effective monitoring of their business. The Ombudsman has highlighted the seriousness and the risks inherent to such a legislative loophole, a circumstance all the more disturbing as it concerns the safeguarding of the physical and moral welfare of children.⁴ This intervention had special resonance in the press.⁵ In relation to **family protection in the field of disability and dependence**, the Ombudsman urged the Secretary of State for Social Security to legislate according to the legislative suggestions issued early in 2006, which were considered pertinent at that time.⁶

For the **special education benefit scheme**, the Ombudsman suggested, on the one hand, more transparency and swiftness in the allocation of the allowance for attending special education establishments, proceeding to urgent review of legislation governing such social benefit, and on the other hand, while this review has not been carried out, the Ombudsman defended the need to clarify the current system of allocation, to enable immediate resolution of the

ongoing claims in the various district centres of the Institute of Social Security, IP, ensuring uniform legal procedures and decision criteria to be adopted by all of them.⁷ This issue was also echoed in the press.⁸

Also noteworthy is the acceptance of a suggestion made by the Ombudsman last year, as part of an investigation filed on his own initiative (P.04/09) listed in the previous report to Parliament⁹, in order to **ensure social protection for unemployed workers who become ill during the period allowed for requesting the unemployment benefit** (which would not benefit either from the sickness benefit or the unemployment allowance).¹⁰ Finally, it is important to underline that **the Institute of Social Security, IP accepted various suggestions on harmonization and standardization of procedures followed by its departments (district centres), by issuing technical guidelines** related to situations and cases presented by the Ombudsman.

Social Housing

The complaints about **social housing** were based mainly on situations of claims for housing presented by households in an alleged situation of economic and social vulnerability: delays from the local community entities in assessing applications for allocation of social housing units or in rejecting some of such requests. Whereas the allocation of social housing is constrained by the availability of such rental units and by the evaluation and ranking of priorities (following the criteria established in the applicable regulations), in these cases, the Ombudsman can only aim to ensure that the entities concerned evaluate the demands properly and grade them correctly according to the priority and severity grade of the personal situations involved. There were some successful interventions, especially in cases of households with children suffering from serious chronic illnesses. In these situations, proper housing is not just a matter of comfort, but an essential element to their health and survival.

In the social housing domain, we would like to highlight a **best practice** from the Municipality of Lisbon consisting of the publication on its website of the lists containing the provisional classification of applications for social housing received each month, giving greater transparency in the allocation of municipal houses.

³ See Chapter «Actions and Investigations from the Ombudsman's initiative» – P-7/10.

⁴ www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=295

⁵ www.provedor-jus.pt/restrito/recortes_ficheiros/JN_20100809.pdf

⁶ www.provedor-jus.pt/restrito/rec_ficheiros/R2155_09.pdf

⁷ www.provedor-jus.pt/restrito/rec_ficheiros/Oficio_R1834_10.pdf

⁸ www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=389 and www.provedor-jus.pt/restrito/recortes_ficheiros/DNeducacaEspecial.pdf

⁹ www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_ar_2009.pdf and www.provedor-jus.pt/restrito/rec_ficheiros/P04_09.pdf

¹⁰ www.provedor-jus.pt/restrito/recortes_ficheiros/JNegocios27092010.pdf and www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=332

Professional Training

Although the number of complaints received on this subject is not significant, it is important to point out the Ombudsman intervention regarding several complaints subscribed by trainers, concerning the excessive delays of the Employment and Professional Training Institute (IEFP), both on issuing and renewing the Certificates of Pedagogical Aptitude (CAP). In view of those complaints, the Ombudsman addressed IEFP an inquiry, asking for detailed information on the reported delays, concerning all Regional Delegations of IEFP. Having analysed the requested elements, it was confirmed the existence of significant delays, in particular on the North Regional Delegation of the Institute.

Considering that in the case of renewals, such delays jeopardize not only the continuity of the trainers activity, but also the planning made by the training bodies and the accomplishment of training actions already scheduled – causing obvious damages also for the learners – the Ombudsman called the attention of the IEFP's Board of Directors, to the necessity of taking urgent measures to tackle the problem, especially regarding the CAP renewals. As a result of the Ombudsman intervention, a new law was adopted (Regulation 994/2010, of 29th September), ending up with the CAP's periodical renewal obligation, which ceased to have an expiration date.

Summary of some interventions of the Ombudsman

Case R-154/09

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

Subject: Regularisation of registration and payment of social security contributions regarding the period of work provided under an employment contract, which was judicially declared void. Access to unemployment benefits.

Summary:

1. The Ombudsman received a complaint signed by a former employee of the Tourism of Portugal Institute, which challenged the refusal of that Institute to carry out his registration in the social security, during the period in which he served, and the consequent payment of social security contributions concerning such period. That refusal prevented the claimant and other former employees in identical situation, of accessing to unemployment benefits.
In fact, between 2002 and 2008, the claimant and several other colleagues, worked for the Tourism of Portugal, as self-employed workers (Independent Workers).
2. The Labour Court of Lisbon considered that the relationship established between those workers and the

Tourism of Portugal was, in fact, a labour contract, but decided that this contract was void. Nevertheless, in accordance with the labour law (Article 115, paragraph 1, Labour Code), the Court also considered that the mentioned contract was legally effective during the time it was held, and, therefore, produced all its legal effects, during that period.

3. Accordingly, the parties were required to fully comply with all the obligations that result from the existence of a labour contract, *maxime*, the registration of workers in the social security and the payment of contributions arising therefrom. However, the Tourism of Portugal refused to proceed that way.
4. The Ombudsman reported the fact to Social Security Institute (ISS, I.P.), pointing out the necessity of demanding to the Tourism of Portugal for payment of the contributions corresponding to salaries earned by employees during those periods.
5. The Social Security Institute (ISS, I.P.), accepted the Ombudsman's understanding about the subject, and, not only, resolved the reported cases, but also issued guidelines determining that, in the future, similar situations should automatically be legalized.

Case R-2429/09

Entity addressed: Ministry of Labour and Social Security

Subject: Reflection of holiday and Christmas bonuses in parental allowance calculation. Adoption of legislative measures.

Summary:

1. In a complaint addressed to the Ombudsman, about the calculation of the parental allowance, two issues were raised: The problem of discrimination created by the way those allowances are presently calculated, and the question of determining the entity responsible for the payment of Christmas and holiday bonuses to workers who enjoy the parental leaves legally established.
2. Indeed, it was noted that the calculation of parental allowance determined by law results in an unfounded discrimination with regard to the allowance amount paid to beneficiaries, since that amount varies according to the moment of the year when the birth occurs, and, therefore, may include, or not, the holiday and Christmas bonuses.
3. Moreover, it was also noted, that the problem of parental allowance calculation, above mentioned, has a close connection with the issue of determining the employer liability for paying Christmas and holiday bonuses to workers who enjoy the parenting leaves legally established.
4. The Ombudsman addressed the Minister of Labour and Social Security on those matters, inviting him to adopt appropriate measures to clarify the rules under

consideration, aiming a standardization and equity of treatment given to these situations. The Ombudsman presently awaits the Minister position on the matter.

Case R-3183/09

Entity addressed: Institute of Social Security, IP (ISS)

Subject: Error of the ISS services in the allocation and maintenance of benefits, refund requests and fulfilment of reporting obligations to beneficiaries, generating situations of lack of social protection.

Summary:

1. Several social security recipients filed complaints at the Ombudsman challenging the conduct of the ISS services (district centers and the National Centre for Pensions), in respect of the service requests for refunding of unemployment benefits received after completing 65 years of age by persons who were not allocated a retirement pension with effect as of the date on which such an age was completed.
2. According to the allocation rules of unemployment benefits – Article 55, Paragraph 1, point c) of Decree-Law 220/2006 of 3rd November – the right to perceiving the benefits of unemployment ceases where the beneficiaries reach legal age for access to pension age (65 years) and have also completed the qualifying period for the same assignment.
3. In the cases of the complaints, it was found that, according to the date on which the right to the unemployment benefits was granted to the beneficiaries, they would complete 65 years of age during the period in which they would receive said subsidy. However, from the contacts made with the various district centers of the ISS, it was concluded that the national computer software of the ISS was not programmed to identify and prevent cases such as those claimed, ie, unemployment benefits were always granted without limitation, whether, during that period, the beneficiary would be able to complete the age of access to the retirement pension.
4. Consequently, the beneficiaries would only request their retirement pension many months after reaching the legal age to do so, convinced that they should exhaust their period of unemployment benefit, as notified and paid by the district centers of the ISS.
5. After the detection of these situations, the ISS services demanded the refund of the unemployment benefits paid beyond the date on which the beneficiaries have completed 65 years of age. This would entail an unreasonable and unjust gap of lack of social protection for the interested persons, since they would not only lose the unemployment benefits for that period but also see

themselves unrewarded by the retirement pension to which, after all, they are entitled due to their old age.

6. Therefore, the Ombudsman suggested to the ISS that the right to the retirement (old-age) pension was granted to interested persons with effect as of the date on which they had completed 65 years of age, thereby avoiding the mentioned gap of lack of social protection. It was also requested that the ISS identifies and proceeds to correct all similar situations. Furthermore it was suggested to modify the computer software used to manage the allocation of benefits, so that the beneficiaries in this type of situation (with pending unemployment benefits), could be identified in a timely manner and duly notified for timely submission of their application for the retirement (old-age) pension. The suggestions made by the Ombudsman have been fully complied with.

Cases R-5392/09 and R-1680/10

Entity addressed: Civil Servants Pension Office

(CGA – Caixa Geral de Aposentações)

Subject: Citizens with disabilities. Allowance for attending a third person.

Summary:

1. The petitioners are mothers of youth with disabilities – and allegedly in a situation of dependency which requires continuous monitoring by a third person – who have complained to the Ombudsman that the CGA had dismissed their applications of allowance for attending a third person, as provided for in the Decree-Law 133-B/97, of 30th May. The CGA grounded such decisions on the advice of its Chief Medical Officer who understood that the cases did not evidence a situation of dependency.
2. The allowance for attending a third person is intended to compensate for the additional family expenses resulting from dependence of the descendants (or equivalent persons) of the beneficiaries, requiring constant monitoring by a third person. CGA is the institution in charge of family benefits management for beneficiaries who are pensioners, where the retired persons or pensioners are under the scope of this institution [Article 46, paragraph 2(b)].
3. The allocation of this social benefit should depend, inter alia, of a certification performed by multidisciplinary medical evaluation teams, which however were never put in place. In the absence of such teams the certification rests with a specialist in the concerned disability or, failing that, the medical doctor assistant [Article 62 paragraph (b)].
4. The CGA, as managing entity of the allowance, has no

legal powers through its Chief Medical Officer, to comment on the evidence of dependency.

5. Accordingly, the Ombudsman intervened with the CGA in order not only to undertake the review of the specific cases claimed by the petitioners, but also to change the procedures of CGA in dealing with similar cases, since the decisions taken on the above referred ground were illegal. The CGA complied with the position taken by the Ombudsman.

Cases R-5793/08, R-2878/08 and R-2209/10

Entity addressed: Institute of Employment and Professional Training (IEFP)

Subject:

I - The rules applicable to the unemployed and not subsidized with regard to their registration, cancellation, suspension and reinstatement in the employment centres. Amendment of regulatory circulars.

II - The advance time of sending summonses by employment centres to their users. The termination of unemployment benefits. The compliance of Article 15, paragraph 3, of the Decree-Law 135/99 of 22nd April by the employment centres.

Summary:

1. In recent years the Ombudsman has been tackling with complaints filed by users of the employment centres of the IEFP in which the issue raised is the manner how users receive information concerning the registration, cancellation, suspension and reinstatement of the unemployed in their respective employment centres, namely the unemployed who are not receiving unemployment benefits.
2. The question is relevant not only for the unemployed who receive a subsidy, since a cancellation results in the termination of the unemployment benefits that they receive, but also for the non-subsidized unemployed, because their registration in the employment centres generate some benefits, albeit indirectly, for example when dealing with situations of long-term unemployment (a situation which is always assessed through proof of registration at the centre for a specified period).
3. After the intervention of the Ombudsman, the IEFP revised its Regulatory Circular 10/2006, of 29th December, aiming in particular to elucidate users with regard to their rights and duties in relation to employment centres. Furthermore the IEFP produced a document for information purposes to be delivered to users at the time when an application for unemployment benefits is submitted. Moreover the information content in the websites of IEFP and ISS was updated as well as the «Practical Guide».

4. Additionally, welcoming also a suggestion of the Ombudsman, IEFP is revising the Regulatory Circular 17/2003, of 21st March, relating to the non-subsidized unemployed. Meanwhile it was adopted the Regulatory Circular 13/2010, of 30th July on the control of candidates not receiving unemployment benefits by post, which partly reflects the suggestions made by the Ombudsman in this regard.

5. Another issue concerning the relationship of users with the IEFP employment centres that has been the subject of complaints to the Ombudsman, is the advance time of sending summonses to users often not fulfilling what is provided in Article 15, paragraph 3, of the Decree-Law 135/99, of 22nd April which states that «the notice shall set a date for an appearance with a minimum period of eight working days».

6. The question is of paramount importance given that the lack of appearance of an unemployed person following a notice issued by the centre results in the cancellation of his registration at that centre and consequently the termination of the unemployment benefits.

7. The Ombudsman stressed to the IEFP that the merits of the legal provision establishing said term was not in question. It was noted that if the application of this rule was indeed an obstacle to the performance of services, then the IEFP should propose to its supervision Ministry the adoption of legislative measures to amend the term of the summonses. Until then, however, employment centres could not fail to be bound by the law, and should meet the established deadline of eight working days.

8. The IEFP accepted the position of the Ombudsman and reported that instructions had been given to all employment centres in order that the eight days deadline, as established in Article 15, paragraph 3, of the Decree-Law 135/99, of 22nd April, is fully complied with.

2.2.4. Worker's Rights

During the year of 2010, 718 cases were opened concerning workers rights, which means a non significant increase, compared to the previous year. Most of them (84,3%) were based on complaints related to public employment matters. Recruitment and career matters (21% and 18%, respectively) were prevalent, in spite of the verification of a tendency to a slight increase of the number of complaints related to remuneration and performance appraisal system (which became closely connected). Matters concerned private employment relations, while matters of the administrative organization represented 10,2% ,most of which may be generically aggregated under the subject «omission of reply/decision», understood here in as including the violation of the duty of information or response from the Administration to private individuals, as well as the breach of the duty to make a decision (in the administrative procedure).

Recruitment complaints show, as in previous years, no relevant improvement in the way Public Administration deals with competition procedures, often going against the grain of case-law that has been built up over several years, thus revealing insufficient respect for the principles that assure the right to a fair competitive examination.

A common problem, during the year of 2010, has been the possibility of an academic degree in a specific area to be accepted as an admission requirement in a competition process. The requirement of academic qualifications is, by Law 12-A/2008 (LVCR) restricted to the ownership of an academic degree, which specific area can only be mentioned in the advertising notice of the competition when this proves to be absolutely indispensable to the exercise of the activity that characterizes the job. Furthermore, the respect for the principle of free circulation of workers (Article 45 of Treaty on the Functioning of the European Union) obliges to the comparability of degrees and prevents the fulfillment of academic requirement to be examined in the light of the designations of diplomas awarded by the school system of respective Member States. Therefore, areas have to follow the international and European parameters, as they are fixed in the Ordinance 256/2005, of 16th March, that approves the actualization of National Classification for Areas of Training and Education.

Though academic and professional qualifications are required to work in a body or service of the Public Administration, the narrowing of the requirement of qualifications

SUBJECT	NUMBER OF CASES OPENED
ADMINISTRATIVE ORGANIZATION	73
Administrative bodies	3
Omission of reply/decision	58
Others	12
PUBLIC EMPLOYMENT RELATIONS	605
Disciplinary action	13
Work accidents and diseases	14
Performance appraisal system	67
Directors	10
Career	111
Guarantees of impartiality (incompatibilities and impediments)	3
Equality and non-discrimination	6
Special work mobility	5

Regular work mobility	34
Work	45
Recruitment	128
Collective labour relations	3
Remunerations	81
Job attachment	46
Others	39
PRIVATE EMPLOYMENT RELATIONS	38
Labour State Administration / Work diseases	10
Work contract formation	3
Work	3
Collective labour relations	4
Remunerations	3
Others	15
OTHER BUSINESS	2
TOTAL	718

to a concrete diploma, besides its non accordance with the spirit of the law, may easily become an instrument to reduce or adequate the universe of candidates, thus in violation of the principle of impartiality and equalization.

Also in matters of recruitment, several complaints have been presented by candidates that were excluded on the ground of lack of presentation of documents that were required by the advertising note of the completion procedure. These exclusions resulted from the wrong interpretation of Article 28, paragraph 9, indent a) of Ordinance 83-A/2009, of 22nd January, that regulates the procedure of competition for occupation of work posts in bodies or services of Public Administration. It is a fact that Administration still does not separate the admission requirements from the instrumental proof of their fulfillment.

Formality problems and lack of correct information were also reported and motive of several complaints. Resulting from the law that established professional probation program in Public Administration, several complaints were reported by excluded applicants, mostly due to insufficient notification, in the course of electronic application procedure. The legislative option for electronic notifications, very often realized during the night and at week end, and for very short terms for the applicants' intervention, as well as lack of adequate support from the Administration in the matter of solving informatics problems, led to significant levels of conflict in the course of these selection process. So, the informality and quickness that the legislator aimed at were compromised by the necessity of solving several problems and the examination of the complaints of the applicants.

Another important question that gave matter to a lot of complains is related to the performance appraisal system. Most of complaints were based on the late fixation of parameters of appraisal, wrong definition of goals, and absence or insufficiency of instruments of measure.

Performance appraisal system, based on goals and results exists, in Portuguese Public Administration, since 2004. It has been based upon the idea of the performance appraisal of civil servants as part of a strategic organizational complex, being, both as a management tool and a way to motivate staff. Law 66-B/2007, of 28th December, that approved the new system, reinforced these principles, clearly establishing the connection between the cycle of administration and the appraisal of services, chiefs and workers.

In spite of all these good intentions, we can verify an inadequate application of these principles, mainly those of coherency and integration, which were needed to join the action of services, chiefs and workers towards the same objectives, due either to a lack of organizational planning or its poor achieving, that compromised the result of the global objectives of performance appraisal system in Public Administration.

During 2010 the Ombudsman issued three Recommendations related to worker's rights. The first one, which has not

been accepted, was addressed to the Parliament and comprehended issues underlying the Law of National Defense, promoting the elimination of the negative discrimination that is incumbent on the military and is an obstacle to the pursuit of the activity of this body of the State, as guarantor of justice, rights and freedom of all citizen. The other two Recommendations are still waiting for the final decision.

Another Recommendation has been renewed and accepted about the fundamental right of access to records and administrative archives.

A special reference is due to several positions taken in the context of cases opened in the wake of complaints, in sense that came to be accepted in subsequent legislation. Such as:

- a) A special career of the Foreign and Frontiers Service was extinguished and its staff was integrated into another that substantially reduced the possibilities of progression in terms of salary. After examining the case, the Secretary of State of Public Administration was commended to reappraise the changeover, because it seemed more appropriate the integration in a higher category as requested by the complainants. This correction has come to be realized in a later diploma.
- b) Several complaints have been sent to Ombudsman about administrative decisions based on an interpretation of the Legal Regime of the Contract of Employment in Public Functions, that considered unjustified absences that were motivated by the assistance of a relative to carry out medical consultations and complementary exams of diagnosis. In spite of considering that a different interpretation of the Law was perfectly acceptable, it was suggested to the Secretary of State of Public Administration a formal clarification in this area, by a legislative amendment, which has been made.
- c) The issue of the application of the same or different methods of selection to the candidates in a competition procedure, as they have already or not the quality of civil servants, gave reason to several complaints from excluded candidates that considered themselves wronged by the selection method that was applied to them.

As a result of these complaints was recommended to the Secretary of State of Public Administration the elaboration of a circular to clarify these matters. The problem has been solved through a subsequent legislative amendment.

- d) Several cases were opened as a result of complaints of civil servants who were denied the possibility, either to return to their services of origin (hospitals that were transformed into public business entities) or to be considered in a situation of special mobility after a situation of long term unpaid leave. The Secretary of State of Public Administration has been alerted to the necessity of repair this injustice, which has been done through legislative solution to regularize the situation of those workers.

In addition, a case has been opened, by Ombudsman

initiative, to clarify the competences of the Authority for the Conditions of Work to intervene with the public entities «whenever labor relations ruled by the Labor Code and its complementary legislation are concerned». This was due to the fact that, although the supervision of violation of labor standards on the part of private entities is safeguarded by Law, the ACT has considered – in a non uniform way – that its competence, as far as public entities were concerned, was restricted to «monitoring the compliance with the legislation on safety and health at work». As a result of this initiative, the ACT assumed within the scope of its competence all the labor relations established by public companies, as they are ruled by the individual employment contract scheme.

As far as the cooperation of the entities concerned in the instruction of the cases, during the year of 2010, there is nothing to refer beyond the fact that, most of times, it is not done within a reasonable time to protect the rights or interests of the parts.

