



**PORTUGUESE OMBUDSMAN**  
**REPORT TO THE PARLIAMENT**  
**2010**  
**SUMMARY**





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## **REPORT TO THE PARLIAMENT**

### **2010**

#### **SUMMARY**

**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 black ink, consisting of a stylized 'A' followed by a vertical line.

*Alfredo José de Sousa*



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

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

## **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



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.



# Message from The Ombudsman

In compliance with Article 23, paragraph 1, of the Statute of the Portuguese Ombudsman (Law 9/91, of 9<sup>th</sup> 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 29<sup>th</sup> 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 11<sup>th</sup> August, as amended by Decree-Law 15/98, of 29<sup>th</sup> January, and Decree-Law 195/2001, of 27<sup>th</sup> July), on 8<sup>th</sup> 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 19<sup>th</sup> 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 (1<sup>st</sup> 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 12<sup>th</sup> August), I participated in the meetings of the Consultative Council for Justice, on 11<sup>th</sup> January, 12<sup>th</sup> July and 20<sup>th</sup> 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 Administra-

tion 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 8<sup>th</sup> 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 2<sup>nd</sup> 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 19<sup>th</sup> 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 14<sup>th</sup> July, to pursue this project.

An example of good cooperation between the Ombudsman and the 1<sup>st</sup> 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 27<sup>th</sup> April.

# 1. THE OMBUDSMAN'S MANDATE

The institution of the Ombudsman, directly inspired by the Swedish Ombudsman set up in the early 19<sup>th</sup> 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 independent<sup>1</sup> 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 refigure 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)<sup>2</sup>.

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 analysis<sup>3</sup>.

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

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

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

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 inspections<sup>4</sup> (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, nationality<sup>5</sup> 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).

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).

<sup>4</sup> 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.

<sup>5</sup> 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.

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 recurs 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.

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).

## The Ombudsman as a 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 having 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 Rights<sup>6</sup>. 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.

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.

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<sup>6</sup> Resolution of the Council of Ministers 27/2010, of 8th April.

## 2. THE OMBUDSMAN AND HIS TEAM

In exercising his functions the Ombudsman is assisted by two Deputy Ombudsmen and by a Cabinet with a Head of Cabinet, Advisers, Secretaries and a Press Adviser.

In what concerns the work related to the investigation of complaints the Ombudsman is assisted by 6 Coordinators and 40 Legal Advisers (Advisory Service). The work is organized in 6 main departments, according to the nature of the fundamental rights in question: Environment and Life Quality Rights; Rights of Taxpayers, Consumers and Economic Operator, Social Rights, Worker's Rights, Right to Justice and Security and Other fundamental Rights.

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 and is placed under the direct supervision of a Deputy Ombudsman. 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. 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).

The Ombudsman also has a Directorate of Technical and Administrative Services, under the supervision of the Secretary-General.

