

Institutions and the protection of the manmade and natural environment- The case of the Greek Ombudsman

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Abstract: In the current article we will refer to examples of the Greek Ombudsman confirming occasional maladministration in Greek public administrations, presenting methods and successful examples of the Ombudsman's intervention and proposals it has made for the modernization and updating of the public administration, with purpose the protection and more efficient management of the manmade environment. An attempt is made at evaluating the sum of the contribution of the Greek Ombudsman's Quality of Life Department in the above mentioned issues.

Key-words: Greek Ombudsman, Quality of Life Department, independent authority

1 Introduction

The Greek Ombudsman is a constitutionally established independent authority. It started operations on October 1st 1998 and provides its services to all citizens free of charge. Its mission is to mediate between the public administration and private individuals, in order to protect the latter's rights, to ensure the former's compliance with the rule of law, and to combat maladministration.

The Department of Quality of Life handles cases involving breaches of environmental legislation, the degradation of the natural environment, illegal housing development and cultural heritage matters, and questions surrounding the more general degradation of the quality of life [6].

2 Legislation

According to the law 3094/2003 the Greek Ombudsman (GO) (founded in October 1998) shall "... investigate individual administrative acts or omissions or material actions of public sector bodies which violate rights or infringe upon legal interests of persons or legal entities..." [6]. The law provides additional authority to the Ombudsman for environmental issues because, he does not "...investigate cases in which the administrative act has generated rights or created a favorable situation for third parties that may only be reversed by a court decision, unless there is manifest illegality or the main object of the case is related to the protection of the environment". "...The Ombudsman may request public services to provide him with any information, document or other evidence relating to the case, and may examine individuals, conduct on-site investigations and order

an expert's report. During the examination of documents and other evidence, which are at the disposal of public authorities, the fact that they have been classified as secret may not be invoked, unless they concern issues of national defense, state security and the country's international relations. All public services have an obligation to facilitate the investigation in every possible way. Non-cooperation with an investigation by a public service shall make the object of a special report from the Ombudsman to the competent Minister..."[5,6].

3 Responsibilities

The Quality of Life Department deals with complaints concerning the protection of natural and urban environment and, generally investigates cases involving land use, urban planning, public works and construction of small & large scale projects (building construction, highways, dams, etc.) and culture [5,6].

More specifically, it handles cases involving breaches of environmental legislation, the degradation of the natural environment, illegal housing development and cultural heritage matters, and questions surrounding the more general degradation of the quality of life.

In a significant number of cases good knowledge of legal requirements in combination with technical experience in the earth and environmental sciences has proven to be a useful tool in detecting acts of mal administration. These acts may occur during the decision-making process but in many cases are observed through

the results they impose (e.g. impacts on wetlands caused by construction, illegal embankments, insufficient environmental protection measures, etc.).

- The Quality of Life Department has investigated several complaints pertaining to illegal acts and adverse environmental impacts. The findings clearly indicate extensive and serious violations of environmental legislation, particularly in ecologically vulnerable areas such as those included in the NATURA 2000 Network or the RAMSAR convention.
- Law 3094/2003 provides the GO with special authority and force when dealing with issues related to the protection of the environment, or when illegal acts are evident. The recent revision of article 24 of the Greek Constitution establishes the right of the individual to the environment and the principle of sustainable development. These new additions to the Constitution significantly extend the Ombudsman's capacity to investigate and mediate environmental matters [5,6].

Through its mediation work the Quality of Life Department contributes to the administration's work in order to:

- Achieve the delicate but crucial balance between the right to the environment and the right to property (in particular in connection with land use) as required by law and the Constitution [5,6].

- Clearly specify essential concepts and rules contained in national and community (European Economic Community) legislation on the environment.

It has been demonstrated that many citizens' complaints can be entirely addressed only if the decisions of the administration are checked for compliance with legal and technical requirements. *On-site inspections and verification of the technical information provided by the administration are important tools in the investigation of complaints.*

4. Maladministration and mediation tools and practices

In many cases it is found that:

- Planning procedures are *not* "legally correct" and lead to technical solutions that have significant impact on the environment.