Even so – and because the behavior of some entities concerned aroused doubts about their understanding of the duty to cooperate with this body of the State- it is important to clarify that the fulfillment of the duty to cooperate with the Ombudsman is measured by his mission, i.e. by the objective of «assuring the justice and legality of the exercise of public power». Whenever the public entities are restricted to reiterate their positions, without arguing the Ombudsman suggestions, they are not respecting their duty to cooperate. During the year of 2010 this happened, mostly, with some services of the Ministry of Education (which is particularly serious, knowing the fact that this ministry has been cause of 29,4% of the opened cases).

However, it is only fair to consider the cooperation of the concerned entities as globally positive as it is fundamental to the achievement of a success rate in solving processes.

Summary of some interventions of the Ombudsman

Case R-285/09

Entity addressed: Polytechnic Institute of Viseu and Technology College of Viseu

Subject: Teacher coordinator – Category.

Summary:

1. A complaint has been addressed to the Ombudsman from two professors of the Technology College of Viseu (ESTV), because the validity of their orders of appointment in the category of teachers coordinators, signed by the President of the Polytechnic Institute of Viseu (IPV) in 2005, was not recognized by the ESTV. The aforementioned recognition has been denied several times and in different circumstances.

2. The issue was aroused by deliberations of the Directive Counsel of ESTV that, in 2007 declared the nullity of the appointments of the complainants. After that, the President of the IPV declared the nullity of these deliberations – as far as the appointments were concerned – but the ESTV never changed its position towards the recognition of the complainants' category.
3. After having examined the complaint, conclusion was that the orders of appointment were valid, in spite of some illegalities that were detected in the course of the respective contest procedures to teacher coordinator. However, having not the aforementioned orders of appointment being judicially challenged or repealed, the acts in question were consolidated in the legal system.
4. So, the President of the Directive Counsel of ESTV was alerted to the need of correction of the proceedings formally adopted concerning the recognition of the professional category of the complainants. After several formal and informal demarches, a new order has been signed by the President of the IPV, in January of 2010, recognizing the validity of the appointments of the complainants as teachers coordinators and authorizing them to have their salaries corrected from the moment of the first appointment. The ESTV complied with this position¹.

Case R-6259/09

Entity addressed: Secretary of State for Education

Subject: Registration and renewal of registration in private schools for higher education. Simple contract: subject and powers of the public obligor. Sanction imposed on the pedagogical director of Oficinas de S. José – Educative Association.

Summary:

1. The intervention of the Ombudsman was requested concerning the legality of the sanction imposed by decision of the Secretary of State for Education (6.11.2009) on the pedagogical director of Oficinas de S. José – Educative Association. A fine was imposed, considering that «In the 2nd quarter of 2008, the defendant, in his quality of pedagogical director, refused the renewal of the registration of M.....» which he was obliged to accept it, by virtue of the application of the legal rules applied to the registration and renewal of registration on public schools.
2. After the analysis of the complaint and after extensive legal discussion with the entity concerned, conclusion was that the punitive decision violates the principle of legality by mistake in the identification of the illegal-

¹ http://www.provedor-jus.pt/restrito/rec_ficheiros/Anotacao_28509.pdf.

ity. In fact, it is not possible to apply to private schools with simple contract the same legal rules applied to the registration and renewal of registration on public schools, because simple contracts are concluded in areas not lacking in what concerns public education. Thus, they fall within the framework of the guarantee, on the part of the State, of the constitutional principle of freedom and of the plurality of education (Articles 43 and 61, paragraph 1 of the Portuguese Constitution). Furthermore, it has been verified a disproportion of the notion and administrative action that, though recognizing, by virtue of the Constitution, a wide space of availability of the private schools in admission and selection of their students (whose constitutional limits, so often disrespected, are not always verified and sanctioned) excludes it, in what concerns renewal, using «by approximation», as a block and in a not specified manner, rules that were been though out for schools of public nature and responsibility. It has also been referred that the punitive decision disregarded guilt as essential condition of the punishment, lacking the accusation, its supporting report and punishment itself, any reference to the subjective element of the infraction.

3. The General – Inspectorate of Education, whose procedure has been sanctioned by the relevant member of Government, dealt with this case forgetting that the workers in a private school are not members of the Public Administration and that inspective and punitive powers of the Administration upon a private activity have the extent of the legal and contractual duties of the respective establishments.
4. The Secretary of State for the Education has been asked to withdraw his decision, on grounds of illegality, but has not accepted the proposal. Furthermore, he has been asked to promote the correction of the system of penalties applicable to private schools, viewing the material unconstitutionality of the standards contained in Article 99 of Decree-Law 553/80, identified by Constitutional Court, but again, he has not accepted to promote any reflection concerning the issue. In face of this position, the member of Government has been exhorted to consider the necessity of doing so, as well as promoting a reflection concerning the legal and contractual limits of punitive power upon private schools.
5. Finally, it has been registered that appraisal of the situation has always been given to the same technician of the General Inspectorate of Education, no matter the different phases of the case, which led to an appeal to a greater care in compliance with the principle of impartiality².

² http://www.provedor-jus.pt/restrito/rec_ficheiros/Anotacao_R6259_09.pdf.

Case R-218/10

Entity addressed: Foreign Office

Subject: Diplomatic career. Performance appraisal.

Summary:

1. Ordinance 1032/2009, of 11th September, adapted sub-systems of performance appraisal of chiefs of Public Administration to workers of the diplomatic career. It has been established as date of entry into force the day after its publication and as date of production of effects the 1st of July of the same year. As a result of the publication of this diploma, services began to take steps towards its application to the diplomatic career staff covered by the scope of its application, and guidelines have been issued in late September. The motive of the complaint was that the objectives that were subjected to contract and accepted by workers reported the whole year of 2009.
2. The ordinance in question is based, among other diplomas, in Law 66-B/2007, of 28th December, in which terms, the minimum requirement of service time for the purpose of evaluation are six months of legal relationship of employment cumulatively with six months of effective service. By virtue of these legal requirements, evaluation can only be made when the card containing the objectives and competences has been signed and formally accomplished until at least six months before the term of the period submitted to evaluation, so that a minimum period of evaluation, (between 1st July and 31st December), with objectives that were previously fixed, is allowed.
3. On these grounds, it was concluded that nor the option contained in the ordinance, nor the subsequent administrative procedure were correct.
4. The Ministry of Foreign Affairs considered that the options contained in the aforementioned ordinance were not to be applied to the performance appraisal of the year of 2009. Alternatively, workers were submitted to the evaluation of their *curricula*³.

Case R-2413/10

Entity addressed: General Secretary of the Ministry of Health

Subject: Placement in a situation of special mobility (SME) by voluntary option.

Summary:

1. A worker of the Hospital de S. João, E.P.E. complained to the Ombudsman because his request to be placed in a situation of special mobility, by voluntary option

³ http://www.provedor-jus.pt/restrito/rec_ficheiros/Anotacao_R281_10.pdf.

was denied. The request had been made under cover of Ministerial Order 6303-B/2009, of 23rd February, of the Ministry of State and Finances, that implemented, for the year 2009, the option of the Article 11, paragraph 5 of Law 53/2006, of 7th December.

2. Given that the aforementioned Law excludes from its scope of application the public business entities (E.P.E.), the General Secretary of the Ministry of Health considered that Ministerial Order nr. 6303-B/2009 did not apply to Hospital S. João E.P.E., so there was no legal basis for the placement in a situation of special mobility.
3. Nevertheless, the Ombudsman noted that, in accordance with the Article 45, Law 53/2006 applies to those who previously had the quality of official or agent of the Public Administration and now works in a public business entity, so the conclusion was that, in spite of the exclusion of the E.P.E. from the scope of application of the mentioned Law, its dispositions are applicable to their workers, since all other subjective requirements are met, namely those concerning the nature of their employment relationship. Otherwise, the aforesaid provision would have no useful effect.
4. The General Secretary of Ministry of Health has been asked to reconsider the request of the complainant, which has been done, and the understanding of the Ombudsman has been accepted. As a result of this new position, the request has been granted by the Hospital S. João E.P.E.
5. The same result has been achieved in the context of another complaint with the same subject⁴.

Case R-3968/10

Entity addressed: Polytechnic Institute of Leiria

Subject: Competition for recruitment of workers in undetermined-term contract. Legal requirements for admission. Non validity of exclusion caused by lack of presentation of signed and initialed *curriculum vitae*.

Summary:

1. A complaint was presented to the Ombudsman by one of the candidates to the competition advertised by Notice no. 10797/2010 about the draft decision of the jury that excluded him on the ground of lack of presentation of signed and initialed *curriculum vitae*.
2. After examining the case, it was found that, based on this sole ground and under no. 9 of Article 28 of Ordinance 83-A/2009 of 22nd January, and 13 of the abovementioned Notice, the exclusion of 60 candidates was projected (and this same ground was also

invoked, among others, to base on the exclusion of 10 more candidatures).

3. This position was found unacceptable, in the view of the fundamental right to access to the exercise of public functions, in conditions of equality and freedom, as well as legal regime of recruitment and selection of workers of the Public Administration and, also, principles of proportionality and pursuit of the public interest. In truth and in short: (a) admission of candidates to a competition for the constitution of a legal relationship of public employment can only depend on the fulfillment of requirements set out in the law; (b) in the present case, those requirements are set out in Law 12-A/2008, of 27th February (LVCR), (c) Ordinance 83-A/2009 regulates this Law and, therefore, must in its interpretation, conformed to it; (d) *curriculum vitae* is only relevant (and not even relevant in exclusive terms) in what concerns the application of curricular appraisal method; (e) the application process may integrate other documents that reveal what is subject of evaluation in the *curriculum vitae*; (f) the signature and heading of the *curriculum vitae* mean only that the candidate is the author of the document and is responsible for it, so, in the present context, its absence is merely a defect, that may be corrected, to favor the participation of candidates; (g) the requirement for signature and heading, specially in cumulative terms, coupled with the threat of exclusion, prevents the participation of the candidate under no valid justification, (h) the public interest behind the competition is to select the best candidate, so, the highest number of available candidatures must be assured.
4. So, the jury has been asked to reconsider their formal position and, having done so, a deliberation was made to include all the candidates whose exclusion had been drafted on the grounds of lack of presentation of a signed and initialed *curriculum vitae*⁵.

Case R-4294/10

Entity addressed: Regional Directorate of Education for Lisbon and Tagus Valley

Subject: Absences due to illness. Crossing of the situation of long term unpaid leave. Return to the service of origin.

Summary:

1. The intervention of the Ombudsman has been requested by a teacher who had been prevented to return to her school, thus being devoid of any means of subsistence.
2. The understanding of the educative administration was the teacher had crossed the situation of long term unpaid

⁴ http://www.provedor-jus.pt/restrito/rec_ficheiros/oficio_2413_10.pdf.

⁵ http://www.provedor-jus.pt/restrito/rec_ficheiros/Anotacao_3968_10.pdf.

leave, based on the fact that she had been considered fit for work by medical committee, after what she had not worked more than 30 days in a row (in terms of Article 47, paragraph 5 of Decree-Law 100/99, of 31st March), and, being in the abovementioned situation, her return could not happen until a year would be completed.

3. The competent Regional Directorate has been notified by the Ombudsman that:

a) The teacher crossed the situation of long term unpaid leave by virtue of paragraph 3 of Article 47 of the aforementioned diploma, because she did not required to be submitted to a medical committee of the Caixa Geral de Aposentações (CGA), nor did she required the crossing to another situation of leave, within 30 days after 18 months of absence due to illness were completed.

b) The situation was not under cover of paragraph 5 of the same Article which concerns deliberations of CGA and not regional medical committees, which was the case; furthermore, regional medical committees are not entitled to make the evaluation of temporary unfitness for work, once the mentioned period of 18 is completed;

c) The return to functions, after the crossing of the situation of long term unpaid leave was not subject to any time limit, because teachers are not nominated workers, so they are not under the cover of Article 10 of Law 12-A/2008, to whom applies paragraph 1 of Article 82 of Decree Law 100/99.

4. This position has been accepted by Educative Administration and the return to function of the teacher has been allowed, two months after the presentation of the complaint to the Ombudsman⁶.

⁶ http://www.provedor-jus.pt/restrito/rec_ficheiros/oficio_4294_10.pdf.

2.2.5. Right to Justice and Security

Overall, in 2010 the cases related to the Right to Justice and Security amounted to nearly 12% of the total number of complaints received by the Ombudsman, since, of the

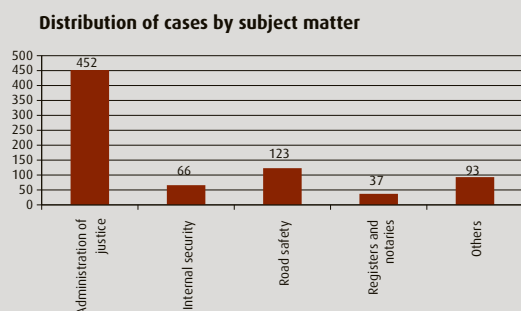
6488 cases opened, 766 related to the «administration of justice», «road safety» and «registers and notaries».

ISSUES	NO. OF CASES OPENED
ADMINISTRATION OF JUSTICE	452
JUDICIAL DELAYS	330
Judiciary	223
Public prosecutors	29
Court officials	8
Enforcement agents	32
Insolvency administrators	6
Social Security / Santa Casa da Misericórdia of Lisbon	5
National Institute of Forensic Medicine	7
Other judicial delays	20
OTHER PROBLEMS OF JUSTICE	36
Commissions for the Protection of Children and Young People	3
Commission for the Protection of Crime Victims	8
Guarantee Fund of Alimony Payments Due to Minors	5
Criminal records	4
Court fees	8
Other administrative problems	8
ACCESS TO JUSTICE	21
BAR ASSOCIATION	20
CHAMBER OF LEGAL AGENTS AND COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES	3
JUDICIAL ORGANIZATION AND INFRASTRUCTURES	3
JUDICIAL DECISIONS	*
OTHER ISSUES OF ADMINISTRATION OF JUSTICE	39
INTERNAL SECURITY	66
ACTION	27

Public Security Police	17
National Republican Guard	9
OMMISSION	22
Public Security Police	9
National Republican Guard	6
Other police forces	7
WEAPONS AND EXPLOSIVES	16
OTHER PROBLEMS OF INTERNAL SECURITY	1
ROAD TRAFFIC MATTERS	123
SIGNS AND ROAD PLANNING	19
ROAD TRAFFIC OFFENCES	70
Police forces	24
National Road Safety Authority	23
Municipal enterprises	16
Administrative offences / Others	7
DRIVING LICENSES AND SCHOOLS	16
OTHER ROAD TRAFFIC ISSUES	18
REGISTERS AND NOTARIES	37
REGISTER	13
Land, Commercial and Vehicle Register	6
Civil register	7
NOTARIES	4
IDENTITY CARD	14
OTHER REGISTERS AND NOTARIES PROBLEMS	6
OTHER SUBJECTS	94
TOTAL	766

* There were 273 complaints, which directly concerned the content of judicial decisions and therefore were dismissed on a preliminary basis.

The growth of almost 5% in complaints about judicial delays (from 315 to 330) showed a trend already experienced in previous years, highlighting the predominance of the matters relating to the «administration of justice» in the relative weight of the different matters dealt with in this area.



It should be noted that, in addition to the complaints about «administration of justice» shown in the preceding graphic, there were an additional 273 complaints that focused directly on the content of judicial decisions and therefore did not lead to any inquiries, pursuant to Article 202, paragraph 2, of the Constitution, and Article 22, paragraph 2, of the Statute of the Portuguese Ombudsman, which exclude sovereignty bodies from the Ombudsman's inspection and monitoring, except as regards their administrative activity.

Thus, in summary, the matters concerning the «administration of justice» corresponded to almost 60% of all cases in this area, followed by «road safety» (16%), «internal security» (8,6%) and «registers and notaries» (4,8%).

Furthermore, in 2010, 875 cases were closed pursuant to investigation.

2010 was also a year marked by some positions taken by the Portuguese Ombudsman in relation to the Right to Justice and Security. First, Recommendation 2/A/2010 was addressed to, and promptly accepted by, the Minister of Justice. It concerned the situation of a citizen who, having served in the Portuguese Army for many years, did not see this period of time taken into account in the procedure for granting of Portuguese nationality by naturalization.

This case, which has unusual characteristics, can be summarized in a few words. Due to a manifest error, the foreign citizen in question served in the Portuguese Army; but, for the purpose of granting Portuguese nationality, not all that period of time could be taken into account, which meant that the foreigner did not meet the requirement concerning legal residence in Portugal and thus prevented the immediate granting of Portuguese nationality. The Ombudsman achieved the desired outcome by recommending to the

Minister of Justice that, in the naturalization procedure, the time the beneficiary served in the Portuguese Army be considered as a period of legal residence in the country.

Recommendation 7/A/2010 was also accepted. It was addressed to the Institute for Mobility and Land Transport (IMTT) and concerned the lack of mechanisms to allow the electronic submission of an application for renewal of the EU-model parking card by people with disabilities who have limited mobility.

After the Institute for Mobility and Land Transport was heard, it was concluded that, notwithstanding the implementation, under the SIMPLEX programme, of various functionalities for electronic assistance to users, the necessary mechanism for submitting those requests was not available.

Therefore, it was recommended that the mechanisms to ensure the possibility of electronically submitting the application for renewal of this document be implemented as soon as possible, which was achieved through the publication of Decree-Law 17/2011, of 27th January.

In 2010, inquiries were also concluded in the case in which Recommendation 12/A/2008 was reiterated. This Recommendation was addressed to the Motor Guarantee Fund (FGA) and in it the Ombudsman sustained that the Fund should pay the compensation owed to a citizen involved in a traffic accident with a vehicle that was not insured. Since the entity in charge of managing the road (a local authority) had clarified that the non-insured vehicle had accessed the road through private property, the responsibility of its driver was presumed and thus it was concluded that the Motor Guarantee Fund should pay the compensation. However, based on the reasoning of its technical staff, the Fund argued that the way through which the vehicle had accessed the road was public, which changed the conclusion regarding the responsibility for the accident. In any event, the Fund did not accept the Recommendation, even after it was reiterated. Once the insurmountable difference of opinions between the Motor Guarantee Fund and the Ombudsman became evident, it was found that no further proceedings would be necessary and thus the case was closed. Yet, the Ombudsman decided to stress that it was not admissible that the Fund itself could define the nature of the roads and ways where traffic accidents occur, namely when such a qualification was instrumental to assessing its (lack of) obligation to pay compensation.

Regarding the Ombudsman's own initiative, in 2010 an inspection was carried out to assess the conditions of the temporary installation of persons whose entry into national territory is refused or who are detained awaiting deportation from Portugal, and who find themselves in a particularly vulnerable situation, because they are often physically and psychologically fragile, diminished by their economic and legal situation and oftentimes even more at a disadvantage by lack of knowledge of the law and the language. The Ombudsman visited the five facilities designed to tempora-

rily install the foreigners awaiting the enforcement of the expulsion of Portugal (the Residential Unit of Santo António, which was the only space that was newly built) and the facilities in the airports of Lisbon, Faro, Porto, Funchal and Ponta Delgada, which are used to install those who do not obtain permission to enter national territory. The hearing of the entities complained against and the drafting of final conclusions occurred already in 2010¹.

The Ombudsman also opened a case on his own initiative, under article 4 of the Statute, in order to analyse the situation of the National Institute of Forensic Medicine (INML), particularly with regard to the delay in responding to requests from the courts with implications on judicial delays. At the same time, this case will allow, in collaboration with the bodies of the Institute, to identify possible shortcomings or constraints and, if needed be, indicate deficiencies in the legislation or reflect on suggestions for the drafting of new legislation. This case will only be finalised in 2011.

Finally, since several complaints have been received over the years concerning the conduct of the Public Municipal Parking Enterprise of Lisbon (EMEL) or of its staff, continually raising problems that require an articulated solution, the Ombudsman also decided to open an own-initiative case to address the issue, in light of the great impact it has on everyday life for many hundreds of thousands of citizens in the largest city of Portugal. This investigation is at the inquiry stage and it will be carried on in 2011.

Administration of justice

As regards the cases pending in the courts, the intervention of the Portuguese Ombudsman is limited to administrative aspects, and to judicial delays, and it is ensured through the High Councils. Therefore, emphasis should be given – as has been done in recent annual reports – to the excellent cooperation provided by the High Council for the Judiciary, for the promptness of its response and the quality of the monitoring of all the situations that the Ombudsman noted.

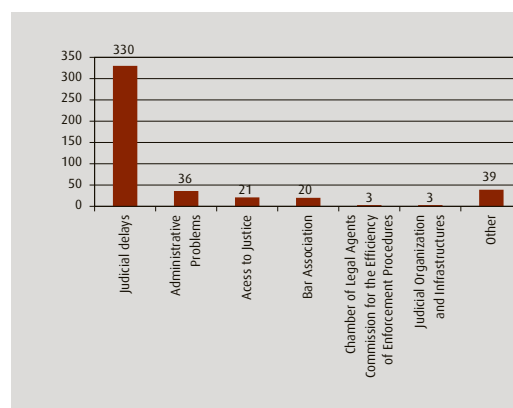
But, in 2010, a word of recognition is also due to the High Council for Administrative and Tax Courts, for the effective follow-up of the situations noted by the Ombudsman, which allows the Ombudsman to intervene in cases of judicial delays also in the administrative and tax jurisdiction.

