

# THE OMBUDSMAN OF SPAIN



SUMMARY OF THE REPORT TO  
PARLIAMENT YEAR 2008

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# The Ombudsman assumed 23,899 complaint cases last year, representing a 37.56% increase

**A large number of collective complaints were lodged in 2008 regarding income tax matters as well as individual complaints regarding telecommunications. Additionally, a large number of civil servants and state employees approached the Ombudsman to fight for issues affecting their status and working conditions. Of the total amount of complaints received, the Ombudsman approved 53.38% for follow up, with 432 resolutions drafted.**

Most noteworthy among the data referring to activities conducted in 2008 was the rising number of citizens who approached the Ombudsman as well as the number of complaints lodged by both individuals and groups. In this regard, 23,899 enquiries were initiated last year, including *ex officio* investigations undertaken by the office of the Ombudsman. This amount represents an increase since 2007, although somewhat less than what was seen in 2006. The number of *ex officio* actions initiated in 2008 was quite similar to the number for 2007, which only had nine fewer. This reflects the Institution's constant commitment to use the resources and time at its disposal to proactively address any failures and purported breakdowns of which it becomes aware, in addition to the ongoing attention it pays to the numerous requests and complaints submitted by citizens.

The vast majority of complaints originated in national territory, and the greatest number of these came from Madrid, followed by Valencia and Andalucía. Only 1.5 per cent of total citizens' complaints came from abroad. Regarding the means of submission for these complaints, most are still sent directly to the Ombudsman whereas just over 9 per cent were received indirectly via collaboration with the autonomic parliamentary commissioners and certain administrative bodies.

With respect to the classification of these complaints by administrative sector of activity, the high number of collective complaints in the area of income tax matters in 2008 is noteworthy. Also remarkable is the number of individual complaints referring to telecommunications, as well as the constant stream of complaints by civil servants and state employees on matters affecting their status and working conditions.

## Processing status

In 2008, 53.38 percent of the total complaints lodged were accepted for follow up with the public Administration concerned. For their part, there were a total of 2,446 individual complaint cases that had been closed by the end of the calendar year, representing just over 42 percent of all cases accepted for processing. In the same year, the percentage of collective complaints resolved was lower because factors involved in handling these types of complaints invariably produce erratic statistical results. Moreover, 42.7 percent of the 253 *ex officio*



The President of Congress, José Bono, speaking with the Ombudsman, Enrique Múgica Herzog, and his Deputies, M<sup>a</sup> Luisa Cava de Llano and Manuel Aguilar, the day of the presentation of the Annual Report in Congress. Photo: Povedano.

enquiries initiated in 2008 had been resolved by the end of the year.

In the section on statistics, complaints received in previous years whose processing continued into 2008 are also reflected, representing a total of 7,697 cases. This data provides a broader and perhaps more accurate picture of the activity undertaken by the institution during the calendar year, because there are more than just a few cases that, for various reasons—often due to delays in obtaining reports requested from the Administration—require a long period of time before investigative needs can be considered to have been met in order to arrive at an appropriate institutional resolution to close the case.

## Effective supervision

In 2008 there were a total of 125 recommendations, 190 suggestions 113 reminders of legal duties and 4 warnings, which add up to a total of 432 resolutions. Additionally, it was decided to include information about resolutions made in the previous two years, i.e. regarding the status of their acceptance or denial over a period of time. This will likely shed more light on the effectiveness of these institutional decisions and the favourable replies given by the administrations, even for cases involving certain delays. In this way, one can more readily see that over 81 percent of the 99 recommendations made in 2006 had been accepted by the end of 2008, and 117 of the 156

recommendations made in 2007, or 75 percent, had already been accepted by the end of last year as well.

## Administration of Justice

Although the many difficulties reported with respect to the Administration of Justice seem to have become chronic virtually since the beginning of the Ombudsman's activity—as reflected in its annual reports—it must also be said that these got a great deal of publicity in 2008 due in large part to a judicial workers' strike in certain autonomous communities. After work stoppages in Madrid, further strikes were called in communities where the corresponding transfer of powers had not yet come about (Castilla y León, Castilla-La Mancha, Extremadura, Murcia, La Rioja, the Illes Balears and Asturias, as well as the cities of Ceuta and Melilla). The consequences of these strikes were duly reflected in citizens' complaints filed at the time and, above all, later on as the impact grew worse and severe backlogs held up thousands of cases that were being processed or awaiting hearings.

In the criminal jurisdiction, the situation can be considered even more complicated as a result of a number of factors, but also due to the impact of rising litigiousness and certain legal reforms, such as the recent criminalization of conduct that is hazardous to motorway safety. The media tend to echo, sometimes overzealously, the very negative and occasionally tragic consequences that stem from the inability of certain courts to take on their caseloads under adequate conditions. As is generally understood and as has been clearly manifested by this Institution over many years, the reform and modernization of the administration of justice is a task that the authorities must undertake without further delay, as the effectiveness of the entire constitutional system and, thus, the safeguarding of basic rights and freedoms depends largely on whether judges and courts are able to perform their work under suitable, if not optimal, working conditions.

In line with the aforementioned matters, it is worthwhile to mention two *ex officio* enquiries in particular. The first aims to gather information from those responsible for the judiciary at the national level regarding the general level of pendency in the criminal and enforcement courts. The second focuses on learning about the potential deficiencies in the judicial system in protecting victims of assault from their partners or ex-partners. The collaboration of the Council of the Judiciary was requested in both cases, and assistance by the Ministry of Justice was sought as well in the first case.

As has been discussed, problems in the functioning of criminal jurisdiction can be the most harmful due to the very nature of the legal rights they are meant to uphold. The following represent some of the issues that the Ombudsman deems to be worthy of the highest priority: excessive caseloads, lack of material resources,

understaffing, excessive staff transfers, inadequate training or insufficient professional experience of temporary staff, lack of computer equipment suitable to the penal process and, more importantly, the incompatibility of different judicial databases as well as the lack of a single computer application to link the respective databases of the prosecution and the courts in order to permit access to indispensable information regarding facts and people involved in court affairs or enforcement procedures. Issues concerning staff working conditions in the Administration of Justice are given special consideration in the corresponding section of this report—the result of the numerous individual and collective complaints lodged in 2008 and in previous years.

## Prison administration

It is customary to begin this section of the report by citing the latest available data on the size of the prison population. The percentage increase in inmates in 2008 compared to the previous year was one of the highest in recent memory, reaching 9.67 percent, which amounts to 73,589 people behind bars. With regard to the ongoing program of prison visits, the following correctional institutions were visited in 2008: Jaen, Cuenca, Segovia, Palma de Mallorca, Ibiza, Granada, Ocaña I, Ocaña II, Lanzarote, Las Palmas, Estremera and Puerto III.

One cause of continued concern is the number of inmate deaths in prison, also progressively increasing, particularly when the cause of death is attributed to suicide. In several investigations the Ombudsman has had to underscore the need for improvements in psychosocial care that the prison administration may offer in order to detect and, thus, attempt to prevent such deaths from occurring. Two potential reasons that might explain the rising prison suicide rates year after year are: overcrowding, which results in harsher living conditions, and inadequate follow-up by the Administration with respect to risk factors affecting inmates prior to death. A study is currently under way with the Secretary General of Prisons to which observations and considerations shall be added before informing the penitentiary inspection services.

Among the positive aspects in the 2008 report is the consolidation of the "Room for Respect" program, with 5,705 inmates taking part in 64 programs at 28 prisons at the end of the year. Visits by the institution confirmed the positive outcome of these communal living experiences at the correctional institutions.

An investigation initiated in 2008 to update the information available on the number of prison inmates with some form of disability is also worthy of mention. Apart from general aspects, such as carrying out a detailed study to determine the number and geographic distribution of such inmates as well as the removal of architectural barriers in facilities, where certain progress is being

made, particular interest is given to completing the process of issuing disability certificates to those entitled to them.

Another common area of enquiry is the quality of medical services offered at the correctional institutions, which has led to a recommendation that whenever there is any irregularity with serious consequences, the ensuing investigation should be carried out by staff from outside the institution under scrutiny.

### Citizenship and public safety

Regarding complaints related to public safety, those relating to allegations of wrongdoing by members of the Security Forces and Corps stand out due to the gravity of the circumstances involved. The first factor that merits mention is the positive reply generally given by the various authorities in charge of these forces in answer to such allegations, and also to the systematic reaction by the Public Prosecutor to gather the evidence available in each case. To this we must add, however, that a certain amount of resistance is still perceptible at various government offices, which prevents the degree of transparency needed to effectively detect the slightest trace of misconduct by police officers. Special emphasis must be given to changes observed in this area in recent years, reflecting a rise in the incidence of abuse or mistreatment attributed to local police officers as described in the relevant section of this report.

Closely related to this is the noteworthy level of concern that gives rise to numerous complaints referring to the excesses of private security guards in the performance of their duties. Specifically, this report describes complaint cases investigated to ascertain the details surrounding the performance of security guards working in the Madrid subway system, which was the subject of certain police reports that were corroborated by video images publicized by various media organizations.

The problems with national document issuance offices, which had already been treated extensively in the previous annual report, persisted in some form into 2008, although the Administration managed to improve the appointment system by mitigating the delays and paralysis that had been occurring previously. In this regard, the Ombudsman recommended reducing the cost of the telephone call required to arrange an appointment.

With respect to traffic and motorway safety, deserving mention is a recommendation to improve the way the public is notified of the different stages of traffic fining procedures. The widespread practice of publishing public announcements in the Official Gazette when it is not possible to deliver a notification to the concerned party's place of residence should be accompanied by whatever other means of public announcement are feasible with modern technology, such as is publication on



From left to right, the Second Deputy to the Ombudsman, Manuel Aguilar; the Ombudsman, Enrique Múgica Herzog; the President of Congress, José Bono; the First Deputy, M<sup>a</sup> Luisa Cava de Llano; and the Secretary General, Mar España.  
Photo: Povedano.

the website of the Directorate General for Traffic. This would make the system of safeguards more effective for citizens by allowing them to defend themselves and to exercise their right to a hearing. This measure may already be included in the draft bill amending the Law on traffic, circulation of motor vehicles and motorway safety, which is currently being studied.

It is also worthwhile to point out the actions taken so that the Supreme Council for Traffic and Motorway Safety would adopt more effective preventive measures to eliminate motor vehicle advertisements that clash with the principles of public health protection and accident avoidance in this sector.

### Immigration and Alien Affairs

Many of the actions carried out in 2008 on immigration shed light on the growing need to shift the focus from the economy and work-related issues, already well established regarding the treatment of affairs related to them, toward a broader concept of the family and social affairs and the preeminence of global human rights. Some of the problems most commonly addressed in the complaints involve a certain degree of confusion with respect to the content of some administrative decisions that are slow to adapt to certain aspects of EU law, for example with respect to the rights of family members of EU citizens. As such, cases involving denial of entry into national territory continue to be detected, even for the parents of Spanish children, or in the processing of visas and reentry permits.

As for the situation in 2008 in the Islas Canarias, the first aid facilities and detention centres for undocumented aliens arriving by sea from the African continent were visited again. Improvements in these facilities were observed in Tenerife-South, but significant irregularities were found at other facilities on the island of Gran Canaria. Specifically, certain aliens from a cayuco boat intercepted in Tenerife were found to have been labeled



The Ombudsman, Enrique Múgica Herzog, greets the President of the Senate, Javier Rojo, on 25 May, the day of the presentation of the Annual Report to Parliament. Photo: Povedano.

with an identification number on their clothing at the Barranco Seco Internment Center in Las Palmas, Gran Canaria. The Ombudsman has already expressed its firm opposition to this practice because it encroaches upon the dignity of people and because its use as a means of personal identification is completely unreliable.

In the Islas Canarias the emergency shelter for unaccompanied foreign children in Arinaga, Gran Canaria was visited, as were the Fondillo and Siete Puertas facilities for alien minors. The former facility is not considered to be suitable for use as a residential centre for minors due to the distance between it and the nearest urban area compounded by a lack of public transport. Other centers for minors were also visited in Ceuta and Melilla.

It is well known that the Spanish legal system provides, in general terms, a comprehensive range of safeguards for minors. Perhaps for this very reason in the area of immigration and in light of certain specific circumstances the administrative authorities appear to be somewhat less effective in conducting procedures that may affect foreign minors. This general ineffectiveness is most evident in the following situations: failure to use existing technical methods to determine the age of children in doubtful cases and with respect to those undocumented aliens arriving along Spanish coasts; delays in certain autonomous communities in issuing statements of child abandonment when dealing with unaccompanied foreign minors, making it hard for them to exercise their rights or impossible when the procedural delay spans their transition to legal adulthood; and lastly, the practice of considering the actual arrival date on Spanish territory as the determining factor regarding the validity of family reunification visas when delays, which are often considerably long, stem entirely from inefficient processing by the relevant Spanish authority. According to the Ombudsman's recommendation, this last practice seems to

have been deemed inappropriate, and the visa application date is now the one used instead.

## Education

Underlying most of the complaints submitted to the Ombudsman regarding education are a number of problems caused, in one way or another, by insufficient financial resources allocated to guaranteeing the basic right to education. This lack of resources is explained simply in light of budgetary priorities in public investment, and its impact is felt at all levels of education.

At the non-university levels, certain issues stand out yet again that had been already discussed in previous reports, such as certain deficiencies at school facilities or insufficient kindergarten coverage. As has been constantly stressed in the past and is now set forth in the Organic Law on Education, it is vital that administrations provide a sufficient number of educational places for children up to three years of age to meet current social demands, and also to ensure truly non-fee based education in the second cycle for students up to six years of age. This should be done in light of the broad implications such coverage has in all socio-economic areas and family matters. Irregularities are still being observed, moreover, with respect to admission of pupils, particularly regarding private schools that receive public funds, in order to promote unfair imbalances in terms of student distribution compared with public schools. Furthermore, attention for students with special educational needs is still inadequate at many centres, a problem that is in danger of becoming chronic.

As for university-level education, 2008 was characterized by the emergence of organized university protests against the so-called "Bologna process", paradoxically just when the deadlines for the implementation of this process and are now being met. Apart from the diverse arguments for and against this process with respect to the Spanish university, it is regrettable that measures and plans to adapt the university system have been conducted up to now in a "silent" manner. As the objectives of the project involve a historical overhaul of the university and the degree system in our country, with all concomitant social, cultural, and economic impact that entails, it is incomprehensible that the various educational authorities have acted to a certain extent without full transparency. Thus, the project has never been opened up to general debate by making essential information available well enough in advance so that not only those immediately involved but also the society as a whole would be encouraged to participate.

Proof of this was the realization by the authorities involved in handling the public demonstrations that a public awareness campaign for the adaptation process to bring the Spanish university system in line with the European System of Higher Education was needed.

## Health and social affairs

Complaints referring to the public health administration in 2008 focused on issues already addressed in the past, with slight variations in intensity with respect to their geographical origin.

Despite the interval of time since the Law regulating the rights and duties of patients with respect to medical records and files was passed in 2002, complaints received on this subject show that the intended level of compliance expected has not yet been achieved.

Additionally, discrepancies in the health services provided for by legislation in the different autonomic administrations is becoming more evident, particularly in the following areas: new therapies and medications, vaccination schedules, mental health, rare or uncommon diseases, pre-implantation genetic diagnosis and genetic counselling, palliative care and pain treatment, dental care, gender reassignment surgery, podiatry care for diabetic patients, anti-tobacco therapies, and financial aid for sufferers of celiac disorder. Additionally, regarding delays in obtaining health services, the number of complaints has fallen, although significant differences exist among different regions as reflected in citizens' complaints. In this regard, the illegal nature of the use of so-called "closed agendas" at several health centres in Madrid should be highlighted because they delay the patient's right to know even the date they can expect to receive medical care.

Also worthy of mention with respect to the health Administration in Madrid is the considerable number of complaints sent by users and health professionals to express their concern about a process known as "outsourcing" of health services. If allowed to continue, this process could undermine the very principles on which the health care system in Spain is based, i.e. that such care should be universal, free of charge, publicly financed, and fair; a concern that, in any case, should be shared by those responsible for providing health care in every autonomous community.

In 2008 several requests were also received from professionals and citizens interested in the creation of new medical specializations, particularly in emergency care and in child and adolescent psychiatry. By the end of the year, a report from the Ministry of Health indicated that they had been considering the creation of such services within the framework of a complete overhaul of medical specializations, which is currently pending decision by the Human Resources Committee of the National Health Service.

As for social policies, the handling of many complaints about the notoriously protracted drafting of the provisions of the so-called Law on dependence deserves mention. The accumulation of applications at service levels for high dependency, for example, whose certification and outcomes should have been resolved in 2008, has overwhelmed the various administrations responsible for

dealing with them, and, thus, they have not been able to meet expectations. It is worthwhile at this point to refer again to the conclusions reached—and included in this report—at the coordination workshop held with the commissioners of the autonomous communities and the Ombudsman, which deal with the highest priority issues in this matter.

## Labor Administration

The sharp deterioration in the economy during 2008 has led to a sharp rise in joblessness and, thus, in the number of applicants for unemployment benefits and services, resulting in a massive influx of people in Public Employment Service offices. Accordingly, there have been many complaints from citizens due to the long waiting times in order to submit their applications or due to delays in being granted their financial entitlements.

Although certain issues involving delays in certain provinces and regions with larger populations had already been under study for years, in 2008 it was decided to open an enquiry with the Directorate General of the Public Employment Office to learn about the measures under consideration to address the multitude of problems arising from this massive influx of applicants. In general terms, it can be said that the response by the authorities has been positive, at least in terms of the decisions taken to boost the staff serving roughly 700 offices in Spain. In the second half of the year, 866 new civil servant staff members were appointed to fill temporary positions at these offices subsequent to approval by the department of civil service and the department of staffing and pension costs. Further measures have been taken within the offices to restructure workflows, with priority given to applications for benefits, and a new telematic application system is expected to be launched, presumably in 2009.

Faced with certain exceptional situations such as this sharp and sudden increase in unemployment, citizens expect an effective and unequivocal response from the authorities concerned, irrespective of the gravity of the circumstances affecting our national economy, in which the principle of solidarity, above all, must prevail.

## Public treasury and general economic activity

Citizen complaints referring to problems in the declaration and payment of taxes and fees are quite numerous year after year, especially regarding the filing and payment of personal income tax due to its widespread impact. In 2008, noteworthy issues arose due to errors in the draft statement prepared by the Tax Authorities. The significant advances achieved by providing these drafts to citizens to enable them to better fulfil their obligations has already been highlighted in previous years, although the quality offered through these services must not be

compromised by including inaccuracies or undue charges. Citizens trust data supplied by the tax authorities, and, stemming from the various complaints received, it was discovered that there was insufficient warning regarding potential errors and omissions in these documents. On a positive note, the Administration, in accordance with the argument expressed by the Institution, decided to include improved warnings in their notifications regarding the need to supplement the draft statement with information that only the taxpayer may have knowledge of.

Another significant body of complaints reflects the dissatisfaction of many citizens regarding the amount and purpose of certain fees, particularly municipal fees. For example, the application of a recycling fee for municipal waste removal services, which can raise the overall charge quite substantially, leads to considerable confusion when it does not appear to comply with legal limitations and studies conducted prior to approval of the relevant municipal ordinance.

Among the general economic activity issues worthy of mention were the numerous complaints referring to modifications in utility fees for electrical power usage—particularly that the nocturnal usage rebate program that many consumers had signed up for in recent years was to be discontinued in 2008. Once again shortcomings have been found in the ways the public Administration informs citizens about issues affecting their daily lives, apart from general awareness campaigns.

## Transport and communications

Regarding rail transport two enquiries are noteworthy because they highlight some of the less positive aspects of the necessary development of high-speed railway service in our country. The first deals with the possible cancellation or elimination of intra regional service on routes with lower ridership rates, which may seriously hamper the mobility of residents of certain municipalities as discussed in a complaint referring to a number of villages in the community of Galicia. The other refers to fare differences that many high-speed railway users feel are not commensurate to the service offered.

With respect to air transport, it is worthwhile to highlight the acceptance by the Directorate General for Civil Aviation of a recommendation to adopt measures promoting equal access for people with disabilities or reduced mobility regarding airfare and the possible introduction of rebates.

The Ombudsman also continues to focus attention on many complaints from citizens regarding the quality of access to telecommunications services. Among other matters in 2008, the Ombudsman closely followed the drafting of a bill of rights and responsibilities governing telecommunications services and the information society as a whole. For example, among other items,

this prohibits companies from operating broadband Internet connection services that fail to provide at least 80 percent, in practical terms, of the connection speed advertised to end-users. Again it is necessary to stress the need to take very firm steps, with the support of all public authorities, in order to close the so-called technological “gap” by pursuing a clear double objective: to establish a universal telecommunications service as a basic individual right belonging to all citizens, and to take full advantage of the potential socio-economic benefits in Spain that a more seamless integration of capabilities and improved availability of advanced technological services will indubitably provide.

## Environment, urban planning and housing

As noted in the corresponding section of this report, it is remarkable to see, via environmental research, the gap between growing public concern towards environmental issues and the lackadaisical (or sluggish) attitude with which certain administrations approach their duty to protect the environment. Such disparity can also be seen between insufficient administrative protection practices and theoretical lectures accompanying all the decisions that have an impact on the area concerned, based on an incomplete definition of the concept of sustainable development.

In 2008, enquiries involving environmental impact assessments and noise pollution issues stand out for yet another year, as do issues related to protection of natural areas whose features occasionally get caught up in urban development projects.

With regard to urban planning, overambitious development projects continue to be the subject of complaints because they do not mesh sustainably with legislation either related to proper zoning and management of urban areas or to expansion and development projects wherever they might be called for. Additionally, with respect to urban management, the complaints reveal that bureaucratic red tape and sluggishness continue to hamper these procedures, which in any case cannot be attributed to the indispensable participation of the citizenry. Lastly, the processing of building permits is a frequent cause of concern due to the public perception, as expressed in citizen complaints, that the authorities wield excessive discretionary power in this area.

The housing sector is perhaps the one that has been hit the hardest by the current economic crisis in Spain, which was particularly significant compared to other countries. Complaints continued to be lodged in 2008 referring to the inadequate supply of subsidized housing available to citizens plagued by the most precarious circumstances. The existing state plan should be taken into account as it calls for more significant investment in this area. One must hope that the measures adopted by the

autonomous administrations produce results that help to alleviate the severe hardships suffered by citizens seeking access to decent housing. Additionally, a very high number of complaints were received regarding breakdowns in management of financial aid programs meant to promote the emancipation of young people, programs approved by the State Administration and managed in collaboration with the Autonomous Communities. Toward the end of 2008, according to reports received, resolutions to the problems were being sought, although in different forms according to the Administration concerned.

### Public administration staff

The degree of efficiency of administrative activity and the maintenance of so-called “good governance”, in contrast to Anglo-Saxon concept of “maladministration”, is primarily in the hands of those men and women who offer their services to the public administration. With all due respect to the importance of defining the main priorities and the organizational *raison d’être* that the various management bodies must take charge of, the fact remains that the very health of administrative government system depends largely on working conditions and the good efforts of the millions of civil servants and public workers currently performing their duties in our country. They also represent a sector of the population that, logically, is better aware than anyone else about the role the Ombudsman plays in defence of their rights, which explains the high number of complaints received year after year regarding perceived injustices or conflicts in the civil service sector.

In general, complaints handled dealt with issues related to staffing, relationships, job lists and working conditions, job mobility and requests for transfer, or to harassment in the workplace, a phenomenon that fortunately does not appear to be on the rise but the continues to be the subject an extensive enquiry undertaken with all of the autonomic Administrations. Additionally, with respect to each sector of activity at every level of government, a resolution has been sought for all of the issues being raised, informing those in charge of each organization or department of the circumstances described and offering, whenever necessary, the most suitable



From left to right, the First Deputy to the Ombudsman, M<sup>a</sup> Luisa Cava de Llano; the Ombudsman, Enrique Múgica Herzog; the President of the Senate, Javier Rojo; and the Second Deputy to the Ombudsman, Manuel Aguilar. Photo: Povedano.

recommendation toward ensuring the rights of concerned parties.

For example, drawing from one of the points previously discussed, the conflict arising in the context of the Administration of Justice in 2008 stemmed in large part from what the personnel of that sector perceived to be very difficult working conditions. Even the possibility that those in charge of the judiciary might resort to such an extreme measure as a strike as a means of protesting their working conditions underscores very significantly that it is impossible to separate the quality of an administrative service from the circumstances surrounding those who perform it.

This selfsame reasoning may be applied to workers in the fields of health or education. With respect to the former, the adoption of measures to cope with situations involving personal risk and even violence directed toward healthcare professionals, particularly in hospitals, is being followed with great care. Regarding the latter, close scrutiny is being given to steps taken to ensure that the provisions of the Basic Statute for Civil Servants regarding the forming of a corresponding negotiating board for the sector are fulfilled in the near future—as the organizations representing these workers have been urging for some time—which will undoubtedly benefit the entire field of education at the non-university level.



# STATISTICS



## In 2008, the number of citizens who presented a complaint to the Ombudsman increased by more than 50,000 people

The number of complaints handled by the Ombudsman increased by 37.56% with respect to the previous year to reach a total of 23,899. The number of *ex officio* complaints reached 253, which represents on average one *ex officio* investigation initiated per working day. The Communities of Madrid, Valencia, Andalucía, and Cataluña accepted more than 50% of the complaints received.

In 2008 the number of citizens who went to the Ombudsman with their complaints grew by 53,650 people, a number which means an increase of 138.49%, compared to the figure registered in 2007 (see Table 1). This number is similar to that of 2006, with respect to which the number of complaints in 2008 means an increase of 3.21%.

**TABLE 1**  
Citizens who have filed collective as well as individual complaints

	2006	2007	2008
Total citizens	89,518	38,738	92,388

The number of complaints filed in 2008 rose to 23,899, including both individual and collective complaints, as well as *ex officio* enquiries initiated by the Ombudsman institution itself. In total, in 2008 there were 6,526 more complaints filed than in the previous year, which represents an increase of 37.56%. It was also established that individual complaints increased by 10.87%, and collective complaints by 174.48%, while the number of *ex officio* enquiries has remained very similar to that of last year. 253 *ex officio* enquiries were opened, which means an average of about one new enquiry undertaken for each working day in 2008. (See Table 2).

**TABLE 2**  
Complaints filed and *ex officio* investigations

	2006	2007	2008
Collective	16,398	2,857	7,842
Individual	14,903	14,254	15,804
<i>Ex officio</i>	142	262	253
<b>Total</b>	<b>31,443</b>	<b>17,373</b>	<b>23,899</b>

With respect to the origin of complaints filed in 2008, Figure 1 shows that the majority were individual complaints, representing 66.13% of the total. In comparison to complaints filed in 2007 it can be seen that in 2008 the number of collective complaints has grown proportionately, increasing from 16.45% of the total to 32.81%.

**FIGURE 1**  
Breakdown by percentage of complaints filed and *ex officio* investigations opened in 2008 compared to 2007

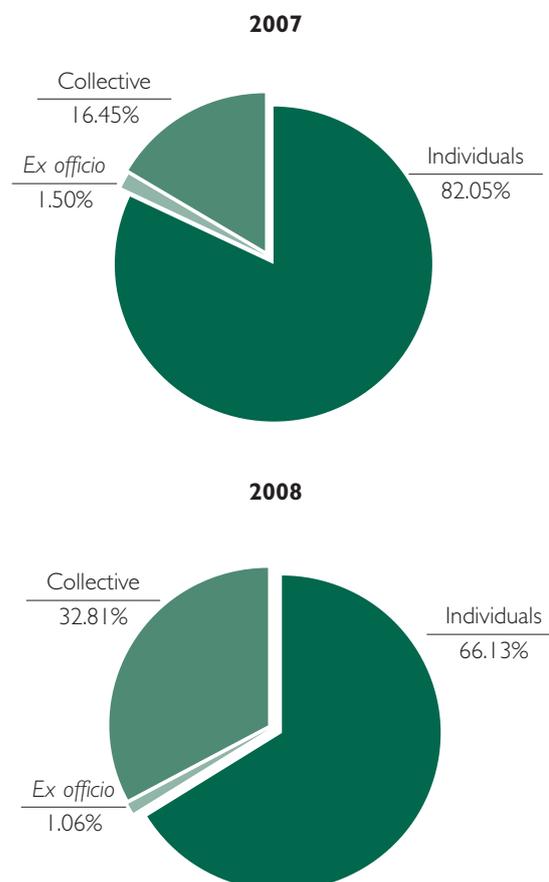


Table 3 charts the percentage of complaints filed since 2001 according to the gender of claimants, as well as the change in percentages throughout the years

represented. A small increase in the number of complaints registered by men versus women can be seen over the last three years.

**TABLE 3**  
Complaint forms filed by gender, 2001 to 2008

	2001	2002	2003	2004	2005	2006	2007	2008
Men	65%	64%	60%	56%	64%	57%	59%	61%
Women	35%	36%	40%	44%	36%	43%	41%	39%

### Distribution of complaints filed by geographical area of origin

The 23,646 complaints filed in 2008, not counting those filed by *ex officio* enquiries, can be displayed according to their geographical area of origin. There

were 23,291 (98.50%) of national origin and 355 (1.50%) complaints originating abroad. In the following graphs and tables a more detailed picture can be seen, broken down by autonomous communities and provinces.

**FIGURE 2**  
Breakdown of complaints by autonomous community: 2008



**TABLE 4**  
**Breakdown of complaints of national origin, by province**  
**and autonomous community: 2007 and 2008**

Provinces and autonomous communities	Number		% of community		% of total	
	2008	2007	2008	2007	2008	2007
<b>País Vasco</b>						
Álava	76	76	11.24	22.09	0.33	0.46
Guipúzcoa	146	81	21.60	23.55	0.63	0.48
Vizcaya	454	187	67.16	54.36	1.94	1.12
<b>Total</b>	<b>676</b>	<b>344</b>	<b>100.00</b>	<b>100.00</b>	<b>2.90</b>	<b>2.06</b>
<b>Cataluña</b>						
Barcelona	1,751	1,727	76.70	78.86	7.52	10.32
Girona	179	182	7.84	8.31	0.77	1.09
Lleida	106	80	4.64	3.65	0.46	0.48
Tarragona	247	201	10.82	9.18	1.05	1.20
<b>Total</b>	<b>2,283</b>	<b>2,190</b>	<b>100.00</b>	<b>100.00</b>	<b>9.80</b>	<b>13.09</b>
<b>Galicia</b>						
A Coruña	814	421	49.01	42.48	3.49	2.52
Lugo	229	126	13.79	12.71	0.98	0.75
Ourense	225	104	13.55	10.49	0.97	0.62
Pontevedra	393	340	23.65	34.32	1.69	2.03
<b>Total</b>	<b>1,661</b>	<b>991</b>	<b>100.00</b>	<b>100.00</b>	<b>7.13</b>	<b>5.92</b>
<b>Andalucía</b>						
Almería	238	170	8.63	9.68	1.02	1.02
Cádiz	449	250	16.29	14.24	1.93	1.50
Córdoba	239	185	8.67	10.54	1.03	1.11
Granada	297	193	10.77	10.99	1.28	1.15
Huelva	157	94	5.69	5.35	0.67	0.56
Jaén	210	95	7.62	5.41	0.90	0.57
Málaga	577	407	20.93	23.18	2.48	2.43
Sevilla	590	362	21.40	20.61	2.53	2.16
<b>Total</b>	<b>2,757</b>	<b>1,756</b>	<b>100.00</b>	<b>100.00</b>	<b>11.84</b>	<b>10.50</b>
<b>Asturias</b>						
<b>Total</b>	<b>500</b>	<b>354</b>	<b>100.00</b>	<b>100.00</b>	<b>2.15</b>	<b>2.12</b>
<b>Cantabria</b>						
<b>Total</b>	<b>225</b>	<b>203</b>	<b>100.00</b>	<b>100.00</b>	<b>0.97</b>	<b>1.21</b>
<b>La Rioja</b>						
<b>Total</b>	<b>184</b>	<b>139</b>	<b>100.00</b>	<b>100.00</b>	<b>0.79</b>	<b>0.83</b>

TABLE 4 (continuation)

Provinces and autonomous communities	Number		% of community		% of total	
	2008	2007	2008	2007	2008	2007
<b>Murcia</b>						
<b>Total</b>	<b>699</b>	<b>459</b>	<b>100.00</b>	<b>100.00</b>	<b>3.00</b>	<b>2.74</b>
<b>Comunitat Valenciana</b>						
Alicante	970	560	34.83	35.35	4.16	3.35
Castellón	265	160	9.52	10.10	1.14	0.96
Valencia	1,550	864	55.65	54.55	6.66	5.16
<b>Total</b>	<b>2,785</b>	<b>1,584</b>	<b>100.00</b>	<b>100.00</b>	<b>11.96</b>	<b>9.47</b>
<b>Aragón</b>						
Huesca	138	61	20.60	13.26	0.59	0.37
Teruel	47	39	7.01	8.48	0.20	0.23
Zaragoza	485	360	72.39	78.26	2.09	2.15
<b>Total</b>	<b>670</b>	<b>460</b>	<b>100.00</b>	<b>100.00</b>	<b>2.88</b>	<b>2.75</b>
<b>Castilla-La Mancha</b>						
Albacete	666	111	43.22	17.26	2.86	0.66
Ciudad Real	171	204	11.10	31.73	0.73	1.22
Cuenca	288	47	18.69	7.31	1.24	0.28
Guadalajara	95	92	6.16	14.31	0.41	0.55
Toledo	321	189	20.83	29.39	1.38	1.13
<b>Total</b>	<b>1,541</b>	<b>643</b>	<b>100.00</b>	<b>100.00</b>	<b>6.62</b>	<b>3.84</b>
<b>Islas Canarias</b>						
Las Palmas	598	366	59.98	57.19	2.57	2.19
Santa Cruz de Tenerife	399	274	40.02	42.81	1.71	1.64
<b>Total</b>	<b>997</b>	<b>640</b>	<b>100.00</b>	<b>100.00</b>	<b>4.28</b>	<b>3.83</b>
<b>Navarra</b>						
<b>Total</b>	<b>196</b>	<b>119</b>	<b>100.00</b>	<b>100.00</b>	<b>0.84</b>	<b>0.71</b>
<b>Extremadura</b>						
Badajoz	350	144	59.73	48.98	1.50	0.86
Cáceres	236	150	40.27	51.02	1.02	0.90
<b>Total</b>	<b>586</b>	<b>294</b>	<b>100.00</b>	<b>100.00</b>	<b>2.52</b>	<b>1.76</b>
<b>Illes Balears</b>						
<b>Total</b>	<b>402</b>	<b>324</b>	<b>100.00</b>	<b>100.00</b>	<b>1.73</b>	<b>1.94</b>

**TABLE 4 (continuation)**

Provinces and autonomous communities	Number		% of community		% of total	
	2008	2007	2008	2007	2008	2007
<b>Community of Madrid</b>						
<b>Total</b>	<b>5,092</b>	<b>4,863</b>	<b>100.00</b>	<b>100.00</b>	<b>21.86</b>	<b>29.07</b>
<b>Castilla y León</b>						
Ávila	76	57	5.13	5.83	0.33	0.34
Burgos	215	189	14.51	19.34	0.92	1.13
León	415	181	28.00	18.53	1.78	1.08
Palencia	82	83	5.53	8.50	0.35	0.50
Salamanca	152	168	10.26	17.20	0.65	1.00
Segovia	73	58	4.93	5.94	0.31	0.35
Soria	39	31	2.63	3.17	0.17	0.19
Valladolid	372	158	25.10	16.17	1.60	0.94
Zamora	58	52	3.91	5.32	0.25	0.31
<b>Total</b>	<b>1,482</b>	<b>977</b>	<b>100.00</b>	<b>100.00</b>	<b>6.36</b>	<b>5.84</b>
<b>Ceuta</b>						
<b>Total</b>	<b>100</b>	<b>53</b>	<b>100.00</b>	<b>100.00</b>	<b>0.43</b>	<b>0.32</b>
<b>Melilla</b>						
<b>Total</b>	<b>107</b>	<b>109</b>	<b>100.00</b>	<b>100.00</b>	<b>0.46</b>	<b>0.65</b>
<b>Unspecified origin</b>						
<b>Total</b>	<b>348</b>	<b>224</b>	<b>100.00</b>	<b>100.00</b>	<b>1.48</b>	<b>1.35</b>
<b>Total</b>	<b>23,291</b>	<b>16,726</b>				

As usual, there are a significant number of individual as well as collective complaints which originate in the autonomous communities with the largest populations,

the largest being the Community of Madrid (21.86%), followed by the Communities of Valencia (11.96%), Andalucía (11.84%) and Cataluña (9.80%) (See Table 4).

**For more information:**  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

**TABLE 5**  
**Individual and collective complaints filed by autonomous community: 2008 and 2007**

Autonomous communities	Complaints individuals				Complaints collective			
	Number		% of total		Number		% of total	
	2008	2007	2008	2007	2008	2007	2008	2007
País Vasco	382	322	2.47	2.32	294	22	3.75	0.77
Cataluña	1,875	1,793	12.13	12.92	408	397	5.21	13.95
Galicia	810	822	5.24	5.92	851	169	10.87	5.94
Andalucía	1,845	1,563	11.93	11.26	912	193	11.65	6.78
Asturias	365	332	2.36	2.39	135	22	1.72	0.77
Cantabria	201	199	1.30	1.43	24	4	0.31	0.14
La Rioja	136	123	0.88	0.89	48	16	0.61	0.56
Murcia	434	345	2.81	2.49	265	114	3.38	4.01
Comunitat Valenciana	1,794	1,467	11.60	10.57	991	117	12.65	4.11
Aragón	445	415	2.88	2.99	225	45	2.87	1.58
Castilla-La Mancha	579	491	3.75	3.54	962	152	12.28	5.34
Islas Canarias	771	596	4.99	4.29	226	44	2.89	1.55
Navarra	167	112	1.08	0.81	29	7	0.37	0.25
Extremadura	308	259	1.99	1.87	278	35	3.55	1.23
Illes Balears	332	302	2.15	2.18	70	22	0.89	0.77
Madrid	3,794	3,569	24.54	25.71	1,298	1,294	16.58	45.47
Castilla y León	990	791	6.40	5.70	492	186	6.28	6.54
Ceuta	38	51	0.25	0.37	62	2	0.79	0.07
Melilla	93	105	0.60	0.76	14	4	0.18	0.14
Unspecified origin*	101	223	0.65	1.59	247	1	3.17	0.03
<b>Total</b>	<b>15,460</b>	<b>13,880</b>	<b>100.00</b>	<b>100.00</b>	<b>7,831</b>	<b>2,846</b>	<b>100.00</b>	<b>100.00</b>

\* Complaints received by e-mail, origin undetermined.

### Complaints originating abroad

The total number of complaints originating abroad was 355. This figure shows a slight decrease compared to the previous year, 2007, and also shows a return to the trend of a gradual decrease that occurred in previous years. (See Table 6).