- Planning procedures are "legally correct" but lead to technical solutions that have significant impact on the environment.

- Planning procedures are "legally correct" and technical solutions proposed are generally acceptable but the administration has not taken the time, or does not have the ability, to effectively educate the concerned citizenry.

- Up to date, the Quality of Life Department received a great number of complaints (up to 2004 11671 complaints) accounting for approximately 22% of all complaints submitted to the Authority (Fig.1,2 3).

- Of these cases, approximately 21% referred to environmental issues.

- Even though most cases deal with some kind of impact to natural and manmade environment (building construction, city planning, permitting etc) [2, 3] for the percentage calculation only cases referring to direct impact & pollution of the Natural Environment are considered. For example such cases deal with uncontrolled waste disposal and pollution due to facility operations, insufficient protection & pollution of wetlands, coastal zones, forest areas etc.



Source: Annual Report 2006

Fig. 1 Main subjects of the complaints handled by the Department [6]

TOTAL COMPLAINTS 2005		2,608
Complaints within the Ombudsman's mandate		1,636
MALADMINISTRATION PROBLEM CORROBORATED		522
Problem resolved (favourable outcome)		441
Problem not resolved (the Ombudsman's recommendations were not accepted – impossibility of resolution)		81
MALADMINISTRATION PROBLEM NOT CORROBORATED		311
INVESTIGATIONS DISCONTINUED		138
CASES PENDING AT 31.12.2005		665

Source: Annual Report 2006

Fig. 2 Total Complaints 2005 [6]

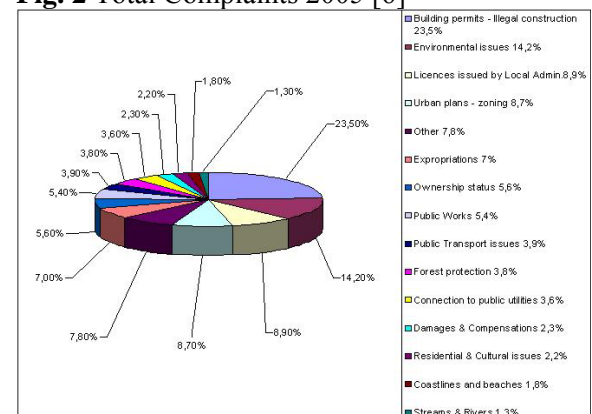


Fig.3 Subject matter distribution of complaints submitted to the Quality of Life Department [5]

Main case handling problems are:

- ✓ Complex and lengthy administrative procedures – involvement of many administrative bodies.
- ✓ Conflicting and ambiguous legislation. Non compliance with EU legislation.
- ✓ Technical expertise required and in many cases lack of technical information.
- ✓ Incompetence and/or unwillingness of administrative bodies to resolve cases, even when court decisions exist.
- ✓ Large amount of documents and data to be reviewed.

Mediation tools and practices

- ✓ On site investigation (at least 2 investigators, preferably of different disciplines).
 - ✓ Visits to the competent public bodies.
 - ✓ Organizing conferences with the public bodies involved and maybe with the citizens or NGOs.
 - ✓ Gathering scientific data relevant to the case (directly by the GO or by assignment to public bodies or private companies).
 - ✓ Issuing of special reports, with emphasis on the main legislative problems and less on the case specific ones.
 - ✓ May request, the assistance of the Public Administration's Body of Investigators-Inspectors or other auditing bodies of the Administration
- May request disciplinary actions to be taken against public servants, or communicate the report to the competent Public Prosecutor.