It was already mentioned that, of the 1038 communications addressed to the Ombudsman concerning judicial affairs, 26,3% (273) focused directly on the content of judicial decisions, and therefore were dismissed on a preliminary basis.

It was also pointed out that the «administration of justice» represented more than half of the cases opened in

this area in 2010 and that, out of these, the judicial delays accounted for 43%.

When the complainants believe they are able to identify the entities responsible for the delay, they complain about judges in 67,5% of cases, the Public Prosecution Service in 8,7% of cases and only residually about court officials. But at the end of the investigation it is not uncommon for the Ombudsman to find that the reasons for the delay can be attributed to the parties. This consideration, however, does not hinder the acknowledgement of the serious structural problems of Portuguese courts, which led, for example, to a citizen having had to wait a year for the simple issuing of a certified copy concerning a case in the Commerce Court of Lisbon.



Still in the field of judicial delays, two special circumstances are worth mentioning: firstly, the number of complaints (32) on the activity of enforcement agents and, secondly, the major delays in the preparation of expert reports by the National Institute of Forensic Medicine. About the first situation, it is noted that the delays in enforcements already account for 10% of all complaints concerning delays in the courts. On the problem of persistent delay in the preparation of expert reports, the Ombudsman has an ongoing study whose findings will be publicised in due time.

But the delays have not exhausted the subject of the «administration of justice», with other problems having been submitted to the Ombudsman in 2010.

The difficulties experienced in accessing the courts prompted 21 complaints, relating both to different forms of legal aid – exemption from or phased payment of court fees and other charges, appointment of a legal representative and payment (or phased payment) of the fees of the court-appointed or freely chosen legal representative and appointment of an enforcement agent – as well as to the delay of Social Security services in deciding the requests.

A word is also needed on the cases against the Portuguese Bar Association, since 17 cases were investigated regarding the slow progress on completion of disciplinary proceedings against lawyers and three others on alleged

¹ See chapter «Cases and Inspections of the Ombudsman own Initiative» – Case P-16/10.

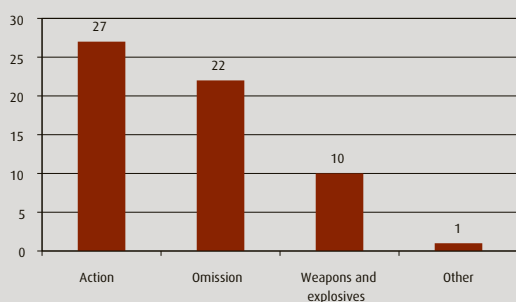
delays in replacing the previously appointed legal representative.

In addition, the delay in deciding the claims for compensation made by victims of violent crimes motivated eight complaints in which, while decision-making powers rested with the Minister of Justice, the entity addressed was the Commission for the Protection of Crime Victims, which was in charge of investigating the cases. This Commission lost its President in December 2009 and therefore, did not work throughout 2010, while waiting for the adoption of the instrument that regulates its constitution, operation and the exercise of its powers and duties. The publication, on 27th October 2010, of Decree-Law 120/2010, will perhaps create the conditions to restore normalcy. In any event, it should still be noted that the Commission provided all the cooperation that it could to the Ombudsman.

Also noteworthy is the good cooperation with the Institute of Financial Management and Infrastructures of Justice, which is the addressed entity in cases of delays in payments of fees to lawyers in the context of legal aid.

Internal security

In 2010, cases on internal security represented 8,6% of the total number of cases about the Right to Justice and Security. Of these cases, 40,9% were opened as a result of complaints about the action of the police forces and 33,3% related to complaints about illegal omissions of the Public Security Police (PSP), the National Republican Guard (GNR) or other police forces. Another 24,2% of complaints had to do with weapons and explosives.

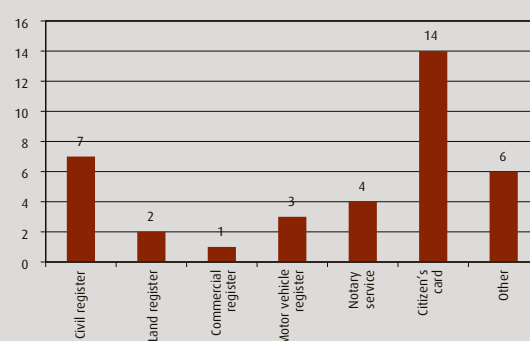


In matters of «internal security» it is necessary to establish regular contacts with the Department of Arms and Explosives of the Public Security Police and with the National Directorate of this police force and the General-Command of the National Republican Guard, in these cases when the complaints concern the police action. In all cases collaboration is swift and without difficulties.

Registers and notaries

Complaints about problems arising in proceedings of civil, land, commercial and motor vehicle registers, as well as of notaries, resulted in 4,8% of the cases in this area. Of these, the largest share (about 38%) had to do with citizen's cards, especially with the problems of delay in issuing them.

Also worthy of praise was the cooperation provided by the Institute for Registers and Notaries (IRN), either as regards the creation of a channel of privileged access or as regards the quality of the information provided.

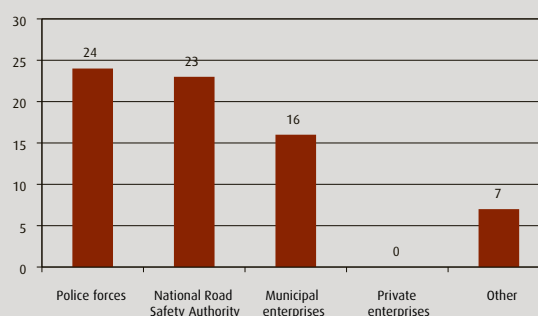


Road traffic matters

In 2010 road traffic matters accounted for 16% of the cases related to the Right to Justice and Security.

Considering the various issues related to road traffic, road traffic offenses represented 56,9% of the cases. Upon analysis of these 70 cases, one can conclude that the following entities are addressed: police forces (34,2%), National Road Safety Authority (32,8%) and municipal enterprises (22,8%).

Road traffic offences



The Public Municipal Parking Enterprise of Lisbon continues to represent an important slice of the cases on road traffic offenses that are investigated by the Ombudsman. While the subjects considered are very different, two main types of problems can be identified: first, the malfunctions in parking-meters and the means available to the users to report them and to obtain reimbursement of amounts inserted in the parking-meters without the corresponding ticket being issued; secondly, the issuance of a certificate of offence in those cases where the parking was paid but the title was incorrectly placed in the vehicle (without being visible).

Other issues brought to the consideration of the Ombudsman had to do with bureaucratic problems, such as the complaint related to gross errors in the texts of notifications for road traffic offences in use by Lisbon Municipal Police. As was found in the course of the inquiries, the three templates of certificate of offence in use by this police force had undergone changes in 2008 and 2009. It was sought to incorporate the new contents in the pre-existing certificates of offences, pre-printed and produced by the Portuguese Mint and Official Printing Office. The addressed entity promptly recognised the incomplete nature of the text, which also rendered it incomprehensible, and ensured that it would analyse the irregular documents, so as to annul those that were drafted incorrectly.

Account should be taken of the good cooperation that has been possible to obtain from the National Road Safety Authority (ANSR) in the many cases in which it is the addressed entity. The informality achieved has allowed for an expedite resolution of the cases submitted to the Ombudsman, in the interest of the complainants.

On the contrary, some difficulties remain with the Public Municipal Parking Enterprise of Lisbon, perhaps due to poor understanding of the duty of cooperation enshrined in Article 29 of the Statute of the Portuguese Ombudsman and also some resistance to the changes suggested by external and independent entities.

Summary of some interventions of the Ombudsman

Case R-70/10; R-6343/09

Entity addressed: National Road Safety Authority

Subject: Administrative offence. Procedure. Decision. Statute of limitation.

Summary:

The Ombudsman received several complaints against the delay of the National Road Safety Authority in analyzing the defences presented in due time in traffic offense proceedings in which the documents had been confiscated in light of the offence committed.

The National Road Safety Authority merely informed the Ombudsman that the defences registered in the electronic system were «ready to be attributed to a legal professional» and that the «National Road Safety Authority has two years to decide on road traffic offence proceedings, under article 188 of the Road Code, a moment which coincides with the analysis of the defence».

Against this position of the National Road Safety Authority, the Ombudsman made use of article 33 of the Statute of the Portuguese Ombudsman and formulated a critical remark.

In fact, on the subject under consideration, article 188 of the Road Code provides that «road traffic offence proceedings are extinguished, due to the lapse of the limitation period, once two years have passed since the time at which the offence was committed». This should be understood as the final deadline for closing the proceedings and not as an indicative deadline.

In summary, the Ombudsman sustained that the defendant had a «right to swift proceedings», since the delay in the administrative offence proceedings, as in criminal proceedings, «in addition to possibly resulting in illegitimate restrictions to the rights of the defendant, would eventually deprive of any content or usefulness the principle of the presumption of innocence». And the principle of the presumption of innocence of the defendant will include, for these purposes, the «preference for a decision of acquittal over the mere closing of the case».

Due to all of the above, the Ombudsman drew attention to the necessity of internal procedures being adopted to ensure a swift assessment and decision of the administrative offence proceedings attributed to the National Road Safety Authority, so as to ensure that, safe in very exceptional cases, the assessment and decision is made within 12 months – a deadline which was considered sufficient, as a rule, to assess and close those cases.

Case R-1669/10

Entity addressed: Public Security Police

Subject: Vehicles. Towing. Fee. Payment.

Summary:

The Ombudsman received a complaint about a removal fee required to a citizen pursuant to a fine to which he was subject.

The complainant challenged the payment of such fee, since the vehicle had not been towed, despite the fact that the necessary equipment for transporting it was present at the place where the offence was committed. The complainant considered that the solution established in the law should be reviewed, to ensure that, once a towing vehicle is called, the costs are proportional, since the payment for the trip of a towing vehicle is destined to cover the cost of the service and not to punish the offender.

As regards proportionality, the Ombudsman sustained that the legal instrument expressly addressed these doubts, by setting different amounts according to the distance to be travelled in each removal. Additional, the Ombudsman noted that the legislator had in some way tried to establish a more favourable mechanism for offenders, since it had provided for the possibility of offenders not being deprived of their vehicles, by allowing the immediate suspension of the removal to a tow pound, thus avoiding any related inconvenience.

However, the Ombudsman drew attention to the fact that, while the actual removal of the vehicle had not been carried out, the supervisory body was bearing the costs associated with moving of the towing equipment necessary for that purpose, and their staff, so that the payment by the offender was justified.

Finally, the Ombudsman explained that, in relation to the fine, the defendant could pay it as a deposit, and then challenge it by addressing the National Road Safety Authority. If this pleading were to be considered well-founded and it was concluded that an erroneous application of the relevant legal provisions had taken place, the Authority would determine the reimbursement of the fees paid, thus ensuring the right to a defence that all citizens have in this regard.

Case R-2479/09

Entity addressed: Institute of Registers and Notaries

Subject: The Ombudsman suggests to the Institute of Registers and Notaries that receipts concerning registration expressly indicate the amount of fines to be paid and the legal provisions that establish them.

Summary:

After analysing a complaint, the Ombudsman argued against the fact that the receipts issued by the Land Register Offices did not expressly indicate the values to be charged as penalty for expiry of the deadline for registration.

The problem arose with the changes introduced in the Land Register Code, deriving from the implementation of the SIMPEX programme. These provided, among other measures, that the land register be mandatory and, in some situation, the same register be made by credit institutions within a very short deadline set by the law. Once the deadline had lapsed, whoever came forward to require registration would be forced to pay double, as a pecuniary penalty.

The Ombudsman considered that the information provided in the receipts did not allow the citizens to fully understand which amounts were to be paid for the registration itself and which were the result of fines. Therefore, he sustained that, in order to provide information to the citizens, the receipts should clearly indicate the amount correspond-

ing to the registration and the amount corresponding to the fine, as well as the applicable legal provision.

The Institute of Registers and Notaries announced that it had accepted the Ombudsman's reasoning and that steps had been taken to change the software so that the receipts issued by the Land Register would specify each value and indicate expressly the legal provision under which the penalties were charged.

Case R-3678/09

Entity addressed: Institute of Registers and Notaries

Subject: Citizen card. End of additional fees in case of theft or robbery.

Summary:

The Ombudsman suggested to the Institute of Registers and Notaries not to charge an additional fee of 10€ in cases in which it was requested to issue a new Citizen Card due to the previous one having been stolen.

The Institute of Registers and Notaries welcomed this proposal and determined that no payment of additional fees would be due if the issuance of a new Identity Card was requested by a citizen who had been victim of theft or robbery, provided that the cancelation of the previous card had been requested and that proof was presented to attest that the matter had been reported to the police.

Before the suggestion of the Ombudsman was accepted, whoever requested the issuance of an Identity Card due to theft or robbery would always be subject to the aforementioned 10€ fee.

Case R-3737/10

Entity addressed: Institute of Registers and Notaries

Subject: Collection of the Identity Card by the parents.

Summary:

The Ombudsman received a complaint against the Institute of Registers and Notaries because one of the parents was prevented from collecting their child's identity card.

In compliance with the duty of prior hearing, the competent services of the Institute of Registers and Notaries were heard.

The public institute reported that internal guidelines were released, under which – and in accordance with the Ombudsman's position – nothing shall preclude the parents, as legitimate representatives of the minors, from being able to collect the document in question.

The Ombudsman drew attention to the fact that the exercise of parental responsibilities belongs to both parents, regardless of whether they are married or living in condi-

tions similar to those of spouses, with the legal effects naturally associated to that fact.

For that reason, the requests for collecting the identity card, made by either parent (irrespective of whether or not they are married) shall be accepted provided, of course, that they are legally entitled to do so.

Case R-4791/10

Entity addressed: National Republican Guard

Subject: Seizure of driving license. Article 173 of the Road Code.

Summary:

The Ombudsman received a complaint from a citizen who had been fined by a member of the National Republican Guard for lack of the mandatory periodic inspection of the vehicle he was driving, even though he was not the owner.

The defendant's driving license was seized because he did not intend to immediately carry out the payment of the penalty nor of the deposit.

The seizure of these documents as guarantee for payment of the certificate of offence is provided for in Article 173, paragraph 4, of the Road Code, which, in indent b), determines that if the payment of the penalty or deposit are not carried out immediately, and if the penalty concerns the holder of the vehicle identification document, then the vehicle identification title and the vehicle ownership registration title should be provisionally seized.

Thus, the Ombudsman concluded that the driving document had been unlawfully seized, since the offense for lack of inspection concerns the holder of the vehicle identification document and not the driver.

The Ombudsman drew attention to the need to enhance instructions to control staff of the National Republican Guard about the seizure of documents in the act of checking offences, in the following terms:

- a) If the penalty concerns the driver, the seizure should focus on the driving license;
- b) If the penalty concerns the vehicle owner, the identification documents of the vehicle should be seized;
- c) If the penalty concerns the driver and he is also the vehicle owner, all documents (driving license, vehicle identification document and vehicle ownership registration title) should be seized.

2.2.6. Other Fundamental Rights

In what concerns other fundamental rights in 2010 complaints where investigated related to Foreigners Law, Nationality, Penitentiary Issues, Education, Health, and subsidiary in relation to other areas, a wide range of issues centred on the Rights, Freedoms and Guarantees.

ISSUES	NO. OF CASES OPENED
POLITICAL CONSTITUTIONAL AFFAIRS	12
SCIENCE	2
MEDIA	6
RIGHTS, FREEDOMS AND GUARANTEES	55
EDUCATION	166
PRESCHOOL EDUCATION	5
PRIMARY SCHOOL	25
JUNIOR HIGH SCHOOL	24
HIGH SCHOOL	19
UNIVERSITIES AND POLYTECHINAL INSTITUTES	73
OTHERS	20
FOREIGNS LAW	259
DELAY	213
SUBSTANCE	40
OTHERS	6
NACIONALITY	423
DELAY	413
SUBSTANCE	10
PENITENTIARY ISSUES	146
FOOD	6
LODGING	6
MAIL/PHONE	5
FLEXIBILITY	9
OCUPATION	12
ADMINISTRATIVE ORGANIZATION	8
HEALTH	22
SECUTITY AND DISCIPLINARY ISSUES	21
TRANSFER	13
VIOLENCE	16
VISITS	13
OTHERS	15

HEALTH	148
NATIONAL HEALTH SERVICE	14
SCOPE OF ACTION	8
ENROLLMENT IN A LOCAL CENTER	3
ARTICULATION BETWEEN LOCAL CENTERS AND HOSPITALS	3
FEES	4
SPECIFIC HEALTH SYSTEMS	23
ENROLLMENT	11
CONTRIBUTION	12
MALPRACTICE	37
NHS HOSPITAL	27
LOCAL CENTER	10
EMERGENCY SERVICES AND TRNSPORTATION	9
ADMINISTRATIVE PROCEDURES	40
SUPERVISON AND REGULATION	5
DRUGS	5
OTHER ISSUES	11
OTHER ISSUES	29
TOTAL	1246

In 2010, the increased number of new cases refers to cases of Nationality of foreigners, because in other matters, or there was stabilization of the number, or even a decline, the latter being seen in the case Education (63 units less or -28%) and Health (47 units less or -24%). The number of complaints about the legal status of foreigners was stable, as compared to previous years. In 2010, particularly in its second half, there was a new upsurge in the number of complaints about the situation of the persons originated from the former Portuguese State of India with regard to their nationality status

In 2010 the Portuguese Ombudsman issued five recommendations. Recommendation 2/B/2010 was addressed to the Minister of Justice, asking for the enlargement of court fees exemption to all workers with the same low resources, regardless of being represented by the District Attorney or by a chosen lawyer. Recommendation 3/B/2010, also addressed to the Minister of Justice, proposed the enlargement, under criteria suggested by constitutional jurisprudence, of the system of legal protection to enterprises.

Recommendation 4/B/2010 was addressed to the Parliament and reiterates several previous recommendations, on electoral matters, but innovating in the equal treatment of independent candidates¹. This Recommendation has been partially accepted, as regards the conditions for early voting.

The parliamentary intervention was also sought, simultaneously with the request for review of constitutionality of the internal rules of the Portuguese Bar Association that limited the right of access to the training period (Recommendation 5/B/2010).²

Recommendation 9/B/2010 was addressed to the Minister of Education, stressing the need to avoid any negative discrimination of teachers of preschool education in institutions run by the social sector, compared to other teachers, both in the public and private sector, in relation to their retirement benefits³.

Among the recommendations mentioned in the 2009 Report, Recommendations 5/B/2009, 6/B/2009 and 7/B/2009, identical in substance but adapted to each case, about the regulatory solutions, in the municipalities of Câmara de Lobos, Funchal and S. Vicente, affecting political propaganda, were accepted. Similar initiative (Recommendation 4/B/2009) directed to the municipality of Santa Cruz failed to be accepted.

The reiteration of Recommendation 1/B/2003⁴, on the remuneration regime of judges and prosecutors resulted fruitless. Recommendation 1/B/2009, about some necessary adaptation of the rules on contracting,⁵ although expressly accepted, did not endure any practical measures for implementation. Instead, information was provided on further work to enable the effective implementation of Recommendation 2/B/2009, regarding the situation of total loss in a car accident, in the framework of an insurance contract⁶.

Recommendation 7/B/2007⁷, on setting the compensation to local radio stations for issuing political broadcasting time during a campaign for national referendum was reiterated, but no answer was received on this regard.

The Ombudsman, on his own initiative, opened an inquiry on the conditions offered by the security forces for housing detained persons when this situation lasts more than 48 hours.

During 2010, 21 visits were carried to 14 prisons, with a predominance of those of a larger size. Two primary schools and one junior high school were also visited. There was a visit to a local health centre and to another specialized unit (rehabilitation).

¹ http://www.provedor-jus.pt/restrito/rec_ficheiros/REC_4B2010.pdf

² http://www.provedor-jus.pt/restrito/rec_ficheiros/REC_5B2010.pdf

³ http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_9B2010.pdf

⁴ http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1b03.pdf

⁵ http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec1B2009A6.pdf e Relatório de 2009, pg. 72.

⁶ http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec2B2009.pdf e Relatório de 2009, pg. 72.

⁷ http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec7B07.pdf

Nationality

The complaints with regard to Nationality law are mainly made by or on behalf of citizens from the former Portuguese State of India, who, pretending to be accorded their Portuguese nationality, claim against the delay in the transcription of relevant records by the Central Registry.

The Ombudsman reports of the last decade illustrate the effect this issue (due to the existence of an exceptional criterion for granting nationality, opposite to the general rule in the context of the decolonisation process of the 70's) has had on the functioning of the Ombudsman's Office and of the Central Registry.

Recommendation 9/B/2009 was accepted and originated the issue of Decree-Law 85/2010, of July 15. The treatment of these complaints is made more difficult due to the complaints' lack of knowledge of the Portuguese language and the clear existence of intermediaries, that draft complaints and receive replies, presumably in the context of their professional activity.