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**TABLE 6**  
**Breakdown of complaints originating abroad, by country.**  
**2008 to 2005**

Country of origin	2008	2007	2006	2005
Andorra	4	3	3	–
Algeria	1	–	8	7
Argentina	37	44	32	40
Australia	1	1	–	3
Austria	3	3	–	1
Belgium	10	13	10	10
Bolivia	5	7	3	6
Bosnia-Herzegovina	–	–	2	–
Brazil	15	14	6	13
Bulgaria	–	–	–	1
Canada	4	1	2	1
Chile	5	10	5	6
Colombia	23	16	6	24
Costa Rica	1	1	4	2
Cuba	11	11	8	18
Czech Republic	1	–	2	–
Denmark	1	2	–	1
Dominican Republic	3	6	2	3
Ecuador	9	5	9	5
Egypt	1	–	–	–
El Salvador	–	1	1	–
Ethiopia	–	1	–	–
Equatorial Guinea	1	–	–	4
Finland	1	2	–	1
France	26	25	59	38
Germany	21	21	20	12
Greece	–	1	1	–
Guatemala	–	1	–	–
Holland	6	6	2	5
Honduras	3	3	–	1
Hungary	–	2	1	1
India	–	–	–	1
Ireland	1	2	3	4
Israel	1	2	–	1
Italy	4	10	9	6
Japan	2	–	–	–
Jordan	–	–	1	–
Kyrgyzstan	–	1	–	–
Latvia	–	1	–	–
Lebanon	–	–	–	1
Liechtenstein	1	–	–	–
Lithuania	–	–	–	2
Luxemburg	2	2	–	1
Malta	1	–	1	–
Mauritania	–	–	–	1
Mexico	12	11	9	14
Mongolia	–	1	–	–
Morocco	25	27	24	26
New Zealand	–	–	–	1
Nicaragua	3	2	1	4
Norway	3	–	–	–
Pakistan	–	2	1	1
Panama	1	4	2	–
Paraguay	1	–	–	–
Peru	17	12	17	11
Poland	3	–	1	–
Portugal	9	11	14	11
Puerto Rico	1	1	–	–
Russia	–	2	–	1
Senegal	–	–	–	1
Slovakia	1	–	3	–
South Africa	–	–	1	–
Sweden	1	2	1	6
Switzerland	5	3	7	7
Taiwan	–	1	–	–
Turkey	–	1	1	–
Ukraine	3	1	1	1
United Kingdom	38	21	28	15
United States	17	57	18	15
Uruguay	3	2	5	7
Venezuela	5	6	11	13
Western Sahara	2	–	–	–
<b>Total</b>	<b>355</b>	<b>385</b>	<b>345</b>	<b>354</b>

**For more information:**  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

## Breakdown according to the method of filing complaints

Complaints can also be categorized depending on which method was used to submit them to the Ombudsman's office. The notable increase of complaints originating from offices of autonomous community parliamentary commissioners, an increase of 46,57% compared to last year, is proof of the adequate and growing collaboration between our institutions. The largest number of these came from, in order of numerical importance, the Galician Ombudsman (Valedor do Pobo) followed by the Andalusian Ombudsman, the Valencian Ombudsman (Síndic De Greuges) and the Ombudsman (Procurador del Común) of Castilla y León, respectively (See Tables 7, 8 and 9).

**TABLE 7**  
Breakdown of complaints submitted, by filing method: 2008

Filing method	Number	% of total
Direct (individual y collectively)	21,308	90.11
Via Ombudsmen in Autonomous Parliaments	2,263	9.57
Via other organisms and public entities	75	0.32
<b>Total</b>	<b>23,646</b>	<b>100.00</b>

**TABLE 8**  
Complaints received via Ombudsmen of autonomous communities: 2008 and 2007

ORIGINS	2008	2007
Arateko (País Vasco)	62	66
Sindic de Greuges (Cataluña)	195	269
Valedor de Pobo (Galicia)	581	87
Defensor del Pueblo Andaluz	274	265
Procurador General de Asturias	41	40
Síndic de Greuges (Comunitat Valenciana)	260	161
Justicia de Aragón	141	160
Defensor del Pueblo de Castilla-La Mancha	135	40
Defensor del Pueblo de La Rioja	70	53
Diputado del Común (Islas Canarias)	184	159
Defensor del Pueblo de Navarra	84	59
Procurado del Común de Castilla y León	236	185
<b>Total</b>	<b>2,263</b>	<b>1,544</b>

**TABLE 9**  
Complaints received through other entities and organizations: 2008 and 2007

Constitutional Tribunal	–	2
General Courts	–	3
Judicial Power	–	1
Government Delegations	1	1
Autonomous organizations	7	–
City Hall	2	1
Municipal Ombudsman offices	41	11
Municipal Consumer Information Offices	9	3
Foreign Ombudsman	15	9

## Breakdown of complaints by sector

Table 10 shows information relating to the subject matter of complaints registered in the Ombudsman in 2008, broken down into the eight management areas used by the Ombudsman's office. The specific subject matter of the individual, collective, and *ex officio* complaints are outlined in the chart. Taking the individually filed complaints into consideration, the greatest number of these were directed to Economic Administration, followed by those areas concerned with Health and Social Issues, to Justice and Domestic Violence, and to Land Management, which includes questions related to the environment, among others. As for collective complaints, the greatest number can also be found in the area of Economic Administration, followed by those concerned with Civil Service and Public Employment and those related to Defense and Home Affairs.

The greatest number of *ex officio* investigations were those related to questions about Education and Culture, Land Management and the environment, Health and Social Policy, Civil Service and Public Employment, in this order.

**TABLE 10**  
**Breakdown of complaints filed in 2008 by management**  
**area and subject matter**

<b>Civil Servants and Public Employment</b>	<b>1,270</b>	<b>1,863</b>	<b>33</b>	<b>3,166</b>
Civil servants and personnel from general administration, Social Security, and autonomous and local administrations	1,019	1,225	20	2,264
Personnel from the armed forces and security corps	186	519	13	718
Judges and Magistrates, Attorney Generals, and personnel at the service of the Justice Administration and Penitentiary Institutions	65	119	–	184
<b>Defense and Home affairs</b>	<b>1,751</b>	<b>517</b>	<b>27</b>	<b>2,295</b>
Citizen and road security	1,007	121	4	1,132
Home Affairs	284	348	9	641
Prison administration	446	48	12	506
Defense	14	–	2	16
<b>Justice and Domestic Violence</b>	<b>2,007</b>	<b>–</b>	<b>23</b>	<b>2,030</b>
Justice Administration	1,387	–	20	1,407
Registry Offices	543	–	–	543
Religious freedom	29	–	–	29
Victims of crimes	22	–	3	25
Judicial agents	26	–	–	26
<b>Economic Administration</b>	<b>3,544</b>	<b>4,956</b>	<b>13</b>	<b>8,513</b>
Economic management, Internal revenue and taxes	1,707	4,956	4	6,667
Telecommunications and postal services	1,075	–	3	1,078
Transportation infrastructure	517	–	5	522
Industry and Commerce	218	–	1	219
Agriculture, livestock and fishing	27	–	–	27
<b>Land Management</b>	<b>1,952</b>	<b>504</b>	<b>46</b>	<b>2,502</b>
Zoning and housing	1,160	129	10	1,299
Environment	783	365	36	1,184
Land management and planning	9	10	–	19
<b>Health and Social Issues</b>	<b>2,485</b>	<b>2</b>	<b>35</b>	<b>2,522</b>

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**TABLE 10 (continuation)**

<b>Sectors</b>	<b>Individuals</b>	<b>Collective</b>	<b>Ex officio</b>	<b>Total</b>
Social policy	875	2	31	908
Labor and social security	901	–	1	902
Health	563	–	3	566
Consumo	146	–	–	146
<b>Immigration and Foreign Affairs</b>	<b>1,315</b>	<b>–</b>	<b>16</b>	<b>1,331</b>
Residence permits and immigration	1,269	–	16	1,285
Foreign affairs	37	–	–	37
Racism and xenophobia	9	–	–	9
<b>Education and Culture</b>	<b>1,480</b>	<b>–</b>	<b>60</b>	<b>1,540</b>
Education	975	–	60	1,035
Activities and services	142	–	–	142
Data protection	108	–	–	108
Communication media	102	–	–	102
Bilingual issues	95	–	–	95
Culture and sports	44	–	–	44
Intellectual property	14	–	–	14



## Filing of complaints to the Ombudsman

### By Internet

[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

### By Fax:

Sending signed document to (+34) 91 308 11 58

### In person:

At Zurbano, 42; corner of Eduardo Dato,  
Monday – Friday 9am-2pm and Monday – Thursday 4pm-6pm.  
Nearest metro: Rubén Darío, Line 5; buses: 40 and 147

### By standard post:

Sending signed document to Zurbano, 42. 28010 Madrid- SPAIN

## Status of complaint processing at the end of 2008

The data in Table 11 show the processing status as of 31 December for complaints filed in 2008.

**TABLE 11**  
Processing status of complaints filed and *ex officio* investigations  
as of 31 December, 2008

	<i>Ex officio</i>		Individual		Collective		Total	
	Number	%	Number	%	Number	%	Number	%
Admitted for processing	253	100.00	5,564	40.60	5,819	74.20	11,636	53.38
Being processed	124	49.01	3,221	23.50	5,511	70.28	8,856	40.62
Concluded	108	42.69	2,338	17.06	308	3.93	2,754	12.63
Suspended	21	8.30	5	0.04	–	–	26	0.12
Not admitted for processing	–	–	8,141	59.40	2,023	25.80	10,164	46.62
<b>Total</b>	<b>253</b>	<b>100.00</b>	<b>13,705</b>	<b>100.00</b>	<b>7,842</b>	<b>100.00</b>	<b>21,800</b>	<b>100.00</b>

It is necessary to explain what happens to complaints that are not accepted for processing. Each case is considered carefully, and those that incur in one or more of the legal justifications for rejection as outlined in the Organic Law 3/1981, which regulates the Ombudsman's office, they are classified as such. In all cases, without exception, information is promptly sent to the citizen in accordance with Article 17 of the aforementioned law

and they are given additional information about how to resolve their problem along with suggestions for possible courses of action.

The data for 2008 shows a slight increase in complaint submissions, although there is still a high percentage of complaints that were not admitted, for several of the reasons outlined in the law. The reasons for not admitting individual complaints in 2008 are shown in Table 12.

**TABLE 12**  
Pending complaint cases as of 31 December, 2008

	<i>Ex officio</i>		Individuals		Collective		Total	
	Number	%	Number	%	Number	%	Number	%
Pending information lacking from filer of complaint	0	–	767	36.54	0	–	767	36.54
Pending study	0	–	1,332	63.46	0	–	1,332	63.46
<b>Total</b>	<b>0</b>		<b>2,099</b>	<b>100.00</b>	<b>0</b>		<b>2,099</b>	<b>100.00</b>

**TABLE 13**  
**Causes of non-admission of individual complaints**  
**2008**

Causes of non- admission	Number
Administrative authority regarding issues within its own jurisdiction	18
Lack of basis	136
Inexistence of claim	20
Judicial intervention	814
Bad faith	2
Jurisdiction of National Defence	3
No previous administrative action	1,210
No action involving public authorities	389
No answer to resolvable defects	12
No answer to requests for information	385
No formal complaint, information sent	222
No formal complaint, information requested	227
No evidence of administrative irregularity	2,602
No legitimate interest	21
Other motives for non-admission	1,232
Period over a year	19
Anonymous complaint	3
Resolved without Ombudsman's intervention	121
Irreversible sentence	149
Third party bias	4
Intervention by Autonomous parliamentary commissioner	141
Personal conflict unrelated to the Administration	268
Without basis to impose an appeal	75
Unfulfilled requirements for the admission of and appeal	52
Waiver of complaint	16
<b>Total</b>	<b>8,141</b>

### Individual complaint cases

The greatest number of individual and *ex officio* enquiry complaints filed before the public administrations were those concerned with the General State Administration followed by those in which no specific investigation was

necessary. The latter referred to complaints that upon being submitted for processing had already been investigated with respect to other cases which had presented similar problems, as well as those directed to the local administration.

**TABLE 14**  
**Individual and *ex officio* enquiry complaints filed**  
**with governmental bodies in 2008**

Administration	Being processed	Concluded	Suspended	Total
General State Administration	1,297	1,209	4	2,510
Autonomous Community Administration	354	333	13	700
Local Administration	474	300	8	782
Attorney General's Office	140	72	–	212
Other public entities	43	65	–	108
Miscellaneous administrations	166	63	–	229
Investigation unnecessary	871	404	1	1,276
<b>Total</b>	<b>3,345</b>	<b>2,446</b>	<b>26</b>	<b>5,817</b>

Tables 15 and 16 detail complaints from 2008 that were processed respectively by the General State Administration and by organizations under autonomous community administrative bodies. Once again, the majority of complaints processed were those received by the Ministry of the Interior, whose

functions include supervision of penitentiary services, together with those related to the Ministry of Justice, and the smallest number were those related to the Prime Minister's Office, the newly created Ministry of Equality, The Prime Minister and the Ministry of Culture.

**TABLE 15**  
**Breakdown of case processing handled by the General State Administration: 2008**  
**Individual and ex officio enquiry complaints**

Ministries	Being processed	Concluded	Suspended	Total
Prime Minister	1	–	–	1
Prime Minister's Office	1	4	–	5
Ministry of Public Administrations	15	10	–	25
Ministry of Foreign Affairs and Co-operation	134	83	–	217
Ministry of Science and Innovation	29	67	–	96
Ministry of Culture	1	4	–	5
Ministry of Defence	21	14	1	36
Ministry of Economy and Finance	99	121	2	222
Ministry of Education, Social Policy and Sports	28	36	–	64
Ministry of Public Works	110	176	–	286
Ministry of Equality	1	–	–	1
Ministry of Industry, Tourism, and Trade	78	8	–	86
Ministry of the Interior	222	270	–	492
Ministry of Justice	238	150	–	388
Ministry of the Environment, Rural Areas and Marine Areas	34	6	–	40
Ministry of Health and Consumer Affairs	6	7	–	13
Ministry of Labour and Immigration	74	103	1	178
Ministry of Housing	61	19	–	80
Peripheral administrations	105	103	–	208
Miscellaneous administrations	39	28	–	67
<b>Total</b>	<b>1,297</b>	<b>1,209</b>	<b>4</b>	<b>2,510</b>

**TABLE 16**  
**Breakdown of case processing handled by the Autonomous Community Administrations: 2008**  
**Individual and ex officio enquiry complaints**

Autonomous communities	Being processed	Concluded	Suspended	Total
Cataluña	2	1	–	3
País Vasco	1	7	1	9
Galicia	12	20	1	33
Cantabria	8	5	1	14
Asturias	13	9	1	23
Andalucía	35	33	1	69
Murcia	25	18	1	44
Aragón	9	6	–	15
Castilla-La Mancha	12	9	–	21
Comunitat Valenciana	53	26	–	79
La Rioja	1	2	1	4
Extremadura	8	14	1	23
Islas Canarias	19	10	1	30
Castilla y León	19	14	–	33
Madrid	124	138	–	262
Navarra	2	3	1	6
Illes Balears	10	11	1	22
Ceuta	–	2	1	3
Melilla	1	3	1	5
Miscellaneous administrations	–	2	–	2
<b>Total</b>	<b>354</b>	<b>333</b>	<b>13</b>	<b>700</b>

**TABLE 17**  
**Types of conclusions in individual and ex officio enquiry cases,**  
**by administration: 2008**

Administrations	Proper procedure	Corrected action	Uncorrected action	Undetermined	Total
General State Administration	598	334	88	189	1,209
Autonomous Community Administrations	112	103	20	98	333
Local Administrations	144	108	11	37	300
Attorney General's Office	49	10	3	10	72
Other public entities	51	9	2	3	65
Miscellaneous administrations	25	15	7	16	63
Investigation unnecessary	102	73	181	48	404
<b>Total</b>	<b>1,081</b>	<b>652</b>	<b>312</b>	<b>401</b>	<b>2,446</b>

**TABLE 18**  
**Breakdown of types of conclusions for individual and *ex officio* complaints received**  
**in relation to the General State Administration: 2008**

Ministries	Proper procedure	Corrected action	Uncorrected action	Undetermined	Total
Prime Minister	–	–	–	–	–
Prime Minister's Office	1	3	–	–	4
Ministry of Public Administrations	7	2	–	1	10
Ministry of Foreign Affairs and Co-operation	45	27	3	8	83
Ministry of Science and Innovation	7	11	1	48	67
Ministry of Culture	1	2	–	1	4
Ministry of Defence	9	4	–	1	14
Ministry of Economy and Finance	65	44	3	9	121
Ministry of Education, Social Policy and Sports	20	12	1	3	36
Ministry of Public Works	77	38	54	7	176
Ministry of Equality	–	–	–	–	–
Ministry of Industry, Tourism, and Trade	6	1	–	1	8
Ministry of the Interior	167	64	17	22	270
Ministry of Justice	65	55	1	29	150
Ministry of the Environment, Rural Areas and Marine Areas	4	–	–	2	6
Ministry of Health and Consumer Affairs	1	2	1	3	7
Ministry of Labour and Immigration	64	19	3	17	103
Ministry of Housing	8	2	–	9	19
Peripheral administrations	43	35	2	23	103
Miscellaneous administrations	8	13	2	5	28
Other administrations	–	–	–	–	–
<b>Total</b>	<b>598</b>	<b>334</b>	<b>88</b>	<b>189</b>	<b>1,209</b>

## The Ombudsman in class: didactic material on human rights for non-university students

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**TABLE 19**  
**Breakdown of types of conclusions for individual and ex officio complaints received,**  
**in relation to Autonomous Community Administrations: 2008**

Autonomous communities	Proper procedure	Corrected action	Uncorrected action	Undetermined	Total
Cataluña	–	–	–	1	1
País Vasco	3	1	–	3	7
Galicia	9	5	3	3	20
Cantabria	1	–	1	3	5
Asturias	5	2	–	2	9
Andalucía	14	11	2	6	33
Murcia	6	11	–	1	18
Aragón	3	–	–	3	6
Castilla-La Mancha	4	2	1	2	9
Comunitat Valenciana		5	11	2	8 26
La Rioja	2	–	–	–	2
Extremadura	5	4	1	4	14
Islas Canarias	2	2	1	5	10
Castilla y León	2	4	3	5	14
Madrid	42	45	5	46	138
Navarra	1	1	–	1	3
Illes Balears	6	2	–	3	11
Ceuta	1	–	1	–	2
Melilla	1	–	–	2	3
Miscellaneous administrations	–	2	–	–	2
<b>Total</b>	<b>112</b>	<b>103</b>	<b>20</b>	<b>98</b>	<b>333</b>

## Filing of complaints to the Ombudsman

### By Internet

[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

### By Fax:

Sending signed document to (+34) 91 308 11 58

### In person:

At Zurbano, 42; corner of Eduardo Dato,  
Monday – Friday 9am-2pm and Monday – Thursday 4pm-6pm.  
Nearest metro: Rubén Darío, Line 5; buses: 40 and 147

### By standard post:

Sending signed document to Zurbano, 42. 28010 Madrid- SPAIN

## 7,842 collective complaints

The collective complaints processed in 2008 have generated a total of 7,842 cases. Complaints made by a significant number of citizens along with the concise content of their corresponding files are briefly described below:

- 1,107 express their disagreement with the regulation in Royal Decree 1629/2006 on the basic aspects of the curriculum for teaching foreign languages, with respect to intermediate and advanced levels.
- 15,806 people request better diligence and flexibility in the resolution of a judicial procedure related to the death of a citizen.
- 266 inhabitants of Poblado de San Miguel, in Úbeda (Jaén) complain about not having municipal drinking water for several years.
- 2,200 citizens of the City Hall of Villarrobledo (Albacete), led by their Mayor, ask for the intervention of the Ombudsman so that they will be able to perform autopsies in the town morgue.
- 741 health professionals request the intervention of the Ombudsman before the Board of Health of the Community of Madrid, in relation to certain projects for privatizing public health services.
- 2,200 residents of Los Camacho (Murcia) request the Ombudsman's mediation to prevent the installation of a presumably polluting industry within city limits.
- 4,500 residents of Briviesca (Burgos) request attention for a citizen who has been sentenced to 6 years in prison.
- 557 citizens demonstrate their disagreement with particular parts of Royal Decree 1629/2006 of 29 December, which has to do with the regulations regarding teaching languages.
- 900 people from various neighborhood associations in Zarzalejo (Jaén) complain about the danger posed to users of the local railways due to the (bad) condition of said railways.
- 141 people request that the Ombudsman study the possibility of asking the proper authorities for a pardon for a person serving a prison sentence.
- 4,000 people request that the Ombudsman study the possibility of asking the proper authorities for a pardon for a person serving a prison sentence.
- 141 civil servants posted to the State Agency of Tax Administration (AEAT) complain about alleged discrimination with respect to the components of the Tax Inspectors Corps and request that this organisation make an adequate report of job positions.
- 769 residents of A Coruña demonstrate their disagreement about the installation of mobile phone radio-electric towers close to their homes.
- 715 civil servants and workers from educational orientation and psycho-pedagogical teams, headed by the Secretary General of the Educational Federation of the Workers Commission, demonstrate their disagreement with Community of Madrid trying to modify the the current organisation of orientation centers.
- 8,000 civil servants and library users demonstrate their disagreement with the application of the price on borrowing books required by the European Directive 2006/115/CE.
- 121 residents of Deleitosa (Cáceres) consider that the property tax increase approved by their City Hall is arbitrary.
- 829 residents of Mazarrón (Murcia), led by one of their city councilman, report alleged housing and administrative infractions in a housing development within city limits.
- 442 affected residents have complained about alleged irregularities in the construction of the 'Variante de Pajares', a spur line of the high-speed train line connecting the region to Asturias.
- 6,000 residents of Cunit (Tarragona) disagree with the revision of cadastral values in their town.
- 2,186 workers of the State Postal and Telegraph Society, led by the Secretary General of the General Workers Confederation (CGT), filed a complaint about the inferior service of the Mostoles (Madrid) Distribution Center Number 2, due to non - compliance of postal service rules.
- 409 workers in the Administration of the Autonomous Community of Cantabria complain about the alleged discrimination they are being subjected to, compared to workers in other administrations, in reference to the enjoyment of particular vacation periods.
- 130 residents of El Prat de Llobregat (Barcelona) have complained about the impact that the high - speed Madrid/Barcelona railway will have on their houses as a result of their being located in an area affected by the line.
- 193 residents of the parishes of A Veiga, Goiás and Carballeda in the municipality of Lalín (Pontevedra) complain about the new traffic signal installed by the Directorate General of Highways at kilometre 159 of National Highway 640. The new signal forces them to go three kilometres out of their way to cross the highway.
- 167 residents of San Agustín del Guadalix (Madrid) complain about the decision adopted by the Directorate of the North Madrid Area of the Board of Education (of the Community of Madrid), in which they

- have consolidated the three existing groups of pupils into just two at the local Infanta Leonor Public School.
- 630 residents of Rascafría (Segovia) and several council members from their City Hall demonstrate their disagreement with the installation project by the Canal Isabel II water management facility of a wastewater treatment plant near the center of their town.
  - 300 members of different agricultural cooperatives in the province of León demonstrate their disagreement with the inter-professional framework agreement for the sugar beet campaign.
  - 384 civil servants and workers of the City Hall of Madrid complain about having been subjected to a violation of their right to protect their personal reputation because of the actions in their workplace of various communication media, especially audiovisual, who were reporting on police activity surrounding a judicial process called 'the Guateque Case'.
  - 962 civil servants of the Ministry of Economy and Finance believe they are being subject to arbitrary discrimination in taxation compared to workers at the State Tax Authority (AEAT), and request equal treatment.
  - 126 civil servants of the Aide Corps of Penitentiary Institutions demonstrate their disagreement with the merger of two former scales or levels in the process of corporative organization, produced while developing that which is set forth in Organic Law 3/2007, of 22 May, for effective equality between men and women.
  - 348 people demonstrate their opposition to bullfighting and request that the proper authorities be asked to prohibit the activity.
  - 453 active service personnel believe they are subject to discrimination by Law 39/2007 of 19 November, for Military Careers with respect to the regulation about promotions for those on reserve status.
  - 107 civil servants in the Justice Administration request the intervention of the Ombudsman before the Ministry of Justice to resolve an indefinite strike they have been holding.
  - 164 inhabitants of Tierra de Barros county in Badajoz demonstrate their disagreement with the installation of a refinery in their area and with all of the environmental problems it could create.
  - 101 business partners of a housing cooperative in Getafe (Madrid) demonstrate their disagreement with the expropriation of some land.
  - 2,629 IT workers want the Ombudsman to request relevant administrations to regulate the IT engineering and IT technical engineering professions.
  - 974 civil servants working in provincial offices of the Social Security Treasury consider the November 2007 agreement regarding salaries and professional promotions between this entity and various trade unions to be offensive and insulting.

- 8,573 users of the so-called 'night-time rate' for electricity report the problems caused by the modifications in said rate in relation to heating systems and collection of safe drinking water.
- 714 consumers, led by the president of the Spanish Consumers Union, complain about the problems caused by the modification of the price of electricity implemented by Royal Decree 1346/2006, 29 December, regulating these prices since 1 January 2007 without an audience on the matter from consumers.
- 100 citizens report certain irregularities in the pass/fail selection exams they took which were required to be able to attend a course for the Certificate of Aptitude for Driving Instructors. The exam was presented by Resolution of the Directorate General of Traffic, 26 December 2007.

**TABLE 20**  
Breakdown of collective complaint processing  
as of 31 December 2008

Situation	Number	%
Admitted	5,819	74.20
Being processed	5,511	70.28
Closed	308	3.93
Not admitted	2,023	25.80
Pending processing	–	–
<b>Total</b>	<b>7,842</b>	<b>100.00</b>

The reason why certain collective complaints were rejected is shown in Table 21.

**TABLE 21**  
Causes for rejection of collective  
complaints: 2008

Reasons for non-admission	Number
No evidence of administrative irregularity	1,467
Other reasons for non-admission	556
<b>Total</b>	<b>2,023</b>

As with individual complaints, the collective complaints handled in the various public administrations in 2008 are presented in Tables 22, 23, and 24, broken down by organization and public entity.

**TABLE 22**  
Collective complaint cases processed,  
by Administration: 2008

Administrations	Being processed	Concluded	Total
General State Administration	2,512	124	2,636
Local Administrations	84	56	140
Miscellaneous administrations	178	1	179
Investigation unnecessary	2,737	127	2,864
<b>Total</b>	<b>5,511</b>	<b>308</b>	<b>5,819</b>

**TABLE 23**  
Breakdown of collective complaints handled  
by the General State Administration, 2008

Ministries	Being processed	Concluded	Total
Ministry of Foreign Affairs and Co-operation	2	–	2
Ministry of Defence	75	–	75
Ministry of Economy and Finance	70	–	70
Ministry of Industry, Tourism, and Trade	2,257	–	2,257
Ministry of the Interior	107	48	155
Ministry of Labour and Immigration	–	76	6
Miscellaneous Ministry departments	1	–	1
<b>Total</b>	<b>2,512</b>	<b>124</b>	<b>2,636</b>

**TABLE 24**  
Types of conclusions for collective complaints, by administration: 2008

Administrations	Proper procedure	Corrected action	Unocrected action	Undetermined	Total
General State Administration	76	48	–	–	124
Local Administrations	56	–	–	–	56
Miscellaneous administrations	–	1	–	–	1
Investigation unnecessary	101	1	2	23	127
<b>Total</b>	<b>233</b>	<b>50</b>	<b>2</b>	<b>23</b>	<b>308</b>

## 253 *ex-officio* complaints

The Ombudsman handled 253 *ex officio* complaints in 2008, practically the same number as those processed in 2007. As its name indicates, *ex officio* actions are those that the Ombudsman's Office carries out on its own initiative if it discovers facts that it deems worthy of investigation. A

breakdown of these actions, which are carried out under the auspices of article 12.1 of the Organic Law 3/1981, 6 April, is shown in the following Table, which also specifies the status of each action as of 31 December, 2008 as well as the Administration that processed them. (See Table 25).

**TABLE 25**  
***Ex officio* enquiry complaints according to the various government administrations: 2008**

Administrations	Being processed	Concluded	* Suspended	Total
General State Administration	39	73	–	112
Autonomous Community Administrations	17	20	13	50
Local Administrations	28	12	8	48
Attorney General's Office	3	–	–	3
Other public entities	5	2	–	7
Miscellaneous administrations	22	1	–	23
Investigation unnecessary	10	–	–	10
<b>Total</b>	<b>124</b>	<b>108</b>	<b>21</b>	<b>253</b>

\* Pending other resolutions (judicial sentence, resolution of another case filed..).

### Justice

Among the many *ex officio* enquiries initiated by the Ombudsman in the area of justice are those that deal with domestic violence, such as: one to assess difficulties encountered by the Civil Guard in the province of Cadiz in enforcing court orders to protect female victims of gender violence; another opened with the Department of Employment and Social Welfare of the Government of Cantabria on the bill to guarantee the right to social assistance for gender violence victims in Cantabria; and the case brought before the General Directorate of the Police and Civil Guard of the Ministry of Interior, on the Police Corps and State Security Force officers responsible for monitoring gender violence crime cases, for domestic violence in general, and for providing protection to victims.

Additionally, two *ex officio* enquiries were opened: the first to study the actions of magistrate No. 5, Torrejón de Ardoz (Madrid) during the course of criminal proceedings in which a woman and her partner were found dead, and the second to investigate the death of a woman at the hands her companion in spite of a restraining order in effect in a case handled by the Coroner's Court No. 7 in Majadahonda (Madrid) and despite repeated allegations made by the victim.

Excessive caseloads at the Courts for Contentious-Administrative Proceedings of Valencia was another subject of enquiries by the Ombudsman, as well as the high rate of cases of misdemeanour offences committed by minors which lapsed through the application of

the statute of limitations, as a result of the lack of sufficient staff in the technical teams in the Juvenile Courts in Alicante. The Institution also attempted to determine the general level of cases pending in Spanish Criminal and Enforcement Courts.

Furthermore, an enquiry was initiated with the Department of the Governor's Office, Justice and Security of the Islas Canarias and with the Attorney General to investigate the alleged existence of 402 samples taken from 1998 to 2005 in numerous cases of sexual assault, that might have been left "unprocessed" in the laboratories of the Institute of Legal Medicine, Las Palmas de Gran Canaria. Another *ex officio* enquiry dealt with the revision of Organic Law 19/1994, December 23, on protection given to witnesses and experts in criminal cases.

The institution also looked into prison legislation reform with respect to post-prison assistance provided to Spanish prisoners having served time abroad, with particular interest in a case involving a Spanish woman held prisoner in Tangiers.

The Ombudsman also made several visits in 2008 to minors internment centers, such as Sograndio, in Asturias, or Vicente Marcelo Nessi, in Badajoz.

### Prisons

The Ombudsman opens an inquiry whenever a prisoner dies. In 2008, five cases were opened for this reason with the Secretary General of Penitentiary Institutions of the Ministry of Interior.

Also investigated were the following: the alleged mismanagement of prison assistance programs, conditions affecting children of female prison inmates at Tenerife II prison, and an outbreak of legionnaires' disease discovered at Zuera prison (Zaragoza).

Issues involving prison officers led to a number of *ex officio* enquiries, such as the overpowering of a prison guard by inmates at the Penitentiary Facility in Valencia, the arrest of several officers for drug trafficking, or an sexual incident involving a prison officer in Palma de Mallorca.

### **Citizenship and public safety**

Complaints of alleged police mistreatment or abuse were also the subject of several enquiries. For example, the death of a 23-year old young man in a cell at the Saragossa Police Department Headquarters, and the death of a Honduran immigrant in a cell at the National Police Station in Getafe (Madrid). Additional enquiries were carried out to determine the veracity of the alleged illegal detentions attributed to an official of the National Police Corps, the abuse of a Bolivian citizen allegedly committed by police after he resisted being boarded onto an aircraft in compliance with a deportation order, and an attack on two British citizens by members of the National Police Corps.

Along the same lines, the Ombudsman looked into acts of aggression by members of private security forces. This was the case of an enquiry opened with the Directorate General of Police and Civil Guard of the Interior Ministry as well as with the City Council of Madrid with respect to the death of a young man at a nightclub in Madrid. Enquiries were also initiated to look into cases of alleged racist assault by several security guards in the Madrid Metro subway system.

Moreover, in 2008 several *ex officio* enquiries dealt with the scarcity of funding and equipment for police officers. As such, the circumstances affecting the local police in several towns in Galicia, and the lack of Civil Guard officers in certain municipalities of Madrid were investigated.

### **Immigration and Alien Affairs**

The Ombudsman looked into several matters involving immigration matters in 2008. As such, the institution carried out *ex officio* enquiries on the following subjects: the temporary closure of a provisional shelter for Sub-Saharan immigrants that had been set up by the Madrid City Hall, the arrest of an officer for alleged fraud in the processing of residency and work permits at the Immigration Department of Palma de Mallorca, the actions stemming from two attempts at mass entry into Melilla by a large number of foreign nationals, or events in Roquetas de Mar (Almería) that led to the death of a young Senegalese citizen.

Likewise, and among the normal activities of the Ombudsman, several visits were made to alien and minor detention facilities. Two centres for unaccompanied alien minors were visited in Ceuta and Melilla: La Esperanza and Fuerte de la Purísima, as were two other temporary shelters for immigrants. Several smaller centres were visited on the Islas Canarias, such as the one at Arinaga, El Fondillo y Siete Puertas, all three on the island of Gran Canaria, as well as the Barranco Seco alien internment centre in Las Palmas. Also visited were the first aid and detention facilities of the National Police Headquarters in Playa de las Americas on the island of Tenerife, as well as in Maspalomas on the island of Gran Canaria. Finally, the alien internment centre in Madrid was also visited.

Among further *ex officio* enquiries carried out by the institution on immigration matters were the following: the alleged existence of a pattern of corruption at the Spanish Consulate in Lima with respect to Spanish passports, the causes for the delay in granting family reunification visas to the children of a Congolese citizen who was left quadriplegic after a beating that was allegedly racially motivated, and the involvement of certain police officers assigned to the Provincial Police Alien and Documentation Unit of Madrid in a pattern of unlawful issuance of documentation to undocumented aliens.

### **Educational Administration**

Universities predominated among *ex officio* enquiries in the area of education that were initiated by the Ombudsman Institution in 2008. As such, as many as 47 cases were opened with the same number of universities throughout Spain to ensure that the rights and responsibilities of students were being fully safeguarded during the enforcement of disciplinary action.

Likewise, another 10 *ex officio* cases were opened involving universities in Andalucía, Extremadura and the Illes Balears in order to ascertain whether they had applied their initial plan to partially waive tuition and public fees for students with disabilities.

Also investigated was whether admission procedures carried out by a state-subsidized, private school of Madrid were in violation of the constitutional right to equality.

### **Health and consumer affairs**

The lack of a radiotherapy unit in Ibiza, to provide quality care to cancer patients living on the Illes Balears, was the subject of a complaint initiated by the Ombudsman with respect to Health.

Additionally, the rising SMS rates of a telecommunications company were the subject an enquiry with the Ministry of Industry and the Ministry of Health and Consumption.

## Social affairs

Social issues were of particular importance in 2008. As such, a study on ‘Centers providing shelter for minors with behavioural issues and complicated social circumstances’ was carried out subsequent to the opening of several enquiries with the various administrations in charge of safeguarding these minors.

Moreover, in the Murcia and the Community of Madrid, an *ex officio* enquiry was opened to investigate conditions, resources, and treatment of residents at certain nursing homes.

Social and hygienic conditions at settlements in the Cañada Real Galiana area of Madrid, excessive delays in processing applications for unemployment benefits by the State Public Employment Agency offices in Madrid, as well as the long queues that form outside these offices, were also the subject of *ex officio* enquiries carried out by the Ombudsman.

## Economic activity

Noteworthy among enquiries conducted by the institution in the area of economic activity was one case in particular, opened with the Directorate General of the State Taxation Agency of the Ministry of the Economy and Finance, on problems arising from the initial drafts that the tax authorities were sending out to citizens to help them prepare their Individual Income Tax declarations.

The social outcry over the new increase in electricity fees, exceeding the CPI, and the establishment of a new social fee that sets limits on consumption without taking household circumstances into account led to an *ex officio* enquiry with the General Secretariat for Energy of the Ministry of Industry, Tourism and Trade. Details were also sought from this ministry about the study that had been conducted by their experts regarding certain offers advertised by operators. In this area, the Ombudsman is preparing a case study on the telecommunications sector from the perspective of services provided to citizens in an attempt to strengthen the market as well as to safeguard users’ rights.

The Ombudsman also investigated several matters related to air traffic, such as insufficient staff and material resources to handle complaints from passengers after the entry into force of Regulation 261/2004 on compensation and assistance to passengers who have been denied boarding or whose flights have been cancelled or severely delayed, as well as the practice of many airlines of charging a baggage fee for each suitcase in addition to airfare. An *ex officio* enquiry was also opened to gather data on a case involving an airline that denied boarding to a sick passenger attempting to return home who needed oxygen during the flight, and another in order to calculate average waiting times for baggage in Terminal 4 of Barajas airport.

## Environment

Among *ex officio* enquiries initiated with respect to the Environment, five noteworthy cases were opened to study the increase and overflow of urban waste in municipal dumps in the Community of Valencia, the Islas Canarias, Galicia, Murcia and Castilla y León.

Along similar lines, the lack or inadequacy of water purification systems in certain municipalities prompted the opening of enquiries with the Ministry of the Environment and with various state and municipal governments throughout Spain.

Two enquiries were initiated with the Nuclear Safety Board to study an incident at the Ascó nuclear plant involving the theft of a suitcase that contained ground density and humidity measurement devices with two low-grade sources of radioactivity.

Also in the area of environmental matters, the Ombudsman addressed the following issues: the alleged illegal dumping of toxic pollutants into Cartagena Bay, the severe environmental degradation that may be affecting the natural environment around Henares River in Madrid, and the environmental feasibility of a project promoted by the state-owned, Tagus River Watershed Authority to link the Sorbe River with the Alcorlo reservoir (Bornoba River) in the Community of Madrid.

## Housing and Urban Planning

Several enquiries have been initiated with the Madrid City Hall on Housing and Urban Development issues, such as a case involving a plan to remodel the Barceló square that would remove the playground of the Isabel la Católica School, or another *ex officio* case to investigate poor conditions affecting certain residential buildings on Cavanilles street and the lack of basic services there. Additionally, information was sought from the Madrid City Council regarding the deterioration of Rodríguez Sahagún Park in the Tetuan district, and again as a result of the apparent state of neglect and filth currently affecting the ruins of the ancient Islamic city walls of Madrid, which are registered as a Historic Artistic Monument and represent one of the oldest constructions in the capital city.

Other issues focused on by the Ombudsman were as follows: difficulties experienced by a disabled woman to gain access to her state-subsidized flat in Molina de Segura (Murcia) because the lift was out of order, increases in appraised property values for rustic farm estates in Lleida, the lack of basic services in a residential area in the municipality of Camarma de Esteruelas (Madrid), and the demolition of dwellings in a village of Candelaria, Santa Cruz de Tenerife.

## Civil service

In the area of Civil Service and State Employment 18 enquiries were opened with all the autonomous

communities and Ceuta and Melilla regarding the three-year statutory periods for temporary health services staff.

Also initiated were two additional enquiries with the State Secretariat for Public Administration of the Ministry of Public Administration to study measures to ensure eligibility for international adoption leave periods for civil servants, and also to determine which training measures are being applied to provide equal access to civil service for the disabled.

## Other affairs

The role of new technologies in disseminating information prompted two enquiries by the Ombudsman's Office. The first was initiated with the Attorney General to seek possible measures to address the issue of assaults on minors that are recorded on mobile phones and later disseminated via the Internet. The second was with the Basque Government Department of Health in order to confirm whether patients' clinical data, including four thousand medical records containing information on voluntary abortions at the Lasai-tasuna Hospital of Bilbao, had been revealed by an Internet application.

### Centre for Documentation on the Ombudsman and Human Rights



Books can be accessed on [www.defensordelpueblo.es](http://www.defensordelpueblo.es) or at the headquarters at Calle Fortuny, 22. 28010 Madrid - SPAIN

## 58 recommendations and 74 suggestions admitted

As a result of the processing of individual, collective, and ex officio complaints investigated during 2008, a total of 432 resolutions were made for the various Public Administrations (see Table 26). Tables

27, 28 and 29 show more details of the resolutions made by the Ombudsman, broken down by resolution and Administration to which they were presented.