The Greek environmental legislation is mainly an incorporation of the EU directives and regulations

- The *EU Treaty* lays down that "environmental protection requirements must be integrated into the definition and implementation of other Community policies." This is a sine qua non for sustainable development respecting the environment.
- This must be seen in conjunction with the Declaration on environmental impact assessments, annexed to the Final Act of the Intergovernmental Conference which drafted the Treaty of Amsterdam.
- Prior to the adoption of a plan or program or its submission to the legislative process, the competent authority of the Member State concerned will be required to carry out an environmental assessment and, after consulting the competent environmental authorities, to prepare an environmental report setting out *inter alia*:
 - ✓ the contents of the plan or program and its main objectives;
 - ✓ the environmental characteristics of any area likely to be significantly affected by the plan or program;

- ✓ any existing environmental problems which are relevant to the plan or program;
- ✓ the national, Community or international environmental protection objectives which are relevant to the plan or program in question;
- ✓ the likely environmental effects of implementing the plan or program;
- ✓ the measures envisaged to prevent, reduce and offset any significant adverse effects on the environment;
- ✓ the envisaged monitoring measures.

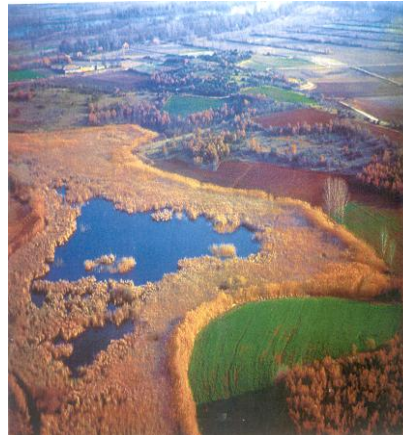
5. Representative cases-GO's interventions and proposals**1. Issuing of illegal permit for the operation of a cattle farm within an environmentally protected area (Living Lakes & Ramsar) [5]**

Fig. 4 environmentally protected area (Living Lakes & Ramsar) [5]

Citizens submitted a complaint claiming that local authorities (the prefect and the city mayor) issued a permit for the operation of a cattle farm near a lake (Fig. 4,5) and within the region of a significant river delta, which is a protected area under the RAMSAR convention (Northern Greece) [5].

The permitting agencies did not acknowledge the existence of the lake (ignoring law requirements) and issued an incorrect verification of the distance of the facility from city limits. In addition, no measures were taken for the protection of the environment (waste handling, etc.).

✓ Following the citizens complaint, the Greek Ombudsman requested local authorities to justify their actions. They denied the existence of the lake and claimed that no negative impact to the environment was expected from the operation of the facility. The GO verified that the legal procedure for obtaining the permit for the operation was not followed.

✓ Senior investigators from the GO office collected existing data and performed an on-site investigation, observing several problems.

✓ Following the findings of the GO investigation an extensive report was issued. It concluded that there were several illegal administrative acts and the facility had to be removed (Fig. 4,5). In spite of this, the prefect did not comply with the recommendations of the GO. The Ombudsman's report was forwarded to the prosecutor while citizens petitioned to the Supreme Court requesting that the administration's decisions be overruled.

✓ *The court canceled all administration decisions which permitted the cattle farm operation.*

✓ *To date the farm owners have been convicted twice for illegal operation of the facility and the prefect has been charged and summoned to court for violating the environmental protection law, for not applying the court decision and for not performing his duties adequately. However, the facility has not been removed (demolished) up to date.*

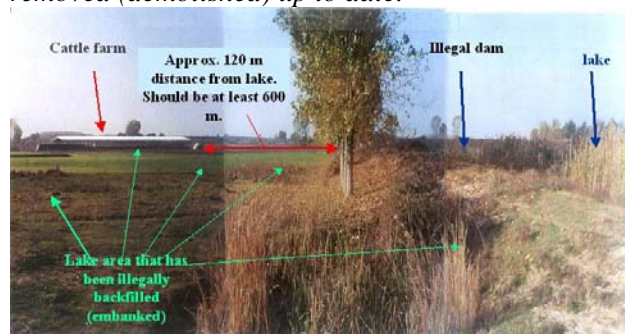


Fig. 5 Lake area illegally backfilled [5]

2. Burial of toxic waste and pollution of the environment due to the operation of liquid fuel tanks at an island located in the northeastern Aegean sea.