In the naturalization process, the most frequent cause for delay is the need for consultation of several public entities. The greatest difficulties have been felt within the judicial system.

To a speedy and more efficient treatment of this high number of complaints, informal means of communication were arranged with the Central Registry, privileging the use of electronic media and the direct reply on a spreadsheet, which have functioned properly. The same efforts were introduced within the Ministry of Foreign Affairs, for their respective central headquarters and the consulates. These simplified mechanisms of contact allowed the elimination of large numbers of pending cases in the New Delhi consular services, these being receptive to suggestions about the improvement of procedures. It also should be emphasized the excellent cooperation received from the consular services in Bissau. Meetings were held with the Immigration and Borders Service that has always provided very good cooperation.

Foreigns law

The complaints regarding the legal status of foreigners in Portugal reflected the change in applicable law, its implementation and its effects in the migration reality.

Thus, the proportion of complaints against the Immigration and Borders Service declined, focusing on the application (now more restrictive) of the exceptional mechanisms of regularisation provided for in Articles 88, paragraph 2, and 89, paragraph 2 of Law 23/2007. Beyond these issues, the renewal of temporary residence permits, notably in what refers to the proof of livelihood and lack of simulation in the employment status, is another subject for conflict.

Many complaints are presented against the functioning of Portuguese consulates, in general for denying or delaying the granting of visas to relatives of citizens (some foreigners, others Portuguese) living in Portugal. A few consulates concentrate the majority of these complaints, namely those in Guinea-Bissau and Senegal, Pakistan and India, and China. The closure of the Portuguese Consulate in Islamabad led to natural disturbance in the treatment of new request as well in the pending ones.

Education

The number of complaints on Education issues declined since 2009, but kept above the figure recorded in 2008. The marked drop was mainly due to the disappearance of several grounds of complaint specific to the previous year (implementation of programs of access to computers and of new arrangements for the management of schools). There was also a decrease in the number of complaints in pre-school education and higher education, returning in both cases to the 2008 figures. In contrast, we are seeing a continued increase in complaints in the junior high level.

In what refers to preschool education, besides complaints about social support or handicapped support, the interesting issue of facilitation of oral hygiene practices in public kindergarten, after lunch, was raised. After the collection of specialized technical information, measures adequate to the age group concerned were proposed, in order to the creation of hygienical routines.

At Junior High and High School education level, there has been an increase in complaints about the condition of facilities and the safety of students. Two schools have been visited within this framework.

An increase in complaints referring to grading was noted in Superior Education institutions, usually invoking a breach of procedures. Also, about the enrolment conditions, complaints were made about the special regime for high standing athletes and the special quotas for candidates of the Autonomous Regions. Although the alleged illegality was not confirmed, the Ombudsman drew the attention of the public authorities responsible about the need to disclose, as far in advance as possible, the criteria for candidacy. This proposal was accepted.

Following Recommendation 2/B/2007, Decree-Law 204/2009, of 31st August, enlarged the scope of college scholarships to every foreign citizen with a permanent residence status (5 years). However, this new legislation led to the presentation of some complaints, either by citizens who, in any case would not be covered by either scheme, or by citizens who would benefited from maintaining the previous regime (like European citizens not living in Portugal for more than 5 years). The rationale behind the legal solution was duly explained.

A number of issues were pointed out to the Government, involving the requirement of presenting a pupil card for entry into a primary or junior high school and the exigency of the payment of a certain amount at enrollment, these being incompatible with the compulsory schooling regime and its gratuity. The response received was concordant with the observations made.

There has been good cooperation with most of the entities contacted, the governmental offices, the Inspective bodies and local structures. The same is also true about schools contacted, some problems occurring with larger universities.

Penitentiary Issues

Although the level of complaints remains the same as in 2009, a significant decrease persistently occurred in complaints relating to temporary leaves of absence, certainly due to the legal improvements meanwhile introduced. Similarly, there has been a decreased of complaints in what concerns transfer to another prison. With an opposite trend, an increase in the figures of complaints was felt in the issues of Security and Discipline, specifically to situations involving the use of force, Lodging, Visits and Occupation.

There is an increasing number of inmates pursuing a university degree. This led to complaints about failure to facilitate access to computers.

Concerning the use of force, a particularly relevant case was submitted to the Ombudsman in October 2010, although it has only been of public knowledge in February 2011. In the operation of removal of a certain inmate from his cell, a taser gun was used. In the preliminary comments addressed to the Directorate General of Prison Services, registering a prompt response with the opening of an inquiry, several remarks have been made, looking forward to the strengthening of the control of how coercive means are used, the availability of documentary evidence being of the utmost importance for review of procedures and accountability, specially in an enclosed environment.

The increased level of external control made possible by the new penitentiary Code has been beneficial in the issues of security and discipline, although some resistance was felt, assuming the impracticality of the new rule's implementation prior to the issue of a further regulation. This trend, felt in specific cases such as the persistence of the mandatory use of uniform, was duly criticized.

As mentioned above, 21 visits were carried, without prior notice, to prisons in Alcoentre, Carregueira, Caxias, Linhó, Lisbon, Monsanto, Pinheiro da Cruz, Sintra, Vale de Judeus, the Prison Hospital and smaller prisons such as Aveiro, Montijo, Setúbal and near the Judiciary Police in Lisbon.

Rather than simply checking the physical structure, it is important to maintain a close contact with inmates and prison officers, including management, education services,

guards and clinical staff. The knowledge of the reality, based on the direct observation and the testimony thus collected, was oriented in particular to the exercise of disciplinary power, with the analysis of random chosen files, handled in recent months and culminating with more severe sanctions.

These visits were made to accommodation spaces, canteens, kitchens, security and disciplinary sector, clinical facilities, living rooms and playgrounds. This year the consequences of an increased prison population were felt, which, together with the unequal distribution of population, has caused considerable overcrowding, as exemplified by the Lisbon Prison. The conservation status was highly variable, mainly regarding the infiltration of moisture. The setbacks in the process of construction of new prisons are obstacles to the announced renewal of the system.

The increased of application of the measure of weekend detention, had consequences in the need for separation of inmates. This situation had the special attention of the Directors of the facilities, adapting the existing infrastructure and by creating separate spaces.

The food, often the subject of complaints, either in quality or quantity, was also observed in these visits. In two prisons, it was detected the distribution of food on the plates without utensils, ie, with exclusive use of the hand, although gloved. Both for hygiene and for the maintenance of dignity, this issue was raised to the attention of the warden, who immediately put a stop to this.

In what refers to healthcare there was an improvement resulting from the uniformity of approaches adopted in the Manual of Procedures for the Provision of Health Care in Prisons. There is a very significant participation of contracted healthcare companies, establishing, at least, daily nursing services and medical attendance three times a week. The complaints of detainees were reduced in this respect, as they were heard during visits to prisons, with the exception regarding access to dental care. Just like in the outside community, the complaints are more often directed against delays in accessing the National Health System.

The excess of inmates working in internal repairs and maintenance persists, as well as the lack of human resources to propose further activities. The school attendance remains defective, despite the incentives created.

The analysis of randomly chosen disciplinary proceedings did not raise serious doubts or concerns, as the entry into force of the new Penitentiary Code resulted in an increase of guarantees, with a overload to the penitentiary services.

The cooperation received was good, as in the previous year, and the close collaboration of the Penitentiary Audit and Inspection Service should be highlighted. The collaboration of the various prisons was variable, also depending on the demands made. Linhó prison should be commended for its cooperation, as a significant number of complaints were presented during 2010, with multiple contacts and visits, always satisfactorily answered.

Health

The number of complaints decreased, compared to 2009, returning to the level occurred in 2008. This decline is mainly due to the reduction in complaints relating to the administrative procedures used in the National Health Service and, in a lesser degree, of the complaints against specific health systems or in respect of fees charged.

The downward trend, previously noticed in complaints related to specific health systems, continued in 2010, more effective on issues related to registration and titling of beneficiaries rather than about the contributions received or due. The effects resulting from the reorganization that occurred in recent years in this sector seem to be less endured, despite a resurgence, but very limited, at the end of 2010, due to the termination of the system concerning several workers of the Ministry of Justice.

Complaints relating to care provided in health facilities did not decrease significantly.

The co participation of the State on the cost of medically prescribed drugs, to low income citizens was challenged, as the current mechanism provides protection to pensioners with low income, but not to citizens, of the same age group and income level, however not entitled to any pension. This injustice was stressed to the Ministry of Health, this issue being articulated with the Ministry of Labour and Social Solidarity.

The problems of citizens receiving cochlear implants were scrutinised, especially in what concerns their maintenance and replacement. Several concrete proposals were made to the junior minister responsible for Rehabilitation. The Government replied this matter would be subject to new regulations soon.

The case of so-called orphan drugs, for patients with rare diseases, was and still is being subject to contacts with the Drug Authority (INFARMED) and the Ministry of Health.

Concerning the Health Administration compliance with the duty of cooperation, a few difficulties persisted with the Medical Association. The General Inspectorate of Health was seldom requested, but always responded adequately. The ministerial offices quickly responded, as did the Central Administration of the Health System (ACSS). More difficult was found on obtaining responses from the Drug Authority (INFARMED). The quality of cooperation of the local health services varied greatly. The ADSE (specific system for civil servants), with one exception duly noticed, was always ready to cooperate.

Other issues

17 complaints were made against the limitation of access to administrative documents, in many cases with a previous intervention by the Commission on Access to Administrative

Documents. Resistance to the principle of open administration is often felt through the establishment of high values of reproduction fees.

A complaint was lodged against a particular parish council as it had in its capacity of administration of a legacy modified the periodic criteria of distribution of certain sums to residents of low income. Beyond personal knowledge, the council chose as an exclusion criterion the condition, alternative or cumulative, of landowner, employee or pensioner. It was noted that, rather than the adequacy of such qualification, it was the true economical situation of each case that should be inquired. Attention was also raised to the need for a proper reasoning and communication with potential beneficiaries.

Summary of some interventions of the Ombudsman

Case R-0325/10

Entities addressed: Open University, Ministry of Education.

Subject: Education, Professional qualifications; Equality.

Summary:

1. A complaint was lodged about the organization by the Open University of a course allowing the acquisition, at elementary and secondary levels, of teacher professionalization. The arguments provided indicated the course was only publicised through a specific trade union, the enrolment (only possible during one day) was made at the siege of such union and the illegality of the publicised effects of professionalization was only later remedied, by an act of the Government.
2. These facts were substantially confirmed and the Open University was censored about this matter, the Ombudsman stressing the need to prevent the completion of courses outside the existing legal framework as well as always ensuring disclosure of its realisation, by the University's own means and always ensuring the possibility for students to register at the regular University desk.
3. The Government, following publication of Order No. 4037/2010, of March 5, that healed the bygone illegality of this course, was also addressed by the Ombudsman, proposing the promotion of a new opportunity for teachers who, on an equal footing with the beneficiaries of this process, had not achieved registration in the course concerned.
4. This solution was carried out, by the organization of another course sponsored by the Open University, following a protocol established with the Ministry. This course had adequate publicity, even in the Internet, allowing candidates to present to the University their requests and for an adequate delay for registration.

Case R-4949/10

Entity addressed: Immigration and Border Service (SEF)

Subject: Foreigners Law; Family reunification; common-law marriage.

Summary:

1. A complaint was lodged regarding the refusal of the Immigration and Border Service (SEF) to grant the application for family reunification formulated in favour of a certain foreign citizen, unquestionably living in common-law marriage for more than two years with a Portuguese resident, allegedly based in terms of Article 100, paragraph 1, indent a) of Law 23/2007, of 4th July.
2. As the marriage of the resident in question was only dissolved by divorce, in April 2009, SEF concluded that it would not be possible to consider «the applicant [living] under conditions similar to that of marriage for more than two years,» starting this minimum delay from the divorce date.
3. The Ombudsman duly noted that, from Article 1, paragraph 2 of Law 7/2001, of 11th May, as subsequently amended, the «de facto union is the legal position of two persons, regardless of gender, living in conditions similar to that of marriage for more than two years. » If it is true that, as provided in Article 2, paragraph c) of that statute, the existence of a valid marriage, without a judicial declaration of separation «preclude[s] the assignment of rights or benefits, for life or death, based on a de facto union», nothing can suggest, under that statute or another, that the minimum duration of a de facto union must take place subsequently to the dissolution of a previous marriage.
4. Therefore, the Ombudsman concluded that the rule in question is not an exception to the «constitution of a de facto union,» but simply of its mere irrelevancy or inadmissibility, as preventing the simultaneous use of the two statuses.
5. The review of the decision illegally taken was suggested and the enforcement of these revised criteria should be applied in future cases. This position was upheld by the National Directorate of SEF.

Case R-4175/10

Entity addressed: Ministry of Foreign Affairs

Subject: Foreigners Law, Visas, Travel insurance.

Summary:

1. In several instances of processing of visa applications, the requirement of prior presentation of a travel insurance, in compliance with Article 52, paragraph 1, indent f) of Law 23/2007, was challenged.

2. The law requires the possession of travel insurance, covering the expenses necessary for medical reasons, including urgent medical assistance and eventual repatriation.
3. This demand was deemed excessive concerning two possible situations. Thus, nothing guarantees that, for an applicant presenting an insurance policy valid for the desired dates of travel, he or she
 - a) would be granted a visa in due time;
 - b) would be granted a visa at all.
4. In the first case, a new insurance policy would be mandatory, in either situation the current legal solution lead to useless spending by the applicants.
5. The Secretary of State for Foreign Affairs and Cooperation was thus challenged about the adequacy of enforcing another rule of conduct, fully respecting the scope of the legal norm, which is to ensure that no foreign national travels to Portugal without having certain risks covered by an insurance contract.
6. It was suggested that applications for visa should be accepted with a mere warning to applicants of the need, after a positive decision and before actually issuing the visa, submit proof of contract of travel insurance for the desired dates of travel.
7. This proposal was not accepted, the entity in question arguing with the Community Code on Visas. As this issue is relevant in terms of simplifying procedures and reducing taxes on beneficiaries, often with limited resources, it remains on study in order to overcome the obstacles put forward.

Case R-4561/10

Entity addressed: ADSE (Healthcare system of civil servants)
Subject: Health; Enrolment; termination of the right of enrolment in the ADSE

Summary:

1. A citizen who for more than six months had begun to work in a local council, was being prevented to enrol in ADSE, as a result of the legal norm that allowed only six months to the option of being included in this special healthcare support scheme to civil servants.
2. This citizen invoked her ignorance of such rule was aggravated by her hearing impairment, arguing that the information provided to the persons who took office at the same time was merely oral and, therefore, not suited to her actual condition.
3. The Ombudsman first confirmed with the municipality in question the version presented as factual, which the local body promptly did, expressing its full opening to find a suitable solution.
4. Accordingly, it was noted that the ADSE had not seemed

to focus upon these particular circumstances, ignoring it has not been assured, in writing or by a sign language interpreter, the right to information of this citizen.

5. Referring to the social dimension of the constitutional principle of equality, it was suggested to ADSE to reconsider the issue, admitting the late entry as a beneficiary of the said citizen. This proposal was accepted, and the person in question was enrolled retroactively to the end of the term legally established.

Case R-6369/09

Entity addressed: Health Authority.

Subject: Mental Health; Warrant for coercive examination.

Conditions for issuing a warrant to conduct a citizen to a health facility, for examination of a mental condition determining compulsory medical care.

Summary:

1. A citizen complained against being, without warning, detained by military of the National Republican Guard, and conducted to a hospital for psychiatric observation. After being observed, no relevant mental problem was found.
2. The situation was investigated with the proper health authorities and it was possible to conclude that the order carried out by the National Republican Guard (GNR) was issued upon the simple receipt of a letter, containing a set of claims about the ordinary behaviour of the citizen concerned. The account given in this letter, according to the Health Authority, indicated serious mental disorders, likely to cause imminent danger to property, to the patient and others. In addition to the content of this letter, the administrative decision was based only on the consultation of prior clinical data, which contained a generic indication that the patient had suffered from an indiscriminate mental disorder. The citizen in question was never been called to appear voluntarily before the Health Authority, prior to the issue of the warrant.
3. The Ombudsman concluded that the Administration failed to prove the existence of the legal terms allowing the issue of a warrant, the conduction to a psychiatric facility carrying itself a high probability of collision with the fundamental rights of citizens.
4. Either in contact with the authority concerned, and with the regional Health Authority, it was considered that a widespread recognition of such severity and the identification of performance criteria and evidentiary steps to be used as preliminary reference points should be developed.
5. Founding an apparent disparity of criteria adopted by the various local health authorities, in the assessment

of compliance with the prerequisites required for the compulsory detention, the Ombudsman proposed to the Director-General of Health the adoption of a minimum set of criteria, forming the necessary uniform guidelines for this kind of action.

6. Thus, within the responsibilities of health authorities, responsible for determining the transportation of citizens to a hospital for evaluation, it was suggested the issue of guidelines containing, for example, the previous exhaustion of existing less restrictive measures available to health authorities, before being issued a warrant, including a personal contact with the citizen targeted for such measure, as well as more in depth concretization of what should be considered as an «imminent danger».

b) ensuring impartiality of those conducting the test, stating a mandatory non coincidence between the person who determines the test and that who conducts it;

c) ensuring the possibility to another test, at the expense of the inmate only if it provides the same positive result.

6. Whilst many of the decisions in which a positive analysis has relevance are now subject to external scrutiny, the Ombudsman made clear that it was very important to dispel any suspicion about the legitimacy of such means of control.

Case R-1372/08

Entity addressed: General Directorate of Prisons

Subject: Penitentiary affairs; Security and discipline; Detection of drug abuse. Lack of specific regulations on testing inmates for alcohol and drug abuse.

Summary:

1. After an inquiry on a specific complaint, the Ombudsman addressed the General Director of Prisons about the omission of any rules ensuring the proper realization of tests to check alcohol or drug abuse within the prison population.
2. Taking argument in a long-time existing regulation about the same tests directed to Prison Guards, several issues were underlined, among them the terms and conditions for realization of these tests, the type of materials used, the identification of a responsible personnel, with preference to health personnel, and the possibility of rebuttal of the results.
3. In response, the addressed entity noted that, the new Code of Execution of Prison Sentences allowing to conduct these tests (Article 8, paragraph g), this matter would await the completion of the drafting of the General Regulation of Prison Services.
4. The Ombudsman replied that, at least from the text of the draft General Regulation that he had knowledge, nothing appeared to be provided to adequately resolve the issues in question. The uncertainty about the date of completion of such a procedure would also advise precaution and a fastest response to the most pressing issues.
5. Therefore, three key aspects that should be, as soon as possible, subject to regulatory framework, were stressed:
 - a) jurisdiction to determine the performance of a control, with possible communication to the Chief of Guards or to the Warden;

2.2.7. Rights of the Children, Elderly Persons and Persons with Disabilities

Matters concerning the rights of children, elderly persons and persons with disabilities are currently handled by a specialized structure – the Department on Children, Elderly Persons and Persons with Disabilities (N-CID) – which has been in operation since late 2009, under the direct supervision of Deputy Ombudsman Helena Vera-Cruz Pinto.

The N-CID aims to be both a specialized and a multidisciplinary structure, combining several areas of knowledge, such as Law, Psychology and Social Work, in order to handle the subjects under its remit from the most complete and comprehensive perspective possible. Thus, in addition to defending the rights of children and young people, elderly persons and persons with disabilities pursuant to complaints, it also seeks to develop more proactive action, by focusing on promoting and disseminating information on the rights of these particularly vulnerable groups.

Since its creation, the N-CID has brought together two specialized and toll-free telephone services of the Portuguese Ombudsman: the Children's Hotline and the Elderly Citizens' Hotline.

The Children's Hotline was created in 1993 and aims to receive complaints concerning children who are at risk or danger, submitted either by the children themselves or by adults on their behalf. The purpose underlying its creation was to address the particular difficulties experienced by children and young people in exercising their right of complaint and denouncing violations of their rights.

In 1999, which was proclaimed by the United Nations as the International Year of Older Persons, the Elderly Citizens' Hotline was created, in order to disseminate amongst elderly people information about their rights, including the right to health, welfare, housing, family obligations, social work, equipment and services, thus contributing to a more active involvement of the elderly in society and enabling them to better exercise their rights. In addition to providing information, the Hotline intervenes in cases where elderly persons are in a situation of vulnerability and their rights are not respected.

Additionally, in 2010, the necessary logistical conditions were met to enable the achievement of one of the essential goals of the N-CID: the creation of the Persons with Disabilities' Hotline (which started to operate experimentally in the first trimester of 2011).

It is important to note that, due to the phased implementation defined for the N-CID, it does not yet handle formal proceedings. Such task is entrusted to the other depart-

ments of the Office of the Ombudsman, according to the subject in question.

Children's Hotline

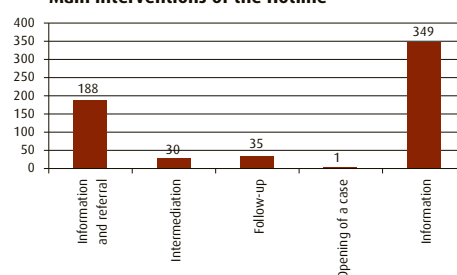
In comparison to the previous year, in 2010 there was a significant increase in the number of calls received by the Children's Hotline (153%). This difference can, in essence, be explained by the fact that the operation of the Hotline was interrupted for almost three months in 2009.