**TABLE 26**  
Resolutions made during 2008

Resolutions	Accepted	Rejected	Pending	Total
Recommendations	58	14	53	125
Suggestions	74	28	88	190
Reminders of legal duties	–	–	–	113
Warnings	–	–	–	4

**TABLE 27**  
Recommendations by the Public Administration to which they were presented.  
Situation on 31 December, 2008

Administrations	Presented	Accepted	Rejected	Pending
General State Administration	68	30	7	31
Autonomous Community Administrations	26	11	3	12
Local Administrations	29	17	3	9
Other administrations	2	–	1	1
<b>Total</b>	<b>125</b>	<b>58</b>	<b>14</b>	<b>53</b>

**TABLE 28**  
Suggestions, by Public Administration to which they were presented,  
status as of 31 December, 2008

Administrations	Presented	Accepted	Rejected	Pending
General State Administration	79	33	14	32
Autonomous Community Administrations	18	4	3	11
Local Administrations	92	37	11	44
Other administrations	1	–	–	1
<b>Total</b>	<b>190</b>	<b>74</b>	<b>28</b>	<b>88</b>

**TABLE 29**  
Reminders of legal duties sent in 2008, to the Public  
Administration to which they were presented

Administrations	Total
General State Administration	38
Autonomous Community Administrations	18
Local Administrations	53
Other administrations	4
<b>Total</b>	<b>113</b>

The follow-up of the reactions made by the different Administrations to the Ombudsman's resolutions clearly shows their degree of efficiency. The

real evolution of the acceptance or rejection of the recommendations and suggestions made in the previous two years can be seen in Tables 30 and 31.

**TABLE 30**  
Recommendations 2006 and 2007. Data as of 31 December, 2008

Recommendations	2006		2007	
	Total	%	Total	%
Accepted	81	81.82	117	75.00
Rejected	17	17.17	35	22.44
Pending	1	1.01	4	2.56
	<b>99</b>	<b>100.00</b>	<b>156</b>	<b>100.00</b>

**TABLE 31**  
Suggestions 2006 and 2007. Data as of 31 December, 2008

Recommendations	2006		2007	
	Total	%	Total	%
Accepted	79	58.52	116	56.86
Rejected	55	40.74	76	37.26
Pending	1	0.74	12	5.88
	<b>135</b>	<b>100.00</b>	<b>204</b>	<b>100.00</b>

## OMBUDSMAN PUBLICATIONS IN 2008

2008 saw the publishing of *Recommendations and Suggestions 2007* and the *2007 Report and corresponding parliamentary debates*, as well as, *The Summary of that report in Spanish and English*. These publications can be consulted on the website: <http://www.defensordelpueblo.es>



# 125 recommendations, 190 suggestions

During 2008, the Ombudsman made a total of 125 recommendations and 190 suggestions. At the close of the annual report, 58 recommendations and 74 suggestions had been accepted, as seen in Tables 26 to 28. In addition, 4 warnings were made. A summary of the recommendations and suggestions that were accepted can be found below. Rejected and pending cases can be found in the full report published on the Ombudsman's website at: [www.defensordelpueblo.es](http://www.defensordelpueblo.es)

## DESCRIPTION OF ACCEPTED RECOMMENDATIONS

### GENERAL STATE ADMINISTRATION

#### Ministry of Public Administrations

To the **Secretary of State for Public Administration** regarding the difference in treatment received by married and common-law couples.

#### Ministry of Foreign Affairs and International Cooperation

To the **Directorate General of Consular Assistance and Affairs** so that they apply the date when the application for a family reunification residency permit was originally submitted to establish the minor status of the applicant.

#### Ministry of Economy and Finance

To the **Inland Revenue Office** so that they clarify the information issued to taxpayers through automated processes, as well as improve the information given concerning the exact reasons for settlements or demands.

Recommendation to the **Regional Economic-Administrative Court of the Community of Valencia** so that they keep claimants informed of the stages of the proceedings in which they are taking part, including with printed acknowledgement, especially in cases where there is excessive delay.

#### Ministry of Public Works

To the **Undersecretary**, a recommendation regarding transport rebates for foreigners residing in the Islas Canarias.

Recommendation to the **General Technical Secretary** regarding the lack of coordination between two organisms of the Administration which resulted in two separate, as well as contradictory resolutions relating to the same incident.

Recommendation to the **Directorate General of Civil Aviation**, regarding the rights of people with disabilities to access air travel at an affordable price.

Recommendation to the **Head of State Highways of Almería** regarding differences in criteria and a lack of coordination between public administrations.

#### Ministry of the Interior

Recommendation regarding the investigation of complaints about medical practices in prisons.

Recommendation to the **Secretary of State for Security** regarding the submission to the Courts of complaints presented to the Guardia Civil.

Recommendation to the **General Secretary for Penitentiary Institutions** regarding the installation of bells or call buttons in family visiting rooms in prisons.

A further Recommendation was made regarding the requirements for gaining points for good behaviour under the family reconciliation category.

Recommendation to the **General Technical Secretary** regarding the reform of the Weapons Regulations.

Recommendation to the **Directorate General of the Police and Civil Guard** to increase and make suitable adjustments to the workforce in a police station pertaining to the National Police Force.

A further Recommendation was made so that the protocol relating to the repatriation of foreigners and the escorting of foreign citizens, include a clause prohibiting the blocking of airways, or the masking of eyes or ears.

Recommendation to increase and make suitable adjustments to the workforce in a police station pertaining to the National Police Force.

A Recommendation was also made so that measures are taken to avoid the delays observed in the processing of particular procedures.

Recommendation regarding the installation of safety belts in vehicles used for transferring prisoners.

Recommendation regarding the correlation, for professional purposes, of primary school and obligatory secondary education graduation certificates.

Recommendation regarding the increase of both human and material resources in a police station pertaining to the National Police Force.

Note: in the summary of the resolutions in the report personal data that would identify those affected by an investigation has not been included in order to guarantee confidentiality as required by the Organic law that regulates the Ombudsman's actions

A Recommendation was also made to increase resources in the Passport and National Identity Card offices.

Recommendation to the **Directorate General of Traffic** regarding the records containing details of obligatory motor insurance and the sanctioning procedure as a result of failure to contract this insurance.

Recommendation regarding the implantation of a system to publish details of traffic sanctioning procedures on the Directorate General of Traffic Website.

Recommendation regarding regulatory changes relating to driving permits used by Spanish workers in the European Union.

### **Ministry of the Environment, Rural Areas and Marine Areas**

To the **Hydrographic Confederation of Cantabria** regarding the capacity of interested party in a sanctioning procedure, not only on the part of the complainant but also on the part of the affected party not making a formal complaint but who wishes to be present.

Recommendation to the **Hydrographic Confederation of the Duero** regarding the *ex-officio* assessment of the sanctioning body that the complainant has a legitimate interest as well as the intention to take part in the proceedings, and is therefore recognised in the capacity of interested party.

### **Prime Minister's Office**

To the **Undersecretary** regarding the health service provided to Muface contributors in Campo de Gibraltar.

### **Ministry of Labour and Immigration**

To the **Secretary of State for Immigration and Emigration** to adjust the residence permits of family members of European community members, with the aim of not restricting their right to carry out work related activities, which they are expressly entitled to do under current regulations.

Recommendation to the **Directorate General of Immigration** so that the spouses of citizens who obtain Spanish Nationality are granted a European Union Residency Permit or an Exceptional Circumstances Residence Permit, as long as they complete the necessary procedure to contract marriage in the Civil Registry Office.

Recommendation to the **Directorate General for the Management of Social Security** to adopt the appropriate criteria so that concerned parties are able to file a complaint to the managing entity or common service of the Social Security, by reason of their authority, against judgements reached by Workplace Accidents and Professional Illness insurance companies, in matters concerning the recognition of the right to receive benefits from the Social Security system.

## **AUTONOMOUS ADMINISTRATION**

### **Autonomous Community of Andalusia**

To the **Department of Agriculture and Fishing** regarding the implementation of the Andalusian Law 10/2007, of 26 November, on the Protection of the quality origin of Andalusian wines.

### **Principality of Asturias**

To the **Management Board of the Health Service** regarding the obligation to provide express resolution.

### **Community of Castilla y León**

To the **Department of the Environment** regarding the calculation of statute of limitation for administrative sanctions.

### **Autonomous Community of Galicia**

To the **Department of Health** so that the relevant offices of the Galician Health Service evaluate the possibility and advantages of adopting appropriate measures to aid the reduction of the extraordinary delays, at least in some cases, relating to breast reconstruction surgery in the Plastic Surgery Service of the University Hospital Complex of Vigo.

### **Community of Madrid**

To the **Education Department** to provide information to applicants for professional training courses in grant-assisted education centres, regarding the limitations which, in terms of number of places available, may derive from the particular characteristics of the centres themselves.

Recommendation to the **Department of Environment, Housing and Land Management** regarding the assessment of environmental impact statements and their effects.

Recommendation to the **Department of Health** regarding application processing procedures.

Recommendation to the **Regional Transport Consortium** regarding coordination between administrations in charge of urban transport services.

Recommendation to **Complutense University of Madrid** regarding the refunding of inscription fees in University Halls of Residence.

### **Community of Valencia**

To the **Department of Justice and Public Administration** regarding the elimination of discrepancies in earnings of positions with similar characteristics.

### **Autonomous City of Melilla**

To the **Department of Health and Social Welfare** to specify the need to document unaccompanied foreign minors in communications sent by the protecting

entities to embassies, and that in the absence of said documentation, registration details are procured.

#### LOCAL ADMINISTRATION

**City Hall of Alicante:** In order to act with the maximum diligence with respect to inspecting, conserving and restoring areas encroached upon by urban planning violations, preventing such violations from becoming consolidated.

**City Hall of Gijón (Asturias):** To presume direct and legitimate interest in sanctioning proceedings relating to noise violations, on the part of neighbouring vicinities suffering the effect of the violation.

Recommendation regarding the preservation of video recording as a means of evidence in sanctioning procedures.

**City Hall of Hoyo de Manzanares (Madrid):** Regarding the drafting of the bidding terms in selection processes.

**City Hall of Langreo (Asturias):** Regarding their duty to inspect, conserve and restore areas encroached upon by urban planning violations, and carry out all the necessary investigations.

**City Hall of Las Rozas de Madrid (Madrid):** Regarding Vehicle Parking control in the municipality.

**City Hall of Lerma (Burgos):** Regarding the notification of administrative actions.

**City Hall of Madrid:** Regarding the nullity of Urban Planning Licences granted to projects whose planning qualification and environmental impact statements have been declared null and void.

Recommendation regarding the requirements to modify bidding terms.

**City Hall of Marbella (Málaga):** Regarding the bureaucracy relating to accessing pedestrian precincts with large objects.

**City Hall of Puçol (Valencia):** Regarding guaranteeing residents access to their garages.

**City Hall of Rioja (Almería):** Regarding differences in criteria and the lack of coordination among public administration offices.

**City Hall of Toledo:** Regarding the composition of selection panels. **City Hall of Torrelavega (Cantabria):** So that they comply with the legal mandate to inspect, conserve and restore areas encroached upon by urban planning violations, acting with due diligence and preventing planning violations from going unpunished.

**City Hall of Torrent (Valencia):** Regarding the implementation of training courses for officers of the Local Police.

**City Hall of Torrevieja (Alicante):** Regarding the inclusion of vacancies in public job offers.

**City Hall of Villaviciosa de Odón (Madrid):** Regarding coordination between administration offices in charge of urban transport.

## SUGGESTIONS ACCEPTED

#### GENERAL STATE ADMINISTRATION

##### Ministry of Public Administration

To the **Government Delegation in the Community of Madrid**, so that they revise the rejection of an application for the renewal of a work and residency permit, solicited out of the established period, and that they proceed to grant the requested authorisation, on the grounds that all other legal and regulatory requirements for said application have been met.

Suggestion that the expulsion order against the interested party is examined and that reasons for voiding said sanction are studied, as long as family connections in Spain are established, as well as compliance with all other material requirements for obtaining an exceptional circumstances residency permit.

Suggestion to re-examine the application to revoke an expulsion order against the interested party, and that reasons for voiding said sanction are studied, as long as family connections in the first and second degree in Spain are established, as well as compliance with all other material requirements for obtaining an exceptional circumstances residency permit.

Suggestion to reach a favourable resolution to the urgent application to revoke an expulsion order, and revoke said expulsion order, on the grounds of changed personal circumstances, as detailed by the interested party, namely that of being mother to a minor of Spanish nationality, as long as there is no violation or threat to public order or security which would impede this.

Suggestion to verify the expiry date of an expulsion order, and subsidiarily to assess the precautionary measure ruled by a Court for Contentious Administrative Proceedings to detain the interested party, and to adopt all necessary measures to proceed to the suspension of detainment and the immediate release of the interested party.

Suggestion to proceed to the examination of an expulsion order whose expiry date may have been passed. Likewise, to take into consideration the assertion of settlement alleged by the concerned party as well as the fact of having arranged an appointment to apply for an exceptional circumstance work and residency permit.

To the **Government Sub-delegation in Alava** to render void an unfavourable resolution relating to the renewal of a work and residency authorisation, due to the absence of legal basis.

To the **Government Sub-delegation in Alicante** to proceed to the granting of a European Union family member card requested by the interested party, without demanding documents not actually stipulated in the regulations.

To the **Government Sub-delegation in Barcelona** to proceed to the granting, at least provisionally,

of a residency permit to the spouse of a European Union citizen.

To the **Government Sub-delegation in Cádiz** so that the resolution to expel the interested party from Spanish territory be annulled, since the interested party was not in an irregular situation on the date that the proceedings began.

Suggestion to reach a favourable resolution to the application to revoke an expulsion order, on the grounds of changed personal circumstances, as detailed by the interested party, namely that of being mother to a minor of Spanish nationality, as long as there are no violations or threat to public order or security which would impede this.

To the **Government Sub-delegation in Salamanca** to reach a favourable resolution to the urgent application to revoke an expulsion order, and revoke said expulsion order, on the grounds of changed personal circumstances, as detailed by the interested party, namely that of being father to a minor of Spanish nationality, as long as there are no violations or threat to public order or security which would impede this.

To the **Government Sub-delegation in Tarragona** so that they proceed to render void the resolution which rejected the interested party's application for a work and residency permit, and that they proceed to grant the permit requested, on the grounds that the simple temporary arrest is not sufficient reason to reject the application.

To the **Government Sub-delegation in Toledo** to reach a favourable resolution to the urgent application to revoke an expulsion order which weighs on the concerned party, on the grounds of personal circumstances, namely that of being father to a minor of Spanish nationality.

#### **Ministry of Foreign Affairs and Cooperation**

To the **Directorate General of Consular Affairs and Assistance** suggestions to revise the rejection of two appeals for reversal ordered by the Spanish General Consulate in Quito, deeming that there is evidence that the visa applications were presented within the deadline.

So that appropriate action is taken by the Spanish General Consulate in Quito to pronounce a new resolution, taking into account the documentation presented, for an application for family reunification, and to indicate the reasons for the rejection or dismissal of the application.

To review the resolution reached by the Consulate Office in Islamabad (Pakistan) refusing the concerned party an entrance visa, and to proceed to expedite the corresponding authorisation allowing the return to Spain, once the right to reside in Spain is proven valid.

#### **Ministry of Education, Social Policy and Sport**

To the **Provincial Directorate in Ceuta** to ease the transfer of documents between different departments of the State Administration.

#### **Ministry of Public Works**

To the **Secretary of State for Infrastructure** to carry out an effective follow-up and control of the environmental impact statement, and that they demand accountability from the corresponding authorities and civil servants for failure to cooperate with other administrative departments.

#### **Ministry of the Interior**

To the **General Secretary of Penitentiary Institutions** to conduct *ex officio* inspections whenever necessary.

To the **Directorate General of the Police and the Civil Guard** regarding access facilities in police stations for blind people with guide dogs.

Suggestion to discipline Civil Guard agents as a result of bad conduct.

To the **General Department on Alien Affairs and Borders**, so that they give the necessary orders to enable the immediate entrance into Spanish territory of the interested party and youngest son, overturning, as such, the order denying entry.

To the **Directorate General of Traffic** suggestions regarding traffic sanctioning procedures.

For more information:  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

## Ministry of the Environment, Rural Areas and Marine Areas

To the **Secretary of State for Climate Change** to proceed to an effective follow-up and control of compliance with environmental impact statements, and to demand accountability from the corresponding authorities and civil servants for failure to cooperate with other administrative departments.

## Ministry of Labour and Immigration

To the **Directorate General of Social Security** so that they review, according to established procedure, the resolution reached by the Provincial Directorate of Social Security in Vizcaya, in which an application to be refunded the cost of a wheelchair was rejected, and that they concede the corresponding amount.

## AUTONOMOUS ADMINISTRATION

### Autonomous Community of Andalusia

To the **Committee for Equality and Social Welfare** regarding express reply.

### Autonomous Community of Aragón

To the **Prime Minister's Office** regarding the obligation to comply with legal deadlines.

### Community of Madrid

To the **Management of the Housing Institute of Madrid** regarding the obligation of a public entity to repair the communal living areas of a building it is rented out.

### Region of Murcia

To the **Board of Health** to consider the possibility and convenience of adopting the necessary and practical measures to carry out an ex-officio investigation into the patrimonial liability of the Administration, within whose framework it should be decided whether or not a patient suffered undue suffering as a result of the incorrect identification of the results of a biopsy.

## LOCAL ADMINISTRATION

**City Hall of Alcobendas (Madrid):** Regarding traffic sanctioning procedures.

**City Hall of Boadilla del Monte (Madrid):** Regarding the obligation to provide express resolution to the concerned party's request for information.

**City Hall of Cáceres:** Regarding the need to undertake the necessary measures to avoid the expiry of a sanctioning procedure and to pronounce the necessary resolution.

**City Hall of Cambre (A Coruña):** Regarding the convenience of reinforcing measures to prevent illegal parking in the area.

**City Hall of El Perelló (Valencia):** Regarding the enforcement of current legislation against the noise pollution caused by the Fallas.

**City Hall of Gerena (Sevilla):** Regarding the need to provide express judgement in answer to complaints and requests for urban planning information.

**City Hall of Gondomar (Pontevedra):** to adopt the measures necessary to provide urban planning information which has been requested.

**City Hall of Guadarrama (Madrid):** So that they adopt the measures necessary to provide urban planning information which is requested.

**City Hall of Las Palmas de Gran Canaria:** Regarding the need for municipal intervention in the face of reports of annoying behaviour.

**City Hall of Lucena (Córdoba):** Regarding traffic sanctioning procedures.

**City Hall of Lucena del Puerto (Huelva):** So that the City Hall provides the information requested by an association concerning the concessions granted on public lands.

**City Hall of Madrid:** So that they increase environmental and organisational control during street fairs and neighborhood parties.

Suggestion regarding the need to provide documented evidence of sanctioning procedures relating to offences against the environment.

Suggestion regarding embargoes as a result of failure to pay vehicle road tax.

Suggestion to adopt the necessary measures in order to restore urban planning legality and to commence, process and resolve sanctioning procedures against the guilty parties.

Suggestion regarding the need to adopt measures to halt polluting and bothersome activities.

Suggestion regarding the obligation to restore urban planning legality compromised as a result of construction work encroaching on a road.

Suggestion regarding the possibility of commencing disciplinary proceedings against agents of the Local Police.

Suggestion regarding the right to access urban planning data.

Suggestion regarding the swift and effective notification of an order to restore urban planning legality.

**City Hall of Malaga:** Regarding embargoes as a result of failure to pay vehicle road tax.

Suggestion to provide express reply to the complaints made by the concerned party relating to construction work, clearly outlining the legal framework in which the judgement was based.

**City Hall of Marbella (Málaga):** So that a resident is allowed to drive a vehicle on the pedestrianized street where he lives.

**City Hall of Miraflores de la Sierra (Madrid):** To apply all the measures envisaged in the Law 9/2001

of 17 July, on Land Use, of the Community of Madrid, to the construction work being carried out without adhering to the subsidiary regulations of the municipality.

**City Hall of Mondoñedo (Lugo):** Regarding construction work on sidewalks in conservation areas.

**City Hall of Móstoles (Madrid):** So that if complaints of noise pollution continue to occur, suitable action will be taken to ensure that noise emission does not exceed permissible limits.

**City Hall of Murcia:** Regarding the confiscation of licenses and the suspension or closure of establishments causing disturbance, as a result of illegal activity and reiterated non-compliance of corrective measures.

**City Hall of Oropesa del Mar (Castellón):** Regarding the obligation to provide to citizens with sufficient information so that they can take public urban planning action or any other action that may correspond to them.

**City Hall of Plasencia (Cáceres):** Regarding the need to investigate noise pollution or bothersome activities.

Suggestion regarding the need to conduct inspections and demand compliance with legislation relating to classified activity.

**City Hall of Sanlúcar la Mayor (Sevilla):** To redress the inappropriate behaviour of Local Police agents towards deaf persons.

**City Hall of Seseña (Toledo):** Regarding the need for municipal intervention with regard to bothersome activity.

**City Hall of Talavera de la Reina (Toledo):** Regarding the need and obligation for municipal intervention with regard to a noisy facility which does not have a licence.

**City Hall of Torrejón el Rubio (Caceres):** Regarding the obligation to investigate the noise and closing times of a bar.

**City Hall of Torrent (Valencia):** Regarding the obligation to redress the inappropriate behaviour of Local Police agents.

**City Hall of La Vall d'Uixó (Castellón):** So that legal proceedings are commenced to restore the urban planning legality compromised by the various urban planning violations which have been committed and which have not yet been punished, and that the necessary sanctioning procedure is carried out.

**Provincial Delegation of Sevilla:** To the Collections Office of this locality to embargo the funds necessary to repair damage done to a public thoroughfare.

## REMINDERS OF LEGAL DUTIES

During 2008, the Ombudsman issued 113 Reminders of Legal Duties, 38 to the General State Administration, 18 to the Autonomous Administrations and 57 to local and other organizations (see Table 29).

## GENERAL STATE ADMINISTRATION

### Ministry of Public Administration

To the **Government Delegation in the Autonomous Community of Aragón** regarding the legal obligation incumbent upon them to terminate temporary residence visas via a resolution stating relevant legal grounds, as well as the legal obligation to formally notify concerned parties.

To the **Government Delegation in the Community of Madrid** regarding the legal obligation to terminate the temporary residence visa via a resolution stating relevant legal grounds, as well as the legal obligation to formally notify the interested party.

To the **Government Delegation in the Autonomous City of Ceuta** regarding the legal obligation to apply the effects of residence authorisations for unaccompanied foreign minors retroactively, to the moment in which they were put under the guardianship of protection services, and that resolutions granting residence authorisations to foreign minors in care should take into account what is contained in the regulations regarding validity of initial authorisations and renewals.

To the **Government Delegation in the Autonomous City of Mellila** regarding the legal duty incumbent upon them to oversee compliance with what is set forth on article 3 of Organic Law 4/2000, ensuring that minors who are under guardianship preserve the documentation which authorises their situation in Spain and, and do not have it removed from them, except in the circumstances, as well as with the relevant requisites as set forth in the aforesaid Law and in Organic Law 1/1992, of the 21 February, on the Protection of Citizen Security. Likewise, regarding the legal duty incumbent upon them to oversee compliance with what is set forth in article 75.2 of the Royal Decree 2393/2004 for the termination of administrative authorisations.

Regarding the duty incumbent upon them to comply with current regulation, applying the effects of residence authorisations retroactively to the moment in which the minor was put under the guardianship of the protection services.

To the **Government Sub-delegation in Alicante** regarding the legal duty incumbent upon them to respect citizens' rights to not have to present documents which are not actually stipulated in the regulations for the procedure in which they are participating, and therefore the inadmissibility of requesting a certificate of cohabitation from spouses in order to grant them a European Union family member residency card.

To the **Government Sub-delegation in Barcelona** regarding the legal duty incumbent upon them to comply strictly with article 35.3 of the Immigration Law, provided for by the regulatory implementation of

repatriation orders for unaccompanied foreign minors pending enforcement.

To the **Government Sub-delegation in Las Palmas** regarding the legal obligation to apply the effects of residence authorisations for unaccompanied foreign minors retroactively, to the moment in which they were put under the guardianship of protection services, and that resolutions granting residence authorisations to foreign minors in care should take into account the regulations regarding validity of initial authorisations and renewals. In addition, a reminder of the procedure applicable to these minors as regards obtaining work permits depending on the papers they have.

To the **Government Sub-delegation in Santa Cruz de Tenerife** regarding the legal obligation to apply the effects of residence authorisations for unaccompanied foreign minors retroactively, to the moment in which they were put under the guardianship of protection services, and that resolutions granting residence authorisations to foreign minors in care should take into account the regulations regarding validity of initial authorisations and renewals. In addition, a reminder of the procedure applicable to these minors as regards obtaining work permits depending on the papers they have.

To the **Government Sub-delegation in Zaragoza** regarding the legal duty incumbent upon this organism to comply with what is contained in article 35.4 of the Immigration Law, which orders that the effects of residence authorisations for unaccompanied foreign minors are applied retroactively to the moment in which the minor was put under the guardianship of protection services.

#### **Ministry of Foreign Affairs and Cooperation**

To the **Directorate General of Consular Affairs and Assistance** regarding the legal duty incumbent upon them to assure that the procedures for handling requests for visas are carried out in complete compliance with current legislation, correcting any measures which imply an extensively used, legally unnecessary requirement for the physical presence of applicants in public offices.

#### **Ministry of Defense**

To the **Undersecretary** regarding the legal duty incumbent upon them by the Administration to resolve, quickly and satisfactorily, any complaints and requests submitted to them in accordance with what is established in Law 30/1992, of 26 November, modified by Law 4/1999, of the Legal System for the Public Administrations and of Common Administrative Procedure, as well as to state that, in accordance with Article 103 of the Constitution, the actions of the Administration must serve the interests of the citizens, attempting to ensure that deficiencies in administrative performance

do not infringe upon citizens' legitimate rights, and also insisting that in accordance with what is established in the aforementioned Law 30/1992, it is incumbent upon the administration to limit their actions to the criteria of efficiency and service to citizens.

To the **Directorate General of Personnel** regarding the legal duty incumbent upon them by the Administration to resolve, quickly and satisfactorily, any complaints and requests submitted to them in accordance with what is established in Law 30/1992, of 26 November, modified by Law 4/1999, of the Legal System for the Public Administrations and of Common Administrative Procedure, as well as to state that, in accordance with Article 103 of the Constitution, the actions of the Administration must serve the interests of the citizens, attempting to ensure that deficiencies in administrative performance do not infringe upon citizens' legitimate rights, and also insisting that in accordance with what is established in the aforementioned Law 30/1992, it is incumbent upon the administration to limit their actions to the criteria of efficiency and service to citizens.

#### **Ministry of Economy and Finance**

To the **Delegation of Economy and Finance in Jaén** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them and answering any questions or petitions raised, in accordance with Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

Regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them and answering any questions or petitions raised, in accordance with Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

To the **Regional Economic-Administrative Court of Aragón** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them.

To the **Regional Economic-Administrative Court of the Islas Canarias** regarding the legal duty to resolve and send notification, within the six month period established in Article 247 of the General Tax Law, for any complaints handled through the Abbreviated Procedure, by a one-person authority.

To the **Regional Economic-Administrative Court of Cataluña** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them.

Regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them.

To the **Regional Economic-Administrative Court of Madrid** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them.

### **Ministry of Education, Social Policy and Sport**

To the **Secretary of State for Social Policy, Family, and Care for the Dependent and Disabled** regarding the legal duty to act with full compliance to the Law and according to the principles of efficiency, hierarchy, decentralization, and coordination, according to that which is established in Article 103 of the Spanish Constitution and Law 6/1997, of 14 April, on organization and operation of the General State Administration.

### **Ministry of Public Works**

To the **General Secretariat of Infrastructures** regarding the legal duty to prevent and correct noise pollution, adopting the necessary measures to prevent and correct noise from highways, compensating citizens for the damages caused.

### **Ministry of Industry, Tourism and Commerce**

To the **Directorate General of Energy Policy and Mines** regarding the legal duty that the environmental impact assessment be adopted by environmental authorities, although this does not exempt the prevailing authorities from responsibility.

### **Ministry of the Interior**

To the **Directorate General of the Police and of the Civil Guard** regarding the legal duty incumbent upon police agencies to abstain from making a legal evaluation about the validity of a marriage, as they are not the organization authorized to do so.

To the **General Department on Alien Affairs and Borders** regarding the legal duty that requires the Administration and all of its agents to act according to judicial order.

To the **Provincial Brigade of Alien Affairs and Documentation of Barcelona** regarding the legal duty incumbent upon them to comply with Article 35.3 of the Law on alien affairs in the precise terms according to the regulatory implementation of repatriation orders for unaccompanied foreign minors pending enforcement.

To the **Chief of Police of Melilla** regarding the legal duty incumbent upon this office to comply with the provisions of Article 5.3 of Law 5/1984, of 26 March, and its regulations which stipulate that a person seeking asylum must be provided with a correctly stamped copy of his or her request.

Regarding the legal duty incumbent upon them to comply with the provisions of Article 38.4 of Law 30/1992, of 26 November, of the Legal System for the

Public Administrations and of Common Administrative Procedure, in handling sanctioning procedures for traffic matters. As for registry offices where citizens can present their requests and documents, the consequences of time limits in relation to the date of entry in said registers should be taken into consideration.

### **Ministry of Justice**

To the **Secretary of State for Justice** regarding the legal duty to justify judgements rejecting marriage inscriptions by the Spanish Consulate in Colombia, in the terms established in the Instructions of this Department as of 10 February 2005, for weddings taking place in Cuba.

### **Ministry of the Environment, Rural Areas and Marine Areas**

To the **Undersecretary** regarding the legal duty to facilitate the processing of complaints as much as is possible so as not to negatively affect the parties involved, strictly complying with legal deadlines and designating all material, organizational and personal means necessary to do so.

To the **General Technical Secretary** regarding the legal duty obliging them to provide an express reply to any requests and appeals for environmental information submitted by citizens, in accordance with the limits, requirements and deadlines of Law 27/2006, which regulates the rights of access to information, public participation and access to justice in environmental matters.

To the **Hydrographic Confederation of the Cantabrian Area** regarding the legal duty to provide an express reply to any requests and appeals submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

To the **Hydrographic Confederation of the Júcar River**, regarding the legal duty to exercise the authority of investigation and supervision granted to them by the Water Law, by commencing the appropriate sanctioning procedures, and using the necessary means to guarantee a final resolution.

To the **Hydrographic Confederation of the Segura River** regarding the legal duty incumbent upon them to resolve appeals lodged by citizens within the maximum time legally allowed, in accordance with Articles 42 and 115 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

To the **Hydrographic Confederation of the Tajo River** regarding the legal duty requiring them to process complaints by complying with regulations in an effective and timely manner, without obstructing the

rights of individuals, as stated in Articles 9 and 103 of the Constitution.

### Ministry of Labor and Immigration

To the **Directorate General on the Inspection of Employment and Social Security** regarding the legal duty requiring them to comply with Article 41 of Law 30/1992 of 26 November of the Legal System for the Public Administrations and of Common Administrative Procedure, which establishes that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

Regarding the legal duty that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

To the **Directorate General for the Management of Social Security** regarding the legal duty incumbent upon them to ensure that the resolutions dictated by the Insurers of Workplace Accidents and Professional Illnesses regarding Social Security benefits, the management of which they are responsible for, are sufficiently justified, with a mention, also, that it is possible to file a complaint or legal proceeding before the relevant jurisdictional authority.

## AUTONOMOUS ADMINISTRATION

### Principality of Asturias

To the **Department of Social Welfare and Housing** regarding the legal duty of the Directorate General of the Elderly, Children and Families to facilitate compliance of Article 35.3 of the Immigration Law, in the precise terms according to the regulatory implementation of repatriation orders of unaccompanied foreign minors, for which they must inform the Government Delegation of the actions they have taken to locate the family of the minor. They must also comply with the legal provisions regarding the requests for the authorization of residence, declaring in said requests the date on which the minor was put in the care of the protection service for minors in Asturias.

### Autonomous Community of the Islas Canarias

To the **Department of Social Welfare, Youth, and Housing** regarding the legal duty incumbent upon

them to resolve, quickly and satisfactorily, any requests and appeals submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

To the **Department of Education, Universities, Culture and Sports** regarding the legal duty derived from Article 42.1 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, to provide an express reply to any requests and appeals submitted by citizens.

### Community of Castilla y León

To the **Board of Education** regarding the legal duty incumbent upon them to manage administrative procedures with all necessary impetus and speed, according to the terms established in Articles 74 (and following articles) of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

### Community of Madrid

To the **Department of Culture and Tourism** regarding the legal duty requiring them to comply with Article 41 of Law 30/1992 of 26 November of the Legal System for the Public Administrations and of Common Administrative Procedure, which establishes that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

To the **Department of Families and Social Affairs** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any requests and appeals submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

Regarding the legal duty concerning the **Directorate General of Senior Citizens** to conform with Article 41 of Law 30/1992 of 26 November of the Legal System for the Public Administrations and of Common Administrative Procedure, which establishes that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

To the **Department of the Environment and Land Management** regarding the legal duty of the Directorate General of Environmental Quality Control to initiate *ex officio* procedures and resolve any assessment procedures or environmental analyses submitted within the time limits established in Law 2/2002 of the Community of Madrid, informing the proper authority, with due diligence, of the need to resolve deficiencies and of the complementary documentation necessary for correct resolution, in accordance with Articles 4.1, 18, 74.1 and 76.2 of Law 30/1992. Also regarding the legal duty of the Directorate General of Zoning and Regional Planning, in application of Articles 4.1, 18, 74.1 and 76.2 of Law 30/1992, to ensure, *ex officio*, the implementation of the rezoning procedures, indicated in Law 9/2001, regarding Land Use, in the Community of Madrid. This requires coordinating its authority with that of other Directorates General, organisms or administrations involved, and calling for, if necessary, the swift completion of reports to avoid delaying the resolution of the process and ensure that the interested parties are notified within a reasonable amount of time.

To the **Department of the Presidency, Justice and the Interior** regarding the legal duty incumbent upon them to maintain contact with other public administrations in accordance with the principles set forth in Articles 3.2 and 4 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of the Common Administrative Procedure, and to be guided by the principles of efficiency and service to citizens when carrying out their actions.

To the **Department of Transportation and Infrastructure** regarding the legal duty to carry out a strategic study on environmental feasibility to satisfy social needs, in accordance with Article 2.a of Law 9/2006, 28 April, on the assessment of the impact of certain environmental plans and programs.

To the **Housing Institute of Madrid** regarding the legal duty imposed by judicial order to provide an express reply to all procedures, notifying the interested parties in an effective and timely manner in accordance with Article 42.1 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure

### Region of Murcia

To the Department of Social Policy, Women and Immigration regarding the legal duty to act in accordance with Article 41 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, which establishes that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever

necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

To the Directorate General of Housing and Architecture regarding the obligation to provide more complete information on the financing measures of State Plan 2005-2008 in order to help citizens access housing, with the aim of enforcing their right to obtain information and guidance on the legal and technical requirements that the current rules impose on proposed projects, actions or requests, according to Article 35 f) of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, and in Article 4 of Royal Decree 208/1996, of 9 February, which regulates Administrative Information Services and Citizens' Services.

### Autonomous Community of the País Vasco

To the Department of Housing and Social Affairs regarding their legal duty to act in accordance with what is contained in Article 20 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, in such a way that when it does not consider itself to be the correct and relevant administration to resolve a matter it should refer the case to the administration that is.

### Community of Valencia

To the Department of Economy, Finance and Employment regarding the legal duty to act in accordance with Article 41 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, which states that the heads of administrative departments will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

To the Directorate General of Citizens' Security and Protection regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any requests and appeals submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

### Autonomous City of Melilla

To the Department of Health and Social Welfare regarding the legal duty incumbent upon them to agree upon the lack of protection of the unaccompanied foreign minors in their care and to maintain this course of action until the responsibility for the minor is transferred to another authority, the family is reunited, or the minors reach legal age.

Regarding the legal duty incumbent upon them to act in accordance with the judicial order, which means

halting the practice of retaining unaccompanied foreign minors' residence cards when they reach the age of legal adulthood.

#### LOCAL ADMINISTRATION

**City Hall of A Coruña:** regarding the legal duty incumbent upon them to make their actions conform to what is set forth in Organic Law 4/1997, of 4 August, regulating the use of video cameras in public places by Security Forces and Corps, in such a way that when the installation of a video camera is deemed necessary, this installation is not begun until appropriate authorization has been obtained from the Delegation of the Government.

**City Hall of Alorcón (Madrid):** regarding the legal duty imposed by the judicial order to respond to requests presented by citizens, and in their case in particular to communicate to the complainant the initiation or otherwise of a sanctioning procedure when the complaint is accompanied by a request for initiation, thus complying with what is established in Article 42 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure and Article 11.2 of the regulations for the exercise of sanctioning power, approved by Royal Decree 1398/1993, of 4 August.

**City Hall of Alicante:** Regarding the legal duty incumbent upon them to apply the principles of efficiency, economy and speed to municipal action as set forth in Article 103 of the Constitution and in Article 3 of Law 30/1992 of 26 November of the Legal System for the Public Administrations and of Common Administrative Procedure, and the legal duty to give urgent and preferential aid to this Institution in its investigations, submitting requested reports in an appropriate way and in a maximum period of 15 days, in accordance with what is established in Article 18.1 and 19.1 Organic Law 3/1981, of 6 April, of the Ombudsman.

**City Hall of Antigua (Las Palmas):** Regarding the legal duty imposed by the judicial order to expressly resolve the requests for licenses in the time limit established by Legislative Degree 1/2000, of 8 May, by which the amended text of the Land Management Laws of the Territory and Natural Environment of the Islas Canarias was approved.

**City Hall of Ares (A Coruña):** regarding the legal duty incumbent upon them to make their actions conform to what is set forth in Organic Law 4/1997, of 4 August, regulating the use of video cameras in public places by Security Forces and Corps, in such a way that when the installation of a video camera is deemed necessary, the installation is not begun until appropriate authorization has been obtained from the Delegation of the Government.

**City Hall of Baños de Molgas (Ourense):** Regarding the legal duty incumbent upon them to comply with the regulation and resolutions of the hydrographic confederation in the matter of treatment of municipal waste water.

**City Hall of Boadilla del Monte (Madrid):** regarding the legal duty imposed by the judicial order to pronounce and notify, quickly and correctly, an express resolution to requests submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Burguillos de Toledo (Toledo):** regarding the legal duty to pronounce a well-founded and express judgment to the appeal of the person performing the duties of municipal architect, in accordance with the obligation imposed in Article 42.1 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, and 176 of Royal Decree 2568/1986, of 28 November, by which the Regulation of the Organization, Operation and Legal System of Local Entities is approved, reminding it to bear in mind, in all its activities, the provisions of subsection 1 of Article 9 of our Constitution which determines that public authorities are subject to the aforementioned as well as the rest of the legal ordinance, as expressed in Article 103.1 of the Constitution and Article 6.1 of Law 7/1985, of 2 April, Regulations of Local Government, which establishes that local Administration must always act objectively and impartially, complying fully with the law.

**City Hall of Burjassot (Valencia):** Regarding the legal duty incumbent upon them to give urgent and preferential aid to this Institution in its investigations, submitting requested reports in an appropriate way and in a maximum period of 15 days, in accordance with what is established in Article 18.1 and 19.1 Organic Law 3/1981, of 6 April, of the Ombudsman.

**City Hall of Ciutadela de Menorca (Illes Balears):** Regarding the legal duty incumbent upon them, derived from Article 36 of Law 30/1992 of 26 November of the Legal System for the Public Administrations and of Common Administrative Procedure, in the text given to the same by Law 4/1999, of 14 January, according to which all documents, files, or sections thereof which take effect outside the territory of the Autonomous Community must be translated into Spanish.

**City Hall of Colmenar de la Oreja (Madrid):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of

the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Córdoba:** regarding the legal duty to act in accordance with Article 41 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, which establishes that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests.

**City Hall of Cotobade; Salgueiro (Rebordelo-Cotobade) (Pontevedra):** Regarding the legal duty imposed by judicial order to provide an express reply to any requests for information submitted by citizens, in accordance with what is established in Articles 35, 42 and 89 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, and Article 18 of Law 7/1985, of 2 April, which regulates the rules of local government, modified by Law 57/2003, of 16 December, regarding Measures for the Modernization of Local Government.