This case deals with the adverse environmental effects of large liquid fuel tanks, situated at a gulf of a Greek island located in the northeastern Aegean Sea (Fig. 6). Pollution from tank leakage and inappropriate waste handling was confirmed. In addition environmental pollution was increased by the burial of toxic waste from the facility. *In 1997 and 2001 the Supreme Court, with its two decisions invalidated the two joint decisions of the responsible ministries which approved the Environmental Conditions for the operation of the storage facility. As stated in the decisions "...Installation and operation of tanks for the storage and transport of liquid fuel cannot be allowed within the area in question..."* [5].

✓ The Greek Ombudsman repeatedly requested the regional government, the prefecture and the Ministry of Environment, Land Planning and Public Works to immediately address these serious problems. The GO also expressed the opinion that apart from the closing

down and removal of these facilities from the area in question, a further examination of environmental conditions was necessary to evaluate possible contamination of the area. This investigation should include surface water, groundwater and soil sampling analysis. If contaminants are detected, a remediation program should be designed and immediately executed.

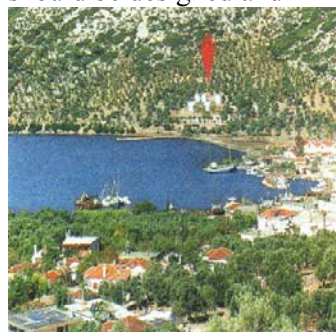


Fig. 6 Burial of toxic waste and pollution of the environment [5]

✓ It took *seven years* since the publication of the first decision of the Supreme Court and almost *three years* from the Ombudsman's intervention, for the regional government to seal the facilities, in December 16 2002. Fuel supply of the island has not been disrupted.

✓ *Based on the investigation findings the GO referred the case to the district prosecutor. To date, the local governor has been charged and summoned to court for violating the environmental protection law and for not performing his duties adequately. A full scale remediation program is implemented up to date* [5].

3. Uncontrolled disposal of municipal waste by local government (the prefect) [5]

✓ In 1999 the prefect issued a decision according to which the produced municipal waste would be disposed in an old quarry area, located within a protected region, in a forest (Fig. 7).

✓ This decision was illegal since it did not comply with law requirements, did not include any protective measures for the environment and moreover created serious environmental and public health problems [1,5].

✓ *Citizens petitioned the Supreme Court that ruled in their favor and canceled the prefect's decision.*

✓ In addition *Citizens submitted a complaint to the GO* claiming that the prefect continued the municipal waste disposal at the same area and did not comply with the court decision.

✓ *This claim was verified. However, in spite of the court decision and the immediate GO intervention,*

the prefect issued a second decision, with exactly the same content, and continued to dispose waste in the same area.

✓ Citizens petitioned again the Supreme Court and again achieved to cancel the prefect's decision.

✓ Since the prefect repeatedly refused to comply with court decisions and GO recommendations the case was referred to the district prosecutor. A month later the prefect informed the GO that he withdrew his decision and that municipal waste would no longer be disposed at the specific area [5].



Fig. 7 Uncontrolled disposal of municipal waste [5]

4. Illegal building permits

a. Complaint for the illegal permits for building construction within an environmentally sensitive area (wetland) [5]

➤ In this case building permits were canceled by the Supreme Court because the village boundaries were extended to include an environmental sensitive area (wetland) [5].

➤ Since permits have been canceled all buildings constructed according to them are illegal and should be demolished. Instead, administration did not comply with the court decisions & relative law and continues to issue new building permits (Fig.8, 9,10).

➤ The GO has requested that the illegal constructions are demolished and that no more new permits are issued. Up to date administration has refused to comply. A special report is being prepared by the GO.

➤ Meanwhile the European Court of Human Rights convicted Greece for non compliance with court decisions and for not demolishing the illegal buildings.