Calls received	Calls made	
856	Complainants	Entities*
	146	207

* This includes both the entities complained against and the authorities from which the staff of the Hotline seeks collaboration.

Thus, the additional 298 calls received in 2010 only allow to conclude that the regular operation of the Hotline was resumed. Possible trends of increase or decrease of calls may only come to be detected in the future, when the periods being compared are equivalent.

Main interventions of the Hotline



The main interventions of the Hotline were, as in previous years, provision of information (in 349 cases) and provision of information coupled with referral of the case to the competent entity (188). These were followed by intermediation and follow up (30 and 35 cases, respectively).

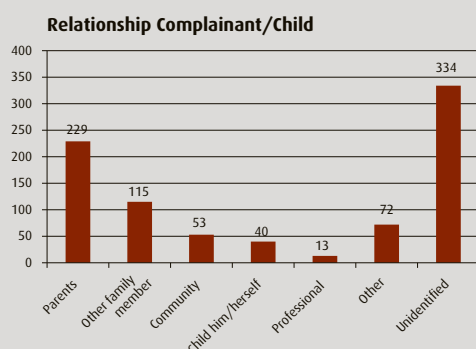
Regarding the main issues raised in calls, the exercise of parental responsibilities is by far the most frequently addressed subject (194 cases), only approached by the issue of abuse, both physical and psychological (110), and by situations of negligence (84). Other situations are also addressed in many calls, but in a more fragmented way in terms of absolute numbers, as shown by the table below.

Main Questions Posed	No.
Exercise of Parental Responsibilities	194
Abuse (physical and psychological)	110
Negligence	84
Activity of a Commission for the Protection of Children and Young People (CPCJ)	43
Protection Measures	37
Risk Behaviour	36
Information about the Hotline	35
Information about the Portuguese Ombudsman	34
Economic Need	31
Education and School Problems	31
Exposure to Domestic Violence	25
Sexual Abuse	24
Psychological Counselling	21
Functioning of Residential Child Care Institutions	19
Exposure to Deviant Behaviour	19
Health Care	18
Activity of Other Entities with Competence in Childhood and Youth Matters	11
Social Responses / Equipment	11
Information on Judicial Protection of Children's Rights	10

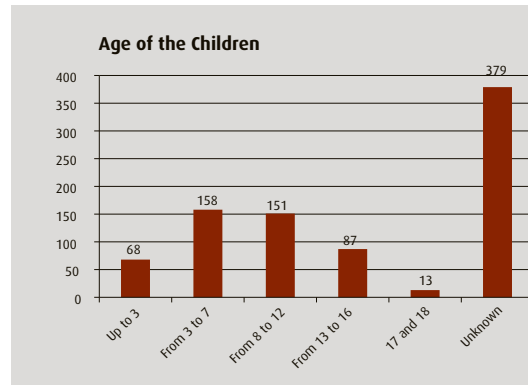
As regards the characterization of the children and young people concerned, as well as of the complainants, the available data allows for a few conclusions to be drawn.

Only 40 calls were made by the concerned children or young people themselves.

Indeed, family members are the main callers to the Children's Hotline (in 344 cases). In approximately 50% of these situations, the parents themselves are the complainants.



In terms of the age of the children and young people concerned, a marked predominance of the group between 3 and 12 years of age was found (309 calls), although children under 3 years also motivate many requests (68).



Elderly Person's Hotline

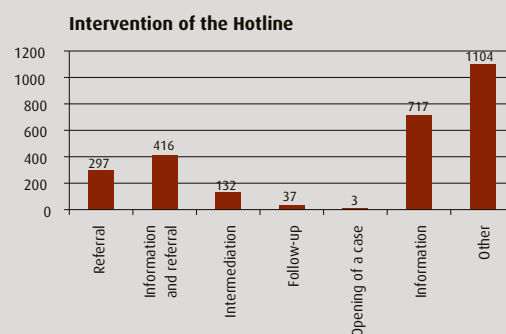
The growing use of the Elderly Person's Hotline has been frequently highlighted in recent reports of the Portuguese Ombudsman.

However, also as regards this Hotline, the fact that its operation has been interrupted for nearly three months in 2009 does not allow for a more complete comparative analysis to be made.

Calls received	Calls made	
	Complainants	Entities*
2706	540	402

* This includes both the entities complained against and the authorities from which the staff of the Hotline seek collaboration.

A more balanced distribution of key interventions is noted in this Hotline, when compared with the Children's Hotline: the provision of information continues to be the most frequent course of action (in 717 cases). But the simple referral (297), the referral with provision of information (416) and intermediation (132) also take place often.



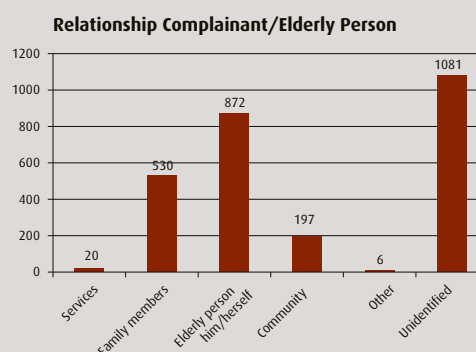
Regarding the main issues raised in the calls, reference should be made to home care (246) and issues related to health (234) and abuse (215). On the next level, but still above a hundred requests, there is the matter of nursing homes (152) and issues related to abandonment (127).

As shown by the table below, many other situations are also addressed in numerous calls, with three groups of situations justifying special reference, due to their obvious relevance in the daily life of the elderly population: the requirements and judicial procedure for interdiction and inabilitation, the Solidarity Supplement for the Elderly and the Long Term Care Supplement.

Main Questions Posed	No.
Home Care	246
Health	234
Abuse	215
Homes	152
Abandonment	127
Complaints	106
Legal Information	106
Social Action	105
Services	74
Neglect of Care	59
Housing	57
Pensions	52
Fundamental Rights	46
Interdiction and inabilitation	41
Solidarity Supplement for the Elderly	26
Long Term Care Supplement	26
Information about the Hotline	21
Day Centre	12

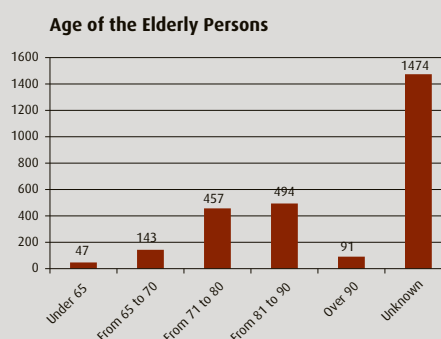
Also here some conclusions should be drawn as regards the characterization of the complainants and the elderly population concerned by the calls.

Unsurprisingly, elderly people themselves were the most frequent callers to the Elderly Person's Hotline (872), although the number of family members calling is also significant (530).



In nearly 200 cases the request comes from the community, presumably with no family connection to the elderly person concerned.

A characterization in terms of age reveals for the first time a marked predominance of the group between 71 and 90 years of age (nearly 1000 calls), which perhaps demonstrates the ageing of the Portuguese population.



2.3. Azores Local Office

The Local Office of the Ombudsman in the Autonomous Regions of the Azores handles cases in which the addressed entity is located within the region, regardless of the matter under analysis.

In 2010, 128 new cases were opened in the Local Office of Azores, 127 of which pursuant to complaints submitted to the Ombudsman and 1 on the Ombudsman's own initiative. In addition, there were 77 cases from previous years, in a total of 204 cases investigated in 2010.

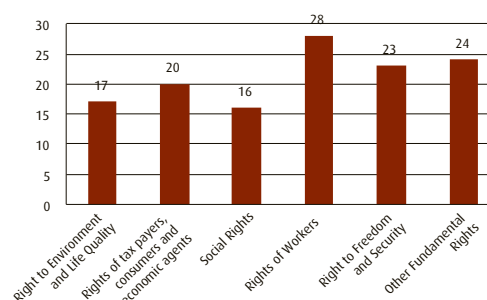
Also in 2010, 115 cases were closed, 41 of which had been opened in the same year.

The number of cases investigated and closed in 2010, and of cases from previous years, is the following:

Investigated in 2010	
- Pursuant to a complaint	127
- On the Ombudsman's own initiative	1
- Opened in previous years	77
Closed in 2010	
- Opened that year	41
- Opened in previous years	74
Pending on 31.12.2010	
- Opened in 2010	86
- Opened in previous years	3

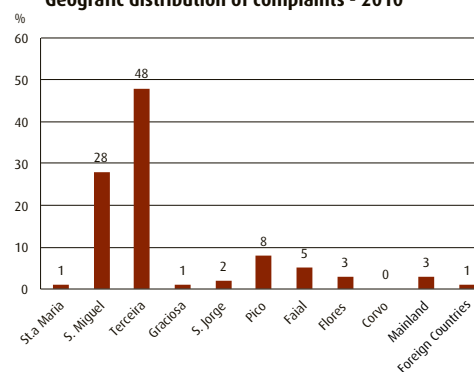
One should firstly remark the balance as regards the number of complaints concerning the different areas of activity of the Ombudsman. Notwithstanding the prevalence of the complaints concerning the Rights of Workers (22% of the total), issues concerning Other Fundamental Rights (nationality law, penitentiary issues, education and health) are separated from those related to the Right to Justice and Security by only 1 percentage point (19% e 18%, respectively). The same balance is noticeable between the Rights to Life Quality and the Environment (13%), Rights of Taxpayers, Consumers and Economic Operators (16%) and Social Rights (12%) are concerned.

Distribution of cases by subject matter – 2010

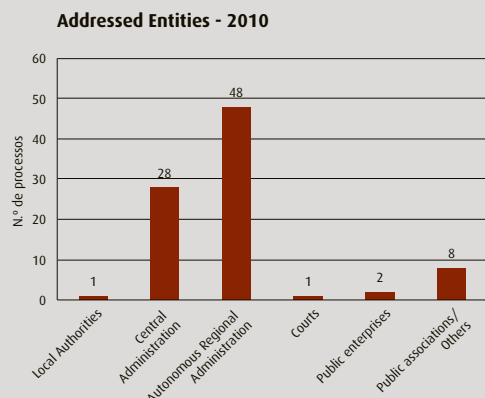


The number of complaints presented in person at the Local Office (59) bears a close relation to the number of complaints originated in the Terceira island (64), where the Office is located. Still, complaints were received from all the islands, with the exception of Corvo: São Miguel, with 36, and Pico, with 11, stand out.

Geographic distribution of complaints - 2010



Complaints aimed at the Autonomous Regional Administration (38%) are closely followed in number by complaints aimed at the Central Administration (28%). Local authorities, public enterprises and courts also motivated a significant number of complaints.



Right to Environment and Life Quality

As far as these rights are concerned, complaints concerning the failure of the local authorities to act are recurrent. That is, the complaints submitted argue that the Administration, in particular local authorities, are especially lenient towards those who breach laws against noise pollution, who do not ensure salubrious conditions or who build without a license, while also being slow in the resolution of the problems that are brought before them in this regard. Still, it is possible to point out a case where the intervention of the Ombudsman contributed to a Municipal Council immediately and definitively closing an illegal mechanical workshop, even if an insistence was necessary to ensure effective compliance with its decision.

Rights of Taxpayers, Consumers and Economic Operators

The interventions in respect to these subjects deal mostly with income taxes and transactions. Thus, a complaint concerning the taxation of vehicles imported from the European Union was investigated. But, in addition, one has to highlight several cooperation requests aimed at public enterprises and associations about consumer issues (electricity, telecommunications and tourism).

Social Rights

In addition to the cases investigated pursuant to complaints within the welfare system and the solidarity subsystem, the investigation of complaints concerning social housing was also ensured. The good response of the Regional Autonomous Administration is noteworthy.

Rights of Workers

The questions raised with regard to the administrative organization and public employment relations are essentially divided around three areas of focus: delay in replying and failure to decide; competitions for recruitment of workers; and the status of teaching staff. It was with regard to the latter, and specifically to the possibility of accumulating teaching functions, that the Ombudsman recommended the following: in view of Article 180, paragraph 5, of the Statute of Teachers In Pre-School and Basic and Secondary Education of the Autonomous Region of the Azores, the competent regional department determine that, as regards teachers of the 2nd and 3rd cycles of basic and secondary education, the global limit of teaching hours be successively reduced, proportionally to the reduction of the teaching load that these teachers may benefit from under Article 124 of the same Statute, rounded off to the unit, and not by mere subtraction, from the global limit of teaching hours of accumulation, of the number of hours of teaching load reduction to which they are entitled due to age and time on the job. Recommendation 4-A/2010 was accepted with effect in 2010-2011¹.

The cooperation of the Autonomous Regional Administration was also obtained in a case where the application of the legal procedure for work accidents was requested, in a situation where, due to manifest lack of care, it had not been applied from the outset.

Right to Justice and Security

The number of complaints concerning judicial delays remains important but there were also complaints involving the Portuguese Bar Association and the standards of conduct of four of its associates.

Other Fundamental Rights

Several cases were investigated following complaints related to the functioning of the penitentiary system, health issues and the law of foreigners and nationality.

The complaints submitted by prisoners prompted interventions in the prison establishments of Ponta Delgada and Angra do Heroísmo that were sufficiently addressed, allowing the elucidation of the interested parties.

In the area of health one should highlight the intervention carried out at the Espírito Santo Drug Abuse Treatment Centre of the Hospital of Angra do Heroísmo².

¹ http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_4a2010.pdf

² http://www.provedor-jus.pt/restrito/rec_ficheiros/cores_21122010.pdf

Concerning good practices, one should mention a case regarding the conditions of support to inter-island transportation of patients. Here the Ombudsman reminded to the health care centre concerned that demanding from citizens a declaration of commitment not to request an additional trip, where the need for it in order to accompany another sick family member could be anticipated, seemed to stem from lack of trust on citizens' honesty and also to be an unnecessary procedure, since the request for a trip could not be refused, as this would be manifestly abusive behaviour.

In its reply the Autonomous Regional Administration announced that it would transmit instructions to the addressed service regarding the unnecessary nature of the procedure, in light of the principle of good faith that exists between Public Administration and the citizens.

In the area of the law of foreigners and nationality, some cases were investigated concerning alleged delays in the assessment of requests for the granting of nationality.

Summary of some interventions of the Ombudsman

Case R-3688/09

Entity addressed: University of the Azores

Subject: Civil liability. University of the Azores. Injury of a student.

Summary:

A student who was injured while participating in a sports competition in representation of the University was refused payment of health care expenses by the University and school insurance.

Following the Ombudsman's intervention the University paid the expenses, upon presentation of proof of expenses. In addition, the University of the Azores informed that it would reanalyse the special insurance scheme for students, so as to prevent similar situations.

Case R-2622/09

Entity addressed: Regional Secretariat of Health

Subject: Regional Health Services. User charges.

Summary:

In a complaint it was argued that it was illegal and unfair for the National Health Service to request user charges to a user of the Regional Health Service, which is free of such charges, especially in the case of a University student who was unable to access the services of the Regional Health Service. However, the investigation of the case allowed to conclude that the Regional Health Service bears the cost

of the National Health Service's user charges where it has referred the patient. In fact, the Regional Health Service has yet to adopt regulation regarding the regime and modalities of participation of users in the costs, even though user charges are envisaged. But, if it would take on such a payment as concerned non-referred users, it would be subverting its very reason for existing. As for the fact that the case related to a University student, the Ombudsman reminded that the Region has University education with various training areas; and that a University student from the Azores who, in a situation of emergency, would go to a National Health Service unit would not be in a different situation from any other student who, in the same circumstances, needed to go to a hospital away from his/her area of residence; and that, in light of a different health situation, it would always be possible to refer him to the Regional Health Service.

Case R-131/10

Entity addressed: Regional Directorate for Labour, Professional Qualification and Consumer Rights.

Subject: Administrative procedure. Duties of response, of prior hearing of the interested party and of stating reasons.

Summary:

The addressed service refused the carrying out of exams relating to a training action in the area of activity of a certain company, despite having previously authorised it. It also refused subsequent requests for other training actions.

Specifically, having carried out an inspection to the facilities of this company, only six months later did it communicate its decision to refuse courses for which authorisation had been requested in the mean time. It also barred students who had already undergone training from undertaking the exam.

Pursuant to investigation, the service admitted to the existence of error in the prohibition of exams within the previously authorised course, and communicated the revision of its decision. Also, it recognised that it should have previously held a hearing of the interested parties, so it determined that the procedure be resumed at that point.

2.4. Madeira Local Office

The Local Office of the Ombudsman in the Autonomous Region of Madeira handles cases in which the addressed entity is located within the region, regardless of the matter under analysis.

In 2010, 141 new cases were opened in the Local Office of Madeira, 138 of which pursuant to complaints submitted to the Ombudsman and 3 on the Ombudsman's own initiative. In addition, there were 94 cases from previous years, in a total of 235 cases investigated in 2010.

Also that year, 130 cases were closed: after the intervention of the Ombudsman, in 62% of these cases the complaint was satisfactorily resolved; and a total of 20% of the complaints were considered unfounded following due investigation.

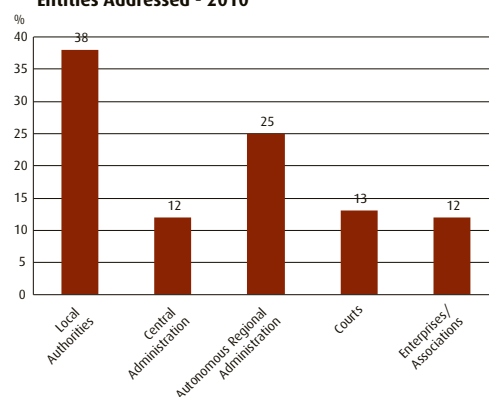
The number of cases investigated and closed in 2010, and of cases from previous years, is the following:

Investigated in 2010	
- Pursuant to a complaint	138
- On the Ombudsman's own initiative	3
- Opened in previous years	94
Closed in 2010	
- Opened that year	49
- Opened in previous years	81
Pending on 31.12.2010	
- Opened in 2010	93
- Opened in previous years	12

About 38% of the complaints accepted by the Local Office had City Councils as targets (the Municipality of Funchal leads with 48% of the total complaints received in this context), while 13% of cases referred to courts.

The consolidation of complaints against the bodies of the Autonomous Regional Administration of Madeira (25%) should be highlighted. Within this number the higher incidence of cases related to the Fiscal Affairs Department (31%) and the Social Security Centre of Madeira (21%).

Entities Addressed - 2010



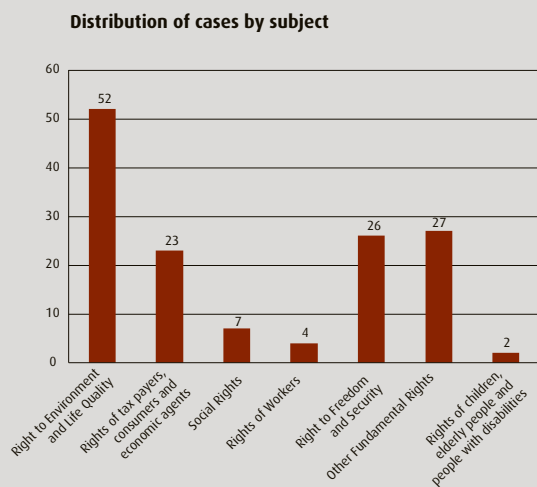
The thematic balance in the overall number of complaints brought to the consideration of the Local Office of Madeira was strengthened, with four main areas of intervention in 2010: environment and urban planning (35%)¹ traditionally predominant in the sphere of civic participation and intervention; protection of rights, freedoms and guarantees (20%)²; issues relating to financial matters and taxation (19%)³; and, finally, issues pertaining to judicial affairs, in fourth place, with 17% of requests⁴.

¹ Regarding urban planning issues, where the interlocutors are most of the times the local authorities, citizens' requests focused mainly on the legality of works done by private entities (licensing, breach of rules on the distance between buildings, compliance with the urban parameters defined in the Municipal Master Plan). Regarding the environmental sector, a large percentage of the issues addressed focused on situations relating to nuisances caused by noise.

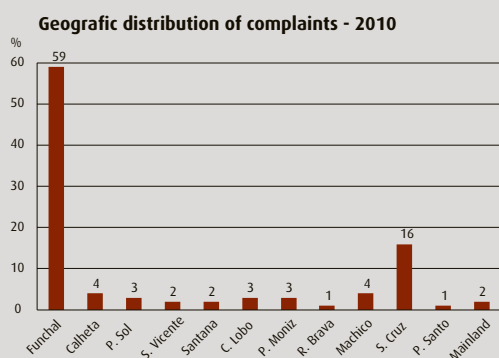
² Prevailing, as had happened in 2009, issues relating to the breach of duty to respond by public entities, and matters on education and health.

³ The majority of complaints referring to irregular procedures by the Tax Administration.

⁴ In particular regarding judicial delays.



In the distribution of complaints as to their geographical origin there is a predominance of Funchal (59%) and, at some distance, of Santa Cruz (16%), followed by the municipalities of Machico (4%) and Calheta (4%).