**City Hall of Fariza (Zamora):** Regarding the legal duty, in accordance with what is contained in Articles 127 of Law 30/1992 of Common Procedure and 4.f), 36 and agreeing with Law 7/1985, Regulations of Local Government, to sanction administrative infractions and solicit the aid of the Provincial Council and the Council of the Autonomous Community, directly or by way of established cooperative organizations, when it lacks the necessary material means and personnel to adequately carry out its authority.

**City Hall of Gerena (Sevilla):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Gondomar (Pontevedra):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Herrerías Cades (Cantabria):** Regarding the legal duty incumbent upon them to give urgent and preferential aid to this Institution in its

investigations, submitting requested reports in an appropriate way and in a maximum period of 15 days, in accordance with what is established in Article 18.1 and 19.1 Organic Law 3/1981, of 6 April, of the Ombudsman.

**City Hall of La Serrada (Ávila):** Regarding the legal duty incumbent upon them to give urgent and preferential aid to this Institution in its investigations, submitting requested reports in an appropriate way and in a maximum period of 15 days, in accordance with what is established in Article 18.1 and 19.1 Organic Law 3/1981, of 6 April, of the Ombudsman.

**City Hall of Langreo (Asturias):** Regarding the legal duty incumbent upon them to adapt municipal action to the principles of efficiency, economy and speed, diligently carry out inspections after receiving complaints, and to pronounce and notify, quickly and correctly, an express resolution to requests submitted by citizens, in accordance with what is established in Articles 3 and 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

Regarding the legal duty imposed by judicial order to assure that acoustic emissions in the city do not exceed the permitted limits and consequently to apply and comply with Law 37/2003 on Noise.

**City Hall of Leganés (Madrid):** Regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any requests and appeals submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Madrid:** Regarding the legal duty incumbent upon them to adopt all necessary measures to restore municipal legality, including the subsidiary execution of payments and fines, in accordance with Articles 41, 74.1 and 75 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

Regarding the legal duty to act in accordance with Article 41 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, which establishes that the heads of administrative departments and personnel working for the Public Administrations in charge of resolution or handling of cases will be directly responsible for processing them and will do whatever necessary to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, doing everything necessary to avoid and eliminate any abnormality in the handling of the case.

**City Hall of Malagón (Ciudad Real):** Regarding the legal duty incumbent upon them to exercise the authority that the law grants them in municipal matters

by inspecting buildings and preventing storerooms and attics from being converted into living quarters.

**City Hall of Minglanilla (Cuenca):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Morón de la Frontera (Sevilla):** Regarding the legal duty incumbent upon them to adopt all necessary measures to restore municipal legality related to construction work on a warehouse and a retail space done without a license.

**City Hall of Móstoles (Madrid):** Regarding the legal duty to sanction administrative infractions in all cases, applying the principle of proportionality and extenuating legal circumstances in application of that which is set forth in Article 127 of Law 30/1992 of Common Administrative Procedure and similar laws, resolving first the legality and feasibility of activities with environmental impact, and then construction, once feasibility has been determined. (Article 22 Regulation of Local Corporations' Services, of 1955 and Article 47 Law 2/2002, of 19 June, Environmental Evaluation of Madrid).

Regarding the legal duty imposed by judicial order to ensure that acoustic emissions in the city do not exceed the permitted limits and consequently to apply and comply with Law 37/2003 on Noise.

**City Hall of Murcia:** Regarding the legal duty derived from Article 42.1 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, to make express judgments to any requests submitted by concerned parties

**City Hall of Nules (Castellón):** Regarding the legal duty to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, and of the obligation imposed by Article 11.2 of the Regulations for the Exercise of Sanctioning Power, approved by Royal Decree 1398/1993, of 4 August, to communicate to the complainant whether or not the procedure has been initiated when it is accompanied by a request for initiation.

**City Hall of Onzonilla (León):** Regarding the legal duty incumbent upon City Halls to comply with waste water treatment regulations and with the resolutions dictated by the Hydraulic Administration.

**City Hall of Oropesa del Mar (Castellón):** Regarding the legal duty imposed by the regulation of administrative procedure to resolve all petitions and appeals presented by interested parties, in accordance with what is contained in Article 42 of Law 30/1992, of

26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, providing citizens with sufficient information so that they may exercise public urban action or any other that may correspond to them.

**City Hall of Pedro Muñoz (Ciudad Real):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Ribadeo (Lugo):** Regarding the legal duty incumbent upon City Halls to comply with waste water treatment regulations.

**City Hall of Sant Joan de Labritja (Illes Balears):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Santander:** Regarding the legal duty imposed by judicial order to provide express responses to requests for information made by concerned parties, except in cases that clearly lack foundation, thus complying with that established in Articles 42 and 89 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure and Article 18 of Law 7/1985, of 2 April, regulations for the foundation of Local Government, modified by Law 57/2003, of 16 December, on Measures for the modernization of Local Government.

**City Hall of Senyera (Valencia):** Regarding the legal duty imposed by judicial order to make well-founded, express judgments and to provide swift and thorough responses to requests submitted by concerned parties, in accordance with what is contained in Article 42 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, and to communicate to the complainant whether or not the procedure has been initiated when it is accompanied by a request for initiation and send notification of its resolution in accordance with Articles 11.2 and 20.5 of the Regulations for the Exercise of Sanctioning Power, approved by Royal Decree 1398/1993, of 4 August.

**City Hall of Sigüenza (Guadalajara):** Regarding the legal duty incumbent upon them to comply with the regulations and resolutions of the hydrographic confederation regarding municipal waste water treatment.

**City Hall of Soller (Illes Balears):** Regarding the legal duty incumbent upon them to adopt the necessary

measures to restore municipal legality, infringed upon by illegal construction.

**City Hall of Soto del Real (Madrid):** Regarding the legal duty to adopt measures to ensure the execution of municipal resolutions, in agreement with sections 1 and 3 of Article 9 and 1 of Article 103 of our Constitution as well as section 1 of Article 6 of Law 7/1985, of 2 April, Regulation of Local Ordinances.

**City Hall of Tordesillas (Valladolid):** Regarding the legal duty imposed by judicial order to make well-founded, express resolutions to the requests and appeals submitted to them, in accordance with what is established in Article 42 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Torrelavega (Cantabria):** Regarding the legal duty incumbent upon them to organize the temporary cessation of unregulated dumping in public waterways, and impose corrective measures with respect to atmospheric polluting emissions, in accordance with Article 103 of the Spanish Constitution, Articles 3 and 72 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, Article 13 of Law 17/2006, of the Integrated Environmental Regulation of Cantabria, and similar components of Law 16/2002, on Integrated Prevention and Regulation of Pollution, and Article 103 of the Water Law.

Regarding the legal duty incumbent upon them to apply the principles of efficiency, economy and speed to municipal action, set forth in Article 103 of the Constitution and in Article 3 of Law 30/1992, of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, complying with the stipulated deadlines of the law currently in force.

**City Hall of Torreloaños (Madrid):** Regarding the legal duty to maintain natural resources, according to Article 45 of the Constitution, which establishes the right of all citizens to enjoy an acceptable environment, and which demands, for its effectiveness, that public authorities oversee certain natural resources, and in addition, that they protect and improve quality of life, as well as defend and restore the environment, which includes the prevention of noise in residential areas.

**City Hall of Torre Vieja (Alicante):** Regarding the legal duty incumbent upon them to adopt all necessary measures to prevent discovered urban planning infractions from being fully carried out due to the mere passage of time.

**City Hall of Tres Cantos (Madrid):** Regarding the legal duty imposed by judicial order to provide express responses to requests for information made by concerned parties, except in cases that clearly lack foundation, thus complying with that established in Articles 35, 42 and 89 of Law 30/1992, of 26 November, of

the Legal System for the Public Administrations and of Common Administrative Procedure and Article 18 of Law 7/1985, of 2 April, regulations for the foundation of Local Government, modified by Law 57/2003, of 16 December, on Measures for the modernization of Local Government.

Regarding the legal duty incumbent upon them to give express replies to any requests and reports submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Valdecañas de Tajo (Cáceres):** Regarding the legal duty incumbent upon them to resolve all requests, complaints and appeals submitted by citizens, quickly and within established time limits, in accordance with what is established in Article 42 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Valencia:** Regarding the legal duty to guarantee, and if necessary to the maximum degree, the effective participation of citizens in the elaboration and carrying out of planning instruments, deeming that public information to be an essential element of said process.

**City Hall of Valencia de Alcántara (Cáceres):** Regarding the legal duty incumbent upon them to guarantee compliance with the obligation of owners of all types of properties and buildings to maintain them in secure, clean, and aesthetically acceptable conditions, by the authority of Article 9 of Law 8/2007, of 28 May on Land Use and Article 163 of Law 15/2001, of 14 December, on Land Use and Land Management of Extremadura.

**City Hall of Valmala (Burgos):** Regarding the legal duty derived from Article 42 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure, to pronounce express resolutions for all requests and appeals submitted by interested parties.

**City Hall of Vilar de Barrio (Ourense):** Regarding the legal duty incumbent upon them to comply with the regulation and resolutions of the hydrographic confederation in the matter of treatment of municipal waste water.

**Island Council of Tenerife:** Regarding the legal duty concerning them to act by substitution in the resolution of a complaint regarding the absence of a nurse's station or well-stocked first aid kit necessary to provide first aid treatment for accidents or sudden illness at an amusement park located in Puerto de la Cruz (Santa Cruz de Tenerife), in accordance with current health regulations, as well as the lack of a Complaints Log which is mandated by Article 8 of Law 1/1998, of 8 January, the Legal System for Public Events and Activities.

This Law establishes the substitution of the Island Councils in municipal jurisdictions in the case of inactivity on the part of the City Hall.

#### OTHERS

**Bar Association of Badajoz:** Regarding the legal duty incumbent upon attorneys working in the jurisdiction of legal assistance for minors to comply with obligations set forth in Law 1/1996, of 10 January, on free legal assistance, in so far as fulfilling their functions of aid and defense in a real and effective manner until the end of the judicial process, and if relevant, the execution of sentences. The special circumstances of these judicial proceedings, established in Organic Law 5/2000 of 12 January, on the criminal liability of minors, should also be kept in mind.

**Bar Association of Cáceres:** Regarding the legal duty incumbent upon attorneys working in the jurisdiction of legal assistance for minors to comply with obligations set forth in Law 1/1996, of 10 January, on free legal assistance, in so far as fulfilling their functions of aid and defense in a real and effective manner until the end of the judicial process, and if relevant, the execution of sentences. The special circumstances of these judicial proceedings, established in Organic Law 5/2000 of 12 January, on the criminal liability of minors, should also be kept in mind.

**Bar Association of Palencia:** Regarding the legal duty incumbent upon them to notify interested parties in the processing of cases handled by said association, complying with the requirements established in Articles 58 and 59 of Law 30/1992 of 26 November, of the Legal System for the Public Administrations and of Common Administrative Procedure

**Association of Procurators of Málaga:** Regarding the legal duty incumbent upon them to turn in documents requested by this Institution in the course of an investigation or a complaint, in compliance with Articles

19 and 22 of Organic Law 5/1981, of 6 April, of the Ombudsman.

## WARNINGS

### GENERAL STATE ADMINISTRATION

#### Ministry of Public Works

To the **Secretary General of Transport:** A warning that if it persists in failing to cooperate with this Institution by not complying with our request for documentation its attitude will be considered a hindrance, since it must be this Administration that asks the Directorate of Barajas Airport or AENA for complaints presented about noise pollution caused by non-compliance in flight paths, and not the Ombudsman.

#### Ministry of the Environment, Rural Areas and Marine Areas

**Hydrographic Confederation of the Tajo River:** A warning that if it persists in failing to cooperate with this Institution by not complying with our request for documentation its attitude will be considered a hindrance.

### AUTONOMOUS ADMINISTRATION

#### Autonomous City of Ceuta

A warning regarding the need to collaborate and not hinder the investigations of this Institution, as it is the Governor's Office of the autonomous city who must procure the necessary information from the relevant authorities, not the Institution of the Ombudsman or the complainant, both of whom must concern themselves with monitoring said process.

### LOCAL ADMINISTRATION

**City Hall of Ourense:** A warning that if it persists in failing to cooperate with this Institution by not complying with our request for documentation its attitude will be considered a hindrance.

For more information:  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

# Appeals of Unconstitutionality

The Ombudsman is authorised to impose appeals of unconstitutionality and legal protection, as expressed in the Organic Law of the Constitutional Courts. Of the 21 requests for intervention received, the Ombudsman did not find sufficient items of unconstitutionality in 19 of them, but did decide to present appeals in the case of two precepts in particular regarding a state law and an autonomous law.

## Requests for Intervention

All filers were informed of the basic aspects of the resolutions adopted, whose entirety may be consulted in the full report which is published by the Ombudsman, and put on its website: [www.defensordelpueblo.es](http://www.defensordelpueblo.es) and which is published as well by the Parliament.

The laws that the Ombudsman was asked to consider for appeal of unconstitutionality were the following:

- 1) Law 11/2007, of 11 October, of the Catalanian Parliament, for the Catalanian Corporation of Audiovisual Media.
- 2) Law 25/2007, of 18 October, on data conservation relevant to electronic communication and public communication networks.
- 3) Organic Law 14/2007, of 30 November, on the reform of the Statute of Autonomy for Castilla y León.
- 4) Law 35/2007, of 15 November, which establishes an income tax deduction for each newborn or adoption and a single payment by the Social Security for each newborn or adoption.
- 5) Law 39/2007, of 19 November, on military careers.
- 6) Law 40/2007, of 4 December, on measures regarding Social Security matters.
- 7) Decree-Law 2/2007, of 4 December, of the Government of Aragón, by which urgent measures are established to adapt the city planning ordinance to Law 8/2007, of 28 May, on land use, guarantees of sustainability in urban planning, and promotion of stimulus policies for housing and land use in the Autonomous Community of Aragón.
- 8) Law 52/2007, of 26 December, to recognize and broaden rights and to establish measures in favor of those who suffered persecution or violence during the civil war and dictatorship.
- 9) Law 10/2007, of 26 November, of the Parliament of Andalucía, on the Protection of the Origin and Quality of the Wines of Andalucía.
- 10) Law 22/2007, of 18 December, of the Parliament of Andalucía, on Pharmacy of Andalucía.
- 11) Law 56/2007, of 28 December, on the Stimulus Measures of the Information Society.
- 12) Law 7/2007, of 21 December, of the Madrid Parliament, on Fiscal and Administrative Measures.
- 13) Law 1/2008, of 20 February, of the Parliament of Cataluña, on Farming Contracts.
- 14) Royal Decree-Law 2/2008, of 21 April, on economic stimulus measures.
- 15) Royal Decree-Law 3/2008, of 21 April, on urgent and exceptional measures to guarantee supplies to cities and towns affected by drought in the province of Barcelona.
- 16) Royal Legislative Decree 2/2008, of 20 June, in which the unified text of the Law on Land Use is approved.
- 17) Law 2/2008, of 17 June, of the Parliament of Castilla y León, on the declaration of a regional project for the installation of a treatment center for non-toxic industrial waste in the municipality of Fresno de la Ribera (Zamora).
- 18) Law 2/2008, of 28 May, of the Basque Parliament, the third modification of the Law on Police of the País Vasco.
- 19) Law 11/2008, of 3 July, of the Generalitat, on citizen participation in the Community of Valencia.

## Appeals accepted

- 1) Law 51/2007, of 26 December, on the General State Budget for 2008.  
The Ombudsman, in exercise of the powers vested in it by Articles 162.1 of the Spanish Constitution, 32.1 of the Organic law of the Constitutional Courts and 29 of the Organic Law of the Ombudsman; referring to the Board of Coordination and Internal Regulations of this Institution, celebrated on 26 March 2008, lodged an appeal of unconstitutionality against the sixtieth additional provision of Law 51/2007, of 26 December, on General State Budgets for the year 2008, published in the Official State Bulletin issue 310, of 27 December 2007.
- 2) Law 15/2007, of 27 December, of the Generalitat Valenciana, on budgets for 2008.  
The Ombudsman, in the exercise of the powers vested in it by Articles 162.1 of the Spanish Constitution, 32.1 of the Organic law of the Constitutional Courts and 29 of the Organic Law of the Ombudsman; referring to the Board of Coordination and Internal Regulations of this Institution, celebrated on 26 March 2008, lodged an appeal of unconstitutionality against the eleventh additional provision of Law 15/2007, of 27 December, of the Generalitat, on Budgets for the

Fiscal Year 2008, published in the Diari Oficial de la Comunitat Valenciana, on 31 December 2007, because it considers that it violates Article 9.3 of the Constitution, as well as Articles 75 of the Autonomous Community of Valencia Statute (EACV), approved by Organic Law 5/1982, of 1 July, and reformed by Organic Law 1/2006, of 10 April, and 21.1 of Organic Law 8/1980, of 22 September, on the Financing of Autonomous Communities (LOFCA), modified by Organic Law 5/2001, of 13 December; these last precepts under the auspices of what is established in Article 28.1 of Organic Law 2/1979 of 3 October, regulator of this court.

### Appeals for Legal protection

Over the course of 2008, 20 requests were received soliciting the intervention of a legal protection appeal, 19 of which manifestly did not comply with the

requisites stipulated in article 44 of the Organic Law of the Constitutional Court, either because they had not exhausted all other methods of legal recourse stipulated by the processing regulations relevant to the particular case, nor commenced formal legal proceedings, where possible, on discovery of the violation of Constitutional Law, or they had solicited the appeal out of the established deadline of 30 days from the notification of the court's decision in the legal process.

The only request which complied with the aforementioned requisites, nevertheless turned out to be unsustainable in its basis, as a result of which the Ombudsmen, referring to the Board of Coordination and Internal Regulations and in compliance with that which is set forth in Article 18.1.b) of the Regulation of Organization and Operation of the Ombudsman's Office, April 6, 1983, adopted the agreement not to accede to the request of the interested parties.

### Centre for Documentation on the Ombudsman and Human Rights



Books can be accessed on [www.defensordelpueblo.es](http://www.defensordelpueblo.es) or at the headquarters at Calle Fortuny, 22. 28010 Madrid - SPAIN

# Administrations that failed to comply or have shown noteworthy delays in responding to the Ombudsman's investigation requirements

The following sections list the organizations and departments of the various administrations that failed to take appropriate action regarding the investigation requirements of the Ombudsman. Thus, they neglected to fulfil the duty of all public authorities to collaborate “in a swift and preferential manner” with this Institution in accordance with article 19 of the Organic Law 3/1981. In such cases article 18.2 of the aforementioned Organic Law authorizes the Ombudsman to declare the organization or administrative department in question to be “hostile or a hindrance to its functions”, and also to shed light on this fact in Parliament via publication in the annual report, or, as the case may require, a special report. As per the aforementioned precepts, actions that took place in 2008 with an unsatisfactory outcome are described below. The first section describes the actions of administrations considered to be hindrances—those that have either hampered or even blocked the work of the Ombudsman altogether either because they had done so systematically or because such a deleterious activity had been carried out that it warranted special attention. The second shows complaints for which no reply had been received by the department to which they had been addressed in 2008 after as many as three requests or enquiries by the Ombudsman to gather information about a particular subject or question. In the third section, which can be consulted in the complete version of this report, complaints listed are those for which the administrative department did finally respond to a third enquiry offering an explanation for the delay, but only after previous requests had either received an inadequate response or no reply whatsoever.

## Uncooperative administrations

### Local administration

- **City Hall of A Estrada (Pontevedra)**, related to the failure to reply to a request for information concerning a licence and to construction work carried out.
- **City Hall of A Guarda (Pontevedra)**, related to the annoyance caused by the noise and bad smells coming from a bar.
- **City Hall of Barreiros (Lugo)**, regarding the lack of urban planning details in the documentation relating to a licence.
- **City Hall of Burgos**, related to the annoyance caused by the noise from pubs.

Related to the annoyance caused by the loading and unloading of merchandise in a shopping mall.

- **City Hall of Cartagena (Murcia)**, regarding the refusal to grant a licence for the closure of a pathway whose ownership was disputed.
- **City Hall of Cercedilla (Madrid)**, regarding building defects in housing and the irregular granting of a first occupation licence.
- **City Hall of Comares (Málaga)**, regarding the numerous and repeated petitions which have been necessary in order to receive each and every one of the requested reports, in a process lasting almost three years, and which finally ended in the rejection of a recommendation.
- **City Hall of Gordocillo (León)**, regarding the request for documentation relating to a licence for construction work by a third party.
- **City Hall of La Adrada (Ávila)**, related to residences without municipal water supply contrary to original planning.
- **City Hall of Llanes (Asturias)**, regarding the poor state and lack of public services of a housing development.
- **City Hall of Puerto de la Cruz (Santa Cruz de Tenerife)**, regarding the eight-year process undertaken by this Institution in order to take disciplinary action on a member of the local police force, in spite of there being a sentence for wrongdoing.
- **City Hall of Puerto del Rosario (Las Palmas)**, related to the lack of first occupation housing licence due to not having electricity supply.
- **City Hall of Santa Úrsula (Santa Cruz de Tenerife)**, regarding the eight-year process undertaken by this Institution in order to take disciplinary action on a member of the local police force, in spite of there being a sentence for wrongdoing.
- **City Hall of Turís (Valencia)**, related to damage caused by annoying activity without a licence.

## Complaints for which no reply has been received in 2008, after the third request

### General State Administration

- **Ministry of Foreign Affairs and Cooperation**  
To the **Directorate General of Consular Assistance and Affairs**, regarding the requirement, for the purposes of obtaining a residency visa, to register

a minor whose father is a Spaniard of Moroccan origin, in the Civil Registry Office.

Regarding the delay in the concession of family reunification visas, when residency authorisation had already been officially granted by the corresponding government subdelegation.

#### • **Ministry of Public Works**

To the **Secretary of State for Infrastructure**, regarding the implementation of the Rías Bajas highway construction project. Section: Villavieja-río Mente, having affected a private property situated in the municipality of A Gudiña (Ourense), the interested party accepted the terms of compensation and claimed for payment on 17 October 2003 to the Highway Demarcation Board of the State of Galicia, but to this day has not received payment for the amount owed.

To the **General Secretary for Infrastructure**, regarding the carrying out of construction work on the Costa del Sol highway, on the Estepona turnoff section; private property having been partially expropriated, the evaluated price was paid at the time, but did not include the interest accumulated as a result of the delay in handing in the relevant documentation.

To the **General Directorate of Civil Aviation**, as a result of numerous letters sent by citizens to this Institution, as well as through articles published in the media uncovering a series of incidents relating to particular flights of an airline company which had caused almost five hundred passengers to suffer uncertainty and insecurity.

#### • **Ministry of Justice**

To the **Secretary of State for Justice**, regarding the service given by members of staff at the Civil Registry Of Leganés (Madrid) and the delays involved in the processing of marriage applications.

Regarding the delay in a marriage registration in the Spanish Consulate in Bogota (Colombia).

Regarding the acquisition of Spanish nationality of some minors.

### **Autonomous Administration**

#### • **Autonomous Community of the Islas Canarias**

To the **General Directorate for the Protection of Minors and of the Family**, as a result of a visit to the centres for the care of unaccompanied foreign minors in Playa Blanca and Hondura, situated in Fuerteventura island (Las Palmas).

To the Canary Housing Institute, regarding legal irregularities in the purchasing of housing.

#### • **Autonomous Community of Galicia**

To the Department of Housing and Land, regarding illegal construction work in a residence with deferred access.

#### • **Community of Madrid**

To the General Directorate of Housing and Rehabilitation, regarding the irregular dealings of a Property Administrator.

### **Local Administration**

• **City Hall of Alatoz (Albacete)**, regarding the lack of a construction license.

• **City Hall of Algar de Mesa (Guadalajara)**, regarding the processing of the recovery of a piece of public property.

• **City Hall of Burgos**, related to the correspondence sent to the Local Police in which a citizen requested specific explanations regarding an alleged traffic violation.

• **City Hall of Castro Urdiales (Cantabria)**, related to the annoyance caused by the smoke and bad smells coming from a bar.

Related to the failure to reply to a license renewal application.

• **City Hall of Ciudad Real**, regarding disturbances caused by a neighbour.

• **City Hall of Cobisa (Toledo)**, regarding annoyance caused by an ironmonger in the area.

• **City Hall of Cospeito (Lugo)**, regarding the suspension of the public transport system which connects the city of Lugo with the neighbourhoods of Rábade, Cospeito and Abadín, thus depriving the inhabitants of these areas of a necessary form of transport.

• **City Hall of Chiva (Valencia)**, regarding the absence of minimum services of sewer systems, electricity supply, signposting and street paving in the municipality. Regarding the insufficient supply of running water to particular residences as well as the impossibility of installing ADSL lines.

• **City Hall of Fuengirola (Málaga)**, regarding irregularities in the licenses relating to commercial activity.

• **City Hall of Gozón (Asturias)**, regarding the failure to reply to a complaint filed by a resident against the building of a wall by another resident which blocked the public area housing the old laundry rooms.

• **City Hall of Granadilla de Abona (Santa Cruz de Tenerife)**, regarding their failure to address the formal complaints relating to an establishment which infringed noise level regulations and which served as a focal point for drug traffickers and consumers.

• **City Hall of Guadix (Granada)**, regarding the payment of debts incurred by the interested parties, who handed over some plots of land to the local Corporation in order to pay off a mortgage to the Institute of Public Works of Andalucía.

• **City Hall of La Cañada (Ávila)**, regarding numerous problems, including the erroneous measuring of water consumption in a private property.

- **City Hall of Linares (Jaén)**, regarding the disturbance caused by the noise from a temple.
- **City Hall of Madrigalejo de Monte (Burgos)**, regarding a neighbourhood path which is impassable as a result of lack of maintenance.
- **City Hall of Manzanares el Real (Madrid)**, regarding failure to respond to six appeals lodged by the interested party.
- **City Hall of Mequinenza (Zaragoza)**, regarding failure to respond to a letter presented to the City Hall, dated 1 September 2004, requesting information about an expropriation dossier which affected rural property pertaining to Segre.
- **City Hall of Mucientes (Valladolid)**, regarding failure to dispose of the rubble from the partial collapse of a residential building.
- **City Hall of Piles (Valencia)**, regarding failure to provide explicit resolution to the correspondence, requests and appeals filed to said Administration.
- **City Hall of Puerto del Rosario (Las Palmas)**, regarding the poor condition of a road in the area, not only with regards to the road surface, but also to the street lighting and sewer systems, as well as to the lack of plastic and paper recycling containers in the surrounding area.
- **City Hall of Puerto Real (Cádiz)**, regarding the lack of security measures in a neighbourhood.
- **City Hall of Sacedón (Guadalajara)**, regarding failure to respond to a request for urban planning information.
- **City Hall of San Cristóbal de La Laguna (Santa Cruz de Tenerife)**, regarding the disturbance caused by the noise made by residents.
- **City Hall of San Miguel de Salinas (Alicante)**, regarding an integrated development project which did not include a hydrological study.
- **City Hall of Ses Salines (Illes Balears)**, so that they proceed to refund the excess payment corresponding to the difference between the amount which was deposited for Urban Property Taxation and the amount which should have been deposited for Rural Property Taxation, for all fiscal periods which were not claimed on the date in which the interested party filed for a refund.
- **City Hall of Teguiise (Las Palmas)**, regarding the annoyance caused by the bad smells and plague of insects as a result of the passage of livestock through the municipality.
- **City Hall of Úbeda (Jaén)**, regarding the lack of running water supply in the vicinity of San Miguel, in spite of the numerous complaints filed by residents.
- **City Hall of Valmala (Burgos)**, regarding their failure to comply with the legal duty to respond directly to the interested party who had made several requests for information to said City Hall, and had requested several Board meetings which never took place.
- **City Hall of Viñuela (Málaga)**, regarding the cutting off of the water supply to a residence without giving any kind of notice to the interested party, nor responding to the complaint filed.
- **City Hall of Vitigudino (Salamanca)**, related to an old people's home which remained closed for five years after its inauguration, leading the Ombudsman to send a correspondence on 26 March 2008 to the mayor, requesting information as to why the residence remained closed, a situation which was contributing to its deterioration.
- **Provincial Council of Zamora**, regarding their passiveness in response to the reporting of the illegal construction of a social centre.

### Others

- **Association of Lawyers of Badajoz**, regarding the professional performance of the state appointed lawyer who was designated to the interested party.

### Administrations that replied after the third request

Due to lack of space we have not included here the list of Administrations which answered the Ombudsman's third request. The list of Ministries, Autonomous Communities and Local Administrations, and other public organizations that fall into this category can be found in the complete version of this report.

## MANAGEMENT SUMMARY



## An increase in complaints lodged through the Institution's website, which also provides educational material for high school teachers and students

The following is an outline of the most important lines of action of the General Secretary during 2008, such as public service data and the economic and budgetary management. It is also worth mentioning the growing importance of our website as a means of informing the public about human rights and the duties of the Ombudsman. It is also becoming an important channel for lodging individual complaints, which now accounts for 48.15% of all complaints received by the Institution.

### Department of Studies and Modernization

In addition to coordinating the production and circulation of the Annual Report, the Department has continued to promote institutional collaboration by signing agreements with the Board of Consumers and Users, The Complutense Institute of International Studies, The Ukrainian Parliament's Commissioner for the Defense of Human Rights, the General Foundation of the Complutense University of Madrid and the Egyptian National Council for Human Rights.

Our educational activities have been many: an on-line Master's in Human Rights, the State of Law and Democracy in Latin America; a Master's in the Protection of Human Rights by the University of Alcalá; a Summer course in the Complutense University in "Road Safety and the Citizen's Rights"; the Ombudsman Institution's INAP courses; internships in the Institution for university students; courses in languages, computer skills and work safety.

Regarding external relations, it is worth mentioning the XIII FIO Congress in Mérida, México, in November; the reception given to the foreign delegations that visited the Institution (France, Morocco, Chile and Uruguay, among others) and the completion of several United Nations questionnaires. One of our most noteworthy collaborations was with the European Union's EUROsociAL-Justice Program, on the preparation and execution of the project for access to Justice.

Regarding our information activities, aside from the Publications Plan, we have created important educational material called "The Ombudsman in Class", regarding human rights and citizen's education, to lend support to high school teachers and students directly from the Institution's website.

We have also made a considerable effort to bring the Institution closer to large immigrant communities residing in Spain by publishing information leaflets in their languages and distributing them to their respective associations and embassies.

### Department of Citizens' Service and Internal Regime

We have remodeled our two buildings and inaugurated our assembly hall, projects carried out by the Directorate General for State Assets.

Regarding contracts, we have adapted our dossier of administrative clauses to the new law and re-trained the staff affected by the change. We have also implemented a fingerprint clocking-in system.

One of the most important activities carried out was adapting the Institution to the new legislation regarding data protection by publishing the regulation of 23 September 2008, which regulates personal information files held by the Ombudsman Institution, published in the Official State Bulletin (BOE) on December 8, 2008, and drawing up the security documents and corresponding instructions for the staff.

### Department of Information Technology Services

We have optimized our institutional hardware and software infrastructure: in the Gex 3, we have improved the general queries system and digitalized 50% of our complaints history. Regarding new applications, we are creating applications for staff, social benefits and coordination meetings records.

Novelties in our web platform include the integration of the 060 network, which allows access to the complaint form, new sections (job opportunities, the Ombudsman Magazine, inclusion of new documents in foreign and co-official languages, etc) and the remodeling of the Documentation Center. We are also currently creating a new, more operative and participative intranet.

### Public service

Public service through the Institution's website, both providing information and receiving complaints, increased in 2008. Data regarding complaints lodged by individuals through the web complaint form amounted

to 48.15% of the total complaints received. Collective complaints, normally filed lodged by associations and organizations, still use the post. The following table details the complaints received according to the method employed:

**TABLE 32**  
**Breakdown of complaints according to the way in which they were received in 2008, compared with 2007**

Complaints received via	2007	2008
E-mail	797	785
By post	6,983	9,773
Fax		
Burofax	30	23
Printed fax	772	879
Web page		
With certificate	98	381
Without certificate	7,648	11,004
In person	782	801
Telegram	1	–

Other means of informing the public are: personal visits in our offices, our telephone service and calls through our toll-free 900 number, mostly used for information purposes.

The following chart details the figures:

**TABLE 33**  
**Number of calls and visits received in 2008 with the objective of offering services to citizens, compared to 2007**

	2007	2008
In person	2,994	2,901
Telephone	8,234	8,404
900 Line	4,402	4,603

The number of visits made to the Ombudsman website rose this year by 6,762, which represents an increase of 4.96%.

The following table shows the data along with the total number of pages visited in 2008 compared to the previous year:

**TABLE 34**  
**Visits to the Ombudsman's website in 2008 compared to 2007**

	2007	2008
Visits	136,260	143,022
Pages visited	1,272,876	1,317,157

This considerable increase in the number of visits to our website is mainly due to our new site launched in the last months of 2008 called [www.enclase.defensordelpueblo.es](http://www.enclase.defensordelpueblo.es). The site aims to educate people in human rights and in the Ombudsman's duties in protecting and defending these, as well as to provide educational materials for teachers and students.

Data regarding the number of visits to our website, together with the number of pages visited in 2008, are as follows:

**TABLE 35**  
**Breakdown of visits to the Ombudsman's website in 2008**

	Visits	Pages visited
<a href="http://defensordelpueblo.es">defensordelpueblo.es</a>	137,243	1,292,866
<a href="http://enclase.defensordelpueblo.es">enclase.defensordelpueblo.es</a>	5,779	24,291
<b>Total</b>	<b>143,022</b>	<b>1,317,157</b>

Other important data on our web visits are, for example, that our most-visited page in 2008 was the one containing the complaints form, with 99,818 visits; our publication "El Defensor al Día" (The Ombudsman Update) had 9,600 downloads, and our Annual Report 2007 in its complete and abbreviated versions had 8,332 downloads.

Visits to our website came mostly from Spain, with 73%, followed by Latin America, the U.S. and other EU member countries.

### Economic and budgetary management

It should be pointed out that the entire Institution's financial solvency was maintained throughout the year with a budgetary execution that amounted to a total of 96.35%.



# **SUPERVISION OF PUBLIC ADMINISTRATION**



## Several proposals by the Ombudsman to improve the functioning of the Ministry of Justice in a particularly complicated year for this Administration

In 2008, there were numerous complaints from citizens expressing their disagreement with the current circumstances affecting the Ministry of Justice. An increase in caseloads and a civil servants' strike were two of the main causes of stoppages in legal institutions with criminal, civil and administrative jurisdiction during a particularly complicated year. Standing out among other activities conducted by the Ombudsman was a recommendation regarding the Immediate Action Plan to Improve the Ministry of Justice, which the General Council of the Judiciary opted to undertake. Reports have also been requested from the Council and the Ministry of Justice regarding the general situation of pendency in the criminal courts and enforcement in Spain. On domestic violence, the Ombudsman stressed the need to maintain permanent coordination among all institutions involved so that measures adopted are effective.

### Undue delays

2008 may be considered one of the most difficult in recent memory for the administration of justice, particularly as regards the operation of criminal courts because these institutions bear a very substantial workload both during investigation and prosecution as well as in the enforcement of judgments.

The caseload for the courts rose sharply due to an increase in litigation that was further exacerbated by the implementation of certain reforms, particularly those carried out in the area of motorway safety.

Furthermore, the judicial strike affecting the courts of Castilla y León, Castile la Mancha, Extremadura, Murcia, La Rioja, Illes Balears, Asturias, and Ceuta and Melilla, as well as the Supreme Court, the National Assembly, the Attorney General, the National Institute of Toxicology and the Civil Registry, had a severe impact on the conducting of judicial activities in 2008 with respect to all judicial orders, as well as the actions taken by the Civil Registry in the regions affected. The strikes triggered the suspension of numerous lawsuits and other legal proceedings, delaying decisions on pending cases or those awaiting admission or execution. As such, the impact of the labor strike did not end with the conclusion of the conflict, but rather began to take effect afterward, which was in turn reflected in the complaints filed by citizens at the Ombudsman's Office.

Thus, in 2008, the Ombudsman processed a total of 541 complaints for undue delay, of which 229 were related to the Civil Jurisdiction, 198 to the Criminal Jurisdiction, 56 to the social courts, 56 to the administrative appeals courts and 2 to military courts. Of the 541 aforementioned complaints, 334 were conducted during 2008, 150 of them corresponded to the Criminal Courts, 140 to the Civil Courts, 27 to the Administrative Appeals Courts, 17 to Social Courts, and 1 to

military courts. The remaining cases pertain to filings initiated in previous years that had remained unresolved at the conclusion of this report.

### Civil Jurisdiction

The oldest cases initiated in this institution, related to delays in the Civil Jurisdiction that remain pending, date back to 2002 and 2003, both of which were mentioned in previous reports. The first of these involves an investigation with the Attorney General and the Department of Social Welfare of the Generalitat Valenciana and the second one refers to a collection proceeding lawsuit filed in 2002 in the Puerto del Rosario Court of First Instance No. 2.

Additionally, delays in eviction proceedings have been one of the most frequent complaints in the civil jurisdiction for years, and this situation was no different in 2008—a year in which approximately one fifth of the complaints received for court delays involved these trials. As reflected in the previous year's annual report, an investigation began in 2007 with the Ministry of Justice to determine if legislative initiatives were being studied or implemented under the auspices of the Ministry in order to resolve this issue.

Likewise in 2008, complaints arising from delays in the execution of court orders were quite frequent.

### Criminal Jurisdiction

An example of the blockage affecting the criminal jurisdiction in the process of executing court orders is reflected in the complaint submitted by officials at Criminal Court No. 1 of Sevilla. The Ombudsman initiated an *ex officio* investigation with the Ministry of Justice and the General Council of the Judiciary, to verify the complaint and to ascertain whether this issue had been dealt with at the Justice Sector Conference

between the Ministry of Justice and the autonomous communities with devolved powers.

Delays at any stage in criminal proceedings can be quite serious. Those arising during the pre-trial phase affect both the victims (especially when adequate measures are not taken in a timely fashion to protect them) as well as the accused, who may be denied their right to presumption of innocence, or even their own personal freedom along with any resulting adverse consequences. Also noteworthy is the fact that the worst delays in the criminal courts—as described in complaints received in this institution—tend to occur in the proceedings involving crimes against property and the socio-economic order, delays which are exacerbated to a large extent by legal actions taken by defendants and by their legal representation during the trial.

Of particular concern to this institution are delays arising during proceedings for crimes involving worker rights—given the guardianship role entrusted to the courts in these types of crimes. For example, criminal proceedings began in 2001 in the Court Instruction No. 2 of Alcobendas due to an industrial accident in 2001, in which the worker was granted full disability in 2002, yet the case is still being processed in the local criminal court. The Prosecutor has reported that a request has been submitted to resolve these proceedings as swiftly as possible.

### **Administrative Appeals Jurisdiction**

Complaints received from individuals have shed light on the widespread, excessive workloads hampering the Administrative Appeals Courts. In some of them, the hearing date scheduled can be as long as two years after the appeal was first admitted. We have received such complaints involving Administrative Appeals Courts in Madrid and Valencia.

This situation is mainly due to the new powers granted to the Administrative Appeals Courts by the reform contained in Organic Law 19/2003 of December 23. During 2005 and 2006, the rising influx of cases has greatly exceeded previous years' caseloads. The admission of appeals has overwhelmed the capacity of the courts to process them, even given parameters involving an extraordinary output by judges.

Regarding complaints involving unjustified delays related to professional associations in the administrative court, at the end of 2008 the Ombudsman was still investigating a complaint submitted in 2006 regarding an ordinary procedure that had originally been filed with the First Section of the Murcia Administrative Appeals Court in 2003. Also under scrutiny at that time were two complaints about excessive delays involving the Granada Administrative Appeals Court in administrative appeals initiated in 2002 and 2004. An additional two complaints related to administrative appeals filed in

2005 remained pending: one before the First Section of the Administrative Disputes Division of the High Court of Justice of Aragón, the other before Administrative Disputes Division of the High Court of Justice of Madrid.