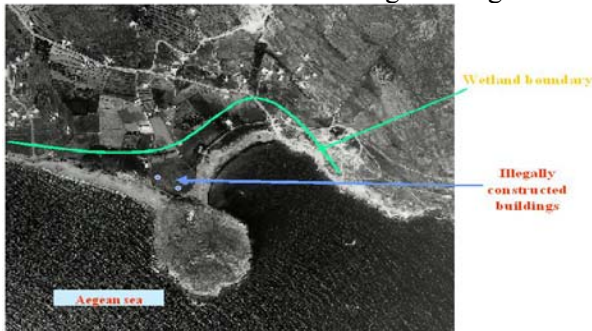


Fig.8 illegal permits for building construction within an environmentally sensitive area [5]

b. Destruction of wetland area



Fig 9 Destruction of wetland area [5]



Fig 10 Destruction of wetland area [5]

✓ The competent planning office issued, illegally, a permit for “landscape reshaping”.

✓ The area is theoretically protected by the Natura 2000 directive and the RAMSAR treaty [2, 3].

✓ This led to the destruction of the wetland. The permits were revoked after the GO intervention. The GO requested measures to be taken for the rehabilitation of the site [5].

✓ To date, the former head of the planning office and the constructors have been charged and summoned to court for violating the environmental protection law.

5. Mobile phone Base stations

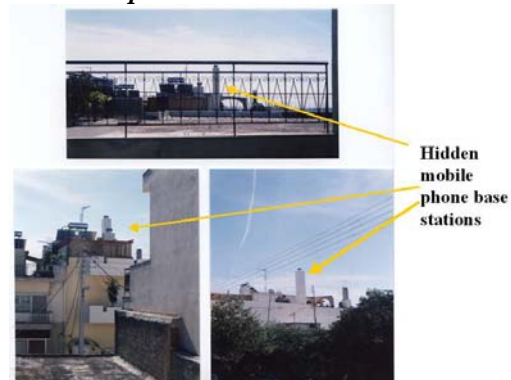


Fig. 11-13 Hidden mobile phone base stations [5]

• Conflicting research information, with respect to the impact of electromagnetic radiation on human health and environment (Fig. 11-13).

• Need to apply the “precautionary principle” in locating mobile phone base stations.

- The national legislation must be revised in order to comply with the principle. This may be achieved by lowering the acceptable limits of exposure to the EM radiation and by determining a minimum distance between mobile phone base stations and inhabited areas
- GO has issued an extensive report with specific proposals [5].

6. Water-Side & Seashore Illegal Construction & Pollution

Problem Description: Citizen Complaint of environmental degradation in waterside & Seashore zone (Fig. 14) in wetland (Western Attica).

➤ It Was Ascertained:

- Over 20-year existence of Illegal Construction of Buildings
- Construction of Artificial Embankment Extension Deteriorating Coastline
- Illegal Accumulation of Trash on Beach Area
- Pollution of Sea and Coastal Environment
- Obstruction of Physical Access to the Seashore's Public Area (Unauthorized Denial of Legal Access Right to Public State Property)

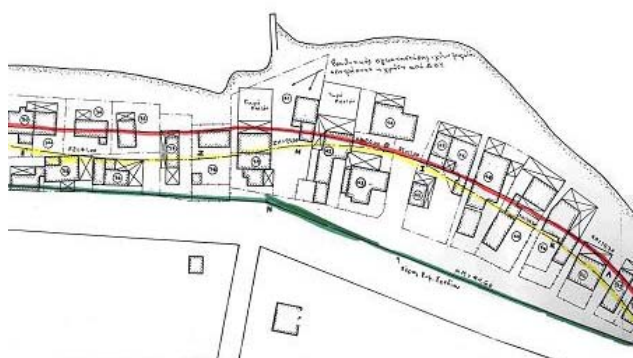


Fig.14 environmental degradation in waterside & seashore zone in wetland (Western Attica) [4]

Extract of Cadastral Diagram of Examined Area
Source: Ministry of Finance & Economy (1994),
Map of the Hellenic Public Real-Estate Corporation

Legend:

Red line: Waterfront line
Yellow line: Seashore line
Green line: Street Layout border line

Definitions:

Waterfront = Coastal land area which the longest of sea waves usually cover.