For the first time, the written submission of complaints was predominant (46% of cases), followed by the presentation in person (35%). In turn, the use of electronic means remains third in preference, with 18%, despite the ever-rising evolution registered in this regard.

In 2010, the Portuguese Ombudsman issued a recommendation⁵ regarding urban planning issues, an area in which the intervention of the Ombudsman is frequently requested due to the inertia of governmental bodies when responding to the citizens, especially in matters pertaining to the legality of constructions built by individuals (in parti-

cular the assessment of compliance with the urban parameters defined in the Municipal Master Plans). The case was closed pursuant to acceptance of the recommendation by the addressed entity (Municipality of Funchal) and after due investigation.

In a different context, having received information on the lack of dignity in the daily life conditions of female inmates at the Funchal Prison Establishment (FPE), which stemmed from the transfer to that space of inmates previously confined in the Prison Establishment of Viveiros, the Ombudsman opened a new case on his own initiative⁶, under Articles 4 and 24 of Law 9/91, of 9th April.

After investigative steps undertaken with the Funchal Prison Establishment and the General Directorate of Prison Services, it was found that all the inmates in the Funchal Prison Establishment lived in grossly inferior conditions to those currently existing, by virtue of the closure of the Regional Prison Funchal (EPR) in May 2009.

Because the transfer in question related to inmates with special security requirements, it was decided to occupy a ward where until then were four female inmates, subsequently relocated to a different ward created specifically for that purpose. The existence of suitable conditions for inmates was also evaluated: the existence of two showers was reported, each serving four cells, and all facilities were found to have sanitary facilities and TV. The population enjoyed general access to the library and to the multipurpose room of the Establishment. Despite the lack of a room for meals (which were taken in the individual cells), as well as the lack of space for a «nursery» designed for newborns and toddlers, interviews with the inmates allowed to conclude on their overall satisfaction with the conditions offered by the Funchal Prison Establishment.

In 2010 investigations were concluded in a case promoted by initiative of the Ombudsman in 2007⁷. This case had as object the effective compliance with the mandatory system for protection of wells and tanks, prescribed by Regional Legislative Decree 20/89/M, of 28th July. Currently, the large majority of municipalities within the region has an updated inventory in accordance with Article 3 of the aforementioned Regional Legislative Decree, having progressively implemented more agile supervisory mechanisms, in compliance with the minimum standards for safety set by Article 36 of the General Regulation of Urban Buildings (Decree Law 38382, of 7th August 1951), as a result of what is established in Article 2 of the Regional statute cited above.

Also in 2010, the Ombudsman completed an inspection to the Homes for Children and Young People and Temporary Placement Centres of the Autonomous Region of

⁵ Recommendation 1/A/2010, in case R-3741/07 (Mad.). http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=449&documento=Recomendação n.º 1/A/2010.

⁶ See chapter «Cases and Inspections of the Ombudsman own Initiative» – Case P-4/10.

⁷ Case P-07/07.

Madeira.⁸ The report produced following the inspection visits sought to characterize the children in placement and the homes, taking into account issues such as sanitary and health care, food, night surveillance, organization of leisure and outdoor activities, safety and the quality of infrastructures.

This inspection covered 9 Homes for Extended Placement, 3 Temporary Placement Centres, an Autonomy-building residence, and the specific case of the Psychopedagogical Rehabilitation Centre of the Sagrada Família.

In the final report⁹, the findings of the inspection stressed the important role played by the various host institutions of the Autonomous Region of Madeira, in particular, by their officers, technical staff and other staff members. Nevertheless, the monitoring of everyday life in the homes carried out by the entities that determine the application of the measure of placement in an institution was considered insufficient. The need for regular visits, including the possibility of hearing the children, was emphasised.

Given the above considerations, the Ombudsman addressed a set of suggestions to various entities, most notably proposals submitted to the Minister of Justice, the High Council of the Public Prosecution Service and the Regional Secretary for Social Affairs¹⁰.

Due to the effective recognition of the Portuguese Ombudsman's capacity to intervene in relation to the various bodies of public powers, almost the entire Local Administration, as well as Autonomous Regional Administration bodies, contributed to speed up the procedural mechanisms used, by responding with reasonable promptness to the requests addressed to them.

As regards good practices it is fair to point out the improvement of the response to inquiries by the Municipality of Santa Cruz, although there is still some inefficiency displayed by its departments, occasionally motivating unjustified procedural delays.

The intervention of the Ombudsman as regards the Regional Secretariat for Social Affairs and the Ministry of Health should also be emphasized, as it made possible to improve the procedure for covering costs resulting from provision of health care to users of the National Health Service in the Autonomous Region of Madeira. The users mostly complained that the principle of universal access to health services provided by the services and institutions of the Regional Health Service was not fully guaranteed, especially with regard to users who stayed temporarily in that archipelago.

After investigative steps taken by the Portuguese Ombudsman, the Central Administration of the Health System, IP, publicized a normative rule directed to all the services and

facilities included in the National Health System, transferring to the Regional Health Administrations the financial responsibility for reimbursement for medication given to beneficiaries residing in the mainland and who were not covered by a health subsystem.

In parallel, by way of a protocol signed with the National Association of Pharmacies (NAP), the pharmacies established in the mainland that were members of the National Association of Pharmacies would reimburse users from the Autonomous Region of Madeira, charging the cost to the region later. In the case of pharmacies that were not members, the reimbursement of users would be guaranteed by the Administration Institute of Health and Social Affairs, IP-RAM.¹¹

In another case, following the intervention of the Ombudsman, the University of Madeira adopted specific internal rules establishing new procedures relating to requests for accreditation of courses and recognition of degrees¹².

Taking advantage of the geography of the area and the possibility of a closer approach on the various problems presented by the complainants, the investigative efforts promoted by the Ombudsman continued to enable a quicker treatment of some of the topics discussed, while promoting, with the entities involved, balanced solutions with a preventive and precautionary nature designed to serve as reference and solve similar problems in the future.¹³

In one of these situations, the Ombudsman analysed a complaint submitted by the legal guardians of children with hearing impairment who attended the 1st/2nd year of the first cycle of basic school and pre-school, requesting his intervention with regard to the Regional Education Department/Regional Directorate of Special Education and Rehabilitation, and contesting the terms in which the students had been integrated in a class that was already formed and included also hearing students, to the detriment of their learning process. The investigation involved several working meetings with the presence of some of the complainants. The strengthening of preventive mechanisms designed to avoid some of the situations described in future school years was suggested¹⁴.

⁸ See chapter «Cases and Inspections of the Ombudsman own Initiative»– Case P-17/10.

⁹ http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_Madeira_2010.pdf

¹⁰ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=360

¹¹ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=320.

¹² Case R-2926/10 (Mad.).

¹³ Cases R-3177/09 and R-5435/09.

¹⁴ Case R-2518/10 (Mad.).

Summary of some interventions of the Ombudsman

Case R-3839/05

Entity addressed: Regional Secretariat of Environment and Natural Resources; Regional Directorate of Commerce, Industry and Energy; Electricity Company of Madeira.

Subject: Environmental disturbance attributed to the exploitation of the Vitória Thermal Power Plant

Summary:

As regards environmental matters, following the intervention of the Ombudsman concerning the Regional Secretariat of Environment and Natural Resources/Regional Directorate of Environment, Regional Trade, Industry and Energy and the Operative Unit of Public Health Care in Funchal, the adoption of administrative measures against environmental pollution caused by activities undertaken by the Victoria Power Plant (belonging to the Electricity Company of Madeira, located in Vale da Ribeira dos Socorridos, Funchal) was monitored.

According to the complaint, the activity pursued by this thermal power plant would cause damage to the environment and the peace and welfare of nearby residents, due to the propagation of noise and the emission of air polluting substances. The negative environmental impacts on health and life quality for residents in that area and for agricultural production were particularly pointed out.

Following inquiries, the environmental license was issued, under the applicable law, as was the license for the expansion of that Station, in accordance with the rules of the Environmental Impact Statement.

Case R-6484/08

Entity addressed: Regional Inspectorate of Economic Activities; **Subject:** Games Inspection Service Compliance with Law 37/2007, of 14th August.

Summary:

In the context of economic and financial affairs and taxation matters, the intervention of the Ombudsman regarding the Regional Inspectorate of Economic Activities and the Games Inspection Service improved the application, by the Madeira Casino, of some aspects of the tobacco law (Law 37/2007, of 14th August, adapted to Madeira by Regional Legislative Decree 41/2008/M, of 15th December). The various inquiries undertaken reflected a gradual compliance by the tobacco-selling concessionaire with the creation of alternative smoke-free spaces, following the requirements and providing a continuous assessment within the legal regulations established.

It should be pointed out that Regional Legislative Decree 41/2008/M, of 15th December, expressly defines under

Article 4 the designated smoking areas in casinos, setting a maximum percentage of 30% of the total area open to the public. The regional regulations regarding the physical boundaries for smokers as well as the rules relating to signs and devices for air extraction and ventilation systems existing in the Madeira Casino, were to be protected and applied. The Ombudsman ordered the closing of the case and considered that the complete reintegration of legality had been achieved.

Case R-4198/09

Entity addressed: Directorate of Customs of Funchal

Subject: Public employment. Career of Secretary of Customs.

Summary:

The Ombudsman intervened with regard to the Directorate of Customs of Funchal (Directorate General of Special Taxes on Consumption), following a complaint against the decision to proceed with the integration of employees belonging to the career of Secretary of Customs in a scale of service regarding passengers/cargo and transport ships¹⁵. The complainants sustained that such functions would be alien to the functional content of their career.

The inquiries led to the conclusion that the Customs of Funchal were an organic unit of regional nature, responsible for ensuring, in its area of jurisdiction, the continued operational activities and ongoing management associated with the tasks of the Directorate General of Customs and Special Taxes on Consumption, capable of substantiation in the Autonomous Region of Madeira.

Contrary to what was claimed, the list of duties inherent to the career of Secretary of Customs, established in paragraph 5 of Annex II of Ordinance 531-A/93, of 20th May, as amended by paragraph 2 of Ordinance 390/98, of 9th July, was not exhaustive but merely illustrative, necessarily involving the performance of other tasks not listed, such as service to customers. Moreover, the career of Secretary of Customs constituted, for the purposes of Article 1, paragraph 1, and Article 4 of the Decree-Law 274/90, of 7th September, with subsequent changes, a career with a special regime, implying constant availability of the staff¹⁶.

Therefore, it was concluded that the Secretaries of Customs had not been appointed for the performance of functions of other careers in customs, but rather for the performance of duties similar to those already within their workplaces, their own specific career or common careers.

¹⁵ Case R-2518/10 (Mad.).

¹⁶ To read in more depth about the concept of constant availability, see the Advice of the Consultative Council of the Office of the Prosecutor-General, P000051992, at <http://www.dgsi.pt>. See also Article 43, paragraph 3, of Law 12-A/2008, of 27th February.

2.5. Recommendations of the Ombudsman

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

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

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

In 2010 22 Recommendations were issued, 9 of which concerning the need for amendments to legislative acts («B» recommendations). These recommendations were addressed to the following entities: President of the Portuguese Parliament (3); Minister of Justice (3); Minister of State and Finance (2); Minister of Environment and Land Use Planning (1); Minister of Education (1); Regional Secretary for Education and Training (1); Secretary of State Assistant to the Minister and for Budget (1); Presidents of the Local Authorities (7); President of the Board of Directors of the Institute for Mobility and Land Transport (1); Chief Executive Officer of the Intermodal Transports of Porto (1); President of the Administration Board of the Santarém Hospital (1).

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

Recommendation 1/A/2010

Entity addressed: Mayor of Funchal

Subject: Urban Planning Law. Illegal construction works.

Date: 12.01.10

Summary: Recommendation on urban planning matters, aiming to ensure that under Articles 107 and 108 of Decree-Law 555/99, of 16th December, as subsequently amended, proceedings were initiated to take administrative possession of the property at stake and its demolition carried out at the expense of the offender.

Status: Accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=449

Recommendation 2/A/2010

Entity addressed: Minister of Justice

Subject: Granting of Portuguese nationality. Legal residence in Portugal. Service in the Portuguese Army. Good faith.

Date: 10.02.10

Summary: Recommends that the time the complainant served in the Portuguese army be counted as legal residence in Portugal, in the context of the process of granting of Portuguese nationality by naturalization.

Status: Accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=415

Recommendation 3/A/2010

Entity addressed: Mayor of Sesimbra

Subject: Conservation and sewage treatment fee.

Date: 11.02.10

Summary: Recommendation seeking to prevent the practice of imposing charges related to the conservation and sewage treatment in cases / time periods in which there is no availability of the wastewater public system.

Status: Partially accepted.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=418

Recommendation 4/A/2010

Entity addressed: Regional Secretary for Education and Training

Subject: Teaching service. Teaching load reduction. Accumulation of functions.

Date: 02.06.2010

Summary: The Ombudsman recommended to the Regional Secretary for Education and Training that, in order to determine the number of authorized hours of accumulation of functions, in relation to the teaching load reduction, a proportion be used and not just a simple reduction.

Status: Accepted with effect for the academic year 2010-2011

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=452

Recommendation 5/A/2010

Entity addressed: Mayor of Tomar.

Subject: Land use planning. Public domain. Street names. Numbers. Lack of competence

Date: 23.03.10

Summary: The Ombudsman concluded that the name of a street had been arbitrarily changed by the civil parish of Asseiceira, with no powers on the matter, which had caused damages to the public (lost mail, uncertainty in identifying land registry and fiscal property). The municipality had not acted to address this matter. Therefore the Ombudsman recommended that a decision be taken on the exact definition of two street names and their numbers.

Status: Not accepted.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=477

Recommendation 6/A/2010

Entity addressed: Mayor of Vila Nova de Famalicão.

Subject: Environment. Salubrity. Livestock sector. Cow farm. Subpoena. Enforcement.

Date: 29.03.10

Summary: The Ombudsman recommended that a cow farm be compulsory closed by removal of the animals. He did so taking into account that the Municipality of Vila Nova de Famalicão had recognized for 12 years that this farm was installed in a clandestine construction and caused disturbance and insalubrity to others. The Ombudsman also noted that numerous administrative procedures and subpoenas had achieved no result whatsoever.

Status: Accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=450

Recommendation 7/A/2010

Entity addressed: President of the Board of Directors of the Institute for Mobility and Land Transport.

Subject: European Union model parking card. Renewal. Request.

Date: 15.04.10

Summary: The Ombudsman recommended the introduction, as soon as possible, of mechanisms to allow the electronic submission of applications for renewal of the EU model parking card for people with disabilities who have with limited mobility.

Status: Accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=480

Recommendation 8/A/2010

Entity addressed: Chief Executive Officer of the Intermodal Transports of Porto

Subject: Guarantee period of «Andante» cards.

Date: 25.06.10

Summary: This Recommendation aimed to extend to two years the guarantee period of «Andante» cards (tickets valid for the collective passenger transport of Porto). Such a period was of three to six months, a situation which, apart from being illegal, put the Porto's transport users in a situation of inequality vis-à-vis the Lisbon users. In Lisbon, also pursuant to an intervention of the Ombudsman, a 2-year guarantee period was already recognized as regarded the «Lisboa Viva» cards.

Status: Accepted.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=457

Recommendation 9/A/2010

Entity addressed: Minister of State and Finance.

Subject: Culture. State assets. Santo António de Campolide church. Antigo Convento de Santa Joana church. Church assets. Confiscation. Restitution.

Date: 28.06.10

Summary: The Ombudsman recommended that the ownership of the Church of Santo António in Campolide be transferred back, at no cost, to the Brotherhood of Nossa Senhora do Rosário and Senhor Jesus dos Passos da Santa Via Sacra de Campolide. He did so after becoming aware of the sale by the State of the Convento de Santa Joana, in Lisbon, which the State never returned to the Brotherhood, thus not conforming to the judgment rendered by the Supreme Court of Justice in 1927. The restitution is considered a moral imperative, also in view of the urgent need to rehabilitate the building, which since 1993 is listed as having public interest

Status: Not accepted.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=459

Recommendation 10/A/2010

Entity addressed: Mayor of Grândola.

Subject: Land use planning. Public domain. Municipal roads. Limitation. Private urban development. Free circulation.

Date: 12.08.10

Summary: Usurpation of the public municipal domain was found to exist with regard to a control device placed at the entrance of a private urban development giving access to the seashore. The aim of this device was to limit traffic and ensure payment of fees for the use of reserved parking spaces. Considering that an allotment is not a closed condominium, the Ombudsman recommended that the collegiate executive

body of the Municipality of Grândola order the removal of the device, if necessary resorting to coercive means.

Status: Accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=462

Recommendation 11/A/2010

Entity addressed: President of the Executive Board of the Santarém Hospital

Subject: Attending physician of Clinical Pathology. Contract termination notice.

Date: 08.11.10

Summary: The Executive Board of the Santarém Hospital terminated an administrative contract with a physician. The terms of the termination of the contract were illegal, so it was recommended that the Hospital fulfil its contractual obligation, by reintegrating the worker and paying compensation for the period of non-working time (between 14.10.2007 and the date of reintegration).

Status: Awaiting a reply.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=469

Recommendation 12/A/2010

Entity addressed: Deputy Secretary of State and for Budget

Subject: Extraordinary updating of retirement pension under Article 7 of Law 30-C/2000.

Date: 25.10.10

Summary: The Ombudsman recommended the extraordinary updating of the retirement pension of a registrar, under Article 7 of Law 30-C/2000, of 29th December (Budgetary Legislative Act for 2001). That extraordinary updating had been denied due to an incorrect interpretation of the law that was applicable at that time.

Status: Not accepted.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=468

Recommendation 13/A/2010

Entity addressed: Mayor of São João da Madeira.

Subject: Noise measurements. Deposit.

Date: 17.11.10

Summary: The Ombudsman objected to the illegal and unjustified request for a deposit of € 500.00 as a guarantee for noise measurements to be carried out following complaints of inhabitants against noisy activities. He recommended the prompt suspension of the application of that provision as well as its revision in the near future.

Status: Accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=482

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

Recommendation 1/B/2010

Entity addressed: President of the Portuguese Parliament

Subject: Legal framework on complaints presented to the Ombudsman concerning matters of national defence and the Armed Forces, as adopted by Law 19/95, of 13th July, and the National Defence Act, contained in Organic Law 1-B/2009, of 7th July – Article 34.

Date: 03.02.10

Summary: The Ombudsman recommended to the Parliament that the legal framework on complaints presented to the Ombudsman concerning matters of national defence and the Armed Forces be amended so as not to restrict in any way the right of complaint of members of the military (this legislation was adopted by Law 19/95, of 13th July, and the National Defence Act, contained in Organic Law 1-B/2009, of 7th July – Article 34).

Status: Not accepted.

http://www.provedor-jus.pt/recomendetalhe.php?ID_recomendacoes=414

Recommendation 2/B/2010

Entity addressed: Ministry of Justice

Subject: Regulation on Court fees. Waiver of Court fees. Workers.

Date: 23.02.10

Summary: Application of the same rules on waiver of court fees for workers defending their rights in Court, regardless of whether their representation is ensured by a public prosecutor or a freely-appointed lawyer.

Status: Awaiting a reply.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=416

Recommendation 3/B/2010

Entity addressed: Minister of Justice

Subject: Legal aid. For-profit entities.

Date: 23.02.10

Summary: Granting of legal aid to for-profit entities that, proving their economic failure, demonstrate that the dispute for which this kind of public support is required falls outside of their normal economic activity.

Status: Awaiting a reply.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=417

Recommendation 4/B/2010

Entity addressed: President of the Portuguese Parliament

Subject: Electoral Laws. Early voting. Special disqualifications in the election for Member of Parliament. Candidacies submitted by groups of voters.

Date: 01.07.10

Summary: Reiteration of Recommendations 9/B/2005 and 3/B/2003, concerning the enlargement of possibilities of early voting and the elimination of restrictions of passive electoral capacity of citizens with dual nationality. Recommendation aiming to ensure equal treatment of independent candidates and those supported by political parties, with regard to exemption from VAT and the use of freely chosen symbols in election campaigns and ballot papers.

Status: Accepted as regards early voting conditions. Awaiting a reply on the remainder.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=461

Recommendation 5/B/2010

Entity addressed: President of the Portuguese Parliament

Subject: National exam for access to the traineeship of the Portuguese Bar Association.

Date: 15.07.10

Summary: Need to clarify the legal academic requirements for admission to the Portuguese Bar Association..

Status: Awaiting a reply.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=460

Recommendation 6/B/2010

Entity: Minister of Environment and Land Use Planning.

Subject: Rented Building Subvention Law (Recria Program).

Date: 02.08.10

Summary: Considering that the RECRIA Program was established in 1988 and since then many of the rehabilitated buildings are already in need of further conservation works, the Ombudsman concluded that the rule which prevented more than one subvention of renovation works in a building should be suppressed.

Status: Awaiting a reply.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=478

Recommendation 7/B/2010

Entity: Mayor of Mogadouro

Subject: Sport and leisure. Municipal aerodrome. Public service. Terms of use. Gliders.