### 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	7

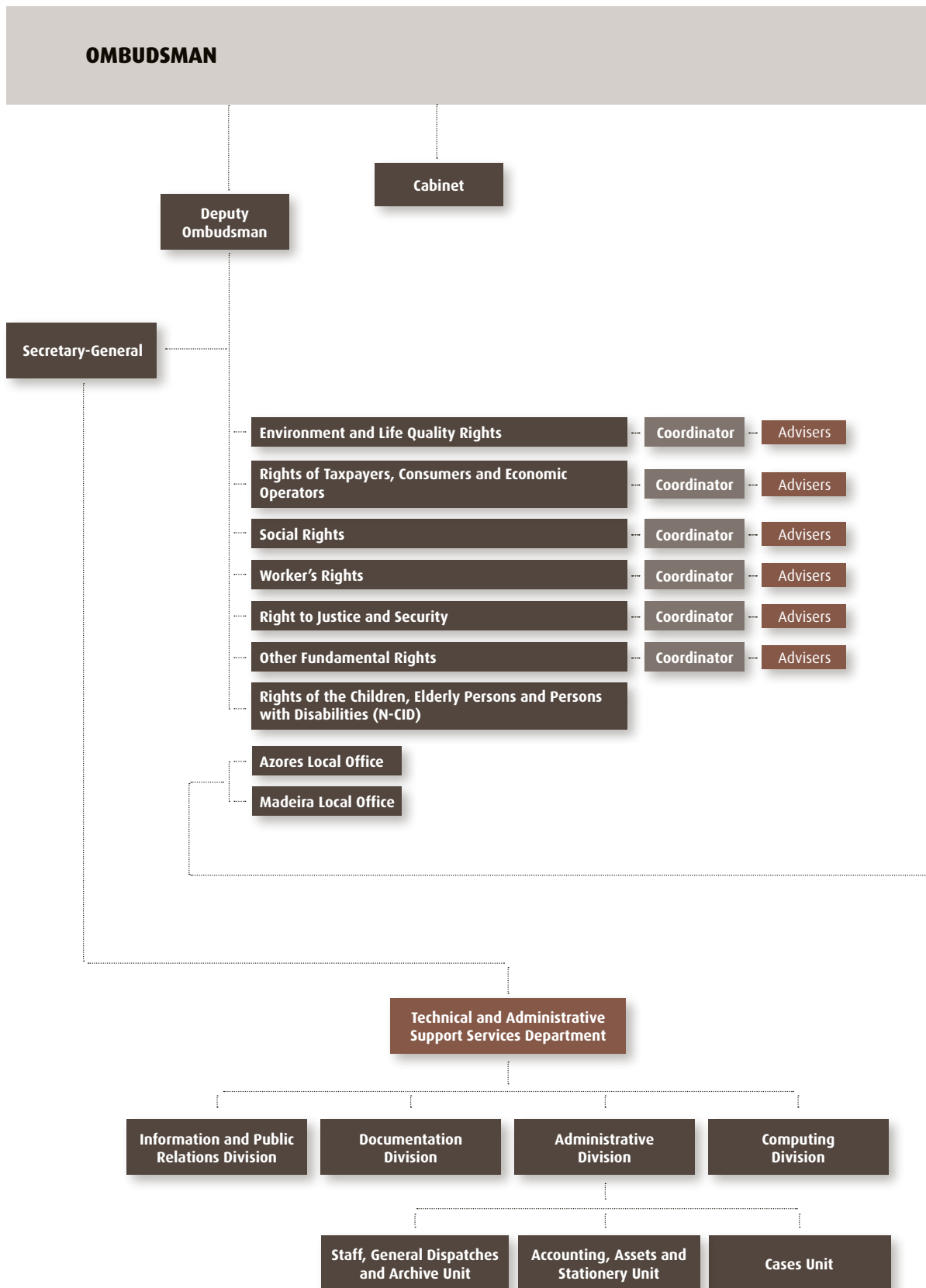
### 2010 Budget

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 €



# Organisational Chart





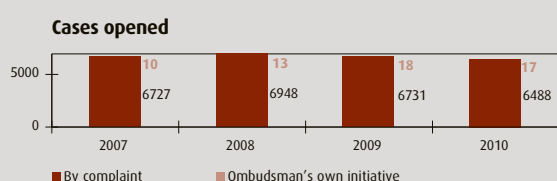


**THE HEADQUARTERS OF THE OMBUDSMAN**

# 3. THE OMBUDSMAN'S ACTIVITY IN 2010

## 3.1. 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
<b>Total number of Complainants</b>	<b>7849</b>

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
<b>Total number of open cases</b>	<b>6505</b>

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.

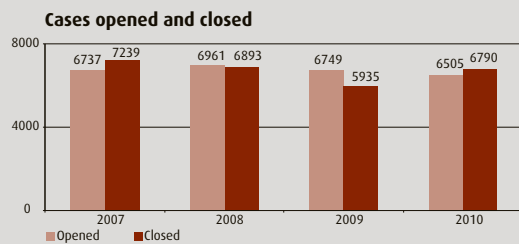
Table 3 – Number of cases closed

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

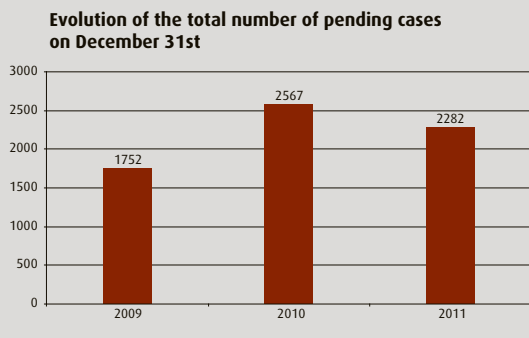
**Table 4 – Number of pending cases as of 31 December**