### **Domestic Violence**

The most significant complaints received by the Ombudsman in 2008 on the subject of gender violence may help to unravel some of the complications involved in applying the measures in our legal system that are meant to prevent it, especially those contained in the Organic Law 1/2004 of December 28, on Comprehensive Preventive Measures against Gender Violence. It is the Ombudsman's conviction that in order to ensure the effectiveness of these measures, constant coordination among all institutions dedicated to eradicating gender-based violence is needed.

Regarding comprehensive social welfare information and assistance, complaints handled referred to incidents in cities other than those in which the offenders are registered residents, and there were complaints about the operation of shelters as well.

In terms of institutional supervision of the activities of law enforcement agencies, an enquiry was initiated with the Directorate-General of Police and the Civil Guard to determine the number of law enforcement agents whose function is to provide protection to victims of gender violence in Spain, and the ratio of the number of officers to the amount of restraining orders issued in each of the provinces in which this function is performed and criteria used in making such assignments.

As for judicial supervision, judicial preventive measures, and victim safety and protection, an *ex officio* investigation was initiated before the Attorney General regarding the death of a woman at the hands of her partner, in spite of the existence of a restraining order and an order to deport the offender from national territory. An enquiry was also initiated with the General Council of the Judiciary, after the murder of a woman and her partner, by her former husband, in spite of the fact that she had reported on several occasions the threats directed toward her and that there was a restraining order in effect that was repeatedly breached. This was met with inaction by the court handling the criminal proceedings, the Local Criminal Court No. 5 in Torrejón de Ardoz.

With regard to the unjustified delays in proceedings involving gender violence, a noteworthy complaint was submitted by a citizen regarding pre-trial proceedings presented before the Madrid Court on Gender Violence I, in which cooperation from the Attorney General was requested. Since then, the Attorney General has kept the Ombudsman informed regarding follow up activity being carried out with respect to the

aforementioned proceeding. At the same time, the claimant lodged a complaint with the Council of the Judiciary, which in turn concluded that, although the case was closed due to lack of evidence of any negligence attributable to those in charge of court, a problem was found regarding the structure of the court, which, among other things, is plagued by high degree of pendency, serious deficiencies in the distribution of tasks among workers, and a very precarious staff, all of which have given serious cause for concern.

### Juvenile offenders

As for complaints received by the Ombudsman in this area in 2008, it should be noted that they have been infrequent. Among the most noteworthy is a complaint by the mother of a child at a Madrid facility who attempted suicide during his stay there, which led to an investigation by the Attorney General. There were also two complaints alleging child abuse at two juvenile detention centers.

Additionally, throughout 2008, visits were made to the following centers: the San Jorge Juvenile Detention Facility by judicial decision in Saragossa, the Ciudad Real-La Cañada Juvenile Facility, the Socio-Educational Juvenile Facility of the Government of Cantabria in Maliaño, Cantabria, the “Vicente Marcelo Nessi” Juvenile Internment Facility, (Badajoz), and the Medina Azahara Detention Facility (Córdoba). No noteworthy deficiencies were found in the facilities or equipment at the aforementioned centers.

### Complaints related to family law

Regarding the division of authority in this area, the Ombudsman maintains its stance on the need for a fully autonomous Family Court to deal with all the consequences arising from family crises in a comprehensive fashion. Although this has previously been proposed to the Ministry of Justice on two separate occasions in 2001 and 2004, it has not yet been accepted. Nevertheless, various groups of judges and lawyers have determined that the granting of authority to Gender Violence Courts is not achieving the intended goals, but rather that a coexistence has emerged of judges specialized in violence against women, judges on violence against women who reconcile other causes with those of violence, first instance judges and family court justices. Furthermore, the division of power between the gender violence courts and family courts is unclear, which leads to conflicts of jurisdiction between different courts and excessive delays in handing down resolutions on family rights issues. All of this may be further compounded by incidents that normally arise in the course of criminal proceedings.

Also the subject of continued complaints lodged with the Ombudsman is the lack of adequate psychosocial

staff in family courts to meet the requirements of judges. The number of complaints in this area has risen dramatically. This is due in part to the number of reports requested, and also to the greater degree of intervention needed in investigations involving minors, in determining guardianship and dual-custody and in following up on meeting points and Family Counseling Centers, in judicial mediation, all of which can lead to delays in generating the required reports. Regarding the performance of psychosocial court professionals and the reports they generate, the Ombudsman maintains an ongoing, general investigation with the central government and the autonomous administrations with relevant authority in the matter as well as with the Attorney General, the General Council of the Judiciary and the General Council of Psychologists. In this investigation, which is nearing completion, various reports submitted by these organizations are being evaluated with regard to regulations governing psychosocial personnel and the training and certification required for members of these professional teams. Moreover, the procedures or protocols employed, requested by the Ombudsman, are also being studied in order to promote appropriate measures to effectively address any potential deficiencies that might hamper the effective performance of these professionals in fulfilling their duty to safeguard the rights of all litigants, and, especially, those of minors.

Also in 2008, there have been numerous complaints concerning family meeting point arrangements. In light of the fact that this is an area that has a notable impact on the interests and welfare of children, several meetings were held with coordinators, policy makers and users of various meeting points. Reports from the various administrations involved in processing individual complaints were also gathered. This has enabled the institution to acquire a better understanding of the current circumstances affecting these services and the problems they pose. First of all, far from achieving nationwide homogeneity, this service is not offered by all courts because not all of them have a family meeting point, and not all of those that do have one have the capacity to cope with the growing demand. Nor is there much uniformity in the type of services provided, not only on the state level, but also from region to region. This is due to the fact that each has a network of meeting points that is subject to different models of jurisdiction, management and financing. It was thus deemed opportune to reopen an investigation initiated in 2003 with the Ministry of Justice and the relevant departments of the various autonomous communities, which led to recommendations to each of the autonomous governments urging them to pass an appropriate regulatory Act governing this public service. Another recommendation was made to the Ministry of Justice on the need for legislation to establish the basic conditions of

family mediation and meeting points, without prejudice to the authority vested in the autonomous governments in this matter. Subsequently, the Ombudsman requested a new, more extensive report from the Ministry of Justice.

## Civil Registry

In successive annual reports, the Ombudsman has attempted to shed light on the deficient service provided by both the Main Civil Registry as well as by the municipal and consular civil registries—as described in numerous complaints—and on the various investigations initiated with relevant organizations as well. In spite of these and the various measures adopted, the desired streamlining of this service has not yet been achieved judging from the steady increase in complaints from citizens submitted to the Ombudsman on this subject.

In 2005, 476 complaints from citizens were handled in the Ombudsman's Department of Justice and Domestic Violence. 319 of these were new cases referring to the functioning of the Civil Registry. By contrast, in 2006 there were 767 complaints, with 499 new cases. In 2007 there were 825, 509 of which were new. In 2008, 550 new complaints were received on this matter of a total of 821 that were processed.

Given the number of complaints received and replies made by the State Secretariat for Justice, one may deduce that manifestly irregular situations are deemed as normal. For example, a report submitted by the State Secretariat, literally states: "...I hereby inform you that the application submitted was recorded on September 27, 2003, and the certification requested was issued on November 11, 2004, which is within the standard waiting time limit of the Civil Registry."

However, complaints do not only refer to the Main Civil Registry, but also to the Municipal Civil Registries, where the issuance of certificates may be subject to incomprehensible delays. Similar complaints have been lodged about Consular Civil Registries, as well as about poor information services, inconsiderate treatment by staff, and communication delays between these registries and the Municipal Civil Registries and the Main Civil Registry or even with the Directorate General of Civil Registries and Notaries. With regard to the handling of different cases, there have been four-year delays to resolve cases of nationality, as well as two-year delays to record marriages between Spaniards and foreigners or to register international adoptions.

The Ombudsman Institution has also received numerous complaints about substandard conditions and insufficient facilities, errors occurring in the processing of cases and in records and entries, mistreatment by Civil Registry staff, particularly personnel serving in Consular Civil Registries.

The Ombudsman is aware of the challenges involved in reforming the Civil Registry system, given the complexity of problems posed by, among others, the computerization of the Magistrates' Courts throughout Spain and the digitization of all pages of the Civil Registry and Magistrates' Court records currently under way. However, in spite of such difficulties, the functioning of civil registries must swiftly adapt to the criteria of efficiency and speed expected of any twenty-first century Administration.

In a report sent to the Ombudsman, the State Secretariat for Justice acknowledged certain breakdowns in the management of personnel assigned to civil registries. Moreover, they have brought to the Ombudsman's attention the fact that in the last Sector Conference on Justice Administration it was agreed to propose the creation of the Standing Committee on improving the management of Civil Registries. This committee will study proposals related to improving performance in such areas as management of queues, digitization of records, or changing social demands.

## Reforms in areas related to the administration of justice

Two of the *ex officio* investigations initiated by the Ombudsman—one on the general aspects of Criminal Court and enforcement pendency in Spain, and another on domestic violence—made it possible to verify the various shortcomings affecting the nationwide judicial system that citizens have repeatedly reported to the Ombudsman. The criminal courts were of particular concern, given their role of legal guardianship and the issues at stake (excessive workloads, lack of material resources, staff shortages, excessive movements of personnel, inadequate training and professional experience of temporary workers, lack of computerization adapted to the special needs of criminal proceedings—in both the pretrial as well as the enforcement phases—and particularly the incompatibility between the various databases that allow the court real-time access to facts and circumstances affecting those subject to criminal prosecution, as well as the absence of a computer system to link the databases of the public prosecution service and the courts, with reliable warning systems, etc.). Although numerous and diverse measures have been adopted in attempts to resolve these deficiencies, they have not been sufficient.

These deficiencies have also been repeatedly reported by associations of judges, prosecutors, clerks, officials involved in the administration of justice and other legal practitioners, who urgently demand a thorough reform of the justice system as well as substantial improvements in personnel and equipment than what they currently have at their disposal to carry out their duties.

In this regard, it was learned that the General Council of the Judiciary was planning to discuss an action plan proposed by an advisory group to urgently address the most pressing issues affecting the administration of justice, and that this plan would be coordinated between the Ministry of Justice and Regional Advisors of the Autonomous Communities. Although the Ombudsman approved of this initiative, a recommendation was made that the Council should consider the degree of coordination required with the Attorney General. At the closing of this report, a communication was received from the President of the General Council of the Judiciary notifying the Ombudsman that instructions have been given to begin processing the document containing the recommendation.

Regarding the general situation of pendency in the criminal courts and enforcement in Spain, reports were

requested from both the Council of the Judiciary and the Ministry of Justice regarding measures adopted or proposed on the subject. Specifically, the Ministry of Justice was asked about the possible discussion of these questions at the meeting of the Justice Sector Conference between the Ministry of Justice and the Autonomous Communities with devolved powers.

The General Council of the Judiciary has recently submitted a detailed report by the Board of Inspectors Service on the subject of overseeing the activity of the criminal enforcement courts. This report contained statistical data, workflows of courts specializing in criminal enforcement, organizational aspects of the judicial office and personnel, statistical and computer modifications, and measures that might be adopted to expedite the work of these organizations and to achieve greater effectiveness in enforcing criminal sentences.

## The prison population grew by double the percentage rate in 2008 than in 2007, reaching a total of 73,589 inmates

The steady growth observed in the prison population in Spain in recent years continued and even intensified in 2008. On December 26, 2008, the number of inmates was 73,589, including 67,666 men and 5,923 women. This figure represents an increase of 6,492 people in just one year—a 9.67 percent rise. If in the annual report for 2007 it could be said that, in rough numbers, the system was dealing with a 20 percent increase in population in a four-year period, we must now state that the system is coping with a 30 percent increase in a five-year period.

Last year the Institution visited the prisons of Jaen, Cuenca, Segovia, Palma de Mallorca, Ibiza, Granada, Ocaña I, Ocaña II, Lanzarote, Las Palmas, Estremera and Puerto III.

### Prison Deaths

The first duty of the prison administration is to safeguard the lives of inmates. A threat to this is the possibility of suicide, an issue of concern for the Administration as well as this Institution and the reason why an ongoing enquiry has remained open since 2001. In this important matter, the Ombudsman found that, of the ninety-nine attempted suicides in 2005, thirty-three had been thwarted. In 2006, twenty-five suicides were prevented out of one hundred and seventeen attempts, and in 2007, twenty-seven suicides were avoided out of one hundred and twenty three attempts.

In this matter, one must not fail to take into account that the period 2005-2007 the prison population experienced significant growth, close to 8 percent (calculating from the average number of inmates of the year) while the number of attempted suicides rose from ninety-nine to one hundred and twenty-three, representing an increase in nearly 23 percent. This figure shows that for every 1 percent increase in prison population there was a corresponding increase of 3 percent in the number of suicide attempts, or, in other words, the number of suicide attempts grows three times faster than the rate of prison population growth. Such data clearly show a dramatic worsening of prison living conditions that stems from increased overcrowding within prison walls. Another cause for concern is the fact that many of the inmates who committed suicide in 2007 presented risk factors that were never detected by prison staff.

The Ombudsman also approached the Secretary General of Prisons to discuss detailed considerations regarding several cases involving deaths, some of

which were due to natural causes, and others to suicide. In order to comply with all of the aforementioned considerations, the Assistant Director-General of the Inspectorate of Prisons held a specific meeting with the inspectors assigned to the Prison Administration Headquarters and who are in charge of supervising and, where applicable, gathering confidential information on deaths in custody, in order that the observations and findings of the Ombudsman be taken into account.

### “Room for Respect” Program

As the Ombudsman’s advisers were able to verify during their prison visits, the program known as “Room for Respect” is one of the most interesting long-term outcomes of prison policy guidelines set forth in the General Penitentiary Law of 1979. The objective of this program is to establish common living areas in penitentiary institutions to allow personalized treatment and activity planning for each inmate in a healthy living environment. Participation in the program is voluntary, and inmates may be expelled from it at any time if they do not live up to the high standards required. Its basic principles are mutual respect, voluntary participation, personalized activity and task planning, organization in groups and involvement by prison guards with the technical teams coordinating the program. From the viewpoint of this Institution during visits, we can safely state that the high level of commitment by inmates, organization of tasks, and cleanliness of facilities represent distinguishing characteristics of the Room for Respect program.

By late 2008, the implementation data for this program were as follows: 5,705 persons in 64 programs at 28 prisons. It can thus be regarded as fully established, and the challenges that remain ahead are to maintain the high degree of quality of life attained as well as to extend the program to more prisons.

## Prisoners with disabilities

Disabled inmates represent a group of particular interest to the Ombudsman. In this year, a report was requested in order to update information regarding the number of prisoners with disabilities in correctional facilities, broken down by kind of prison and by type of disability (physical, intellectual or sensory). Reports were also requested on the number of inmates eligible for a disability certificate who do not currently possess one, and also on actions taken to improve living conditions for inmates suffering from either physical disability or sensory impairment, particularly, but not only, with respect to the removal of architectural barriers. Additionally, there is a plan under way to evaluate the results of the intervention program for inmates suffering from mental disabilities, and to generate a report on their findings.

In the middle of the year, the number of inmates with disabilities was 2,978, or about 5 percent of the total. 2,436 of these had an official disability certificate that, in 40 percent of the cases, had been processed within the prison. At all prisons, works had been carried out to remove architectural barriers in order to accommodate the needs of disabled inmates. Regarding the intervention program for mentally disabled inmates, this had been implemented at seven other correctional facilities in collaboration with the FEAPS association, bringing the total to 31 centres with 394 inmates involved.

## Transfer of a prisoner to the Islas Canarias for humanitarian reasons

One informant reported that her mother, who was also the mother of a male inmate, had been admitted to a hospital on the island of Gran Canaria. As described in the hospital certificate, she was suffering from secondary obstructive renal failure due to a retroperitoneal tumour, and her prognosis was critical. The patient expressed her wish to see her son. The informer requested intervention by the Ombudsman to see if it might be possible for her brother to be transferred on humanitarian grounds to the Salto del Negro Correctional Institution, even if temporarily, in light of the critical state of their mother's health.

Given the urgency of the situation as detailed in this request, the Ombudsman addressed the Secretariat General of Prisons on June 2. The reply was immediate and appropriate to the circumstances, which, as such, deserves to be evaluated in a very positive light. The inmate was granted special permission for this purpose.

Consequently, he was transferred from the León Correctional Facility to Puerto III in order to be able to set off for Las Palmas from there in the ship that makes a weekly trip between Puerto de Santa Maria

and Las Palmas. Due to the extremely critical condition of his mother, and because a flight to transfer inmates from Madrid to Las Palmas was scheduled to take off on June 4, an urgent drive was arranged to Madrid from Puerto III so that the inmate could catch the direct flight from Madrid to Las Palmas and take advantage of his special permit to visit his mother at the Gran Canaria University Hospital.

To sum up, only two days after the Ombudsman received the initial report, the inmate, who was in Puerto de Santa Maria, was able to visit his mother in the Islas Canarias by travelling to Madrid to take a flight. The high degree of sensitivity and diligence by the prison administration is clearly praiseworthy in this regard.

## Irregularities in prison medical services

The Ombudsman received a complaint from an inmate in early 2007 regarding medical care received at the Soto Real (Madrid V) Correctional Institution after an accident in one of its courtyards.

According to the informer's account, two months after his incarceration in 2004, his head was struck very hard by a ball, which caused him to begin to lose vision in his right eye. He eventually completely lost vision in that eye.

The informer complained about the lengthy period of time that passed from the moment the injury was sustained and the day that specialized medical care was finally provided.

After launching an enquiry into the matter, the Ombudsman found that the answer given by the Directorate General of Prisons was a copy of the report previously made by the medical services whose alleged misconduct was under investigation.

In the end, the Ombudsman made a recommendation suggesting that complaints involving serious consequences of alleged malfeasance by medical services in prisons should be investigated by medical professionals who do not belong to the correctional institution in question. Rather, a standard protocol for internal action coming from within the prison administration headquarters should be established for this purpose. Such improper conduct can occur during the provision of the medical care itself, which they are legally obliged to provide, or in following the necessary steps to ensure that inmates receive whatever medical care they require externally. This recommendation was accepted, and the Secretary General of Penitentiary Institutions agreed that in cases involving both allegations of abuse as well as alleged irregularities in medical services with serious consequences, the staff from the prison administration headquarters should carry out the necessary investigations.

## Security Forces and Corps: Zero tolerance for abuse

**Complaints involving abusive treatment by members of the Security Forces and Corps call for special attention by the Ombudsman. Concern is heightened whenever a citizen approaches the Ombudsman to communicate that he or she has been beaten, insulted or humiliated in any way. The basic right to physical integrity must be preserved at all times, and the trust that society bestows upon members of the various Forces charged with safeguarding the public is betrayed if the use of force exceeds what is reasonable and appropriate for the performance of police duties. Zero tolerance is the only way to address such behaviour.**

It is vital to prevent these acts and, where appropriate, punish the perpetrators, because there is a lot at stake: human dignity, the prestige of the Security Forces and Corps, and—a key factor affecting quality of a democracy—a police force dedicated to serving and protecting citizens, their security (a basic right established in article 17.1 of the Constitution), and all other rights. The police must know how to cope with difficult situations and how to use force only when strictly necessary in accordance with the principle of proportionality.

The Ombudsman, as mentioned on several other occasions, accepts such complaints for enquiry, gathers all relevant information, and goes beyond mere acceptance of versions offered by the accused by seeking out testimony from any potential witnesses. The Institution demands that disciplinary action be taken, and approaches the Attorney General's Office to monitor any pre-trial proceedings undertaken, which often do take place in most of these cases.

### Victims of terrorism

Protection for victims of terrorism is a legal and ethical duty of the State and of the society as a whole. Terrorism attacks not only the basic rights of individuals (right to life, physical and moral integrity, security, freedom), but also democracy itself, our collective freedom and our very right as people to live in peace and with full respect for basic human rights.

If we are indeed able to take legitimate pride in having very advanced legislation governing protection, solidarity and aid to victims of terrorism, we must never assume that all issues have been satisfactorily resolved. Demonstrating this is the announcement made in 2008 of a new Victims of Terrorism Act to expand existing rights, not to mention the concerns of those who continue to approach the Ombudsman to report on specific issues in this regard.

The 2007 report referred to a citizen whose application for financial assistance to defray the cost of treatment for psychological distress arising from events in 1986 and 1987 (telephone threats, arrests of members of the ETA terrorist organization who had information

on this citizen in their possession, etc.) was rejected by order of the General Directorate for Assistance to Victims of Terrorism. This citizen appealed the decision, and the Ombudsman was concerned about the possibility that it might be thrown out as well. The appeal for reversal was indeed dismissed because the cause-effect relationship between the events and the consequences on the health of this citizen could not be ascertained.

This complaint underscores the problem facing those threatened by the ETA terrorist organization as victims of terrorism. The Ombudsman's institutional experience in its efforts to defend citizens highlights the fact that the enormous suffering caused by terrorism vastly exceeds, so to speak, the legal definition of "victim" in regulations and jurisprudence. In other words, there are clearly more people who suffer from terrorism in a fairly direct manner than those deemed "victims" in our existing legislation.

As such, the Institution must congratulate itself due to the fact that, on June 3, 2008, Congress passed a motion urging the Government to set forth in the new Victims of Terrorism Act being prepared that those threatened, extorted or persecuted be deemed victims as well. It is hoped that this new law will pass in 2009, and will offer recognition to so many people who to date have run up against unfavourable administrative rejections and rulings in their dealings with the public authorities with regard to their claims—all the while failing to comprehend why their suffering, until now, had never even been accorded so much as mere acknowledgement on moral grounds.

In another case mentioned last year, the Ombudsman was made aware of the existence of a park in Hernani (Guipúzcoa) named after a terrorist. The Institution had received a complaint from the widow and daughters of a citizen who was killed in an attack involving the aforementioned terrorist. Consequently, the Ombudsman approached the Hernani Town Hall to enquire about the measures to be taken in order to change the name of the park to "José Manuel Aristimuño".

In this case, the Ombudsman reminded the Hernani Town Hall that, in accordance with the provisions of

Law 4 / 2008, June 19, on Recognition and Reparations to Victims of Terrorism in the Basque Country, Article 4.b) “the Basque public authorities shall guarantee that victims are treated with respect for their rights.

“To achieve this: b) they shall take appropriate steps to... anticipate and prevent the perpetration of acts performed in public to show disdain, contempt or humiliation toward the victims or their relatives, the exaltation of terrorism, or public acts of tribute toward terrorists, and they shall make a concerted effort to eradicate graffiti and posters of this type...” Hence, the park may not be given a name that fails to comply with what is provided for in this legislation, nor may any other street or public space be given the same treatment.

### Security guards

Reference must be made to an enquiry initiated by the Institution with respect to an issue that received a great deal of coverage in the news media: racist attacks by various Madrid Metro system security guards, which had been captured on video. This enquiry was carried out with Metro de Madrid, SA, the Directorate General of Police and the Civil Guard, and the Regional Government of the Community of Madrid to ascertain whether the response by the authorities involved was appropriate in light of facts gathered, which were conclusive in this case because of the widely disseminated video recordings.

The Ombudsman received exhaustive reports on all actions carried out, and considers the response by the relevant authorities to said unfortunate incidents to be appropriate, based on the relevant responsibilities set forth both in criminal law as well as in the Law on Private Security.

Additionally, information was sought regarding the operation of the company's security camera system, with particular reference to anything related to the preservation and destruction of recordings made, and also to the protocol applied when security cameras capture images such as those disseminated by certain media organizations, or, in general terms, images of alleged criminal acts. It should be noted that the Madrid Metro network comprises 292 stations and covers an area of 283 kilometres.

In this regard, this Institution was informed that the camera system, given the impossibility of continually displaying all images from 6,270 cameras 24 hours a day, is set up so that should an incident occur, authorities or individuals may request that it be found on the list of recordings. Once identified, its extraction may only be carried out at one of two facilities available for this purpose. This is to ensure a proper degree of control and authorization in the protocol for such purposes so as to safeguard the rights of any third parties that might be affected. Upon receipt of a request for such images,

the company turns them over to the authority that made the request once they have signed the appropriate legal documents.

### Issuing offices of the National Identity Card

The report for the previous year contained a detailed description of the serious circumstances plaguing the issuing offices for the National Identity Card, which were overwhelmed by the introduction of the new electronic identity card. It was said at the time that there was a full breakdown of the system, because the staff and equipment needed to undertake a project of this scope had not been put into place. No appointment system existed, queues were enormous, and public outrage was justifiably high.

The Ombudsman, who at the time carried out many initiatives in an attempt to ameliorate the situation continued to monitor the situation intensively in 2008, both on a general level as well at specific police stations around the country.

In 2008, it was discovered that despite efforts to improve the issuance and renewal of identity cards, an acceptable degree of satisfaction had not yet been achieved among citizens, who were able to see that the early morning queues of the past have given way to numerous fruitless attempts to make appointments by telephone. These had to be made within a two-month period, although sometimes appointments for these entire periods were completely booked up. Moreover, the caller was obliged to pay the cost of unsuccessful phone calls that did not lead to any productive results. We therefore made a recommendation to increase staff and material resources at the various identity card issuance and renewal offices in order that all appointment requests might be handled successfully within a period no longer than two months.

In their response, the Directorate General of Police and Civil Guard reported that by the end of 2008 the vast majority of offices authorized to issue National Identity Cards and passports had appointment slots available to enable citizens to meet the necessary requirements for these documents within the two-month period after the initial application date. In emergency situations, all offices—except for those at Plaza de España in Barcelona and on Calle Santa Engracia in Madrid—have orders to allocate a certain percentage of their output capability to providing immediate assistance to citizens who physically appear for the purpose of obtaining these documents. Their report went on to state that it was true that certain offices, mainly in the Basque Country, had experienced difficulties in coping with the demand and had run out of available appointment slots for the entire two-month period. Hence, measures were being undertaken (staff reinforcements and

deadline extensions) to address this issue there. The report concluded stating, thus, that they were in the process of implementing the Ombudsman's recommendation in an attempt to ensure that all citizens requesting a National Identity Card or passport at any of the issuing offices with an appointment-based system may be able to arrange one upon request and be attended to within a two-month period subsequent to the initial application date.

Along the same lines, the Ombudsman recommended that the telephone appointment system to renew the National Identity Card should be toll-free for citizens, at least when calls fail to go through and no communication can be made with the representative answering the call.

In this regard, the Ombudsman was informed that indeed, the best solution would be to replace the existing fee-based "902" telephone number (902 364 444) with a toll-free "900" number. However, the administration referred to the enormous volume of telephone calls made via this number to run the appointment system, and budgetary limitations that make it impossible to replace. To give an idea of the volume of calls, suffice it to say that during only one month (June 2008), there were 913,239 calls related to the national identity card, 48% to set up an appointment, 27.8% to request information and 23.6% for other purposes. The lack of free calls, however, is mitigated by the option to set up an appointment via the web: ([www.citapreviadnie.es](http://www.citapreviadnie.es)).

As for the individual offices, the Ombudsman received complaints and looked into the situation in a wide range of places. For example, Madrid, Las Palmas, Tenerife, Zaragoza, Barcelona, Igualada, Lugo, Alcira, Logroño, Alcalá de Henares or Getafe.

Recently, the Directorate General of Police and Civil Guard was informed of the need to reinforce services during vacation months as well as those leading up to them in order to meet the service demands that tend to be concentrated during these peak periods.

In their reply, the Administration describes the current Special Action Plans for Spanish document services: taking on reinforcement staff, lengthening workdays assigned to civil servants of the Administrative Assistant Corps of the General State Administration, and offering the National Police Corps civil servant workforce the possibility of logging overtime hours outside their normal working hours when there is insufficient staff to fill the timeslots assigned to each team.

### **Traffic fining procedures**

Many people approach the Ombudsman to express their disagreement with traffic fining procedures initiated against them. The Institution studies these claims, and if it finds that all of the safeguards have been fulfilled, we reject them. On the other hand, if any right is deemed

to have been infringed upon (incorrect notifications, exclusion of relevant evidence, errors in the physical identification of vehicles, etc.), we urge the Administration to proceed either to reverse the legal action at the opportune moment, or to expunge the fine from the record.

### **Electronic bulletin board**

The problems associated with regulations governing notifications between the Directorate General of Traffic and citizens are closely related to two issues that are relevant to the Ombudsman. On one hand, the citizens' basic right to protection (not protection against the unknown, *per se*, due to errors in notifications, misplacement, or simply due to an apparent lack of a sense of civic duty among citizens to consult the official gazettes where official notifications are published), and, on the other, the principle of administrative efficiency because it is in everyone's interest that traffic violations that were indeed committed should effectively be punished regardless of whether or not the safeguards implicit in the corresponding sanctioning procedure have been upheld.

In this light, it is necessary to make good use of new technologies. This conclusion finds its origin in an enquiry initiated as a result of a written complaint submitted by a citizen to highlight the need for improvements in the way citizens are notified about fines imposed on them or attempts to do so. The Ombudsman deemed it opportune to make a recommendation for an electronic publication system at the departmental headquarters that would replace the publication of notifications as per Article 59 of Law 30/1992, 26 November. Enhancing the notification process would allow citizens greater access to all of the traffic fines imposed on them by officers pertaining to the Directorate General of Traffic in order to further safeguard their right to a hearing and to defend themselves.

The Directorate General of Traffic accepted this recommendation and included it in the preliminary draft of the new Law on Traffic, Circulation of Motor Vehicles, and Driving Safety under the heading "Traffic Fine Notification Bulletin Board", which would be located on the website of the Directorate General of Traffic and would contain any notifications that could not be made by ordinary methods. This Bill is currently pending approval by Parliament.

### **Automobile advertising contrary to driving safety**

A citizen expressed his disagreement with an advertising campaign for motor vehicles broadcast on various Spanish television channels in which the occupants of a certain model of vehicle could be seen singing and dancing while driving.

The concerned citizen believed that such advertising could constitute a violation of traffic safety by offering a misguided picture of the attention needed to drive safely. This idea of promoting careful attention while driving is intrinsic to all public awareness campaigns presented by authorities whose mission is to ensure driving safety and effective regulation of traffic. As such, this advertisement ran counter to the intent of said accident prevention campaigns because it could endanger the lives of those travelling in vehicles in a manner similar to what was represented in the aforementioned advertisement.

Article 8 of the Law on Traffic, Circulation of Motor Vehicles, and Driving Safety provides for a Supreme Council on Traffic and Motorway Safety to serve as an “advisory body to foster and improve driving safety, and to perform such duties as, among others, reporting on advertising for motor vehicles.” Moreover, Royal Decree 317/2003, March 14, governing the organization and functioning of the Supreme Council on Traffic and Roadway Safety, sets forth in Article 5 among its Plenary functions the duty “to inform on the general criteria for the advertising of motor vehicles” and Article 7 empowers the Standing Committee, among other duties, to “directly publish the reports contained in paragraphs d) and e) of paragraph 2 of Article 5, with subsequent presentation to the Plenary session in such cases where, due to the nature or urgency of the matter, it is inadvisable to wait for a meeting or to call one for that purpose.

In this legal framework a report was requested from the President of the Standing Committee of the aforementioned Supreme Council. The General Subdirector for Driver Education, Circulation, and Training subsequently analyzed said advertising campaign and sent a written warning to the automobile company, a copy of which was sent to the Ombudsman. It stated, “Even in light of the fact that advertising is based on generating notoriety and frequently employs exaggeration as a resource, such a campaign appears to be ill-advised given the fact that traffic accident rates and motorway safety are public health issues. Therefore, the cited advertising campaign would seem to represent an unwise strategy that may even infringe upon Article 52 of the Motorway Safety Act, which prohibits motor vehicle advertisements from inciting hazardous situations in their use of sound or imagery. As such, with a view to avoiding potential adverse consequences among the audience, we hereby recommend that the appropriate instructions be given to your Marketing Department to alter and rectify this content in case the campaign is still active. If this is not possible, we kindly request that you take this into account in future campaigns”. It must be taken into consideration that approximately 40 per cent of fatal traffic accidents are

due to distractions, which lends a greater sense of purpose to this initiative.

## **Military administration**

### **Abuse in the Army**

The selfsame concern shown by the Ombudsman toward preventing, sanctioning, and rooting out any behaviour contrary to the dignity of prison inmates or in the actions of the Security Forces and Corps, is also evident in the area of the Armed Forces.

In 2008, the media broadcast news about the beating of three soldiers of immigrant origin in the sleeping quarters of the Bruch Barcelona barracks by a group of approximately eight soldiers wearing ski masks on February 8, 2008. Reportedly, at about 3:00 PM on that day a group of soldiers from the Cazadores de Montaña battalion entered the bedroom where the victims were. The attackers, who were dressed in uniform but without their nametags, kicked and punched the victims, who were later treated for minor injuries at a hospital. The motive for the attack may not have been due to xenophobia, but, rather, to work-related circumstances.

This case led to the opening of an *ex officio* enquiry as well as an individual complaint. The Undersecretary for Defence referred a report by the General Army Staff to the Ombudsman indicating that they had begun disciplinary proceedings for grave misconduct with respect to the soldiers involved in the incident, and they were awaiting final resolution within the framework of Organic Law 8/1998, December 2, on disciplinary procedures for the Armed Forces. The final decision will be communicated to the Ombudsman once it is handed down.

### **Military archives**

Concern over access to military archives by historians and by the general public, particularly to learn about circumstances related to the Spanish Civil War and its consequences, continues to give rise to certain complaints.

A case that is representative of the tasks performed by the Ombudsman with regard to military archives involved a citizen who declared that he had requested a certificate that he had completed his 15-month stint of mandatory military service.

The application for said certificate was rejected due to insufficient data. The concerned party stated that he had provided all of the information in his power and that this should suffice to locate the files, an opinion shared by the Ombudsman. As such, this Institution admitted the complaint for follow up. A person's name, the headquarters or barracks where he or she served and the year of service should certainly be enough to

locate the files required and issue the corresponding certificate of service, which is often needed for various administrative purposes, including financial ones (certification of time served for purposes of calculating triennialia in the area of public administration). This case is pending resolution.

As the Ombudsman has stated in the past, cases such as these reflect the need for an effort to modernize

(computerization, hiring of technical staff), particularly in the military jurisdiction to meet the demands of citizens that arise either due to requests for certification and access to files needed to conduct business in other administrative areas, or out of a legitimate desire to learn—either for the purposes of research or for personal knowledge—certain aspects of our more recent history.

## The protection of victims of human trafficking must have priority over measures intended to restrict the entry of undocumented aliens

Cyclical economic changes weigh on migratory hopes to such an extent that they can obscure the fact that viewing immigration as an issue related solely to economic or job market considerations fails to offer a complete picture. Assuming that these issues affect the residency of a certain percentage of immigrants in Spain, one must also take into account the family-oriented aspect of such residency. According to official figures for September 2008, the number of permanent residents or those at the threshold of joining them amount to one and a half million people. Roughly 500,000 of these are minors under 16 years of age with residency permits. This circumstance warrants an approach to regulation with a vision that goes well beyond merely considering specific economic conditions, particularly if the main aim of the legislation governing this matter is to achieve the social assimilation of foreigners in Spain.

### Entry into national territory

Among the normal activities involving border crossing issues, noteworthy complaints were filed in 2008 by relatives of EU or Spanish citizens who had been denied entry at the Madrid-Barajas border control. In one case, entry was refused to a minor who was the daughter of a Honduran citizen holding a residency card as a family member of an EU citizen—the wife of a Spaniard. In the end, the minor was able to gain access to Spanish national territory subsequent to intervention by the Ombudsman.

Upon observing the lack of awareness, evidenced by police practices, regarding the precepts of the Court of Justice of the European Communities as well as those set forth in Spanish law, the Ombudsman urged the then Commissariat-General for Aliens and Documentation to instruct all border control posts regarding the scope and content of article 4 of Royal Decree 240/2007, of February 16. Said governing body stated that they had proceeded to disseminate a memorandum, similar to a previous one circulated in 2006, referring to actions at border controls involving third-country citizens entitled to EU rights.

Also investigated were difficulties involving very young Spanish minors traveling with one parent, usually the mother, who is denied access to national territory. An analysis of complaints concluded that the decision to deny entry at the border violates the right of Spanish minors to enter their own country, irrespective of a report by the Madrid-Barajas airport commissioner stating that nothing prevents these Spanish minors, in full possession of their passports, access to national territory at any time. Such a possibility is purely theoretical in the case of such very young children who need their parents in order to exercise their rights.

Moreover, the last report shed light on the difficulties involved in obtaining a visa that would allow them access to Spanish territory and the lack of guidelines in this area. In 2008, the Ministry of Foreign Affairs gave instructions, in accordance with the Ombudsman's recommendation, reminding all consulates that they must accept and process any visa applications submitted by aliens who, entitled to residency status in Spain, are unable to provide proof because they do not have in their possession either an alien resident identity card or a reentry permit.

The issuance of said instructions, which alleviated the serious problems discussed, should be considered positive. Nevertheless, the Ombudsman continued to intervene in an effort to streamline the processing of visa applications, to counteract the rigid enforcement occasionally employed by consulates when a resident overstays the reentry permit deadline, or to clarify the administrative status of citizens seeking reentry. The Ombudsman reckons that the technology currently available to the Administration should enable them to verify relevant identity documents in such cases with maximum speed and efficiency. It must also be stated that such problems—including the risk of losing legal residence—arise or are exacerbated by a lack of adequate service to concerned parties, who often have serious difficulties even gaining access to consular offices.

### Unauthorized border crossings

This institution continues to investigate known attempts to gain illegal entry in order to verify compliance with existing legislation and appropriate actions by State law enforcement agencies.

Among the enquiries conducted, one noteworthy case that remains open involves a child and an adult

who were summarily returned to Morocco. The minor was treated at the Tetuán Hospital and subsequently transferred to the Algerian border, deported along with his companion. The adult attempted to seek asylum as he had been rescued at sea by the Civil Guard in Ceuta, but his request was denied. Furthermore, the minor was identified as an applicant for asylum in Morocco. In the opinion of this Institution, the action of the Civil Guard in Ceuta breached the law by not placing the concerned parties at the disposition of the National Police Corps, which possesses the authority to handle such cases, and for disregarding a very young minor at obvious risk based merely on the argument that the adult accompanying the child claimed to be the father. This Institution has expressed its grave concern regarding the justification given for denying these people entry to national territory.

### **Visits to first aid and detention facilities for aliens**

The Ombudsman found, in a repeat visit in 2008, a substantial improvement in the facilities employed by the Tenerife-Sur Police Headquarters to detain of foreigners arriving in small vessels or rafts. The deficiencies of these installations had been pointed out in the previous report.

During the visit to the Barranco Seco Internment Center in Las Palmas de Gran Canaria, it was noted that several sub-Saharan detainees rescued from a small cayuco boat that had been intercepted near Tenerife were wearing clothing displaying numbers. This institution has long considered, and has indicated as such to the responsible authority, that such a practice must be terminated because it is both detrimental to their dignity and of dubious utility to the police.

Additionally, the Local Headquarters of the National Police Corps in Maspalomas (Playa del Inglés) on the island of Gran Canaria was visited. Facilities used there to provide temporary shelter to foreigners arriving in cayuco boats until they may be transferred to an alien internment center were found to be substandard. Further problems were also detected with respect to the protocol established for determining age.

### **Visits to Migration Centers in Ceuta and Melilla**

Regarding Centers for Temporary Immigrants (CETI) in Ceuta, the Ombudsman placed particular stress on the need to improve management supervision of tasks conducted by security personnel and to define the duties corresponding to personnel and residents more clearly.

Regarding the CETI in Melilla, a multipurpose building currently under construction will provide additional living space in overcrowded situations, rather than using tents that were originally intended as a stopgap

solution but which have been used in greater or lesser numbers on a continuous basis. Nonetheless, the Ombudsman reiterated a recommendation set forth on a previous visit in 2004 that new family units must be built.

Neither of the two sites visited has programs intended to identify, prevent and treat victims of human trafficking, a deficiency that must be addressed without fail. It was also noted that, in both cases, the criteria for identifying those belonging to the most vulnerable groups for transfer to more adequate residential facilities on the peninsula must be clarified, and families with minors must be granted priority.