Date: 11.08.10

Summary: The Ombudsman considered that the Mogadouro Municipal Aerodrome Regulations offended two basic principles of public services - equality and universality - and recommended they should be amended.

It was confirmed that the users of the aerodrome who were not members of a given local association were forced to book its use much earlier than others, which was not compatible with either principle, because of the nature of aeronautics or/and the unpredictability of forecasted weather.

Status: Accepted.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=481

Recommendation 8/B/2010

Entity addressed: Minister of State and Finance

Subject: Banking industry. Reprivatisation operation of BPN. Capital reserve on behalf of small investors.

Date: 12.08.10

Summary: The recommendation was formulated since the Ombudsman was convinced that the bill which approved the reprivatisation operation of «BPN – Banco Português de Negócios, S.A.» should have established a capital reserve on behalf of small investors, something that did not happen.

Status: Case closed. Recommendation lost its usefulness due to the developments on the reprivatisation process of BPN.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=463

Recommendation 9/B/2010

Entity addressed: Minister of Education

Subject: Private social welfare institutions. Kindergarten teachers. Enrollment in general pensions scheme.

Date: 15.11.10

Summary: Since there were doubts on the part of the Caixa Geral de Aposentações on this matter, the Ombudsman recommended that it be clarified that teachers in pre-schools ran by private social welfare institutions are included in the same pension system as that enjoyed by the generality of teachers, whether from the public or the private sector.

Status: Disagreeing with the argument that this recommendation had lost its usefulness, the Ombudsman insisted on the matter, which nevertheless did not yet receive a definitive reply.

http://www.provedor-jus.pt/recomendafich_result.php?ID_recomendacoes=479

In relation to the 22 recommendations made in 2010, 10 had been accepted by the end of the year. It should be noted that in what concerns «A» Recommendations, addressed to solve concrete cases, with no need for legislative measures, with two exceptions, only two recommendations were awaiting a reply – the ones issued at the end of the year and in relation to which the deadline of sixty days for reply had not yet lapsed.

In 2010, recommendations issued in previous years were also accepted by the authorities addressed:

Recommendation 9/A/2006

Entity addressed: Mayor of Póvoa do Lanhoso

Subject: Access to registry and administrative archives.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec9A06.pdf

Recommendation 8/B/2008

Entity addressed: Minister of National Defense

Subject: Counting of the period of registered mandatory license for the purpose of retirement

http://www.provedor-jus.pt/restrito/rec_ficheiros/REC_8B2008.pdf

Recommendation 13/A/2008

Entity: Mayor of Mafra

Subject: Increase of taxes for legalization of construction works.

http://www.provedor-jus.pt/restrito/rec_ficheiros/13A2008.pdf

Recommendation 5/B/2009

Entity addressed: Mayor of Funchal

Subject: Regulation on political propaganda.

http://www.provedor-jus.pt/restrito/rec_ficheiros/rec5B09.pdf

Recommendation 6/B/2009

Entity addressed: Mayor of Câmara de Lobos

Subject: Regulation on political propaganda and other uses of public domain.

http://www.provedor-jus.pt/restrito/rec_ficheiros/rec6B09.pdf

Recommendation 7/B/2009

Entity addressed: Mayor of São Vicente

Subject: Regulation on the display and dissemination of political propaganda

http://www.provedor-jus.pt/restrito/rec_ficheiros/rec7B09.pdf

Recommendation 9/B/2009

Entity addressed: Minister of Justice

Subject: Requests for the transcription of births occurred in the State of India.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec_9B2009.pdf

The following recommendations issued in previous years were not accepted:

Recommendation 4/B/2009

Entity addressed: Mayor of Santa Cruz

Subject: Regulation on political propaganda.

http://www.provedor-jus.pt/restrito/rec_ficheiros/rec_4B09.pdf

Recommendation 11/A/2008

Entity: Mayor of Cascais

Subject: Construction works. Allotment operation.

http://www.provedor-jus.pt/restrito/rec_ficheiros/Rec11A2008.pdf

Recommendation 12/A/2008

Entity addressed: Director of the Motor Guarantee Fund

Subject: Motor Guarantee Fund

http://www.provedor-jus.pt/restrito/rec_ficheiros/rec12A08.pdf

2.6. Review of the Constitutionality

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

In 2010 the Ombudsman received 39 complaints asking for a subsequent abstract review of constitutionality.

As in previous years, the main constitutional parameters raised were the principles of confidence and equality. In the first case, the consequences of the changes in tax law that were motivated by the financial crisis and occurred at various times in the year 2010 were especially at stake.

No request was made concerning the review of unconstitutionality by omission.

UNCONSTITUTIONALITY		39	
	CONFIDENCE	8	21%
	EQUALITY	6	15%
	ORGANIC AND FORMAL DEFECTS	2	5%
	OTHER GROUNDS	23	59%
	OMMISSION	0	0,0%

In 2020 the Ombudsman addressed two requests to the Constitutional Court, both in the framework of the review of unconstitutionality by action, concerning:

- Request for a review of the constitutionality of the legal provisions approved by the Portuguese Bar Association that forced Law graduates, within the Bologna Process to pass an examination previous to initiating their traineeship (15th July 2010). It was argued that there was a breach of the organic and formal rules applicable to the freedom of profession. In early 2011 the Constitutional Court upheld this request (Judgement 3/2011).
- Request for a review of the constitutionality of the legal provisions of article 4, paragraph 2, of Decree-Law 211/2004, of 20th August, that established the incompatibility of the profession of estate agent with any other trade or profession. It was also argued that there

was a breach of organic and formal constitutional rules. This request was submitted on the 29th October.

In 2010, the Constitutional Court rendered a judgment in reply to a previous initiative of the Ombudsman. Judgment 224/2010 dismissed an application that had been presented in 2009 to assess the constitutionality

«of the rule of article 10, paragraph 4, of Law 97/88, of 17th August, when applied to messages of political propaganda, as it violated article 37, paragraph 3, of the Constitution, which established the need of an independent administrative body responsible for assessment of administrative offences in the exercise of rights attached to the freedoms of expression and information.»

Although not directly resulting from a request of the Ombudsman, it is also worth mentioning the Constitutional Court Judgment 65/2010, which declared

«unconstitutional for violation of articles 26, paragraphs 1 and 18, paragraph 2, of the Constitution, the second part of paragraph 4 of article 1817 of the Civil Code (as amended by Law 21/98, of 12th May) applicable under article 1873 of the same Code, in that it provides for bringing an action for paternity investigation, the period of one year from the date on which the treatment as a child has voluntary ceased.»

As this legal issue was previously raised by the Ombudsman, the Judgment made reference to the views expressed in Recommendation 36/B/99.

With regard to situations in which the Ombudsman decided not to seize the Constitutional Court, the more relevant ones were:

- The Ombudsman studied on his own initiative questions regarding changes in tax law, originating in the financial crisis. Thus, the legitimacy of applying new taxes on the Personal Tax Income to the full year of 2010, approved by Laws 11/2010, of 15th June and 12-A/2010, of 30th June. However, as the President of the Republic seized

the Constitutional Court, the Ombudsman considered that any further initiative would be useful;

- The modification of the tax on capital gains provided by Law 15/2010, of 26th July, both as regards the application of new rules to the period already elapsed in 2010, as in what regards the application in future situations previously exempt from that tax. Although no grounds were found for an abstract review of the constitutionality, the possibility of a review being submitted in a concrete case was mentioned to the complainants;
- Complaint against the reporting obligations set out for Banks by Decree-Law 72-A/2010, of 18th June;
- Complaints against changing the system of salary supplements of the Police Security Police Force officers and the allowances paid to former combatants, once again calling on the principles of equality and confidence;
- Complaint against the use by the Government of special rights (golden share) in the decision-making process of Portugal Telecom. Although the specific issue has quickly been surpassed, the complainants were informed of the insufficient grounds of their complaint;
- Complaint against the internal rules of the Regional Parliament of the Autonomous Region of Madeira and against the statutory standards of a particular political party, regarding the absence of the formation of lists of candidates for elected bodies by mechanisms of direct democracy;
- Complaints against the new regime of autonomy, administration and management of public education schools, approved by Decree-Law 75/2008 of 22nd April, particularly in the framework of the election and legal status of the Director. It was also the subject of attention the way responsibilities were transferred to local government (preschool and basic education), particularly for non-teaching staff;
- Complaint about some provisions of the Statute of Journalists, republished by Law 64/2007, of 6th November, generally referring to violations of freedom of expression and creativity and copyright;
- Complaints about the concrete application of a decision of the Constitutional Court that had declared *erga omnes* as unconstitutional the regulation that limited the right to collect a survivor pension in the case of unmarried couples, from the month on which it was requested onwards. Although the Ombudsman agreed with the perspective of the complainant, the abstract review of

constitutionality was not the mechanism able to give satisfaction to what was intended. The grounds for this decision were duly explained and the complainant was referred to the regular courts, with the possibility to appeal to the Constitutional Court.

2.7. Cases and Inspections of the Ombudsman own Initiative

In addition to analysing citizen's complaints, according to Articles 4 and 24 of his/her Statute the Portuguese Ombudsman may also act on his/her own initiative, in response to facts that come to his/her knowledge by any means. Under Article 21, indent a), of the Statute, the Ombudsman may also carry out inspection visits to any area of activity of the central, regional and local administration.

In 2010, 17 cases were opened on the initiative of the Ombudsman, 4 of which related to inspections.

P-01/10

Entity addressed: Portuguese Public Security Police Force (PSP)

Subject: Detention. Accommodation.

Summary: *Ex officio* case opened pursuant to a situation reported by the media. An investigation was carried out to determine how often detainees were held legitimately after the standard delay of 48 hours and, in such cases, how adequate was the response provided by police forces to ensure the needs of accommodation and personal hygiene.

Status: At the inquiry stage.

P-02/10

Entity addressed: Municipality of Lisbon.

Subject: Public road. Restrictions to traffic and parking. Private use of public space. Production of movies and filming. Residents and traders.

Summary: *Ex officio* case opened pursuant to complaints received in previous years, which showed that in the city of Lisbon there is no regulation whatsoever in respect of traffic and parking restrictions imposed by movies and filming productions. Residents and traders are often informed on the very same day by security forces agents of such traffic conditioning and parking restrictions, which results in clear disadvantages to their family and working lives. In other cases, the movie or advertising production companies themselves provide the information to the public, in a way that is considered insufficient.

Status: At inquiry stage – the collegiate executive body of the Municipality of Lisbon transmitted its views on the mat-

ter. However, measures to safeguard the legitimate rights and interests of residents and traders are still required.

P-03/10

Entity addressed: National Institute of Forensic Medicine

Subject: Delays observed in the activity of the National Institute of Forensic Medicine, with implications on judicial delays.

Summary: *Ex officio* case opened in order to analyse the situation of the National Institute of Forensic Medicine, in particular regarding delays in responding to requests from courts, which have implications in terms of judicial delays. The Ombudsman tries to identify, in collaboration with the competent bodies of the National Institute of Forensic Medicine, insufficiencies and constraints at the administrative level. At the same time, he also seeks to identify possible shortcomings in legislation or reflect on suggestions for the drafting of new legislation with a view to increasing the speed of these proceedings.

Status: At the inquiry stage.

P-04/10

Entities addressed: Prison Establishment of Funchal, Directorate-General of Prison Services

Subject: Treatment of the female population in prison.

Summary: *Ex officio* case opened with the aim of studying the conditions of the stay of women inmates transferred from the Regional Prison of Funchal in May 2009, to the Prison Establishment of Funchal. It was found that appropriate conditions for prison treatment were met and that all the facilities had sanitary facilities and television. Despite the lack of dining room (meals being taken in each of the individual cells), as well as the lack of space for «nursery» for newborn care, the contact with the prison population supported the conclusion that there was an overall satisfaction with the conditions provided. After inquiries were made to the Directorate-General of Prison Services, the contents of the report of the Audit and Inspection Service made by this entity were communicated, affirming the intention of building in 2011 a fully separate space for this group of inmate.

Status: Closed.

P-05/10

Entity addressed: Ministry of Public Works, Transport and Communications and Institute for Mobility and Land Transport

Subject: Penalty regime applicable to collective passenger transport infringements.

Summary: *Ex officio* case opened with the aim of amending the legal framework in force (approved by Law 28/2006, of 4th July, as amended by Decree-Law 14/2009, of 14th January), since it gives rise to reservations concerning its suitability regarding passenger rights legally and constitutionally enshrined, namely: a) the large amount of the fines imposed, in view of the infringements, which may breach the principle of proportionality; b) lack of possibility of the defendant to present a defence after having paid the fine; c) the noted difficulties of users to adapt to the new electronic ticketing system. The Ombudsman is following the work of revision of that law, which is in progress, to safeguard the rights of users of collective passenger transport, bearing in mind the preventive and sanctioning effectiveness related to the imposition of fines.

Status: At the inquiry stage, awaiting decision of the entity addressed.

P-06/10

Entity addressed: Minister of Education

Subject: Annual competition for the recruitment of teachers to solve temporary needs.

Summary: *Ex officio* case opened taking into account the repercussions of the competition at stake and the advantages of dealing in a more articulated manner with the complaints submitted every year to the Ombudsman concerning the opening and subsequent procedure of this kind of competition. In this case, some questions were discussed with the Administration, concerning issues that could be anticipated by reading the opening notice of open competition and confronting it with the developments already seen in previous competitions.

Status: Taking into account the lack of fruitful dialog with the Administration, the fact that the issues raised were submitted to the consideration of the Minister of Education, the stage reached in the competition and also the pending judicial cases invoked by the Administration, the case was closed for lack of any other useful procedure.

P-07/10

Entity addressed: Social Security Institute

Subject: Inspection to establishments of social care for the elderly and to the supervision services of Social Security.

Summary: the Ombudsman decided to carry out an inspection to some establishments of social care for the

elderly (homes), particularly the integrated establishments (homes under the direct management of the State or under indirect management, through private social welfare institutions). Furthermore the inspection focused on the performance of the supervision services of Social Security, who are responsible, under the law, for supervising the functioning of social institutions. With regard to the homes, the main objective was to verify the life conditions offered to the institutionalized elderly, as well as their comfort and well-being, personal care and health, the personnel engaged in the provision of services, the activities of personal and social development and also the interpersonal relationships among the elderly. With regard to the supervisory activity of the State in this area, the objective was to evaluate the performance of different supervisory services of Social Security, and the organization, operation, intervention, articulation and fulfilment of obligations that are legally assigned.

Status: The inspection visits are completed and the final Report is being drafted.

P-08/10

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

Subject: Road affairs. Administrative penalties for improper parking.

Summary: *Ex officio* case opened taking into account the frequency of complaints against the EMEL. The case aims to enable the assessment, together with the addressed entity, of the adequacy of the monitoring procedures in place, as well the adequacy of the means employed in view of the public service that is provided. In particular, the following issues are being addressed: malfunctions in parking-meters and the means available to the users to report them; reimbursement of amounts inserted in the parking-meters without the corresponding ticket being issued; the problem of a certificate of offence being issued in those cases where the parking was paid but the title was incorrectly placed in the vehicle or was not placed in a visible manner.

Status: At the inquiry stage.

P-09/10

Entity addressed: Portuguese Parliament

Subject: Unconstitutionality of Article 68, paragraph 1, of the Personal Income Tax Code (Laws 11/2010 and 12-A/2010). Additional level of taxation in the Personal Income Tax.

Summary: *Ex officio* case opened pursuant to a complaint against the possibility of changes introduced to the levels of taxation of the Personal Income Tax being applied to all income earned in 2010, including income for the

period before the entry into force of the legislative acts in question.

Status: Closed. The President of the Republic, however, asked the Constitutional Court to declare the unconstitutionality of these norms. The Court, on its Judgement 399/10, did not grant this request.

P-10/10

Entities addressed: Ministry of Finance, Ministry of Justice, Ministry of Culture.

Subject: Attachment of copyright. Limits of the attachment.

Summary: *Ex officio* case opened for the purpose of analysing and studying the position of people facing the (full) attachment of income arising from copyright, which often represent their only source of livelihood. Amendments to the Copyright and Related Rights Code and in particular to the Civil Procedure Code are being considered. As regards the latter, the changes aim to clarify the wording of Article 824, paragraph 1, indent a), in order to include copyright and other periodic income that is the only source of livelihood of the debtor, by treating them as wages and salaries for the purpose of partial unseizability.

Status: At the inquiry stage.

P-11/10

Entity addressed: Regional Secretariat of Tourism and Transport

Subject: Anomalies in the operation of the validation system of the card «Giro».

Summary: *Ex officio* case opened pursuant to complaints of users, to analyze the operation of the validation system of the card «Giro», following the dissatisfaction shown by various users of the urban public transport services provided by the company «Horários do Funchal, SA». It was found that an electronic system for surveillance and collection of payment had been implemented, through the use of contactless technology. It was concluded that, in case of malfunction, the consumer paid only once for the service received, not being forced to abandon the trip, according to the rules stipulated by Articles 152 and 188, indent a), of Decree-Law 37272, of 31st December 1948, and Article 2 of Law 28/2006, of 4th July. The case was closed, with no criticism being addressed to the competent entity.

Status: Closed.

P-12/10

Entities addressed: Regional Inspector of Economic Activities (RAA); Regional Labour Inspector

Subject: Lajense Sports Club.

Summary: *Ex officio* case opened to verify if, and on what terms, there was compliance with the legal requirements for operation of a food and beverage establishment open to the public at the premises of a sports club.

Specifically, the aim was to ascertain whether the activity of the public entities responsible for monitoring this area was consistent with the general principles of administrative activity.

Status: Awaits closing of the case.

P-13/10

Entity addressed: Institute for Employment and Vocational Training (IEFP)

Subject: Inspection visits to job centres.

Summary: The Ombudsman decided to carry out an inspection to deepen the knowledge of the activity of job centres as regards the allocation of support to projects for the creation of jobs, as well as to identify the key problems in connection with the allocation of support to projects that create jobs, namely regarding: a. delays in assessment and decision of applications; b. weaknesses in the technical support that project promoters are entitled to; c. unilateral termination, by the IEFP, of contracts for granting incentives where the failure to carry out the project does not derive from the will of the promoter.

Status: Inspection visits completed. Final report being drafted

P-14/10

Entities addressed: Directorate-General for Health; National Association of Portuguese Municipalities.

Subject: Domestic waste. Insalubrity. Mental health. Diogenes Syndrome.

Summary: *Ex officio* case opened after consideration of several complaints from previous years revealing the lack of coordination between different public authorities in monitoring the insalubrity problems caused by sufferers of Diogenes syndrome.

This pathology is characterized by intense accumulation of objects and waste within households. The neighbours, affected by infestation and by the propagation of smells, are faced with the difficulties of municipal authorities in ensuring public health conditions and with the lack of coordination between health authorities, social security departments, firefighters and police.

Weighing the need for guidelines on how to respond to these situations and to restore the health conditions inside the building, and the need to respect the patient rights and interests, the Ombudsman decided to initiate an *ex officio* case.

Status: At the inquiry stage – preliminary hearing of the Directorate-General for Health.

P-15/10

Entities addressed: National Institute for Rehabilitation; Ministry of Interior; National Association of Portuguese Municipalities.

Subject: Parking and taxed parking. Areas with restricted access. Citizens with disabilities.

Summary: *Ex officio* case opened to study the improvement of the legal framework on the elimination of barriers preventing the free circulation of persons with reduced mobility, providing them with reserved parking spaces close to their residence – by identifying their car through the registration plate – even if they are temporarily or periodically residing there or if their place of residence includes private parking (garage). It is proposed to study the possibility to create a legal framework that established the elimination of barriers to the free circulation of persons with reduced mobility, providing the possibility to park even in places where parking is restricted, by attributing, whenever necessary and possible, duly identified reserved parking spaces, in accordance with the National Plan for the Promotion of Accessibility.

Status: At the inquiry stage – analysis of solutions found in other legal systems.

P-16/10

Entities addressed: Immigration and Border Service

Subject: Inspection to places of detention of foreigners that are not allowed in Portugal or that are in the process of removal of the national territory.

Summary: The Ombudsman decided to make inspections to places of detention of foreign nationals who do not meet the requirements to enter Portugal or who are illegally in the country and who find themselves in a particularly vulnerable situation, because they are often physically and psychologically fragile, diminished by their economic and legal situation and oftentimes even more at a disadvantage by lack of knowledge of the law and the language.

Visits were made to five facilities designed to temporarily install foreigners awaiting the enforcement of the expulsion from Portugal (the Residential Unit of Santo António, which was the only space that was newly built) and the facilities in the airports of Lisbon, Faro, Porto, Funchal and Ponta Delgada, which install those foreigners who do not have a permit for entry into the national territory.

Status: Final Report released in March 2011¹

P-17/10

Entities addressed: Regional Secretariat for Social Affairs/ /Social Security Centre of Madeira

Subject: Inspection to the Homes for Children and Young People/Temporary Placement Homes of the Autonomous Region of Madeira.