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

**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).

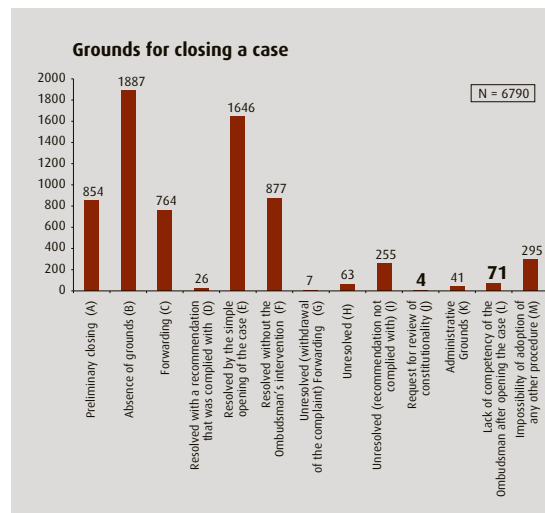
**Table 5 – Summary**

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
<b>Pending cases as of 31 December</b>	<b>2282</b>

\*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**



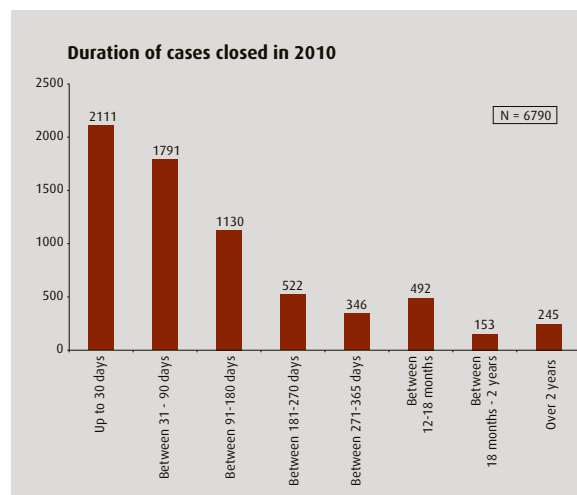
Regarding the grounds for closing a case, 1672 cases were solved with an essential participation of the Ombudsman (277 more than in 2009). In 26 cases, this intervention involved a formal recommendation (12 in 2009).

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.

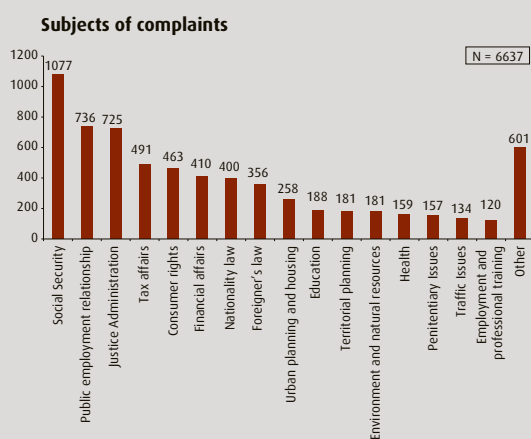
**Graph V**



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.

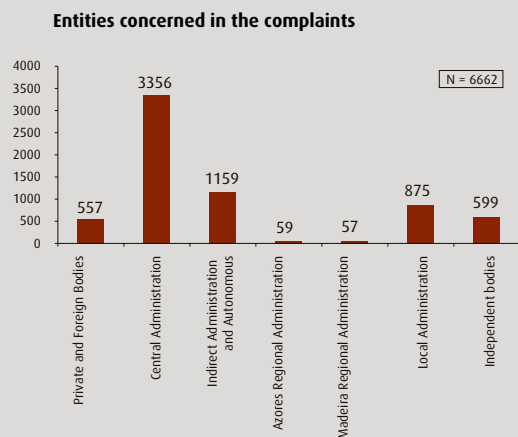
As in previous years, one year after the end of 2009, it is possible to calculate the percentage of the new cases opened during that year that met their final decision before twelve months were completed, which was 88,5%.

**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.

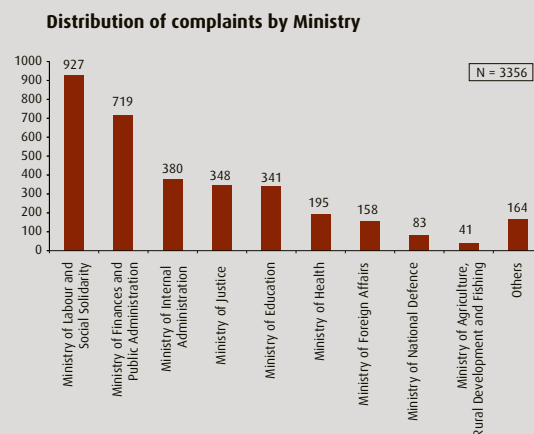
**Graph VII**



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.