### **Unaccompanied foreign minors**

In 2008, the Islas Canarias Government stated their acceptance of a recommendation addressing deficiencies observed in the protocols to determine the age of foreigners arriving in small vessels or cayuco boats. They agreed to perform radiological tests to ascertain age at authorized hospitals, in cases raising even the slightest doubt, including those in which the person concerned claims to be an adult. However, in visits to various facilities (i.e. Barranco Seco and Hoya Fria CIES) and based on complaints from various points across the country, it has been observed that this protocol is not as reliable as would be desirable, so the matter remains under investigation.

Additionally, the ongoing arrival of unaccompanied foreign minors in various autonomous communities is overwhelming their systems of protection. This fact at times calls into question basic principles such as non-discrimination on the basis of a minor's nationality. Worthy of mention in this area is the action taken by the Equality and Social Welfare Department of the Council of Andalucía, for which a recommendation was delivered urging them not to shirk the responsibility to declare abandonment of unaccompanied foreign minors under their care.

Moreover, problems arising in the documentation of legal residency for minors occupied a substantial part of the Ombudsman's attention for yet another year. This area includes complaints submitted by the minor wards of the state for whom residency permits had not been requested in spite of their express eligibility for this. One of the justifications for this situation used by the protection services in the autonomies is that these minors do not have passports in their possession. The Ombudsman noted that the lack of a passport is not a valid reason to block the residency permit application process because this document may be substituted by a registry certificate which may be requested along with the application for a residency permit if acquisition of a passport is not feasible. Subsequently, it was necessary to reiterate in the course of a number of enquiries the

importance of explicitly recording the date of entry of minors into the child protection service in order to guarantee their right to obtain the documents to which they are entitled and which are appropriate under the circumstances.

The Ombudsman's position regarding the most suitable type of residency permit and period of validity, for unaccompanied foreign minors who are wards of the state was laid out in the 2007 annual report. A number of recommendations and reminders of legal duty offered on this subject remained pending at that time, and the replies given since then have underscored the lack of clear set of guidelines among the various government delegate and subdelegate offices.

### Visits to centers for minors

In 2008, a follow-up on visits carried out in previous years was conducted and other centers were visited, such as DEAMENAC (emergency reception service for unaccompanied alien minors in the Islas Canarias) in Arinaga, on the island of Gran Canaria. This center is owned by the government of the Islas Canarias, but is operated by a private entity. The center visited was originally designed, as is the case with all DEAMENAC, as a temporary center. However, at the time of the visit, 35 of the 159 children present had been there for over two years and 96 children were approaching a full, two-year stay. As such, procedures to ensure that minors are transferred to other housing facilities must urgently be established.

Also visited on the island of Gran Canaria were El Fondillo and El Siete Puertas Centers for Unaccompanied Minors (CAMES), both under the auspices of the Island Council and managed by a foundation. In the visit to El Fondillo, the location was found to be far from the nearest urban center and without adequate means of public transport, and, as such, it does not meet the minimum standards required for a residential center. It also should be noted that substantial repairs were needed to properly maintain certain elements of the facility, and the literacy and educational resources available for those over 16 years were insufficient. In interviews with minor residents, incidents of abuse by one of the caretakers of the center were reported. For this reason, the Canary Island authorities were informed of the urgent need for a thorough investigation which would benefit from the opening up direct and frank lines of communication with minors in order to ascertain the truthfulness of these allegations. With respect to the Siete Puertas facility, the overall situation deserves a positive evaluation.

In Ceuta, La Esperanza Center was visited. This center, managed directly by the Autonomous City, has achieved a high degree of involvement by personnel in the day to day work with minors there. However, the

facilities suffer from serious structural weaknesses and given the intended occupancy of the facility there is clearly a situation of overcrowding. With regard to Melilla, a visit was made to the Fuerte de la Purísima Center, which is owned by the autonomous city but managed by a private entity. Despite the fact that there have been significant improvements since the last visit in 2004, existing characteristics and numbers of children in the center make it unsuitable for extended stays. Other problems were observed, including the schooling of children and the lack of clear guidelines at the center that can lead to the arbitrary use of corrective measures.

### Alien Internment Centers (CIES)

This institution continued to perform normal inspections and supervisory tasks at alien internment centers (CIES) across the nation. During 2008, visits were focused on the Barranco Seco (Gran Canaria) and Madrid CIES, as well as police installations at Isla de las Palomas, in Tarifa (Cadiz).

Regarding the former, it must be stated that no changes had been made in its structure since the previous visit to this institution in 2005. Failure to make some of these modifications is inexcusable, particularly the enlargement of patio space, as well as suitable facilities to accommodate visits by lawyers, relatives or friends of detainees. Nevertheless, work accomplished to establish a library with texts in various languages is worthy of praise. With respect to the alien internment center in Madrid, deterioration in the general atmosphere and a higher level of tension was observed in comparison with the situation seen in previous visits. Persistent problems were also discovered with respect to medical service, but the situation apparently improved somewhat after the Ombudsman's visit.

With respect to police facility at Isla de la Paloma, Tarifa, these present better conditions for aliens than even the CIE at Algeciras upon which it officially depends, and the social work performed there is commendable. However, there is cause for concern regarding the uncertainty of the legal statute governing these installations, and, as a consequence, the lack of certain basic services that must be available at all CIES.

### Expulsions and deportation

Throughout 2008, actions have been common to deal with questions involving punitive procedures or enforcement of expulsions. In many cases these investigations have led to the urgent recommendations that have succeeded in blocking these procedures.

### Protection for victims of human trafficking with illegal documentation

In this area it is worthwhile to elaborate on a complaint lodged by several non-governmental organizations to

express their concern about the lack of appropriate procedures with respect to victims, as evidenced during the dismantling of an organized crime network operating in cities throughout Spain during the so-called “Operación Zarpa”. The Ombudsman initiated actions with the General Commissariat for Immigration and Borders, after observing that a successful police intervention did not appear to have resulted in similarly positive results with regard to the situation of the women in custody, who had clearly been identified as victims of human trafficking in press releases by the Ministry of the Interior. As such, a review was requested of police actions in order to prevent these female victims of human trafficking, as foreigners lacking legal documentation, from being deported without having initiated actions intended to protect them and safeguard them from further subjection to abuse and extortion. The clear commitment to accord higher priority to status as aliens over the condition of being victims often prevents further judicial effectiveness in fighting such crimes and can leave victims at the mercy of their exploiters.

At the same time, the Ombudsman must express concern over the lack of enforcement regarding the provisions set forth in Directive 2004/81/EC, whose aim is to provide victims of trafficking a grace period during which repatriation measures are not to be carried out in order to allow them an opportunity to boost their morale, escape from the influence of those extorting them, and to enable them to decide freely whether or not to cooperate with authorities.

## **Administrative Management Centers**

### **Consular offices**

Complaints continue to be submitted, in line with those mentioned in previous reports, regarding the inefficiency and the excessive delays experienced by users of the offices of the consular services. Enquiries cover a wide range of topics, the most noteworthy of which are complaints concerning the functioning of information services, particularly via telephone and the Internet, as well as the shortage of staff and materials at the consular offices.

Through various actions with the General Consulate of Spain in Quito (Ecuador) and the local consular office in Sevilla, a lack of interdepartmental coordination in the administration of visas was discovered. As a result, many foreign citizens’ visa applications were denied by the aforementioned Consulate because they were considered to have been submitted after the deadline as the Consulate had not been apprised of the dates on which judgments had been given by the local consular office. According to the Ombudsman’s findings, the notification date had been clearly stated on the

computer application form for aliens. At first, the Directorate General for Consular Affairs and Services rejected recommendations made to remedy the situation, considering that it did not proceed to review decisions taken by appeal if the individuals concerned had not requested this. In the Ombudsman’s opinion, such a response implied transferring to citizens the consequences of the deficiencies observed and requiring them to seek extraordinary means to seek a resolution, which is contrary to legal certainty and to the principle of efficiency. In the end, the suggestions were accepted.

Another investigation, opened in 2007, which concluded with the acceptance of a recommendation made to the Directorate of Consular Affairs and Assistance, referred to the determination of the moment at which a minor child’s age must be certified to allow for family reunification. This Institution disagreed with the view held by the aforementioned Directorate, which deemed that a child reunited with his or her family must be under 18 years of age as of the effective date of the resolution authorizing him or her to reside temporarily in Spain—in other words, upon entering the country. This, however, does not allow for any flexibility even if the delay in obtaining the visa was attributable to the government delegation or the local government or consular offices. The Ombudsman reiterated that in such cases it is important to certify the age of the reunited family member at the commencement of the proceedings, especially in light of the lengthy delays commonly arising throughout the process. The Administration has agreed to apply the original application date for a family reunification residency permit, submitted by the sponsor on behalf of a minor, to determine the age of said minor for which family reunification is being sought via a residency permit in Spain. In this regard, relevant instructions have been issued to all consular offices.

### **Alien Affairs Offices**

In previous years, the offices responsible for processing applications for documents for EU citizens and their families nearly came to a standstill due to excessive workloads. This situation has not yet been rectified in certain provinces. For example, despite the opening of a new office in Madrid in July 2007, the general sense of paralysis was still evident as they had received a great deal of complaints referring to overloaded telephone switchboards, serious delays in arranging appointments, long queues extending outside the building, and delays of up to ten months in obtaining their family reunification with EU citizen identity cards.

Also reflected in the last report was a recommendation made to improve the service provided by the Madrid Provincial Police Unit for Alien Documentation, calling for the following: improved resources to

eliminate the long queues of people crowding into these offices, decent indoor waiting areas to allow them to take shelter from inclement weather, and an increase in the restroom facilities available to the public. Subsequent to intervention by the Ombudsman, the General Directorate of the Police and Civil Guard reported that alien affairs services had been transferred to other offices in order to reduce the level of overcrowding and to improve the service provided, and also that an additional roofed area with indoor seating had been set up. Nevertheless, this enquiry remains open because, according to data gathered during the last quarter of 2008, the waiting period for fingerprinting was still about two and a half hours, albeit only in the mornings.

Additionally, a follow up was carried out with respect to plans to improve services available via the Internet, which had been previously announced by the Ministry of Public Administration.

## Residency application procedures

### EU Regulations

Among the issues affecting reunified family members, it is noteworthy to mention an enquiry initiated with the Directorate General on Immigration to elucidate the scope of the 19th additional provision of the Alien Law, entered by Royal Decree 240/2007. This provision allows for residency status to be accorded to family members not covered under the benefits of EU regulations under certain circumstances, but the application procedure to be followed is not specified. Said organization replied that the applications submitted should be treated as residency permits for exceptional circumstances. However, the Ombudsman indicated that the stipulations of this provision are scarcely suitable to this procedure, and a more comprehensive system should be laid out.

Another issue that has been the subject of several actions has to do with the refusal of various government delegations and offices to recognize the right to EU residency pertaining to undocumented aliens who marry EU citizens. This situation was first discovered at the Illes Balears delegation. As noted in the previous report, this agency required in such cases possession of a valid EU visa before they would accept any other applications for processing. Enforcement of a requirement to obtain a visa in order to be granted a residency permit contravenes EU law, and, thus, the Ombudsman recommended that it be modified. In the end, the Government of the Illes Balears changed this practice in line with this recommendation.

The previous report also referred to the need that family residency cards issued for reunification with EU residents should clearly reflect their right to work, as per existing regulations. In this regard, a recommendation

was addressed to the Directorate General on Immigration to remove the reference to “non-work residence” from cards issued to spouses, and also to eliminate the statement “not authorized to work” from cards issued to offspring under 21 years of age. The Directorate General on Immigration accepted the recommendation of this Institution and took appropriate action with the competent authorities of the Ministry of the Interior.

During the same enquiry, the Directorate General on Immigration was also informed that the transposing of European legislation in our national legal framework introduces a limitation on the right to work pertaining to ascendants and descendants over 21 years not covered by Directive 2004/38/CE. The Directorate of Immigration argues that limiting access to work is inherent in maintaining dependent status as required by EU law, and they rejected this part of the recommendation. The Ombudsman Institution must state for the record their disagreement with this argument because it perpetuates the situation of those concerned, which is an outcome that runs precisely counter to the aims of European legislation.

### Criminal record in the country of origin

Certification of a clean criminal record in the country of origin or previous country of residence is a mandatory requirement for obtaining a residency permit in Spain. The Spanish government has made a great effort to ensure that the required foreign certificates meet Spanish equivalency standards regarding the scope and reliability of those issued in Spain. The result of this effort was the issuance of Order DGI/06/2008 on the submission of foreign public documents required for processing applications involving alien and immigration affairs. This Order aims to clarify the legalization procedure for these clean criminal record certificates, and to establish the procedure to be followed when it is deemed that they do not meet the standards required by Spanish law. As can be seen in the complaints received, this action has had particular impact regarding citizens of India and Pakistan. Solutions are being sought with these two countries that would provide for the issuance of criminal record certificates of national scope in line with legal requirements of concerned parties.

Similarly, a follow-up was made on the special procedure that allowed a significant number of certificates to be issued for Nigerians based in Spain without requiring them to make a return trip to their country of origin.

### Family reunification process under general legislation

During 2008, there were few noteworthy advances in legislation in two areas recommended by the Ombudsman: the ministerial order establishing the means

of support which the applicant must prove, and the housing requirements that the alien must meet in order to reunite his family. Regarding the second issue, the Directorate General on Immigration has taken into account the approach of this institution and has initiated contacts with the Ministry of Housing. However, the current diffusion of authority in this area may hinder the drafting of comprehensive legislation with national scope.

In the last report, the Ombudsman referred to the implementation of DNA testing to clarify any doubts regarding the paternity of a child to be reunited. According to the Directorate General for Consular Affairs and Services, such tests are authorized in the Consulates General in Shanghai and Beijing (China) and Lagos (Nigeria) in cases where the veracity of kinship documents cannot be ascertained. The Ombudsman is aware of the complex work that must be carried out in this area by the consular authorities, but the encroachment of such practices on the right to privacy of those concerned as well as the possibility of their use spreading to other consulates behooves the Ombudsman to emphasize that such tests should be considered only under exceptional circumstances. At the same time, improvements in the way genetic tests are incorporated into administrative procedures, in the guidelines governing how personal data obtained is treated, and in how it is recorded in case files should be sought.

Another consequence of the lack of security of the registry system in some countries is the doubts often posed by various consular offices regarding the true age of the children to be reunited. Thus, several complaints have stated that the policy of consular offices in Dakar (Senegal) and New Delhi (India), is to reject an application for a family reunification residency visa for a minor when the evidence offered by the test results does not match the age noted in the documentation provided, even in cases where the lower limit of that age range falls below the age of legal adulthood. The Ombudsman's suggestion that the Consular Authority should apply the younger age for applicants was not accepted, so this institution made a recommendation urging them to change their position in this matter. A reply to said recommendation remained pending on the closing date for this report.

Also having a significant impact is the redundant supervision exercised by consular offices regarding requirements already verified by government delegations and offices in the processing of family reunification residence permits. In the opinion of this institution, their scrutiny during the processing of the visa appears to be neither justified nor legally founded. For the same reason, it is also unacceptable that, during the consular phase, an additional assessment of the need to authorize the applicant's residence in Spain is conducted.

### **Criteria for issuance of government reports**

The Ombudsman has long urged the Department of Immigration and Emigration to draft orders governing the contents of the obligatory government report that must be issued upon granting of residency permits with the aim of standardizing the procedure and thereby avoiding arbitrary assessments. In the end, Order DGI/SGRJ/09/2008 was drafted to address these issues. This institution is confident that the instructions contained therein shall clarify the processing of cases and lead to greater respect for the rights of citizens, particularly the right to presumption of innocence as well as the right to be informed of the reasons why applications have been denied. Nevertheless, the implementation of this Order shall be subject to special scrutiny.

### **Asylum**

Among its supervisory tasks, this institution places a high priority on whether potential asylum seekers are effectively able to exercise their right to petition our authorities, as well as how the "non-deportation principle" is handled—bearing in mind the occasional difficulties encountered in distinguishing economic immigrants from those seeking other types of asylum or international protection.

Proceedings brought before the Ceuta Government in several cases involving hasty deportation of aliens attempting to enter illegally reveal that the difficulties in enforcing asylum laws spring from the divergent interpretations to which rules are applicable, because there is a tendency to skirt around the international obligations assumed by Spain, and even the right to asylum provided for by law, under the pretext of rescuing shipwreck victims who are later to be returned to their place of origin.

### **Integration, fair treatment and non-discrimination toward persons based on their racial, ethnic or national background**

Also worthy of mention is the termination of proceedings related to photographic requirements for official identification documents. The last annual report indicated that the Ombudsman had deemed that the filing of proof of membership in a religious faith as a prerequisite for accepting photographs in which the applicant's head is covered with a headscarf or other garment is unconstitutional because it violates both the principle of legislative hierarchy as well as the basic principle of the right to religious freedom. As such, a recommendation was made to the Secretary of State for Homeland Security, which was accepted.

Also noteworthy is the inquiry opened as a result of a visit by the First Deputy to the Ombudsman on

October 20, 2008 to an area of the Cañada Real Galiana, known as “El Gallinero”. This settlement is mainly made up of families of Romanian origin—as such, they are EU citizens entitled to unrestricted movement and residency—most of whom are of gypsy descent. The living and health conditions observed during the visit can only be described as miserable (large muddy zones, exposed electrical wiring in many cases dangerously close to flooded areas, presence of rodents, piles of garbage, etc.).

In the Ombudsman’s opinion, this situation requires a comprehensive and coordinated effort by the various competent authorities, and, hence, enquiries were initiated with the City of Madrid, the Autonomous Community, and the General State Administration with the precise aim to promote improved coordination of efforts.

## **Spanish prisoners abroad**

According to official data provided by the Directorate General for Consular Affairs and Services of the Ministry of Foreign Affairs and International Cooperation, there were 1889 Spaniards being held in foreign prisons in 2008. By country, the largest numbers are found in Morocco (232), France (215), Peru (173), Brazil (130), Portugal (125) and Argentina (115).

Likewise, the largest number of complaints received by the Ombudsman on this subject are in the following order: Morocco, Argentina, Peru, and in equal numbers from Venezuela, Ecuador and Colombia.

The reasons for the complaints were similar to those expressed in previous years, referring mainly to delays in processing cases involving prison transfers for serving time, the appalling conditions of prisons abroad, and the actions of Consulates in pursuance of their obligation to provide consular protection.

**For more information:**  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

## The Ombudsman calls for ways to achieve full effectiveness of the basic right to education and to improve policy with regard to study scholarships and grants

**The lack of financial resources, exacerbated by the current economic crisis, is the fundamental problem underlying many of the issues at both non-university and university levels: poor facilities, lack of space, need for special staffing, scholarships and grants, etc. With regard to the Bologna process, the Ombudsman calls for maximum participation and transparency as well as a greater effort to inform and communicate. The Institution restates, once again, the failure to approve a statute for university students as well as the urgent need to establish disciplinary regulations on behalf of these students.**

### Non-university education

Regarding non-university education matters, issues handled by the Institution in 2008 have similar characteristics to those dealt with in previous years. For example, regarding school facilities, issues raised with the Ombudsman, similar to the past, referred to problems in providing certain services, to a general state of disrepair and poor conditions affecting certain school buildings, to renovation work defects, or, furthermore, to unfavourable circumstances arising from the transfer of pupils to provisional school facilities in order to refurbish their permanent installations, or to other reasons.

Regarding schooling issues, the lack of sufficient school places to meet the demand in certain areas or districts should be reiterated, with special emphasis in the area of elementary school, as should the appearance of certain problems with respect to the enrolment or schooling of students from immigrant families.

As for the first point, this report recalls the fact that childhood education is broken down into two “educational” stages (0-3 and 3-6 years of age), as stipulated in Article 14 of the Organic Law on Education, and, as such, it represents part of the basic right to education to which everyone is entitled. As the legislature is aware of the structural and material deficiencies involved in guaranteeing this right and in light of the voluntary nature of enrolment at this educational level, it orders the government to provide for a gradual increase in available spaces for the first cycle and establishes that the second be provided free of charge. However, if insufficient space in public schools or a lack of public funding prevent this from being offered free of charge, the law calls for the gradual incorporation into the State Budget of the credit needed to provide for it.

Given the aforementioned, the Ombudsman hereby calls for compliance with these legal mandates in order to fully safeguard the right to education for all students.

In terms of enrolment and schooling of immigrant students, this year there have been setbacks arising from the requirement for certain documents (a taxpayer ID number, or NIE) or compliance with certain obligations (census registration), which are not always carried out in line with either the institution’s regulations or general legislation meant to guarantee the right to education for both citizens as well as foreign nationals. Moreover, a problem described in previous reports persists with respect to the uneven distribution of pupils of immigrant origin at the different schools resulting in high concentrations of them at certain institutions, which is not likely to be entirely propitious to providing high quality educational services or to attending to the special needs of these students.

Regarding student admissions, this report highlights a few cases where the application of certain prioritization criteria has led to inauspicious results. For example, one semi-private school with unrestricted discretionary authority for enrolment purposes gave preference to candidates whose parents professed a particular religious faith. Another example was the method used to determine disposable income of the family unit in the case of civil unions because in some areas the income of only one of the members is taken into account. In another case, in the area of official language instruction, preference was also shown to pupils studying in a general educational program who applied for a course in a language different from the one they were already studying as a first language in said educational program.

On the subject of academic structure, disregarding other more concrete issues, it is worthwhile to mention efforts undertaken in order to achieve the following: 1) to extend to semi-private schools, which after all are subsidized with public funds, the financial aid granted in certain regions to public schools for activities intended to bolster academic skills so that students

may meet the requirements needed to graduate and to get their diploma, 2) to increase testing frequency to more than once a year; the legally established minimum, for students who have completed the mid-level vocational training course and who wish to apply for the higher level even though they do not have a high school diploma, 3) to approve the regulations contained in Article 8 of Organic Law 5 / 2002, on Certification and Vocational Training, to regulate the processes of certification, evaluation, accreditation, and filing of skills acquired through work experience or non-formal training methods, and 4) to draft legislation that establishes the basic curriculum parameters for special language instruction for levels C1 and C2 of the Council of Europe (advanced levels) as defined in the Common European Framework for Languages.

Lastly, in the area of special education in 2008, complaints were lodged with this Institution referring to significant deficiencies at school facilities for students with special educational needs, to the lack of sufficient skilled staff, educators or others, and to problems associated with attention given to students that does not always comply with what is contained in school policy guidelines and regulations.

## University education

Regarding university education, the so-called Bologna Process, whose deadline for full implementation is imminent, has had a significant impact in all areas as well as in the Ombudsman's activities. With respect to formal degrees, the new educational structure requires that the current range of university degrees be done away with, and gives each of the universities the power to offer new degrees as long as they meet certain conditions. This allocation of powers to the universities led to a huge mobilization of university students in the last few months of 2008 that spread even to high schools, whose students and degree-holders feared that certain degrees might disappear or be stripped of their current official validity.

The protests managed to raise a certain degree of alarm for several weeks and to seriously disrupt the normal course of academic activity at certain Spanish universities. This in turn gave rise to the filing of a significant number of complaints, the majority of which called for a halt to the Bologna process as well as participation by the entire university community to continue with the modifications undertaken in Spain.

It does not behove this Institution, in order to protect its neutrality, to make pronouncements or to interfere in any way regarding decisions of this character that led to the inclusion of Spain in the Bologna process nor with respect to those exercised autonomously by educational and university authorities to execute the process. Nonetheless, irrespective of this caveat, it can

be stated that the obvious concern expressed by academic and professional sectors as well as by large numbers of students would seem to warrant, at the very least, that the decision-making process should be carried out with the highest level of participation and transparency possible. Furthermore, greater effort should be made to inform and explain beyond the mere publication of decisions, agreements and rules adopted in order to imbue the process of reforming the university and its educational offerings with a degree of consensus from the outset. This would ensure the future stability of the university system and would meet the academic and professional expectations of both future degree-holders as well as current ones with respect to the new structure for education and degrees.

Particular concern about the potential invalidity of certain academic and professional degrees as a result of the reform arose in the sector of Computer Engineering and among the student body and degree-holders of the Faculty of Labour Sciences, among others, as these professions are unregulated and lack legally defined professional attributes. With legislation still pending regarding professions of a general nature in Spain, this report calls attention to the fact that the designation "professional competence" entitling each graduate access to a corresponding degree level significantly expands upon the traditional approach used to establish curricula in previous years. This was essentially limited to content and credit hours, whereas the aforementioned expansion is essential to enhancing the mobility of graduates within the European System of Higher Education in compliance with Article 7.4 of Directive 2005/36/EC on the certification of professional qualifications.

On another note, this report calls for fulfilment of a commitment made by educational authorities to devise a standard nostrification procedure between university studies and high-level professional training, as per the provisions set forth in article 47 of Royal Decree 1538/2006, which establishes the general structure for vocational training within the educational system. The aforementioned commitment provided that such regulation would be in force by the beginning of the 2008-2009 academic year, and non-compliance is hampering the transferability of credits and courses taken by upper-level vocational training degree-holders upon admission to and commencement of their university studies. This runs counter to the policy set forth in the current guidelines of the educational system, the intent of which is that such transfers from vocational training to university studies should be a process that is more open and favourable to students.

A better situation can be described with regard to several aspects of the system for university admissions, which has been addressed in the regulations drafted to replace the legislation currently in force starting with

the 2009-2010 academic year and whose reforms the Ombudsman had repeatedly called for. For example, Royal Decree 1892/2008 expressly stipulates that more than two admission cycles may be conducted per year for the entire university entrance examination process or some of its phases, which would prevent the unfairness that stems from the current system of rigid adherence to only two entrance exam sessions. Another positive development is the providing of access to students older than 25 years of age via a special examination with a similar structure and format to the standard examination, but that does not exclude, as was previously the case, students holding a high school diploma or the equivalent. This will facilitate access to college for those who for a number of reasons have not been able to achieve this goal by a certain age. It will be completed upon entry into force of the provisions of the aforementioned legislation, which provides for the establishment of a process to allow access to university for people over 45 years of age as well as to those over 40 years of age who can demonstrate certain professional or work experience in lieu of required academic degrees or background.

Further positive developments include regulatory reforms governing university admission procedures for students from Member States of the European Union or from other countries with which reciprocal agreements have been signed. Also favourable are reforms pertaining to the assessment of university transcripts and certification granted for university studies completed at foreign institutions outside the EU and subsequently nostrified in Spain for those applying to universities in our country to conduct courses of study that are in high demand and, thus, cannot accommodate all applicants.

Another reminder that must be made in this report is the obligation to abide by Article 47 of the Organic Law on Universities, providing for the approval of a statute for university students, already a year overdue, and also to constitute a Collegiate Council for the purpose of representing the student body. In the meantime, it is of utmost importance that the issue involving regulations governing disciplinary procedures for students be addressed, as they continue to be governed by a pre-constitutional, partially abrogated and inapplicable decree dating back to 1954. The Ombudsman has been calling for this for many years.

Continuing with an enquiry already partially outlined in the previous report, there are differences of interpretation concerning the degree to which fees may be waived for college students with disabilities. Certain issues that have given rise to debate are as follows: Should fee waivers cover full matriculation and tuition costs or only to the first enrolment period and not to successive ones, or should a waiver only be applicable

to requisite courses leading to degrees but not to elective ones also offered by universities? What is beyond any doubt is that funding for these waivers for public tuition is insufficient, and this problem affects the entire university system and particularly the UNED, which, according to data provided to the Ombudsman, is the alternative chosen by 45% of disabled students nationwide.

The desirable increase in enrolment of disabled students at university, a clear indicator of progress in the pursuit of equality in our society, represents a proportional increase in costs and a corresponding reduction in university revenue, which, if not adequately compensated, would not only have an impact on the quality of education provided to other students, but also on the university systems' very ability to pay for other technical measures needed to ensure adequate progress for disabled students in their studies and to expand efforts to improve access and participation of all disabled students regardless of their particular needs.

It is beyond any doubt that free university education for the disabled is a social measure for a country that is clearly committed to the principle of equal opportunity, but to make such a measure viable, the appropriate channels to make it happen must be established. One of these that must indeed be included is financing.

Last but not least, and dovetailing with the concept of university funding, special emphasis must be given in this report to various issues related to scholarship and financial aid programs. Apart from other, more specific issues, it is noteworthy to point out that during the current process of incorporating Spanish universities into European system of higher education (the Bologna process), concerns presented before the Ombudsman by academic and student groups refer less to the final goals of the reform process than to the manner and conditions under which the process of adaptation is being conducted. Moreover, these groups are constantly calling for a thorough review of the existing system of university financing, which must be enhanced in line with the objectives established in this process of transformation by substantially improving scholarship, financial aid, and student loan policies to permit real and effective international mobility of students from one institution to another.

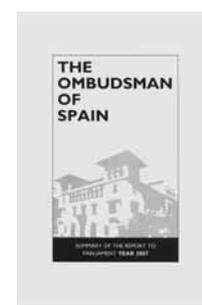
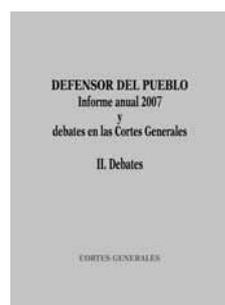
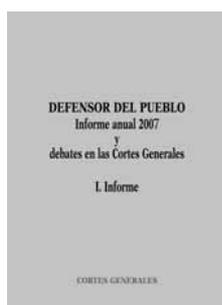
In this vein, and taking advantage of the opportunity that this annual report to Parliament presents to the Ombudsman, we hereby request the largest increase in funding for higher education available, convinced that the budget cuts called for in such difficult economic times as the present should not have an impact on education, science or research. Universities, along with mobility of university students throughout Europe and equal opportunity in the European Higher Education System, must be considered key elements to successfully achieving the renewal that

Spain is undergoing, and they must be given the wherewithal to adapt to this new international arrangement. For this purpose, in the opinion of this Institution, it is essential to enhance policies pertaining to

scholarships and grants intended to promote studies and mobility of students in order to ensure that university doors are open to all students regardless of their financial capabilities.

## OMBUDSMAN PUBLICATIONS IN 2008

2008 saw the publishing of *Recommendations and Suggestions 2007* and the *2007 Report and corresponding parliamentary debates*, as well as, *The Summary of that report in Spanish and English*. These publications can be consulted on the website: <http://www.defensordelpueblo.es>



## The bureaucratization of the primary health care system and the new methods for managing centers and services have given rise to complaints

Complaints this year have highlighted the increasing worry among users of the public health system due to the new ways of organizing and managing health centers and services. Apart from the bureaucratization of the medical visits, once again there were complaints regarding the lack of health care professionals, lack of information for patients, waiting lists, access to services, emergency health care and the lack of specialists in children's mental health.

### Clinical information and documentation

One of the causes —perhaps the main one— for users and patients' discontent with the health care system is the lack of adequate and sufficient information in all stages of the medical process.

It is worth noting the number of complaints received by the Ombudsman demanding the right to sufficient and comprehensible information in order to form an opinion and, if needed, decide on possible courses of actions to defend their rights.

More than 5 years since the Law regulating patient independence and rights and obligations regarding clinical information and documentation came into effect, there are still cases that prove that its compliance and respect for patients' rights is still far from ideal.

### Access to health services

Regarding equal access to health services, we must note that there are still some imbalances and regional differences from one autonomous community to another, in things such as its universality and cost-free health care, new therapies and medicine, vaccination schedules, mental health, rare or infrequent diseases, preimplantation genetic diagnosis and genetic advice, palliative care and pain management, oral hygiene, sex-change operations, podiatry services for diabetic patients, anti-smoking therapies and economic aid for those with gluten intolerance. Other problems include the unequal distribution of health care professionals and the lack of specialists in pediatrics, general medicine, anesthesia and radiology, among other fields.

Regarding the universality and right to free health care, it is once again necessary to recall that although there has been remarkable improvement, these are not yet fully effective. There are still people with no health care rights who are forced to pay for their medical visits when they use the National Health System.

### Regulation of services

Regarding the regulation of services and the inclusion of adequate services or treatments for HIV/AIDS patients

in the National Health System's list of common services, special mention must be made to research conducted on reconstructive surgery in cases of lipoatrophy in HIV/AIDS patients. At the end of 2008, the National Health System's Inter-regional Council approved the inclusion of reconstructive surgery for facial lipoatrophy in the NHS' list of services. Facial lipoatrophy, or facial wasting, is one of the conditions that most affects patients' sense of stigma.

### Waiting lists

The 2007 Health System Survey carried out by the *Centro de Investigaciones Sociológicas* (The Center for Sociological Research) published in July 2008, reveals that the main causes of dissatisfaction among the public regarding the public health system stem from "delays in non-emergency admissions", "waiting time between appointments and the actual visit" and "delays in diagnostic tests". According to the Survey, 61.4% of the public believes that the problem with waiting lists is still as it was before or has got worse in the last year.

The implementation of guaranteed deadlines for scheduled surgeries, generally between 90 and 180 days, depending on the autonomous community, is probably the reason why complaints regarding surgical procedures to this Institution decreased once again. However, it is necessary to note that, in some health services and certain procedures, there are still substantial delays, according to the complaints still being lodged by the public.

Regarding waiting times, in general, the respective health administrations have accepted the Ombudsman's recommendations or criteria; and in many cases they have informed of the early re-scheduling of already programmed procedures.

We cannot avoid mentioning the mismanagement of waiting lists as a result of closed agendas, which create more patients on the waiting list, often for many months. Going by the complaints received on this matter, this practice has occurred, to a greater or

lesser extent, in the gastroscopy department at the Gregorio Marañón Hospital of Madrid; in the neurology department in the Villaverde-Cruce specialist center of Madrid; in the Gynecology and Obstetrics Department at the Infanta Elena Hospital of Madrid; and the Ophthalmology Department at the Moratalaz specialist center of Madrid.

### Primary health care

In this area, complaints from the public were mostly due to the bureaucratization of the medical visits, the lack of health care professionals, the time spent with the doctor and problems with information and communication. These complaints carry an underlying perception of the health system's progressive deterioration.

Regarding the bureaucratization of medical visits, a common complaint made by a high number of primary health care specialists from different departments in Madrid deserves special mention: these complaints underscored, among other things, that primary health care physicians were formalizing the treatment orders given by specialists and emergency services in the official prescriptions, thus acting as mere "transcribers" and not as professionals. Sometimes, the hospital prescriptions were for long-term treatments, which initially had to be re-filled by the primary health care doctor to keep up the treatment, even though they were never informed of a diagnosis confirmation, the clinical evolution in later check-ups, changes in dosages and other details that could change the treatment. From a legal point of view, there is no legal basis that would justify the fact that general medicine doctors must duplicate prescriptions, transcribing on official letterhead and under their names, written out by other professionals; and from a professional point of view, that these prescriptions demand an average of two hours of time a day, with the consequent negative outcome in health care service for other patients.

Regarding this, the Ombudsman highlighted the following three points to the Regional Ministry of Health of the Community Madrid: firstly, the progressive increase in the last few years of pressure in medical care and the number of visits in primary health care; secondly, the amount of time each family and community medicine professional must spend in transcribing prescriptions coming from other fields, which inevitably leads to a loss of adequate time spent on each patient; and, thirdly, the need to eliminate the bureaucratic processes and the unnecessary visits to the primary health care physician in order to guarantee quality health care to patients.

In its response, the Regional Ministry mentioned the implementation of different initiatives to solve this situation, such as writing instructions in the hospital discharge report that would reflect the pharmaceutical recommendations, giving the first prescription in an

official medical prescription, and detailing in the clinical report, for those patients treated in the emergency ward, the appropriate pharmaceutical recommendation, with the express mention of the prescribed treatment, its length and dosage.

### Managing centers and services

Aspects of specialized health care such as highly qualified professionals, the use of new techniques and technology, the high use of resources and the public's greater demands and expectations have led to numerous complaints on different matters.

The first set of complaints is related to the implementation of new ways of organizing and managing health centers and services in the Community of Madrid. These complaints, lodged by many users and health care professionals, express a growing perception of the public health system's possible deterioration as a result of, in the claimants' opinions, the implementation of a new private or corporate style of management. The Ombudsman has expressed its worry regarding certain initiatives to re-organize and manage the health centers and its services. The Ombudsman has emphasized the need to preserve the principles that should rule our public health system, such as its universality, publicly financed cost-free and equal medical care for all.

Special mention must be made to the request made to the Ombudsman to lodge an appeal on the grounds of unconstitutionality regarding "the possible incompatibility between the granting of licenses to private companies to run hospitals and health centers in the Community of Madrid and the obligation of maintaining the health system as a public service". The request cited the General Public Health Law and Law 15/1997 of 25 April regarding the authorization of new ways of managing the National Health System. The interested parties were informed that such an appeal must be lodged by the authorized bodies or people within a period of 3 months after the official publication of the challenged law. After this period, the laws cease to be contestable. In the case of the aforementioned laws, the period for lodging an appeal ended years ago.

### Emergency health care

Because of its connection to patient safety, we must mention the creation of the specialization of emergency medicine as an elementary course of study. The Ombudsman's fear stems from the increase in complaints received questioning the quality of this new branch of medicine. This forces one to reflect on the need to improve and modernize the emergency health care service, which would require professionals with knowledge and technical skills that, although they mostly overlap other specializations, still require specific guidance and actions.

After the meeting held in the Ombudsman's offices with the Spanish Association of Emergency Medicine, the Ombudsman requested a report on the existing forecasts on the creation of an emergency medicine specialty from the Ministry of Health and Consumer Affairs. In its report, the health administration pointed out that the creation of this specialty would be taken up in the framework of the core reform of specialties taking place in the NHS Human Resources Commission, which prevented them from specifying when this branch would be created.

### **Mental health**

The Ombudsman received a high number of complaints in 2008 highlighting that one of the main problems of our public health system is the lack of infrastructure and mechanisms for mental health care. Special stress was placed on the inadequacy of basic spaces and community guidelines in which to carry out rehabilitation programs.

The need for regulating child and adolescent psychiatry deserves special mention, recognized as it is in almost all of the European Union, brought to attention by not just a few citizens, and having been an area of focus by the Ombudsman on several occasions. The

Ministry of Health and Consumer Affairs reported in August 2008 that the relevance of creating a child and adolescent psychiatry specialty was being analyzed within the framework of the core reforms of medical specialties, which, at that time, was being done in the NHS Human Resources Commission. Consequently, it is necessary to reiterate that here has been no significant advances in this matter despite the extraordinary importance of training professionals in child psychiatry.

### **Smoking**

Smoking constitutes one of the main problems for public health, which is why this Institution has been advocating the need for measures to reduce smoking and protect the legitimate rights of non-smokers. To this effect, the Parliament approved Law 28/2005 of 26 December proposing measures against smoking and regulating the sale, supply, consumption and advertising of tobacco products.

However, the Ombudsman continues to receive many complaints from people demanding the approval of a more restrictive law that would broaden the smoking ban to all public places in order to better protect the rights of non-smokers.

## The *ex officio* inquiry continues regarding enforcement of the Dependency Law, which also raised numerous individual complaints

Differences stemming from enforcement of the Dependency Law in the various autonomous communities and the problems arising from the current economic crisis, such as increased unemployment benefits and assistance, in addition to the effective integration of disabled persons, family protection, or survivor benefits have been the subject of enquiries opened by the Ombudsman. Concern over the situation at certain shelters for minors with behavioral disorders has led to a monographic study. As the presentation of this study was made in February 2009, we will include it in the report for that year.

### International adoption

In 2008, the Ombudsman undertook several actions with respect to the impact that legislative changes in adopted children's countries of origin may have on the international adoption process.

In the case of Nepal, adoptions were temporarily suspended in 2007. The Ministry of Foreign Affairs and the Department of Family and Minor Affairs of the Ministry of Labor and Social Affairs informed the Ombudsman of the steps taken, both with respect to information provided by the Spanish authorities to the applicants concerned as well as to actions taken by the ambassador of Spain in New Delhi requesting special treatment for cases that had been in full compliance with previous legislation. In early 2008, most of these cases were approved and a commitment to review a new set of cases was successfully arranged. Nevertheless, there are still Spanish cases awaiting approval, and, thus, the enquiries remain open.