Summary: The Ombudsman determined this inspection covering nine homes for extended placement, three temporary placement centres, an Autonomy-building residence and the specific case of the Psychopedagogical Rehabilitation Centre of the Sagrada Família of the Autonomous Region of Madeira. In the final report, the findings of the inspection stressed the important role played by the various host institutions of the Autonomous Region of Madeira, in particular, by their officers, technical staff and other staff members. Nevertheless, the monitoring of everyday life in the homes carried out by the entities that determine the application of the measure of placement in an institution was considered insufficient. The need for regular visits, including the possibility of hearing the children, was emphasised. Given the above considerations, the Ombudsman addressed a set of suggestions to various entities, most notably proposals submitted to the Minister of Justice, the High Council of the Public Prosecution Service and the Regional Secretary for Social Affairs.

Status: Final report released in December 2010.²

¹ http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_CIT_Marco2011.pdf

² http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_Madeira_2010.pdf

2.8. Other Activities of the Ombudsman

In the set of activities developed in 2010, and beyond the Portuguese Ombudsman's traditional complaints-handling activity and work as National Human Rights Institution, several other actions should be mentioned, regarding dissemination of information and promotion of human rights, drafting of opinions on matters within his competence, training activities and participation in meetings or relevant working groups.

To raise awareness to the role of the Ombudsman as protector of fundamental rights, a Conference entitled *The Ombudsman - The Protector of Fundamental Rights* was organized jointly with the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, in the Grand Hall of the Parliament, on 22nd April. The speakers were D. Alvaro Gil-Robles, former *Defensor del Pueblo* of Spain and former Commissioner for Human Rights of the Council of Europe, who presented a paper on the «The Ombudsman of the Member States and the Charter of Fundamental Rights of the European Union», and D. Rafael Ribó, *Síndic de Greuges* of Catalunya, who spoke about «The Role of the Ombudsman: Prevention and repair of illegal acts or omissions of public authorities towards the citizens, prevention and redress of grievances.» The session also included speeches by the Vice-President of the Portuguese Parliament, MP Vera Jardim, by the President of the Parliamentary Commission for Constitutional Affairs, Rights, Freedoms and Guarantees, MP Osvaldo de Castro, and by the Portuguese Ombudsman. A book was published in 2011¹ with the works of the Conference.

With the same objective of human rights education and dissemination of information on the rights of the child, the Ombudsman celebrated the Universal Children's Day (1st June) with a group of students from a first-cycle school. The students participated, at the Office of the Portuguese Ombudsman, in an event called «Don't let go of your rights», which included an interactive approach to the rights of the child and a symbolic moment of release of balloons inscribed with such rights. The role of the Ombudsman was also explained and the existence of the Children's Hotline promoted².

On 19th April 2010 the Portuguese Ombudsman sent to the Parliament a draft Code of Good Administrative Behaviour, focused on individual guarantees, bringing together the principles of good administration that should guide the conduct of public officials in their dealings with citizens, affirming the basic values of public service in the expected conduct of civil services³. This proposal was subject to a hearing before the Parliamentary Committee on Labour, Social Security and Public Administration, on 14th July 2010⁴.

At the request of the Minister of Justice an opinion was issued on the preliminary draft of a General Regulation of Prisons and on the draft Enforcement Procedure Reform.

Highlight should be put on the Portuguese Ombudsman's coordination and cooperation work with other national, foreign and international entities, in particular the meeting held on 22nd September between representatives of the Ombudsman and representatives of the national SOLVIT centre, in order to deepen mutual knowledge of the activities of both institutions. The initiative aimed to ensure continuity at internal level of the work started at the joint meeting of Liaison Officers and representatives of national SOLVIT Centres, which was promoted in the framework of the seminar for liaison officers of the European Network of Ombudsmen of Member States of the European Union, in Strasbourg⁵.

Regarding the participation in working groups, the participation of the Ombudsman in the National Commission for the Protection of Children and Youth at Risk should be stressed.

The Ombudsman was also present or represented in several other events, of which the following should be highlighted:

- Participation, as speaker, in the meeting of the Commission for Equality and Against Racial Discrimination (CICDR), which took place at the seat of the High Commission for Immigration and Intercultural Dialogue, on 3rd March. The Ombudsman shared the work developed in the fight against all forms of racial discrimination⁶;

¹ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=276

² http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=436

³ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=273

⁴ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=281

⁵ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=325

⁶ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=260

- The training action «The Convention on the Rights of Persons with Disabilities», held on 19th April 2010, in the auditorium of the National Rehabilitation Institute (INR), in Lisbon;
- The 9th Congress of the Portuguese Society of Diabetology, which took place in Vilamoura, from 10th to 13th March 2010, and in which the Ombudsman rendered a speech on the topic «Social Rights of Citizens with Diabetes»⁷;
- The 4th European Conference on Missing and Sexually Exploited Children, focused on the role of new technologies as a vehicle for paedophilic content but also as a tool for the search of children. This event was organised on 25th May 2010, by the Institute for Child Support (IAC), which is a member of the European Federation for Missing and Sexually Exploited Children;
- The seminar «Ombudsman Institution and Citizenship», promoted by the Foundation Former *Gil Eanes* High School, with the support of the Portuguese Ombudsman, on 18th June, and in which an intervention was made on the topic of «Protection of Children, Elderly Persons, Persons with Disabilities and Women» (this seminar was followed by two others of an identical nature, held in the Cape Verdean cities of Praia and São Vicente);
- The National Colloquium of the Association of Municipal Civil Servants – ATAM (Grândola/Tróia, 28th October 2010), in which a communication was presented on the subject of «Prevention of the Risk of Corruption and Related Crimes – The Assessment of the Plan and the Code of Good Administrative Behaviour», on the basis of the draft Code that the Portuguese Ombudsman recommended;
- The Conference «The role of the Ombudsman regarding Equality», which was held on 15th November, in the framework of a cycle of Conferences for Equality promoted by the Students Association of the Law School of the University of Oporto – Foz Campus;
- The Seminar «Non-contractual liability of the State», which was promoted by the Portuguese Insurance Academy, which took place on 15th November, in Lisbon, and where a communication was presented on the topic of «Liability of the State: a practical experience»⁸;
- The 1st Meeting on Prevention of Abuse, promoted by the *Liga Social e Cultural Campos do Lis*, on 26th November, in Leiria. An intervention was made on the subject of «The Portuguese Ombudsman in the Defence of the Rights of the Elderly»;
- The National Meeting «Accessibilities and Human Condition – Bringing to Life the Convention on the Rights of Persons with Disabilities», held on 30th November, under the organisation of the Foundation *Liga*, in partnership and with the co-financing of the National Institute for Rehabilitation, Subprogram For All;
- The master's course in Legal-Forensic Sciences, of the Law School of the University of Lisbon, specifically the subject of «Minors Law», in the context of which, on 17th December, a presentation was given on the work carried out by the Portuguese Ombudsman in this domain;
- The Seminar «Challenging Ageing», organized by the Municipality of Vila Franca de Xira, in which an intervention was made on «Elder Law and Social Participation».

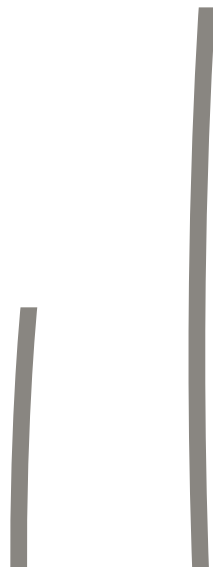
⁷ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=261

⁸ http://www.provedor-jus.pt/Imprensa/noticiadetalhe.php?ID_noticias=357





3. INTERNATIONAL RELATIONS



3. International Relations

Following a period of transition in 2009, which required an effort to re-establish and bring new dynamic to the international activity of the Portuguese Ombudsman, the stability achieved in 2010 allowed for regular contacts and cooperation ties to be resumed with the various foreign and international entities acting in the area of human rights.

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

In 2010, in the overall international activity carried out by the Portuguese Ombudsman, the first thing to stand out is the work developed to maintain and deepen cooperation with his counterparts, both on a bilateral level and in the context of the international *fora* of Ombudsman and National Human Rights Institutions in which the Portuguese Ombudsman participates.

Highlight should be put on:

- The participation in meetings, conferences, seminars, general assemblies and other events promoted by the organizations of Ombudsman and National Human Rights Institutions in which the Portuguese Ombudsman takes part (such as the Iberoamerican Federation of Ombudsmen, the International Ombudsman Institute, the Association of Mediterranean Ombudsmen and the European Network of Ombudspersons for Children, to name a few).
- The attendance to the ceremony of celebration of the 15th anniversary of the European Ombudsman, which included the launching of a new visual identity for the European Ombudsman and the European Network of Ombudsmen, together with a new strategy for the mandate 2009-2014.
- The contributions submitted to projects and works promoted by the aforementioned organisations, as was the case, for example, with the information and comments

sent to the Iberoamerican Federation of Ombudsman in the context of the preparation of the 7th Human Rights Report on Persons with Disabilities.

- The integration of the Portuguese Ombudsman, as a full member, in the Follow-up and Coordination Committee created at the 1st Meeting of Arab, Iberian and Latin-American National Institutions for the Promotion and Protection of Human Rights;
- The development of initiatives of cooperation between Ombudsmen in Portuguese-speaking countries, as well as initiatives to promote the creation of Ombudsmen in the countries of the Community of Portuguese-Speaking Countries (CPLP) where the institution is either not established in the law or not implemented in practice. In particular, one should recall the joint letter sent in December 2010 by the Ombudsmen of Portugal and Angola to the President of the CPLP, requesting his good offices to promote the creation and effective implementation of Ombudsmen in all the countries of the CPLP. Highlight should also be put on the efforts carried out by the Portuguese Ombudsman to encourage the designation in Brazil of one or more entities that could undertake the role of Paris Principles compliant National Human Rights Institution, while also ensuring representation in the cooperation *fora* of Ombudsmen, such as, for example, the Iberoamerican Federation of Ombudsman. This would also have the merit of strengthening the representativeness and efficiency of these areas of cooperation.
- The strengthening of cooperation with the Moroccan counterpart, *Wali Al Madhalim*, by way of a work visit, held at his invitation, with a program that included, *inter alia*, a work meeting and visit to the seat of the institution;
- The regular or occasional collaboration with other counterparts, either by way of official visits, organisation of events or written exchange of information, experiences and good practices.

Another important aspect concerning the international activity of the Portuguese Ombudsman – and one which the Ombudsman tried to deepen and disseminate more broadly in 2010 – was the taking on of a specific role in the framework of the international system of protection and promotion of human rights. The Ombudsman appears as a privileged interlocutor and partner to the various entities acting in the area of human rights, in *fora* such as the United Nations, the Council of Europe, the European Union and the Organization for Security and Co-operation in Europe, among others, offering them an independent and accurate perspective of the national reality, as well as supporting and continuing their action at the internal level.

Thus, the Ombudsman is regularly called by international entities to provide data on his activity, perspectives and positions on human rights issues. In 2010, the Ombudsman had the opportunity to contribute, for example, to the work of the United Nations Independent Expert in the field of Cultural Rights and to a study of the Organization for Security and Co-operation in Europe on cooperation between National Human Rights Institutions and Civil Society.

In the framework of the United Nations, highlight should be particularly put on the participation of the Ombudsman in the Universal Period Review on Portugal. This process was initiated in 2009 (see 2009 Report to the Parliament) and culminated in 2010, with the adoption, at the 13th session of the Human Rights Council, of the final evaluation report containing recommendations addressed to our country. In his capacity as A-status National Human Rights Institution, the Ombudsman ensured representation in this event and an oral intervention¹ was made on his behalf. One of the points highlighted in that intervention was the importance of the Portuguese State ensuring ratification of the Optional Protocol to the Convention against Torture and other Cruel,

Inhuman or Degrading Treatment or Punishment, as well as appointment of the National Prevented Mechanism established therein. On this topic, the Ombudsman has had the opportunity to convey to the various competent Ministries his entire availability to undertake such a function. Such a solution would be justified not only in view of the competences already attributed to the Ombudsman but also in view of the vast and sustained work that he has developed throughout the years as regards the penitentiary system and the rights of inmates.

In 2010 the Portuguese Ombudsman also transmitted to the competent national authorities his contributions for the preparation of national implementation reports regarding United Nations instruments, specifically the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the International Covenant on Economic, Social and Cultural Rights.

At the level of the European Union, 2010 marked a period of intensification of relations with the Fundamental Rights Agency. Participation was ensured in events promoted by the Agency, in particular the 3rd Meeting with National Human Rights Institutions, which is an important forum of dialogue and collaboration between the Agency and these entities.

The table below provides summarised information on the **international events** that took place in 2010 and in which the Portuguese Ombudsman was present or represented:

¹ http://www.provedor-jus.pt/imprensa/noticiadetalhe.php?ID_noticias=265

Event	Place and date	Participant(s)
Conference «Human Rights: Universal Principles and Regional Guarantees», organised by the <i>Médiateur de la République</i> of France, with the Universities <i>Panthéon-Assas</i> and <i>John Hopkins</i>	Paris, France 01.02.2010	Mr. Jorge Silveira, Deputy Ombudsman
Seminar «The Anti-Discrimination Directives 2000/43/EC and 2000/78/EC in Practice», organised by the Academy of European Law	Trier, Germany 22-23.02.2010	Ms. Catarina Ventura, Legal Adviser
Seminar «EU law on Equality between Women and Men in Practice», organised by the Academy of European Law	Trier, Germany 08-09.03.2010	Ms. Margarida Santerre and Ms. Ana Neves, Legal Advisers

Event	Place and date	Participant(s)
13 th session of the United Nations Human Rights Council – Consideration of the Universal Periodic Review evaluation report on Portugal	Geneva, Switzerland 18.03.2010	Ms. Adriana Barreiros, Adviser to the Ombudsman
23 rd Congress of the Brazilian Association of Magistrates, Justice Promoters and Public Defenders for Childhood and Youth – «(New) Frontiers of the Rights of the Child and the Adolescent. Interdisciplinary, interinstitutional and international perspectives under the aegis of human rights.»	Brasília, Brazil 05-07.05.2010	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsman
3 rd General Assembly of the African Ombudsman and Mediators Association – «The Ombudsman and Good Governance»	Luanda, Angola 12-15.04.2010	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsman
3 rd Meeting of the EU Agency for Fundamental Rights with National Human Rights Institutions Symposium «Strengthening the fundamental rights architecture in the EU», organised by the EU Agency for Fundamental Rights	Vienna, Austria 06-07.05.2010	Ms. Adriana Barreiros, Adviser to the Ombudsman
7 th Seminar of Liaison Agents of the European Network of Ombudsmen	Rabat, Malta 05-08.06.2010	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsman
7 th Seminar of Liaison Officers from of the European Network of Ombudsman	Strasbourg, France 06-08.06.2010	Ms. Catarina Ventura, Legal Adviser
4 th Meeting of the Association of Mediterranean Ombudsmen – «Challenges posed to Ombudsman by immigration and human rights»	Madrid, Spain 13-15.06.2010	Mr. Alfredo José de Sousa, Portuguese Ombudsman, and Mr. Miguel Coelho, Coordinator
1 st International Congress of Ombudsman – «Citizenship, Fundamental Rights and the Limits between Public and Private», promoted by the Brazilian Association of Ombudsman – Minas Gerais Section and the Brazilian Pro-citizenship Institute	Belo Horizonte, Minas Gerais, Brazil 28-30.07.2010	Ms. Catarina Ventura, Legal Adviser
Seminar on Good Practices of the Ombudsman Offices at Local Level Public session organised by the Parliament of Uruguay, in which the initiative to create a national Ombudsman was discussed	Montevideo, Uruguay, 13-16.09.2010	Mr. André Folque, Coordinator
Ceremony of commemoration of the 15 th anniversary of the European Ombudsman	Brussels, Belgium 27.09.2010	Mr. Alfredo José de Sousa, Portuguese Ombudsman

Event	Place and date	Participant(s)
Conference and General Assembly of the European Region of the International Ombudsman Institute – «Europe, an open society»	Barcelona, Spain 03-05.10.2010	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsman, and Mr. João Portugal, Coordinator
14 th Annual Conference and General Assembly of the European Network of Ombudspersons for Children «Listening to children and involving them in the promotion and implementation of their rights»	Strasbourg, France 7-9.10.2010	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsman, and Ms. Adriana Barreiros, Adviser to the Ombudsman
1 st Meeting of Arab, Iberian and Latin-American National Institutions for the Promotion and Protection of Human Rights, organised by the Consultative Council for Human Rights of Morocco	Casablanca, Morocco 12-13.10.2010	Mr. Alfredo José de Sousa, Portuguese Ombudsman, and Ms. Adriana Barreiros, Adviser to the Ombudsman
Work visit to the Moroccan counterpart <i>Wali Al Madhalim</i> , Moulay M'Hamed Iraki	Rabat, Morocco 14-16.10.2010	Mr. Alfredo José de Sousa, Portuguese Ombudsman, and Ms. Adriana Barreiros, Adviser to the Ombudsman
5 th EU Forum on the Rights of the Child, organised by the European Commission	Brussels, Belgium 14.10.2010	Ms. Teresa Cadavez, Collaborator
Seminar «EU law on Equality between Women and Men in Practice», organised by the Academy of European Law	Trier, Germany 25-26.10.2010	Ms. Maria Namorado, Legal Adviser
XV General Assembly and Congress of the Ibero-American Federation of Ombudsman	Cartagena das Índias, Colombia 26-29.10.2010	Ms. Jorge Silveira, Deputy Ombudsman, and Ms. Miguel Coelho, Coordinator
Seminar «Ombudsman and Citizenship», organised by the Foundation Former Gil Eanes High School, with the support of the Portuguese Ombudsman	São Vicente, Cape Verde 02.11.2010 Praia, Cape Verde 04.11.2011	Ms. Helena Vera-Cruz Pinto, Deputy Ombudsman
<i>Workshop</i> «The Role of National Human Rights Structures in promoting and protecting the rights of persons with mental health Problems», organised in the framework of the <i>Peer-to-Peer</i> Project, under the joint responsibility of the EU and the Council of Europe	Bilbao, Spain 17-18.11.2010	Ms. Sara Vera Jardim, Legal Adviser
3 rd Fundamental Rights Conference, on the topic «Ensuring Justice and Protection for All Children», organised by the EU Agency for Fundamental Rights, in collaboration with the Belgian Presidency	Brussels, Belgium 7-8.12.2010	Ms. Adriana Barreiros, Adviser to the Ombudsman

In this chapter regarding international relations, it is also important to consider the visits of foreign entities received by the Portuguese Ombudsman

Entity	Date
<i>Defensor del Pueblo</i> of Spain, Enrique Múgica Herzog	09.04.2010
<i>Síndic de Greuges</i> of Catalunya and President of the European Region of the International Ombudsman Institute, Rafael Ribó, and former Commissioner for Human Rights of the Council of Europe, Álvaro Gil-Robles The visit took place in the framework of their participation in the Conference organised by the Portuguese Ombudsman and the Parliamentary Committee for Constitutional Affairs, Rights, Liberties and Guarantees, on the topic «Portuguese Ombudsman – The Protector of Fundamental Rights»	27.04.2010
Delegation of the Constitutional Court of the Republic of Slovakia, headed by the President of the institution, Jože Tratnik	18.06.2010
Commissioner Against Corruption of Macao, Fong Man Chong	30.06.2010
Authorised Person of the Parliament of Uzbekistan for Human Rights, Sayora Rashidova, and Ambassador of the Republic of Uzbekistan in Portugal, Bakhromjon Aloev <i>The visit ended with the signature of a Cooperation Agreement between the two Ombudsmen</i>	10.11. 2010
Human Rights and Justice Ombudsman of East-Timor, Sebastião Dias Ximenes	14.10.2010
Ombudsman of Angola, Paulo Tjipilica	02.12.2010



4. MANAGEMENT OF RESOURCES

4.1. Administrative and Financial Management

The strategical goals of the Planning Activities were followed, namely in what concerns the improvement of staff management – through professional promotion – financial and patrimonial resources.

Staff in functions in the Ombudsman's Services (as of 31 December 2010)

Ombudsman's Cabinet and Deputy Ombudsmen	10
Advisory Legal Service	46
Directorate of Technical Services and Administrative Supports	41
Contracted Staff	5

2010 Budget

Budgetary execution was based on policies of restriction of the current expenses. Initial budget (superior to the budget of 2009): 5 847 381,00 €.

Staff expenses	4 839 840,00€
Acquisition of current services and goods	450 333,00 €
Investment expenses (New technologies and repairs of the building)	411 160,00 €

4.2. Public Relations

In 2010, there continued to be personalised attendance – either in person, or via the telephone. The number of information requests increased in 2010. A total of 5478 citizens submitted their complaints personally or by phone, to the Ombudsman.

4.3. The Ombudsman's portal

The Ombudsman's portal remained updated throughout 2010 in order to provide information on the Ombudsman. The highest number of accesses to the portal was recorded in May.

4.4. Publishing activity

The *Ombudsman Report to the Parliament* 2009 and the leaflet *Ombudsman in the Defense of the Citizens* that was sent to the municipalities in the extent of a protocol established between the Ombudsman and the National Association of Portuguese Municipalities (ANMP).



5. ANALYTING INDEX

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	09/3678-R - page 70
	10-3737-R - page 70
	10/0070-R - page 69 09/6343-R - page 69
	09/2479-R - page 70
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