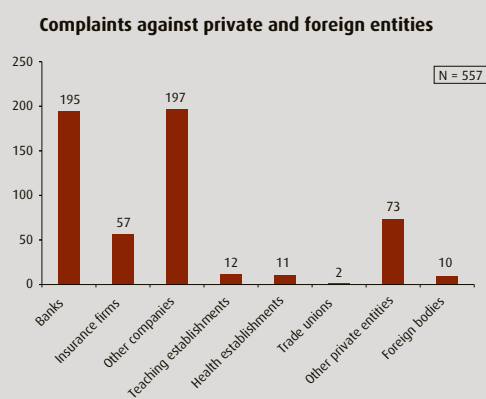
This decline was offset by slight increases in the complaints against foreign entities and individuals, against the Azores Regional Administration and, especially, in the Autonomous and Indirect Administration.

**Graph VIII**



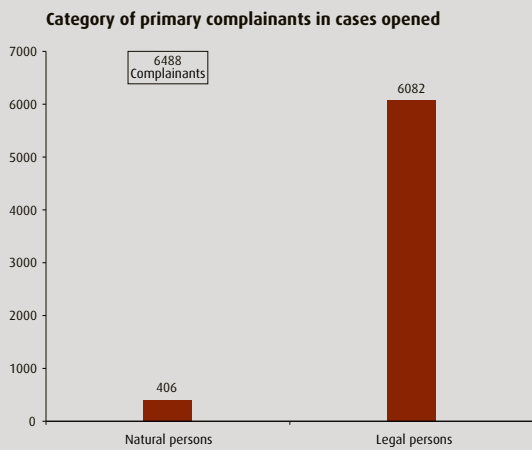
The Ministries of Labour and Social Affairs and Finance and Public Administration remained on the top of the list, with a rise in relative terms of the former and a decline of the second. The descent of the weight of complaints against the Ministry of Justice led the move to the third place of the Ministry 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**

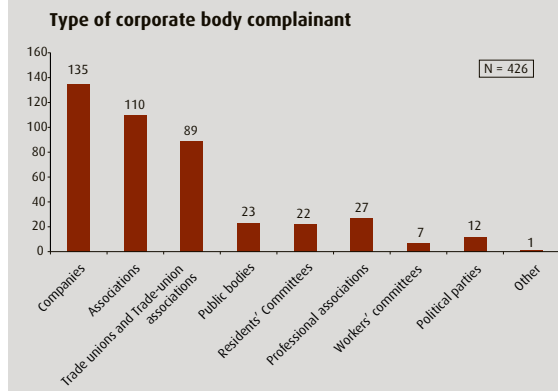


Consistent with the previous trend, there was a further increase in the number of complaints against banks, with an increase of 23% (plus 37 complaints). There was also an increase in complaints against insurance companies (over 54%, or 20 complaints more), reversing the tendency occurred last year.

**Graph X**



**Graph XI**



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.

## 3.2. 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](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](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](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](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](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](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](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](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](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](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](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](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](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](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](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](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. Candidates 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](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](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).

**Data:** 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](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](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](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](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.

## 3.3. 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 (15<sup>th</sup> 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 20<sup>th</sup> 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 29<sup>th</sup> 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 17<sup>th</sup> 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 12<sup>th</sup> 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 15<sup>th</sup> June and 12-A/2010, of 30<sup>th</sup> 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 26<sup>th</sup> 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 18<sup>th</sup> 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 6<sup>th</sup> 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.

## 3.4. Cases and Inspections of the Ombudsman own Initiated

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 matter. 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 Insti-

tute 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 2011<sup>7</sup>

#### **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.<sup>8</sup>

<sup>7</sup> [http://www.provedor-jus.pt/restrito/pub\\_ficheiros/Relatorio\\_CIT\\_Marco2011.pdf](http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_CIT_Marco2011.pdf)

<sup>8</sup> [http://www.provedor-jus.pt/restrito/pub\\_ficheiros/Relatorio\\_Madeira\\_2010.pdf](http://www.provedor-jus.pt/restrito/pub_ficheiros/Relatorio_Madeira_2010.pdf)

## 3.5. International Relations

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 15<sup>th</sup> 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 7<sup>th</sup> 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 1<sup>st</sup> 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 13<sup>th</sup> 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 intervention<sup>9</sup> 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 3<sup>rd</sup> Meeting with National Human Rights Institutions, which is an important forum of dialogue and collaboration between the Agency and these entities.

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<sup>9</sup> [http://www.provedor-jus.pt/imprensa/noticiadetalhe.php?ID\\_noticias=265](http://www.provedor-jus.pt/imprensa/noticiadetalhe.php?ID_noticias=265)







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