Adoption cases in Colombia were also affected by a Justice workers' strike that paralyzed the courts in that country as of September 2008.

The Ministry of Foreign Affairs reported on actions undertaken by the Consulate General of Spain in Bogotá to ascertain the impact that the judicial strike had on Spaniards seeking adoptions. Moreover, attempts made to refer cases to courts that were functioning intermittently in certain parts of the country were unsuccessful because Colombian law deems that the judge with authority in adoption matters is determined by the minor's place of residence. At the end of the strike, on October 24, 2008, the affected families were able to finalize arrangements and return to Spain with the adopted minors.

### Family protection

On another subject, it is worthwhile to mention that Law 40/2007, December 4, on Social Security, added a

new paragraph to section 2 of Article 2 of Law 40/2003 November 18, on protection for large families, with the following phrase: "A father or mother with two children when the other progenitor is deceased." This reform provides greater protection for families when, subsequent to the loss of a parent, they find themselves in more precarious circumstances. However, single parent families with two children like the aforementioned cases were not covered by this protection if they were not entitled to benefits established in the Law on Large Families.

The Seventieth Additional Provision of Law 51/2007, December 26, on the 2008 General State Budget, ordered the Government to establish the necessary legal amendments for single-parent families with two dependent children to be classified as large families. Some citizens have approached the Ombudsman regarding the failure to enforce this regulation. Completed in 2008, and because that provision was not fulfilled, it was reiterated in Law 2 / 2008, December 23, on the 2009 General Budget, whose Sixty-fourth Additional Provision requires the Government to fully comply with the cited Seventieth Additional Provision of Law 51/2007 within one month of its entry into force.

Also with respect to Law 40/2003, November 18, on Protection for Large Families, it is necessary to reiterate the need to amend the existing text so that it may be enforced equally regardless of region. As noted in last year's report, no unanimity currently exists in the application of section 3 of Article 2 of the existing legal text.

### Disabled persons

Article 9 of the Spanish Constitution requires public authorities to ensure the greatest degree of welfare for all citizens, while facilitating their participation in political, economic, cultural and social life. Article 49, referring to people with some type of physical, mental or

sensory disability, establishes a policy of precaution and social integration for such persons.

There are many obstacles hindering the effective integration of disabled persons. Specifically, the responsibility to supervise conditions regarding accessibility and to remove architectural and urban barriers falls to local councils and other governing bodies in charge of approving plans and projects to be executed. Many citizens have turned to this Institution with respect to accessibility issues affecting persons with reduced mobility who need to travel by railway.

Pursuant to Law 51/2003, December 2, on equal opportunities, non-discrimination and universal access for disabled persons, the "Guide to Railway Services for Disabled Passengers" became effective in July 2007. Yet another step toward universal accessibility for disabled people was taken on November 23, 2007, with Royal Decree 1544/2007, which governs basic access and non-discrimination issues for users of the various means of transport who have disabilities. As a result, in early 2008, the Railway Infrastructure Authority (ADIF) developed a "Train Station Accessibility Plan" that would ensure full accessibility to 96% of the population, and they are taking the steps needed to achieve that goal starting at stations with highest ridership. In future stations as well as in extensive remodeling projects at existing stations, specially designed facilities and services providing access to those with a range of disabilities are planned.

In light of the aforementioned issues, it is safe to say that action is being undertaken to improve accessibility. However, this institution is fully aware that providing full accessibility to transportation and public buildings requires an ongoing effort by government, and there is still a long road ahead in this regard. Thus, enquiries with the General Secretariat on Infrastructure remain open regarding actions being conducted in this area.

## Dependent persons and application of the Law

During the year covered by this report, there was a decrease in complaints from citizens seeking access to retirement homes. The reorganization of social services in some regions after the entry into force of Law 39/2006, December 14, on providing personal autonomy and care for dependent persons, allowed some of those cases to be evaluated and certified in order to award the benefits provided for in this Law.

With respect to dependency issues, it should be noted that huge expectations raised by passage of the Law and implementation of the System for Autonomy and Dependent Care (SAAD), led to a veritable plethora of applications for evaluation and certification of dependency status. This doubtlessly called for an enormous effort by authorities that found themselves

overwhelmed by the increased workload and largely unable to award benefits within the timeframes set forth in the Law. According to said Law, in 2007, those assigned grade III, high dependency levels 1 and 2, would be entitled to benefits, and, in 2008, those assigned grade II, severe dependence, level 2.

In this regard, complaints received in 2008 demonstrate that at the closing of this report there were still a significant number of citizens whose dependency status had not been acknowledged and thus had not been granted, as of December 31, 2008, the benefits to which they were entitled. The greatest number of citizens who sought the Ombudsman's assistance in response to the failure to acknowledge their rights, and, in many cases, even to provide information regarding the status of their applications, originated in the autonomous communities of Madrid and Valencia, which together represented over 50% of the complaints received on this subject.

In addition to handling individual complaints, the Ombudsman also continued to gather general information from all of the autonomous communities regarding the most noteworthy obstacles hindering full enforcement of the Law.

Moreover, at the annual meeting held to coordinate actions between the Ombudsman and the parliamentary commissioners from the autonomous communities, special attention was given to problems encountered in applying the Law as well as to gaps observed in its enforcement.

Hence, a summary of the most salient questions arising both in reports from the various administrations as well as during the aforementioned coordination meeting is provided below:

In the first place, difficulties encountered in drafting regulations and in enforcing the Law, which must be done on equal terms in every autonomous region, led to delays in the proper implementation of the System.

The Law provides for the participation of beneficiaries in the system, which is determined by the type of service received, the cost, and the financial capacity of the applicant. However, it does not define these terms, but, rather, refers them to the Regional Council. This Council must define what it deems personal financial capacity, in terms of income and property, and must establish a co-payment system with a social justice criteria to be applicable nationwide. The Regional Council Agreement on the System for Autonomy and Dependent Care (hereafter referred to as SAAD), on determining financial capacity of beneficiaries and on SAAD participation requirements, was not published in the Official State Gazette until December 17, 2008. As such, upon closure of this report no practical data was available as to its enforcement or to modifications that each autonomous region may choose to apply to it.

However, it should be noted that the agreement reflects only general criteria with few specific details. This leaves plenty of room for financial capacity assessment in each region, which could lead to unjustifiable discrepancies among citizens from different regions.

In the same vein, the autonomous community administrations have been calling for an agreement with the Regional Council to facilitate the certification of companies, entities and services provided for by the Law. As in the aforementioned case, the December 17, 2008 issue of the Official State Gazette published the agreement that establishes certain minimum standards to ensure the suitability and quality of services provided for in the Law.

After the first year applying the scale set forth in this legislation, there should have been an analysis of the results obtained along with proposals for whatever modifications might be deemed appropriate. For this purpose, a Technical Commission was established, under the auspices of the Regional Council, whose purpose is to ensure the uniform nationwide application of that assessment scale. However, the improvements and proposals suggested in the work groups of the Technical Commission have not been successfully approved.

In terms of practical application, one autonomous region underscored the lack of correlation between data supplied by the Administrations with what was published by the Institute for the Elderly and for Social Services (IMSERSO). They attributed this to difficulties arising from the use of state computer programs, which, as confirmed by various administrations, repeatedly rejected data sent from other computer applications.

The state database, SISAAD, is a tool that has been subject to ongoing modifications in order to adapt to practical problems in various regions, such as connection failures, incompatible applications, errors in the lists and many others. This has led to a duplication of tasks, and, thus, processing delays or a need for more staff.

Moreover, among the most noteworthy issues hindering the proper application of the Law is the lack of efficiency in the system established by the State Agency for Tax Administration (AEAT) or the Public Welfare Office to provide information to the Autonomous Communities that need financial data for beneficiaries. It is not possible to receive data regarding income exempt from income tax for individuals, along with the rest of the financial information provided by the AEAT, even though this organization has such information at its disposal. This makes it necessary to refer to the Public Welfare Office, which in turn leads to other inconveniences, such as the fact that they

only provide information for the current year and not the previous ones, which are the ones that are applicable in such proceedings.

In another vein, some autonomous communities reckon that the collaboration agreements signed with the State General Administration lack stability and sufficient guarantees to reach an appropriate level of fairness and efficiency. Article 32 of Law 39/2006 establishes funding for the program and provides for a system to promote cooperation and funding via agreements, although these will only be effective until 2015 according to the first transitional provision. At the same time, almost all of the regions considered funding from the State General Administration to be insufficient because it is established on a per person basis and assessed according to their grade and level, whereas the true cost of the System lies in the services and benefits corresponding to each person regardless of their grade and level of dependency.

To date, the largest number of citizen complaints referred to delays in evaluation and subsequent approval of the Individual Assistance Program (PIA), which records all benefits and services awarded to each person. Of note is the significant number of concerned parties who have passed away during this process, and whose descendants, depending upon the autonomous regions in which they reside, may or may not be able to exercise rights that had corresponded to the deceased, at least starting from the original date of application.

The range of criteria used by each Autonomous Community, in the opinion of the Ombudsman, should be addressed within the Regional Council in order to seek greater uniformity, at least on the core issues, so that all dependent citizens are entitled to the same rights as set forth in the Explanatory Addendum to Law 39/2006, December 14, on Promotion of Personal Autonomy and Assistance for dependent persons.

Another noteworthy problem related to differences that may arise in the application of the Law, is the failure to streamline the system of benefits. The urgency as well as incompatibilities when providing certification for services or benefits for the Individual Assistance Program require the drafting of legislation. However, to date not every region has done so, and of those that have, not all of them regard it with the same degree of urgency.

To illustrate this situation, we may cite the actions of the Council for Equality and Social Welfare of Andalusia, which concluded that rigorous enforcement of its Order of August 3, 2007, could, on occasions such as the one raised with the Ombudsman, be unfavorable to concerned parties whose benefits would be reduced upon entry into force of the new PIA.

The vulnerable situation of dependents requiring more than one service in order to remain with their

families warranted modification of existing legislation. The new Law of March 7, 2008, amended former versions and expanded previous regulations on compatibility of service and benefits provided in cases involving individuals who qualify for Grade III, high dependence, at any level, or Grade II, severe dependence, at Level 2.

Difficulties have arisen resulting from incidents not specifically considered in the legislation drafted, such as handling transfers from one community to another within the Spanish State: persons who have submitted applications for dependent status certification in the home community move to another community before their status has been evaluated, or cases involving people with degree and level certification arriving from another community before approval of the Individual Assistance Program. These situations are even more complicated for dependents that have alternating living arrangements with different relatives who provide them care in different regions during different periods. Hence, the option of transferring benefits to the family caregiver who provides assistance to a dependent during a particular period should be provided for in legislation.

Special mention should be made regarding circumstances involving the Autonomous Community of Valencia. In view of the large number of applications received dealing with dependence issues, the Administration opted not to address them specifically, but rather to tacitly reject them via administrative silence.

Although the Ombudsman understands the difficulties involved in handling such a large number of applications, this institution does not share the aforementioned point of view because Article 42.1 of Law 30/1992, November 26, on Legal Regulations for Public Administrations and Standard Administrative Procedure, establishes the obligation of the government to resolve any requests made by concerned parties without recourse to express resolution or lack thereof through administrative silence.

The proceedings concluded when the Administration acknowledged its acceptance of the arguments presented by this institution, and, consequently, actions were undertaken to begin resolving requests to evaluate and certify the dependent status of concerned parties.

The Law for the Promotion of Personal Autonomy and Caregiving for dependent persons gives preference to providing services adapted to individual needs versus financial aid granted for exceptional circumstances. However, given the lack of social services and resources available for this purpose at the moment when this Law became effective, financial aid is beginning to play a greater role than what the Law actually sets forth.

In light of the aforementioned, this Institution reckons that promoting training in various areas of caregiving for dependent persons would not only alleviate

certain deficiencies among the ranks of the unemployed, but it would also open new doors toward the creation of jobs. Due to social changes, the demand for professional services is growing. Measures must therefore be established to support and train professional as well as non-professional caregivers.

### **Survivors' benefits**

Significant changes in Spanish society warrant that pensions should again be deemed as substitution income to be set aside in the event that the claimant effectively contributed to the upkeep of the surviving spouse. This new definition requires a full revision of the pension system along the lines of the Agreement on Social Security measures, 13 July 2006, which was adopted at the twenty-fifth additional provision of Law 40/2007, December 4, on measures related to Social Security.

Regarding such regulation, it is worthwhile to point out that the law fails to take into account whether the separation or divorce might have occurred as a result of abuse suffered in marriage and proven in a court of law. Hence, women are left more vulnerable when, faced with the circumstances described and out of fear or coercion, waived their right in the past to a compensatory pension.

Given the importance of this issue, the Ombudsman deemed it appropriate to address the Secretary of State for Social Security. They, in turn, stated that the Government, within the framework of social dialogue, should conduct a comprehensive reform of the survivor's pension with a clear outline of cases of need that will have to be addressed in pension coverage issues in the future. This Institution believes that such reform is necessary and should be carried out as soon as possible.

### **Unemployment benefits**

The rise in unemployment stemming from the bottoming out of the financial system, led to the commitment by various protection agencies to mitigate as much as possible the adverse impact of job loss. Both contributory benefits as well as assistance for unemployed workers are intended to provide them enough income to cover their basic needs. This Institution reckons that in cases where, for reasons not attributable to the jobless, they receive the benefit or allowance extemporaneously, a system should be established to issue advance payments for amounts due that have not yet been disbursed.

Ever since this Institution's inception, as has been noted in previous reports, the Ombudsman's concern over the proper functioning of employment offices has been constant. Given the significant increase in complaints involving undue delays in processing applications for unemployment services and benefits, as well as the

long queues to obtain a number on the waiting list, new initiatives were undertaken to learn more about how the Directorate General on Employment intends to deal with these issues in the future.

Furthermore, information (which had also been referred to in the media) was delivered to the Directorate General of the State Public Employment Service regarding the fact that the unemployment office network was located on “premises not suitable for the large number of citizens seeking assistance”, and that it “lacked sufficient staff to handle the workload” and, particularly, that the existing employees at these offices lacked adequate training. The Directorate General, in a lengthy report, apprised the Ombudsman of measures being taken to remedy the aforementioned deficiencies and to facilitate the process of applying for unemployment services and benefits.

The Administration concluded that, despite the setbacks that have arisen, the average time for granting unemployment benefits starting from the initial submission of an application to the Public Employment Service, was 13.1 calendar days in August, and a cumulative rate of 9.7 calendar days for the year, compared to the legal deadline of 15 working days. Indeed, the provinces where this limit was exceeded may very well be those with the greatest number of complaints as well as those that have taken the most significant steps to improve the processing of applications for benefits.

The great effort made to ameliorate existing dysfunctions while the Ombudsman seeks to monitor the implementation of the measures cited and to evaluate their effectiveness and the need to expand them whenever appropriate should also be underscored.

## Filing of complaints to the Ombudsman

### By Internet

[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

### By Fax:

Sending signed document to (+34) 91 308 11 58

### In person:

At Zurbano, 42; corner of Eduardo Dato,  
Monday – Friday 9am-2pm and Monday – Thursday 4pm-6pm.  
Nearest metro: Rubén Darío, Line 5; buses: 40 and 147

### By standard post:

Sending signed document to Zurbano, 42. 28010 Madrid- SPAIN

## **Ex-officio Investigation into errors in the Inland Revenue Office's Initial Drafts**

In 2008 the Ombudsman learned about numerous errors in the income tax statement initial drafts, which on occasion lacked full data for all taxpayers. Additionally, there were numerous complaints related to payment of municipal fees for use of public space as concerned parties considered the increase in fees unjustified.

### **State tax: Income tax statement initial drafts for individual taxpayers**

Last year the institution opened an *ex-officio* inquiry with Inland Revenue after news appeared in the press referring to numerous errors in the income tax statement initial drafts for individual taxpayers in the 2007 tax year. Specifically, these initial drafts lacked complete data about taxpayers, some of which were known by the Agency, such as the following: deductions for homes purchased before January 20, 2006, new family circumstances, dues paid to unions, or autonomic deductions applicable in the drafts.

As confirmation of these drafts is a widespread practice among citizens, they should contain all information available to the Inland Revenue Office. Moreover, it is also advisable to make tax notifications clear when there are factors that may affect the final outcome of an income tax statement. Additionally, the information campaign conducted by the Tax Office should also point out the circumstances under which it is not possible to use these drafts, rather than focusing solely on their merits.

The Tax Authority is not privy to all of the factors that individual taxpayers must take into account when preparing their statements, nor is it in a position to verify that there are no discrepancies between the data they have and what the individual taxpayer has. This is true with respect to union dues that are not known by the State Agency for Inland Revenue, or the personal and family circumstances of each taxpayer. As for the deduction for home purchases, which is highly complex, it is necessary to determine the exact date of acquisition for the property, which can lead to a variety of different outcomes.

Regarding autonomic deductions, there is a formal procedure to ensure that the Regional Administrations provide such information to Inland Revenue and that this information be taken into account when preparing initial drafts, although the fact remains that there is considerable room for improvement.

Lastly, with regard to the public awareness campaign, Inland Revenue argues that public announcements can only cover the most basic aspects. Nevertheless, they acknowledge that the campaign can still be improved even though they did not believe it would

be appropriate to focus solely on the draft correction service. In this regard, Inland Revenue stated that it would conduct a statistical study on the drafts, and a survey among citizens as well, in order to raise the level of quality of the public awareness campaign next year.

It is important to remember that each citizen relies on the accuracy of information supplied by the Inland Revenue Office, both in terms of the tax data it compiles as well as in the initial draft he or she receives, because this information comes from the competent government authority, and, thus, the general practice is not to review the data thoroughly.

This circumstance means that public awareness campaigns must point out the possibility that tax data contained in the draft may not always be accurate, and that this could result in fines or penalties for the taxpayer.

On a different note, delving more deeply into legal safeguards in the relationship between the taxpayer and the Administration, the Ombudsman recommended the use of a form listing any documents provided by taxpayers for the purpose of preparing initial drafts, as well as current family data and tax options selected, to be used during appointments with taxpayers to finalize income tax statements. Inland Revenue agrees with our suggestion but believes that it would hamper service due to the additional workload. Nevertheless, they have taken a series of steps toward achieving the aim of the recommendation, and they have clarified taxpayer information regarding the documentation required to use the tax preparation service by previous appointment. For this purpose, theoretical and practical training has also been provided to staff members who handle this taxpayer service.

Even though these measures are commendable, the Ombudsman deems them inadequate, and has therefore reaffirmed the aforementioned recommendation. This administration has since rejected it, underscoring the measures taken for the 2008 tax year and detailing improvements in training for staff working in the statement preparation service. Although the Agency has promised to continue to pursue every available avenue of improvement for the initial draft preparation service, the Ombudsman deems this recommendation as not accepted, and has closed the case.

## Local Taxes: Municipal Fees

The payment of fees is an issue that generates many complaints, because taxpayers may perceive that the amount charged is not limited to services rendered, or they simply do not understand the purpose of such fees. These fees are payable by individual taxpayers when the Government provides them with a service or the use of the public domain (land, facilities). Most of the complaints received referred to the unjustifiable increase in fee amounts and to fees they view as disproportionate in light of the use for which they are charged. Also the subject of numerous complaints were the municipal fees assessed for rubbish removal and recycling, as fee increases were significant due to the addition

of a recycling service, and they did not always comply with the legal requirements and economic studies prior to passage of the ordinance.

Finally, the existence of a protracted time lag between notification to pay administrative fees required to issue residency cards to foreigners and the authorization to renew residency permits and the appointment date for the procedure, if the time elapsed spans two fiscal years, can entail an increase in the applicable fee required by the approval of budgetary legislation for each fiscal year. This practice requires concerned parties to return to the collaborating financial entity to make an additional payment in order to cover the difference and deadline.

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## Elimination of night rates and acquisition of the “baby cheque” continue to generate complaints

The Ombudsman made a recommendation to find ways of compensating the 1 million homes that were left without night rate after originally investing in this scheme to be able to register for it. Moreover, the Institution continues to investigate the so-called “baby cheque”, the public aid granted to families for births and adoptions, which discriminate against marriages where one spouse is a foreigner and the other a Spaniard.

### Electricity supply and night rates

One of the most frequent complaints received by the Institution concerns the poor customer service given by the electric companies. Customers have said they must call many times before they are finally attended. However, they are not given solutions and they are often told their problem will be solved shortly, which doesn't happen, forcing the customers to begin the process again.

Still, the complaint that most absorbed the Institution's attention in 2008 was the elimination of the night rate for a million homes that had signed up for this service. Moreover, the electric companies unilaterally cancelled their contracts with their customers.

The report sent by the Ministry of Industry's General Technical Secretariat listed the different regulations that backed the elimination of the night rate. The most affected rate was the 2.0.N. since this rate contributed the most to the rates deficit because it barely covered the cost of this type of supply. They argued that with the transfer of other rates, in July 2008, 2.0.N customers enjoyed 14 hours at a discount rate compared to 8 hours in the night rate. It was also stated that the elimination of the night rate meant that consumers would have to notify the electric company of the new rate they wanted before 1 July 2008. However, the report gave no explanation on how consumers could recover the investment made installing new equipment for the night rate. Even after more than a million families chose electricity over gas as a result of an advertising campaign extolling the benefits of the former.

Regarding the change or modification of the night rate, it was done gradually and with previous notice, although it is important to keep in mind that its publication in the official newspapers is beyond the reach of most people and users, many of which are retired and have scarce means. This in mind, there should have been an information campaign with enough time before the change so that consumers could have known about the modifications in detail and get an explanation about different rates so they could choose a new one and notify the electric company in the established time

period. In short, there was little information and transparency in the changes. In many cases, the first news consumers had was a letter from the electric company announcing that the night rate would disappear as of 1 July 2008, and asking them to choose another rate before said date; otherwise the company would automatically apply the general rate, with differences for hours of use and according to the electric power contracted. When consumers requested advice from their companies, either their requests were not answered or their problems were not solved.

The unilateral cancellation of the contracts signed by the electric companies and their customers goes against the principle of good faith established in the first chapter of the Civil Code and the Constitution, article 9.3, which states that the principle of good faith and the citizens' confidence in the Public Administrations cannot be arbitrarily changed. It is also important to mention article 51.1 of the Constitutional text, which obliges the state to guarantee the defense of consumers and users, protecting their legitimate economic interests.

Thus, the Institution made a recommendation to the Technical General Secretariat to study some form of compensation for the affected consumers caused by the losses from modifying the rate and alleviate the economic damage from the heavy investment made. The institution also recommended granting a longer transitional period for the service in similar conditions in order to adapt the electrical installation in the homes or businesses to the new rates.

### The agricultural sector

According to EC law, the so-called Farming Land Geographical Information System (SIGPAC in Spanish) was implanted in Spain in 2005. This system is a basic tool for managing and controlling the aid granted by the Common Agricultural Policy. It is a graphic and georeferenced system that identifies plots of farming land that cover the entire country and it is used to grant aid according to surface area. The Royal Decree that regulates it states that is the Autonomous Communities' responsibility to maintain it and use it on their territory.

The system also contains information on the use and crops in the plots of land by demarcating crop masses in enclosures.

The problem arises when an error is made and aid stemming from the Common Agricultural Policy is denied or delayed. There was a specific complaint from the Valencia Community that caused the Ombudsman to intervene.

This Autonomous Community already has a computer program that can detect errors in the SIGPAC when identifying plots of land at the same time the application is being processed and gives farmers the adequate claim, which shortens the payment times. Moreover, all the Sigpac information on the plots of land is available through the Internet and the applicants have personalized service from the Regional Offices of the Ministry of Agriculture and the collaborating institutions. The next campaign will see graphic and alphanumeric information for each farmer with the changes made in 2008 to make the process easier.

### Protecting users of telecommunications services

This section deals with the improvements developed by the Public Administration in telecommunications services and protecting consumer rights. The Institution found out, through the mass media, that the Ministry of Industry, Tourism and Trade had carried out a study to pass a Royal Decree to regulate the Charter of Rights and Obligations for Telecommunications Services and of the Information Society. This specifically refers to a measure that would forbid operators from offering ADSL Internet connections that don't guarantee at least 80% of the bandwidth promised. Thus, the Ombudsman requested detailed information on the rights contemplated in the Charter to protect consumers in this type of market, and information regarding the bill and when it is expected to come into effect. At the closing of the 2008 Report, this investigation was still pending an answer.

The public administration is still dealing with regulation to improve the situation for users of telecommunications services, thus Law 56/2007, of 28 December, of Measures to promote the Information Society, which is part of a set of measures from Plan 2006-2010 for Developing the Information Society and Convergence with Europe and among the Autonomous Communities. This Plan, better known as the Plan Avanza, was approved by the Government in 2005 and includes measures such as adopting a series of initiatives aimed at eliminating the existing barriers to the widespread use of information technology and communications and guarantee citizens' rights in this new age. On the one hand, it introduces innovations in electronic billing and reinforcement of users' rights and, on the other,

undertakes the necessary modifications in the law to promote and boost the information society. To this effect, a series of modifications were introduced into Law 34/2002, of 11 July, of Services of the Information Society and E-commerce, and Law 59/2003, of 19 December, of Electronic Signatures. These are 2 fundamental pieces of the legal framework where the information society is developing.

### Public Aid: the "Baby cheque"

In 2008, the Ombudsman continued working on the regulation that provides aid for newborns or adoptions, the so-called "baby cheque", which was approved by Law 35/2007, of 15 November. This Law establishes an income tax deduction for each newborn or adoption and a single payment by the Social Security.

As indicated previously in the 2007 Report, the main reason for the complaints was the inclusion of births and adoptions that took place after 1 July 2007 and the situation of mixed marriages, where the father is a Spanish national and the mother a foreigner with a child born in Spain but no way of proving the mother's residency in the 2 years prior to the birth. It seemed that the law penalized the mother's nationality and discriminated male couples, since, if they adopted a child, only one of them needs to be Spanish as they would choose the beneficiary of the aid.

Another problem is that the law does not take into account mothers from other member states of the European Union.

The complaints filed dealt with the unequal legal treatment that the new modification could bring, since, in the same tax period, it only grants fiscal benefits to some taxpayers while many others that were in the same conditions as of 31 December, the time when the Personal Income Tax Law lists the personal and family conditions to meet in the income tax return, were not eligible for the deduction.

Moreover, since the aim of the law is to compensate families for the expenses caused by a new child, this Institution became interested in how this would apply in cases of pre-adoption foster care or permanent adoption and, if it were the case, the reasons for any exclusions and denial of said aid.

The Secretary of State for Taxation and Budgets answered that the Law derived from a bill approved by the Government whose parliamentary processing had already concluded and its contents had already been approved by Parliament. The office also pointed out that the approval of any tax deduction is the responsibility of the legislative power but its application corresponds to the Spanish Internal Revenue Service

The aforementioned Secretary of State forgot to mention in its report that, according to article 87

of the Spanish Constitution, the legislative initiative belongs to the government it is a part of. Nonetheless, this Institution expressed its disagreement with the Administration's application of Law 35/2007 because, despite the statements made in the report, it does have the power to modify the regulations it deems appropriate and interpret the law more favourably towards the citizens.

A recurring question in the complaints that could be easily solved is the restrictive interpretation made by the Public Administration concerning legal residence in Spain in the 2 years prior to the child's birth which is required for the "baby cheque", since the Administration starts to count legal residence from the moment the residency card is issued.

### **Consumer affairs**

Last year, one of the most ambitious legislative bills in the area of consumption was passed, Royal Legislative Decree 1/2007 of November 16, by which the modified text of the General Law for the Defense of Consumers and Users (LGDCU) and other complementary laws were approved. This combined into a single text both the LGDCU and the rules governing transposition of EU directives issued to provide

protection to consumers and users involved in matters regulated by said legislation.

As in the previous year, advances were achieved in 2008 with respect to drafting new legislation on consumer issues, and Royal Decree 231/2008, of February 15, was passed, regulating the Consumer Arbitration System with a view to providing a new set of rules to govern said system as well as to regulate virtual arbitration. This is the first modification that has arisen since its inception in 1993, involving the voluntary system for dispute resolution between consumers and suppliers, which is free of charge, user friendly, and streamlined in order to swiftly reach final decisions, or arbitration awards, which are legally binding for concerned parties.

However, this effort to draft legislation on consumer affairs unfortunately does not always lead to the perception that protection for the rights of consumers and users has improved.

In recent years consumers are taking a more active role in protecting their rights, and they are better informed and more willing to take advantage of instruments at their disposal to achieve their objectives. As such, the considerable number of complaints submitted by citizens to the Ombudsman related to such matters is hardly surprising.

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## The lack of coordination between administrations and the excessive formalities involved in preventing and reducing environmental impact represent the main deficiencies found in environmental affairs

**As in previous years, this institution continued to receive complaints in 2008 that reaffirmed public interest in the proper preservation of the environment. This is in contrast in certain cases with the position taken by the government, which often reacts too slowly in exercising its authority in such matters. Also observed were other deficiencies in government stewardship of the environment, the most significant of which is a misconception, in the view of the Ombudsman, of the purpose of this management.**

This institution has argued repeatedly that the environmental stewardship is a concept that should involve all branches of government as opposed to merely those that have been assigned this particular function. Put another way, the environment cannot be separated from other substantive issues. We must also point out the finding that procedures were being applied unnecessarily in certain interventions, or they were sluggishly carried out, or they were limited to such an extent that they even breached the rights of citizens.

In any case, the diversity of statements contained in the complaints, the increasing number of them, and the fact that in many cases they are submitted by groups make it necessary yet again this year to highlight the most relevant.

In 2008, the question of the definition of 'environmental information' was raised again, and this Institution discovered once again that there were narrow interpretations of the regulations.

The concept of environmental information includes the exercising of any type of administrative action and any information held by the government that has a bearing on or is intended to protect the conditions of any environmental elements. The law explicitly mentions economic or technical analyses. As such, it cannot be argued that the financing of projects and their conditions has no relevance to environmental issues. Excluding certain environmental information due to its technical, economic or financial nature, or due to the fact that it is related to administrative hiring practices or the required or granted licenses, lacks legal foundation.

The government may deny a request for access to environmental information if it might compromise the confidentiality of personal data, provided that the person concerned has not consented to its use or disclosure. Nevertheless, in such cases this Institution reckons that documents containing personal data whose confidentiality must be safeguarded may be made available as

long as such private information is expunged from them.

### **Environmental Impact Assessment. Strategic assessment of projects and plans**

Regarding ordinary environmental impact assessment (hereafter referred to as EIA), three scenarios have been taken into consideration: omission of the procedure, deficiencies in making assessments, and the lack of an Environmental Impact Statement (hereafter referred to as EIS).

When the environmental assessment procedure is omitted, the Ombudsman considers it to be an irrevocable omission that precludes subsequent assessment, blocks further progress on the project, and obliges the developer to restore the environment to its previous condition, even though both current doctrine and jurisprudence have declared mainly that the omission may be rectified. However, in the Ombudsman's view, the preventive nature of these assessments is essential because their purpose is to provide adequate information on the impact of a project, which must be taken into account when determining if authorization should be granted. The environmental assessment must be substantiated in the initial stages of the approval procedure in order to genuinely prevent environmental impact, even by weighing the possibility of withholding authorization, as opposed to merely adhering to a formal procedure. All of this is difficult if not impossible after the project has been undertaken, and therefore, the natural environment has already been altered.

Carrying out or authorizing a project with little or no prior assessment in cases involving serious and substantial omissions and later attempting to address such omissions perverts the meaning and purpose of environmental assessment. Permitting such cases represents a breach of EU regulations and undermines the

assessment, because it can result in chance legalization of unviable projects leading to real consequences that cannot be easily rectified given the existence of the fait accompli.

Deficient evaluation of environmental impact would be avoided to a large extent if projects were subject to regular evaluation procedures containing a consultation phase, rather than brief procedures that merely meet deadlines for public information. An environmental assessment is not valid if it fails to analyze the considerable impact (air emissions, noise, waste transfer), for example, on a municipality other than the one where the site is located. Certain cases were found in which it could be argued that the EIS infringed upon the environmental rights of neighbors because the feasibility hearing for the project was fictitious.

All essential assessments to support whether or not a project is feasible must explicitly appear in the EIS at least in summary form. Deficient environmental impact assessments are those that fail to include the reasons why a particular site was chosen over alternative sites, the impact of the proposed project on nearby population centers, or the overall impact of the project in conjunction with surrounding installations.

The Ombudsman deems it contrary to the spirit of the law that environmental impact should be derived from corrective measures rather than vice versa. An impact assessment should be a positive photograph, not a negative one. Nor is it reasonable that, rather than compiling all potential consequences in a systematic and orderly fashion and expressly establishing well-founded and suitable corrective measures, the EIS is limited to merely recording the corrective measures outlined in the impact study “so as not to contradict this statement.” The Administration, through its environmental division, should state in a detailed, explicit and reasoned fashion whether or not it deems that the developer’s descriptions of environmental impact and the corresponding corrective measures, if any, to be satisfactory, and they should add whatever aspects were not included in the study along with their rectification. All this must appear in the EIS. Otherwise, its efficacy is limited and the meaning and purpose of the environmental assessment is distorted, leaving it entirely up to the developer to assess the impact of the project on the environment.

In the same vein, this Institution reckons that the responses given by the developer to allegations should be studied and assessed by the administration, and that assessment should be reflected in the impact statement. Merely mentioning the fact that allegations “...have been addressed by the developer and evaluated by the Commission for Environmental Prevention”, without further report on the conclusions reached by the Administration is unacceptable. Consequently,

failure to include in the EIS at least a summary constitutes a failure of the Administration to fulfill its duty to serve as arbitrator and to safeguard the general interest. The procedure that produces the EIS is not just another step in the overall fundamental procedure, but rather an essential and qualified one that determines a project’s feasibility and, hence, its approval. The final decision, the EIS, must not be regarded as a measure attached to a substantive resolution. It represents an administrative act of authorization that becomes distorted if it fails to contain at least a summary of outcome of the examination of allegations.

With regard to the evaluation of strategic plans and programs, in addition to considerations described in this section, more are discussed in the ports and infrastructure sections along with other very important and special ones in the urban planning section. Now we would like to shift the focus to certain practices of the authorities to disregard such assessments, appropriately known as strategic. We have discovered practices that come close to being deceptive in order to avoid application of the law.

### **Protection and conservation of natural areas, flora and fauna**

In this area we discuss cases involving rejection of suggestions to revoke decisions to authorize construction of Alpine ski resorts in Natural Parks due to the fact that they were not properly assessed for potential environmental impact as required by law. The government should manage natural spaces with the overriding priority to protect, conserve, restore and enhance them, rather than to encourage public use of them. Unless there is a change in circumstances, the level of protection for environmental resources for which an area is declared a nature park may not be curtailed, particularly when the consequences of the works have not been properly assessed.

We also cite the denial to admit for processing of a complaint over the failure to call a meeting of the Board of Trustees of Doñana National Park since 2005. This issue had an enormous impact on the division of powers in the management of national parks due to confusion arising from the complexity of the laws enacted, on which there have been several rulings of the Constitutional Court.

Generally speaking, we found irregularities in the management of tourism in natural areas declared protected and unprotected, as well as an inversion in the order of legal priorities that are commonly involved in public use land management issues. Certain administrations approve and authorize public works—and even encourage—public use and activities within the area or adjacent areas that are unfavorable to the conservation of natural resources. Improved protection is frequently cited, when what is really being sought are “economic development”

for the area and the greatest profit possible from an attractive natural environment—unspoiled places “where there is nothing and therefore something can be done”. The Administration did not even seem to be aware that extensive public use in the long term is almost always incompatible with the preservation of ecosystems.

This Institution is not at all opposed to actions taken toward a more orderly and rational use of natural areas, but one must remember that conservation of the variety, uniqueness and beauty of natural ecosystems and the landscape is essential to proper management and such preservation is often incompatible with a massive influx of visitors.

### Seas, coastline and ports

The Ombudsman has observed cases of systematic assault on the public domain, on public rights of way, and on the unrestricted use of both, while the violator sees that the public service entrusted to the Administration is not exercised in a way that would make it unprofitable to continue this behavior. Furthermore, in addition to cases of abuse toward individuals that the Administration neglects, there are complaints about the misapplication of the Coastline Law. The effect of the Coastline Law on property is clear, but the fact that there is widespread misuse of administrative powers and a general arbitrariness in enforcement is inadmissible.

When the Coastline Law entered into force, a much stricter coastal protection system was implemented that those directly affected were not familiar with, and this now behooves the authorities in charge of coastlines to act with a great rigor, as detailed in several specific cases not discussed in this summary.

In the section on Ports, reference is made to cases of poor planning and lack of strategic environmental assessment in port plans, which has been the subject of several complaints.

It is irrefutable that in order to carry out port projects, plans must mandatorily be drawn up, processed and approved, as should, consequently, the required special plans for municipalities affected—a fact underscored by this Institution—because a significant delay in putting together a plan to regulate port areas can lead to serious environmental consequences.

The loss of valuable and irreplaceable natural areas due to the creation of port facilities carries with it a potential impact that requires a deep and thorough assessment, given the virtual irreversibility of the loss. We have found cases where the administration has argued that, as specific projects are to be evaluated individually, strategic assessment of all of them together is not deemed appropriate.

Nonetheless, the Commission considers this line of reasoning to be directly opposed to the intent of Law

9/2006, which weighs “environmental impact in order to take decisions during phases prior to those when a plan is put into motion” and “taking strategic actions during these preliminary phases.” Otherwise the “environmental sustainability report,” is omitted. This tool is needed to identify, describe and evaluate potentially significant environmental impact that may arise during the implementation of the project, as well as offering reasonable alternatives, including the zero alternative (not carrying out said plan or program). We found cases where a usage plan submitted to environmental authorities only provided specifics in “certain areas”, whereas “the specific uses of the area are left undefined because they were not known at the time the project was drawn up.” Thus, we have a usage plan whose uses are unknown, but in the opinion of this Institution, a usage plan that fails to define uses does not deserve to be classified as such because there has been no strategic assessment regarding the incorporation of the port in the service area without a clearly defined purpose for a large surface area.

### Inland waterways

In 2008 the circumstances arising from the drought, on one hand, and years of enquiries by the Ombudsman regarding inland waterways, on the other hand, warranted the drafting of an individual study on the subject, which is currently under way.

As such, we shall outline only the main sections arising from the processing of complaints, which are duly elaborated upon in the aforementioned study: municipal use without concession, illegal land use for years without fines, exercise by the hydrographic confederations of their powers of control over compliance with the terms of water concessions, the need to evaluate during the procedure for granting concessions all possible factors affecting previous catchment rights, verification by the watershed authority of incidents reported, disagreement with the conditions under which water rights are acknowledged on water from private wells or underground waterways, requests for water use after certification of mineral water to be bottled and sold; irrigation communities who feel they are not subject to supervision by the Ombudsman due to the fact that they “do not constitute a public administration”, which is an erroneous and worrisome judgment, water distribution among the community and respect for the status of commoners and their definition; persistent discharge of untreated waste water by urban centers or homes over long periods of time and illegal development, fines imposed by watershed authorities that are frequently ineffective with pollution of water going unpunished for years at a cost that is profitable to the violator, the question of who has authority in the processing of the integrated environmental

authorization, of the execution of actions with effects on water, among others.

## Waste prevention and management

The high percentage of waste dumped in unsuitable landfills has led to the opening of official investigations in various regions (Generalitat of Valencia, the Government of the Islas Canarias, Government of Galicia, Government of Castilla y León, Region of Murcia) with the objective of assessing the current situation. Complaints continue to arise due to lack of special recycling bins for sorting household waste or the lack of recycling centers to leave oils, small appliances, furniture, used batteries, mercury thermometers, and medicines. In these cases the Ombudsman suggests that the authorities should provide bins and recycling centers and duly inform the public regarding their use, to facilitate reuse and recycling through as broad a refuse collection service as possible.

Moreover, we still find that waste and garbage continues to be dumped in vacant lots, located in both downtown areas as well as in the outskirts, and it is accumulating without any control—these are, indeed, illegal dumpsites.