Seashore = Inland extension from the Waterfront's edge not exceeding 50 meters in width.

Greek Legislation considers Waterfront & Seashore public lands (L.2971/2001)

NOTE: Greece's coastline exceeds 300,000 Km [2,3].

No unified waterfront map of Greece exists - thus waterfront marking in each area is examined separately.

Legal Provisions: Law 2344/1940 & Law 2971/2001 dictate that property rights of assets located on the seashore be mandatorily re-allotted for the common good [2,3].

Are implemented:

1) Legal provisions for re-allotment applied as in the case of street layouts (Responsible Authority: Local Town Planning Office of Prefectural Government)

2) Demolition Process of Unauthorized Construction (Responsible Authority: Hellenic Public Real-Estate Corporation - Ministry of Finance and Economy) & Impose Penalties.

Public Administrations Stance - Legal

Framework Implementation Issues:

- 10+ years delay ascertained for the implementation of relevant legislation & correct recording and mapping of waterfront, seashore and public lands.

- Inefficient coordination of involved public services (leaving the environment unprotected).

- Inability to impose legal penalties.

Ombudsman's recommendations and proposals were:

- Correct interpretation and faster implementation of legal provisions.

- Imposition of legally defined penalties.

- Revocation of illegal administration acts with intention the keeping of the law & restoration of the landscape and vulnerable ecosystems.

- Re-allotment when applicable (securing funds for compensation).

7 Protection & Maintenance of Green Space in High Density District

Problem description: Citizen's Association request (2005) for the protection of Green space in high density district (Polygono in Athens outer circle) [4]. Athens has a 2.5 m² rate of green space per habitant - the lowest of European Capitals [2,3].

➤ It was ascertained (Fig. 15-23):

- Insufficient Planting of Trees and Bushes.

- Inexistent Care of Park Plants & Facilities (Play Ground & Sports Field).

- Noticeable Problems of Cleanliness & Public Hygiene

- Signs of Vandalism

- Lack of Protection of Property & Public Safety

Public Administrations Stance - Responsible Party is Municipality of Athens:

- Receptiveness to Cleanliness - Park was promptly cleared of trash.

- No Care to Park Plants & Facilities (Play Ground & Sports Field).
 - No Guarding of Ground & Facilities.
 - Current Situation Considered Adequate by Municipality of Athens
- Ombudsman's Recommendations and Proposals:
- Because of it's contribution the Park requires Special Maintenance and Care.
 - Current grounds include olive trees which were planted years ago by the Association and the Municipality itself - maintenance and planting must continue according to plan.
 - After intermediation of the ombudsman the Municipality committed to maintain the fence & replace the destroyed equipment.
 - Focus should be placed on the Effective Guarding and Securing of the Park with permanent and sufficient staff.
 - Since according to Municipality's record the issue is one of organization and not of financing *the Ombudsman insists on the completion and satisfactory confrontation of these issues.*



Fig. 15-23 Protection & Maintenance issues of Green Space in High Density District [4]

6 Conclusion

The current article briefly presented the Greek Ombudsman's contribution to the protection of the manmade and natural environment. This independent authority is renowned for the quality of its highly educated scientific personnel comprised of lawyers and other subject matter experts, which bring about practical experience in technical subjects for the applicability of the laws and the overall and in depth understanding of the correct interpretation or abuses of the authority of the national and local administrations. Through its participation in the frame of the *Eunomia* project of the *Stability Pact for Southeastern Europe –Council of Europe*, the Greek Ombudsman contributes to the creation and medium-term support of newly founded mediation institutions in the countries of South-Eastern Europe [6].

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