Lastly, we allude to complaints by residents about waste treatment plants that emit a foul odor along with other nuisances. Normally when such facilities are set up they are situated at a reasonable distance from nearby towns. However, over time, urban development spreads without taking into account the inconveniences that will arise for new residents. On the other hand, the Administration that owns the facility does nothing to ameliorate the situation (nor does it propose to modify the urban plan or challenge it). Meanwhile, the facility continues to grow to handle the growth in population, which further increases the impact.

There is practically no coordination or synchronization of actions affecting one particular area, and this is precisely where the problem lies. It is advisable to plan land use in such a way that installations of this size have buffer zones (whose dimensions depend on their specific activity and their specific conditions) that are not to be used for housing, easements or land reserves.

## Noise pollution

In this area we point out the noise generated by public works, transport infrastructure, sanitation services, the loading and unloading of goods on public thoroughfares, as well as the celebration of town festivals and the practice known as *botellón*, or large, outdoor parties in public areas.

Most of the nuisances caused by the public works are related to noise at night. Generally, citizens who suffer from these circumstances often turn to the Ombudsman after having lodged numerous complaints to

the authorities. In such cases, keeping the neighborhood well informed is vital, so that they know what to expect, and will suffer less as a result.

In 2008, a considerable number of complaints were received that referred to noise caused by city buses because certain streets have become makeshift bus terminals where vehicles are double parked for a period of time with their engines running while drivers rest and new passengers wait. In these cases the Ombudsman has had to remind the municipal authorities that they are the ones responsible for managing vehicular and pedestrian traffic on city streets, as well as for preventing, assessing and rectifying cases of noise pollution. If the noise pollution is excessive and unnecessary in providing good service, residents are entitled to have the issue addressed.

Other significant cases refer to noise caused by railway activity. Among the complaints received this year special mention must be made to those lodged with reference to freight trains transporting minerals, containers and so on, where costs to resolve noise issues are always assumed by taxpayers instead of the railway authority, transport firm, or train users.

For yet another year, we must make explicit mention of the noise generated at airports, particularly at Madrid-Barajas and Barcelona-El Prat airports. Although the issues are numerous, we shall refer to only one of them in particular: public participation in the assessment and mitigation of noise pollution. The Ombudsman recommended to the administration that they should guarantee access to environmental data and encourage participation in public decision making by using a different approach from the strictly formal one. For example, there are periods in the year in which participation is virtually impracticable, such as the months of July and August in Spain. Thus, a more appropriate period should be established for disseminating public information. Moreover numerous complaints have been received and investigated regarding non-compliance with air corridor regulations without any apparent reaction by airport and aviation authorities.

The Ombudsman would like to highlight the finding by the Supreme Court with respect to the appeal made by several residents of a neighborhood near Madrid suffering from noise caused by aircraft landing at Barajas airport. This decision reckoned that the existing state of affairs violated their right to privacy at home, establishing a legal doctrine of significant importance.

Also addressed in this section are activities that are part of everyday life in our cities, such as street cleaning and loading and unloading of goods on public thoroughfares, as well as noise pollution caused by celebrations, festivals and crowds of people drinking in the streets, especially alcohol. From the viewpoint of this Institution, the latter have appeared to become more and

more widespread. It is also true that without a greater degree of civility among the populace, it is quite difficult for the government administrations to tackle the noise pollution issue alone.

### **Airports, motorways and railways**

Apart from noise pollution issues caused by airport activity, there are others that are indirectly related to them. In this vein, we have described in previous reports and studies the criteria of this Institution with respect to urban planning regarding infrastructures. The municipalities cannot have their planning decisions restricted, nor should individuals be forced to cope with excessive noise caused, not by themselves, but by aircraft at the airport or trains at railway stations and terminals. There is very serious confusion between the 'definition of the noise footprint', which is the determination of a physical fact, and the imposition of land use fees, in other words, the imposition of noise easement zones.

The noise generated by traffic on certain stretches of highway and roads has also been the subject of complaints. In such cases the institution suggests that the administration should conduct assistance projects, and works projects as each case may require, with whatever provisions are deemed necessary in order to determine the existing levels of noise pollution. The data obtained from these measurements should then be made available to claimants in order to decide upon the appropriate preventive, restorative and corrective action to be taken to address whatever adverse effects are generated by traffic.

### **Classified activities**

The complaints covered in this section stand out, as in previous years, because of the wide range of cases posed by citizens due to the variety of types of "classified activities" and the awareness of those affected that certain nuisances are unjustifiable because they represent a breach of law and a violation of basic rights to personal and family privacy, protection of health, and reasonable quality of life, which all represent parts of the overall right to enjoy a decent environment.

In these cases, the Institution recommends that the authorities concerned should provide detailed information to affected citizens regarding the purpose of the projects, the benefit that they will provide to the society as a whole, and the measures adopted to resolve any issues that may arise.

Another source of problems without a simple solution, also the subject of complaints, is large numbers of people crowded outside nightclubs and bars in the early hours of the morning. The municipal response is usually confusing, either because they claim to lack legislative support to intervene in such cases or because they simply do not deem the situation to be a problem of noise but, rather, of public safety. The Ombudsman believes that municipal governments must move to regulate the responsibilities of nightclub and bar owners and to require their active participation in finding ways to prevent or resolve this issue. The Ombudsman also recommends the use of public civic behavior awareness campaigns targeting customers of these premises.

In other cases, some of great relevance, many establishments have been carrying out unlicensed activities in an unregulated fashion for years, causing a great deal of inconvenience in the area. In other words, they benefit from the complete permissiveness of the Administration.

### **High-voltage power lines and mobile telephony**

Throughout 2008, there has been a considerable reduction in the number of complaints in this area as public concern lessened regarding electromagnetic pollution as more and more verifiable information about their potential impact on health becomes available.

The findings of the report on radio frequency and health (2007/2008), prepared by a Scientific Committee sponsored by the General Foundation of the Complutense University of Madrid, demonstrate that exposure levels of the Spanish population to electromagnetic fields are quite low, as emissions measured were below limits regarded to be safe. As such, the negative perception of electromagnetic emissions that is commonly held by the public does not hold up to proven scientific scrutiny. Nonetheless, rational use of mobile telephone handsets is still recommended.

On the other hand, with respect to both mobile telephony as well as high voltage lines, complaints are still being received about these types of installations that do not have all of permits required by law. Thus, it has been observed that certain municipal authorities do not act with the necessary diligence in proceedings to fine offenders for obvious municipal violations.

## The Ombudsman believes regaining public trust in urban management is urgent

**The institution has been noticing a steady increase in public distrust through complaints it has received regarding administrative measures taken on urban matters. It believes that regaining the public's trust in the administration is an urgent priority that would require, among other things, stricter compliance with the regulations.**

In this endeavor, collaboration initiatives between professional associations and city halls to process permits would be welcomed. Such collaboration would complement and make the urban development easier by incorporating reports by independent bodies to the licensing procedure.

The following is a summary of the most significant complaints investigated in 2008 regarding urban planning.

In recent years, the concept of sustainable development has emerged as a basic element in urban planning. This Institution believes that it is necessary to use this concept without taking for granted that all development is sustainable nor that there need be development always and in everything. It can also be argued that protecting trees from excavations and foundation works can also be considered development. Therefore, both development and sustainability can be two-way concepts, and the term sustainable development cannot be applied in a single, strict sense.

In 2008, there were both personal and collective complaints precisely because there was growth that could be labeled excessive and “developist” urban works typical of an unsustainable city. In these cases, the urban planning authorities claimed municipal autonomy to justify their plans. But the range of discretion given by the law to the Administration is not limitless nor does it mean that it can plan freely, since there are limits, including those set out by both sectorial and urban planning law. Such limits are set forth in the report: limits imposed due to environmental issues and the Environmental Plans Strategy assessment; limits that protect the cultural and historical heritage; and the obligation to prove that there are enough water resources.

This institution has been drawing attention to the urban planning authorities' excessive bureaucratization and slowness in management procedures and their methods of equal distribution. We thus confirm what has already been exposed in other reports concerning deficiencies in applying the execution systems for historical urban developments, emphasizing the compensation systems, the prime example of private

management in Spanish urban planning and which is still the development model used in the plans. Once again, the irregularities reported by citizens highlight the same problems: delays in processing the establishment of compensation boards, the participation of proprietors and the expropriation of non-participants in the system; the city hall's refusal to implement attachment proceedings to satisfy money owed to the Board, etc. In conclusion, despite the time this execution system has been in use, the city halls still view Compensation Boards as a body of self-administration set up by the proprietors for their “governance” and, therefore, distant from municipal activities. Thus, we must again insist in the need for administrations' efficient intervention to ease the Compensation Boards' internal processing and guarantee a genuine collaboration. However, we do highlight the efforts by the Autonomous Communities to include corrective mechanisms for these irregularities in their norms.

Problems regarding urban development information are also dealt with (complaints from people who have had their request to access certain information rejected without any legal basis, mostly by not answering or giving restrictive interpretations). The interpretation defended by this Institution is based on the citizens' right to participate in proceedings that affect them, as this is one of the pillars of our legal and political system, especially the participation of associations, collectives and civil platforms.

Regarding building permits, it is worth paying special attention to the granting of building permits through administrative silence, which has led to many complaints, and which is one of the urban planning activities that stands out the most. Nevertheless, despite its practical importance, in the procedures — especially in small cities— there are guidelines that do not correspond to written regulations or at least not to current regulations, a practice which creates a sense of insecurity and distrust in the city halls' excessive, or even abusive, arbitrariness. This document highlights the attitude of some of the local authorities that view positive silence as a quick way of granting what normally cannot be granted under

urban planning law, and encourage the delay in municipal bureaucracy.

Regarding urban planning discipline, as in previous years, as well as in 2008, there were many complaints due to the actions of the administrations, especially the local ones, for acting as police: In other words, the measures taken, and sometimes through coercion, to ensure that the acts of private citizens remained within the sphere of the law. Despite the laws passed by the Spanish State and the Autonomous Communities, the lack of discipline in urban development matters are constant. The main problem is the lack of rigor; we must also consider that there is only the duty to redress the damage caused by the violation of the urban planning laws (either by granting permits that would legalize, where possible, what was being built without it, or, in cases where legalisation is not possible, by demolition) and it is not necessary to take any other measure, so that there is no need to begin legal proceedings against those responsible, nor demand compensation for damages to the association or to third parties. In order to justify their lack of action, some city halls argue there isn't enough money in the budget to cover the costs of subsequent operations (mostly demolitions of illegal works). There are many different cases and our suggestions and recommendations are, unfortunately, constant.

## Housing

The problems that have arisen from the uncontrolled rise in housing prices in the last decades in Spain and the hardships caused to the population are notorious. To this we have to add the problems caused by the current economic crisis that is affecting the entire world.

However, several laws were passed at the end of 2007 and throughout 2008 to make access to housing easier. Among these are the Royal Decree 1472/2007, dated 2 November, which regulates the minimum state aid for young people who wish to rent a flat, and Royal Decree 2066/2008, dated 12 December, which regulates the State Housing and Restoration Plan for 2009/2012, as well as a bill to encourage housing rentals and energy efficiency measures in buildings.

The inadequate enforcement of these laws in some cases, or the incorrect interpretation of them in others by some local administrations have given rise to official complaints. The most significant ones are included in the Report and are quite detailed.

On the subject of boosting access to housing, especially concerning basic state aid for young people, there were 385 complaints, of which 153 were admitted; 98 correspond to the Ministry of Housing, 55 to the Autonomous Communities, and of these, 28 correspond to the Community of Madrid, a considerable

percentage. The rest of the complaints were not admitted due to lack of information from the claimants. The causes are primarily the delay in receiving aid and the issuing of rulings by the Autonomous Communities and the Autonomous Cities of Ceuta and Melilla, termination of aid, irregularities due the modification of an unappealable ruling and the issue of a provisional ruling. One of the complaints was filed because Royal Decree 1472/2007 (article 1.d) states that when the applicant is a non-EU citizen, that person must prove he/she is a legal, permanent resident.

The first conclusion from our investigations is that none of the public administrations concerned has admitted any responsibility in the complaints received. As a last resort, the administrations have transferred responsibilities to each other, as is detailed specifically in the Report.

Other issues in this matter concern state-subsidized housing, specifically the problems caused by voluntary declassification, penalties for infringements (state-subsidized housing developers that do not repair building deficiencies, etc); and, in general, problems with repairs in public buildings or buildings with right of rental. There were also complaints due to delays in granting title deeds, demands for the payment of interests on unpaid bills, difficulties encountered with the Armed Forces Housing Institute (INVIFAS), non-compliance with the obligation to conserve buildings—, which affects all proprietors.

Other complaints that received special attention were compensation issues and relocation due to expropriation, shanty-towns, the prevalence of architectural obstructions, and, in general, financial aid for buying or renting housing.

Finally, there are also special sections in the report that deal with free-market housing and warranties for damage caused by building defects, breach of contracts by the developers and construction companies and some mention of condominiums. In general, the Ombudsman cannot directly enter into these matters because they are private, but it is necessary to mention them since people perceive these problems to be serious. We must also mention the many complaints received regarding the actions of some property administrators.

This technically complex and substantial section details one of the problems, or better still, a set of problems, that affect people the most because it deals with basic necessities. Although the right to decent housing in an adequate setting is indisputable, entrepreneurs and the public administrations are not obliged to offer accessible products and viable solutions to meet that need, with products— let us not forget— in a market where the supply is not rational and the demand is not wholly free. The place of residence

is subject to many limitations, the means of payment are so restricted, speculation, and even corruption, are so common, that housing seems to be the population's biggest fear and a very real worry; not only, but certainly mainly, because of issues regarding financing. Here, the

work of the Ombudsman's Office could be called modest, but not in relation to the seriousness of the complaints received and the great interest shown in their investigation, which this Institution has carried out within the scope of its duties and means.

### Centre for Documentation on the Ombudsman and Human Rights



Books can be accessed on [www.defensordelpueblo.es](http://www.defensordelpueblo.es) or at the headquarters at Calle Fortuny, 22. 28010 Madrid - SPAIN

## The *ex officio* enquiry into violence against health care professionals with the Ministry of Health and several autonomous communities remains open

During 2008, access to public employment was a source of numerous complaints, particularly among the disabled in light of their perception of the scarcity of job posts set aside for this group. Actions were also undertaken with respect to mobbing in the workplace, both in various administrations such as the Civil Guard and among educators. The Ombudsman closely monitored understaffing issues at certain prisons as well as enforcement of the new Law on the Military Career. The incidence of violence towards health professionals was also the subject of an *ex officio* investigation.

In 2008, access to public employment was the subject of numerous complaints, the most noteworthy of which were those raised by citizens with some degree of disability referring to the percentage of job posts set aside for them and also to the adaptation of civil service examinations.

There were also complaints about the qualifications required in compliance with the new classification groups set forth in the Basic Statute for Civil Servants.

In connection with the drafting and application of the statute, a recommendation was made to the Secretary of State for Civil Service suggesting that an analogous interpretation be made to allow stable common law couples access to permits provided for by said regulation. This recommendation was accepted because such cases are not subject to the same legal conditions as those involving wedlock due to lack of a valid marriage license. As such, this interpretation could only be extended via legal amendment.

Concerns were also raised regarding staffing, job vacancy listings, and the conditions under which civil servants must perform their tasks, and also regarding mobility, particularly in areas lacking sufficient staff due to difficulties affecting transferees there.

With regard to mobbing in the workplace, complaints were investigated and ongoing enquiries continued with all the autonomous communities and the autonomous cities of Ceuta and Melilla to determine the severity of this problem and to study existing or planned preventive measures.

From the abundant information provided, generally speaking, it is clear that in the various autonomous communities there are procedural protocols applicable for these cases, framed normally in the area of occupational hazard prevention, and, in certain cases, in human resource management, with specific regulations or supervisory mechanisms. It is not considered to be a growing phenomenon and the various administrations have already

implemented, or intend to adopt procedural protocols to promote the most suitable measures to provide a healthy working environment for their employees.

In line with the Ombudsman's approach, early detection of mobbing is called for, as are mediation and victim support in order to arrive at a lasting solution.

### Health Services Staff

As for working conditions for health services staff, an enquiry is currently under way with the various autonomous communities and the Ministry of Health and Consumption regarding violence against health professionals.

Preventive protocols drawn up begin by analyzing the situation, determining risk factors and developing of a risk map. The most conflict-prone service areas were identified as emergency care and mental health.

Most health service authorities propose that violent acts carried out against health care professionals be regarded as criminal acts of assault. Following this line of reasoning recently, the Attorney General reckoned that the use of force, aggression or extreme resistance against a health services staff member or intern should be deemed a criminal act of assault against authority, provided that these functions are carried out in the public sphere from the condition of civil service.

An *ex officio* enquiry was also carried out with the various autonomous health services and the Ministry of Health and Consumption, with respect to Ceuta and Melilla, regarding acknowledgment and payment of statutory three-year periods for temporary health services staff, following the entry into force of the Basic Statute of Public Employees—because framework Law 55/2003 deems temporary staff ineligible for this payment, whereas the Basic Statute for Public Employees recognizes triennial payments for temporary staff to be in line with what the Ombudsman had recommended in 2003.

At the close of this report, payment of this amount to temporary health services staff was confirmed in the autonomous communities of Andalucía, Aragón, Asturias, Canarias, Cantabria, Castilla y León, Castilla-La Mancha, Cataluña, Extremadura, the Illes Balears, Murcia, the Basque Country, La Rioja and Valencia, as well as at the Ministry of Health and Consumption, in the autonomous cities of Ceuta and Melilla.

On the negative side, only the Autonomous Community of Madrid failed to concur, and a recommendation was made for them to review their position. Additionally, the Provincial Council of Navarra is in the process of negotiation.

### **Public education staff**

In the area of collective bargaining in public education, trade unions have called for the establishment of an Education Sector Office to serve as a forum for negotiation.

The Secretary of State for Public Administration expressed the need, first, to establish a Negotiating Committee of the General Public Administration, regulated by the Statute for Public Employees, to create, dependent upon it, the sectoral tables considered most desirable, which in principle would represent teachers in non-university public academic institutions, public health workers, justice administration personnel, and civil servants at universities.

Regarding triennial payments for substitute teachers, the Community of Madrid agreed to acknowledge services rendered prior to the effective date of the Basic Statute, to be paid retroactively with effect from the entry into force of this Act as well as the general budget of Madrid for 2008, stating that the procedure to implement the provisions set forth in the Statute will be regulated.

On the subject of maternity leave for breast-feeding purposes, complaints were submitted by teachers in Madrid who were unable to request the substitution of cumulative breast-feeding time allotments for the corresponding paid leave in full days off. This issue was settled in the April 28, 2008 Agreement for the 2006-2009 period.

Teachers working in the Autonomous Community of the Islas Canarias were concerned about the circumstances currently affecting public education after a teachers strike during the 2007-2008 academic year failed to produce agreements to resolve the issues that had sparked the conflict.

At the university level, complaints continue to be lodged referring to the CNEAI National Assessment Commission on Research Activities.

In one case, it was observed that not all of the contributions made by the candidate had been taken into account—as per the Ombudsman's recommendation

that a detailed report be included as additional information in case where requests for the six-year payments are denied. Consequently, this Institution is currently investigating the reasons why the Advisory Committee failed to heed instructions given in this regard by the administrative authority.

With regard to the National Agency for Quality Assessment and Accreditation (ANEC), complaints were received that questioned the process of evaluating the academic and professional backgrounds of applicants. The Ombudsman lacks the authority to challenge denials in the areas of teaching and research activity, which fall within the discretionary scope of the Evaluation Committee. However, this institution continues to keep watch so that when all of the modifications set forth in the Organic Law of Universities are put in place, a fully objective, transparent and uniform evaluation process can be achieved. This will guarantee the degree of quality needed by universities to ensure their smooth integration into the European Higher Education system.

Complaints of workplace mobbing in the university environment continue to be handled with the greatest care in order to work toward eradicating such activities to whatever extent is within the Ombudsman's capacity.

### **Justice Administration Staff**

As a result of the appearance of representatives of trade unions calling for indefinite strike of judicial workers of both decentralized autonomous communities as well as centralized services, a report was requested from the Ministry of Justice about this conflict, with particular emphasis on ways to resolve it.

After the strike, the Ombudsman was informed of its impact on the functioning of courts and civil registries, indicating that a work plan had been implemented and reinforcements had been called in at all judicial offices that had been affected by the strike in proportion to whatever delays had arisen.

### **Penitentiary Staff**

In 2008, complaints investigated involved understaffing issues at certain prisons for services that are considered basic. Constitutionally inspired rights to rehabilitation and social reintegration provided for by the General Penitentiary Law contrasted with unfilled vacancies for psychologists as well as problems related to a general lack of sufficient staff.

Once male and female divisions of Correctional Institution assistants were brought together into a single corps, a new problem arose due to the manner in which the merge had been carried out.

The female officers involved claimed that when the two groups of candidates with different qualification

scales had been joined, the principle of equality, merit and ability to enter public service was broken, and, thus, they would be placed at a disadvantage both in their primary posts as well as in future contests for transfers.

The prison administration reported in this regard that, aware of this problem, by agreement reached on April 30, 2008, an order of priority would be established between male and female prison staff, which, among other measures, would mean that in each Public Job Offer, the order of promotion obtained would be respected in the corresponding selection process.

### **Military administration staff**

A large group of citizens approached the Ombudsman to take issue with problems that, in their opinion, arose due to the entry into force of provisions in the new Military Career Law.

There were numerous complaints about the restructuring of the armed forces deployed in Melilla, which involves a transfer for those concerned, and significant repercussions in their family life.

With respect to delays in processing psychophysical conditions cases, the Defense Ministry reported that the process to appoint and replace members on the panel of medical experts had been streamlined, certain regular meetings had been eliminated, and powers had been delegated to authorities.

This Department announced that a proposal was under way to amend the legislation in order to restructure the medical expert organizations of the Military Health Agency as well as to approve new medical questionnaires and health records for Psychophysical aptitude test so as to gather greater detail on the backgrounds of candidates for the regular panel of medical experts, thus overcoming obstacles in appointing such staff members. Monitoring of the effectiveness of these proposals is being carried out via an *ex officio* enquiry.

## **State Security Forces and Corps Personnel**

### **Civil Guard**

As in previous years, this institution was particularly concerned about cases of mobbing reported in complaints lodged by Civil Guard members or their families. Moreover, certain situations and actions by directors were the subject of *ex officio* enquiries. Subsequent to these, tension became noticeable at certain headquarters due to the elevated number of leave requests for psychological distress, requests for transfers, other indicative factors, or, in certain cases, due to alleged retaliation as a result of the complaints filed. Special attention was accorded to striving to reconcile the work and personal lives of these officers.

Also subject to an *ex officio* investigation was the tension and pressure apparently supported by officers of the Leganés Civil Guard Traffic Division. Action was also taken with respect to the alleged mobbing at the Arnedo headquarters in La Rioja and regarding the revocation of a transfer in retaliation for, in the plaintiff's opinion, a report submitted on alleged cases of corruption at the Gijón headquarters.

Similarly, interventions were made in connection with service contracts that lasted for longer periods than what is permitted by law, causing particular distress for officers who might have been adversely affected by the failure to announce certain vacancies. Specifically, the Corunna Headquarters was investigated.

Complaints continued to be lodged with respect to Staff Performance Reviews. This institution informed the Directorates General of the Police and the Civil Guard that, even if the requirements set forth in current legislation are met at least formally, inconsistencies in performance reviews prepared by superiors can still arise, as noted in previous years. This can lead to situations that are difficult to comprehend by those concerned, who may find that in a mere four months, or sometimes even days, recipients of commendations may receive a negative score in their staff performance review.

With respect to payments, the need for swift processing of requests for expense allowances to attend training courses, among other issues, was stressed.

Occupational hazard prevention was also addressed. This is a basic issue when one takes into account the role the Civil Guard plays in society, and, hence, an enquiry was initiated to determine whether officers making up citizen safety patrols were satisfactorily equipped.

Regarding the minimum qualifications required for employment with the Civil Guard, and in particular for access to the ranks of corporals and guards in internal promotions, a recommendation was finally sent to the director of the aforementioned organization to suggest that school leaver certificates be accepted as equivalent to high school diplomas from now on for membership in the Civil Guard as well as in contests involving internal promotions.

This recommendation was accepted and the Directorate-General agreed to follow the suggestions of the Ombudsman in future contests.

Regarding compulsory membership for Civil Guard employees in the Mutual Aid and Orphan Relief Associations, it is important to consider the Supreme Court decision of September 25, 2008, which states that no appeal may be made by the Mutual Relief Association of the Civil Guard against a ruling by the Provincial Court of Madrid acknowledging the right of plaintiffs to voluntarily withdraw their membership from said entity.

It is expected that, in light of this ruling, members of the Corps may voluntarily withdraw from the Mutual Relief Association of the Civil Guard and that this decision will be expanded to include the Orphans' Association.

### **National and Municipal Police**

As for the National Police Force and the municipal police, investigations were conducted into delays arising during the medical-expert certification process in the Regional Health Unit of the Superior Police Department in Madrid. We have been informed in this regard that, in light of a case backlog and the lack of sufficient medical, technical and administrative personnel for about two-years, a gradual and ongoing prioritization of tasks and a redistribution of functions were being carried out. Moreover, aware of the severe shortages plaguing this regional organization, it was planned to outsource health care and to incorporate certified medical and nursing specialists among the general civil servant job post listings. Supervision of the implementation of the measures announced was being carried out to ensure their effectiveness.

Additionally, separate enquiries were undertaken to ascertain the reasons why various municipalities in Galicia had been affected by a significant number requests for sick leave by local police at the same time.

Complaints filed by local police officers of the Municipality of Torrejón de Velasco (Madrid) shed light on the existence of a municipal proclamation containing allegations that called into question their professionalism as well as information on disciplinary actions that failed to respect the presumption of innocence that must be upheld until such time as the procedure is brought to a close, with sanctioning where appropriate. Even given these circumstances, whether or not the information in this case should be made public would still be open to debate.

As for other staff, a noteworthy enquiry was conducted with the Community of Madrid regarding the possibility of accumulating breast-feeding leave time to use as full days off, and also establishing fifteen-day paternity leave periods. An agreement with the trade unions on this issue has not yet been reached, but it is already being resolved for non-university level teaching staff employed by said Community.

After a long process with the City of Torre Vieja (Alicante) regarding activities related to personnel in their employ, which failed to abide by existing legislation, the recommendation made by the Ombudsman to this effect was accepted. It was also reported that, among the priorities for government action by the Corporation would be to set guidelines to bolster job security for all job posts, with an view toward bringing the process of filling all existing vacant positions to a close by the end of 2009 or early 2010.

Nonetheless, the difficulties encountered in carrying out enquiries with this City Hall must be pointed out, given the vagueness of the replies submitted in spite of repeated requests for clarification on issues involving staffing as well as proposed ways to put an end to temporary hiring practices.

### **State Pensioners**

On another note, an investigation remains open with the Prime Minister's Office, with the goal of attaining full equivalence between the Special State Pensioners' System and the General Social Security Pension System with regard to payments that retired civil servants must make when buying prescription medication.

In the latest report received, the misgivings of the Ministry of Economy and Finance to pass this reform due to its economic impact were spelled out. Nevertheless, the various mutual funds (MUFACE, MUGEJU and ISFAS) agreed to reduce the amount of the current percentage rate, and effort continues to be made in this area.



# INSTITUTIONAL RELATIONS



## INSTITUTIONAL RELATIONS

This section lists the Ombudsman's most important institutional relations in 2008. The section focuses on our cooperation and collaboration with, firstly, Autonomous parliamentary commissions, as well as other foreign institutions and national and international organizations for the promotion of human rights.

Moreover, the Ombudsman is continuously informing the public on its specific duties as High Commissioner of the Spanish Parliament and, in general, on the basic rights and public liberties which contribute to strengthening its relevance in our established order. The Ombudsman's closeness to the general public is a key element in the strengthening of rights in our country. Albeit limited in human and material resources, and always protecting its compulsory impartiality as an independent institution separate from the State, the Ombudsman tries to support all types of social, academic and institutional initiatives that aim to spread information about the rights, duties and liberties established in the Constitution and international declarations and treaties.

The report also includes ordinary contacts with the Parliament, different authorities and the rest of the public authorities, as well as the most significant meetings with social organizations and citizens' groups that have shown an interest in sharing their concerns with the Ombudsman.

### Parliamentary Activity

The Annual Report for 2007 was handed over to the President of Congress on 2 June 2008 and to the President of the Senate on 6 June 2008. The appearance before the Mixed Senate-Congress Committee on Relations with the Ombudsman took place on 16 September and the presentation before the plenary



Enrique Múgica during his participation in the Senate, at the presentation of the Annual Report 2007. Photo: Povedano.

session of Congress and the Senate took place on 25 September and 15 October, respectively.

### Relations with the Commissioners of Autonomous Communities

This section lists the main contacts held with the commissioners of Autonomous Parliaments in 2008, both in formal work meetings in the Ombudsman's offices or in the offices of its Autonomous counterpart as well as collective meetings and events. Foremost among these are the national annual coordination conferences.



The Ararteko (Ombudsman of the País Vasco) meets with the Ombudsman in the Headquarters of the Ombudsman in Madrid. From left to right, Mar España, Secretary General of the Ombudsman of Spain; the Ararteko, Íñigo Lamarca; Enrique Múgica, the Ombudsman of Spain; and his Second Deputy, Manuel Aguilar Belda.

- Visit and meeting with the Ombudsman of Navarra, Francisco Javier Enériz, together with his Secretary General and Chief Advisor. Held at the Ombudsman's offices on 21 January.
- Visits and meetings with the Ombudsman of the Basque Country, Íñigo Lamarca. Held at the Ombudsman's offices on 23 January and 4 April.
- Work meeting with the Síndic de Greuges of Catalunya, Rafael Ribó i Massó. Held at the Ombudsman's offices on 22 May.
- Work meetings with the Secretary Generals of the Autonomous Commissioners and the Ombudsman. Santiago de Compostela, A Coruña, from 1 to 3 June.
- Conference commemorating the 25th anniversary of the Law of the Andalusian Ombudsman "The challenges faced by the Autonomous Ombudsmen with the new statutory framework". Opening speech by the Ombudsman. The Second Deputy participated in the first round table discussion on "Reforming the laws that regulate the Autonomous

Ombudsmen. New perspectives". The "Antonio Machado" International University of Andalucía, Baeza (Jaén), 19 and 20 June.

- XXIII Conference on Coordination between the Ombudsmen of Spain held in Oviedo on 29 and 30 September and 1 October.
- Joint Declaration of the Ombudsmen (State and Autonomous) to the media on the 60th anniversary of the Universal Declaration of Human Rights in Barcelona, and meeting of the heads of these institutions to deal with matters regarding the coordination of their activities. Held at the new offices of the Síndic de Greuges of Cataluña on 9 December.
- Official opening of the new offices of the Síndic de Greuges of Cataluña, with a speech by the Ombudsman. Barcelona, 10 December.

### XXIII Ombudsmen's Coordination Seminar

In 2008, the Coordination Seminar focused on analyzing the situation of socially unprotected people, assessing the causes and circumstances that prevent them from having access to social welfare measures, the characteristics of this lack of protection, or the risk of experiencing it, with the aim of proposing the inclusion of additional measures into the social welfare system that would legally and materially guarantee the minimum subsistence levels.

In order to prepare the XIII Coordination Seminar, 3 workshops were developed beforehand on the following subjects: a) socially unprotected people, which took place in Vitoria; b) dependency: analysis of implementing the law, which took place in Logroño, and c) unprotected disabled people, which took place in Sevilla.

The Presidents of the Board and of the Government of the Principality of Asturias opened the seminar with the following program:



Group photo of the Ombudsmen. Photo: Procuraduría of Asturias.

- Framework Conference: "Vulnerable Social Groups: ethical and legal aspects". Speaker: Dr. Yolanda Gómez Sánchez, Professor of Constitutional Law.
- Meeting on "Children's rights and participation of minors: mechanisms and material used by the Ombudsmen".
- Round table on the problems faced by the homeless.
- Round table on the problems faced by senior citizens.
- Conference: "The Attorney General's Office and the protection of the disabled". Speaker: José María Paz Rubio, Chief Prosecutor for the Civil Courtrooms of the Supreme Court.
- VII Forum on Citizens' Rights entitled "The rights of people with special difficulties from the perspective of a social initiative".
- Meeting with representatives of the Office of the European Commissioner of Human Rights of the Council of Europe.

### Meetings concerning complaints filed

The following is a list of the main meetings and reunions in 2008 held to gain better knowledge of the complaints proceedings or *ex officio* inquiries, and to establish a more direct contact with some social and citizens' organizations and the administrative authorities whose duties are related to the Ombudsman's. All the meetings were related to especially relevant complaints due to their social impact or because they affected the interests of a large group of people.

- Meeting with representatives of the Association of Parents of Students "Giner de los Ríos", regarding the closing of the "Valle de Oro" daycare center in Madrid. The Ombudsman's offices, 16 January.
- Meeting with the General Manager of The Brand Defense Association (ANDEMA), Soledad Rodríguez, together with 2 experts, to file an appeal on the grounds of unconstitutionality of certain articles in Law 10/2007 of 26 November, for the Protection of the Origin and Quality of Andalusian Wine. The Ombudsman's offices, 22 January.
- Meeting with representatives of the Coalición Pro- Acceso (Pro Access Coalition) regarding the need to legally establish the full right to access public information in Spain. The Ombudsman's offices, 24 January.
- Meeting with representatives of the URBE Association regarding the administrative silence of the Municipal District Board of Hortaleza, Madrid, after being reported for violating urban planning laws. The Ombudsman's offices, 30 January.
- Meeting with The Association of Users of Meeting Points of Madrid (AUPECM). The Ombudsman's offices, 7 February.



The Association of Victims of Terrorism visited the Institution to discuss topics related to the modification of the State Law on aid to victims. In attendance: the Ombudsman, Enrique Múgica, his First Deputy M<sup>a</sup> Luisa Cava de Llano, Advisors to the Institution, Juan Antonio García Casquero, President of the Association, and some of its members.



Representatives of the Civil Servants of Justice asked for the mediation of the Ombudsman in their conflict with the Administration. Received by the Ombudsman, his Second Deputy and their respective Cabinet Chiefs.

- Meeting with representatives of the Fundación Instituto de Cultura Gitana (The Gypsy Culture Foundation), on the formal presentation of the Foundation and to study possible collaboration regarding anti-discrimination and racism. The Ombudsman's offices, 11 February.
- Meeting with representatives of the Association of Attorneys and Auditors of the General Accounting Office. Madrid, 12 February.
- Interview with representatives of "Plataforma 21-38" regarding the layout project for the North-eastern Highway in the section connecting Las Rozas and Collado Villalba. The Ombudsman's offices, 13 February.
- Meeting with the Executive Vice-president of the Foundation of Institutionalism and Justice, Servio Tulio Castaño, and with the Executive Director of the Citizens' Participation Movement, Javier de Jesús Cabreja. The Ombudsman's offices, 18 February.
- Meeting with representatives of The Spanish Road Association, The Association for the Study of Spinal Cord Injuries and the Mapfre Foundation, in the presentation of their Green Book on Road Safety, which includes the conclusions drawn by the International Congress on Preventing Road Accidents, entitled "Society and the Challenges Posed by Road Safety". The Ombudsman's offices, 19 February.
- Meeting with a delegation from the Spanish Federation of Returning Emigrés to assess the government's policies for returning emigrés in the last few years and show the public how they live, their lack of institutional representation and the problems faced by their associations. The Ombudsman's offices, 19 February.
- Meeting with representatives of the Fundación Instituto de Cultura Gitana (The Gypsy Culture Foundation), on the formal presentation of the Foundation and to study possible collaboration regarding anti-discrimination and racism. The Ombudsman's offices, 11 February.
- Meeting with a delegation from the Pan African Federation, headed by its President, Aby Nfubea, to discuss the problems faced by the African community in Spain, review a report on those problems and take action that would favor their institutional representation. The Ombudsman's offices, 20 February.
- Meeting with a delegation from the Secretary of Institutional Policy from the Comisiones Obreras Trade Union of Madrid to discuss the state of the Guadarrama Regional Park. The Ombudsman's offices, 10 March.
- Visit by a delegation from the unions that called for an indefinite strike in part of the Justice Administration to plan the Ombudsman's mediation to solve the conflict. The Ombudsman's offices, 14 March.
- Meeting with representatives from the Spanish Emergency Medicine Society, who proposed the creation and development of a special branch of emergency medicine. The Ombudsman's offices, 25 March.
- Meeting with the Dean of the Psychology Association of Madrid, Fernando Chacón Fuentes. The Ombudsman's offices, 2 April.
- Meeting with representatives from the National Federation of Retirement and Pre-retirement Associations to discuss some of the aspects included in the last reform of the Social Security legislation and, specifically, pensions for early retirement. The Ombudsman's offices, 7 April.
- Meeting with the Deputy Rector of the Universidad Nacional de Educación a Distancia (UNED) (The Open University) regarding the limits placed on payment exemptions for university registration fees for the disabled. The Ombudsman's offices, 23 April.

- Meeting with representatives from The Children's Platform, headed by Francisco Lara González, to study the state of youth shelters and the problems affecting children and youth in Spain. The Ombudsman's offices, 5 May.
- Meeting with the Ombudsman of Cordoba, Francisco García Calabrés Cobo. The Ombudsman's offices, 17 June.
- Meeting with the new President and other members of the Joint Committee for Relations with the Ombudsman. The Ombudsman's offices, 25 June.
- Meeting with the Director General of Environmental Quality and Assessment, María Jesús Rodríguez de Sancho, and the Deputy Director of Environmental Assessment, Ignacio Gamarra. The Ombudsman's offices, 2 July.
- Visit from a neighborhood association from Aluche, Madrid, union representatives and ex political prisoners, to inform the Ombudsman of the state of the former Carabanchel jail and to present a text about a future project for the former jail. The Ombudsman's offices, 18 September.
- Meeting with the President and some members of the Association of Victims of Terrorism to discuss the Law of Measures (Ley de Medidas) in favor of the victims of terrorism from Aragón and modifying the State Law that provides assistance to the victims. The Ombudsman's offices, 6 October.
- Meeting with the representatives to the Spanish Parliament and the Madrid Assembly, respectively, Gaspar Llamazares and Inés Sabanés, regarding the management of private health centers in the Community of Madrid. The Ombudsman's offices, 10 October.
- Working visit from the President of the Autonomous City of Melilla, Juan José Imbroda, along with several collaborators, to highlight the problems the city authorities have enforcing immigration laws regarding the status of unaccompanied foreign minors. The Ombudsman's offices, 28 October.
- Visit from a Bolivian Parliamentary delegation along with the Bolivian Ombudsman, Waldo Albaracín, and the Ambassador of Bolivia in Spain, to discuss topics related to the European Directive on the return of illegal immigration (border controls, illegal immigrants, the slave trade...). The Ombudsman's offices, 3 November.
- Meeting with representatives from the Spanish Confederation of Gays, Lesbians, Bisexuals and Transsexuals (COLEGAS). The Ombudsman's offices, 3 November.
- Meeting with representatives from the Spanish Cancer Association. The Ombudsman's offices, 10 November.
- Meeting with the Environment, Water, Urban Planning and Housing Councilor of the Generalitat of Valencia to discuss the problems caused by the lack of collaboration from the abovementioned office with the Ombudsman. Valencia, 3 and 4 December.
- Meeting with the State Secretary for Immigration, Consuelo Rumí, and two of her advisors, regarding reforms in the Law of Immigration. The Ombudsman's offices, 15 December.

## International Activity

The Ombudsman's international activity in 2008 consisted mainly in cooperating with its counterparts in other countries and international human rights organizations and organizations committed to the consolidation of democratic institutions. This international activity has improved the exchange of institutional experiences with the double aim of incorporating successful practices used in other countries and making the best results obtained by the Ombudsman since its creation in Spain available for others to use.

## Participation in international events

- The First Deputy gave a speech at the Workshop on Unlawful Detentions and Human Rights: Preventing Torture in Europe, with a conference entitled: "Unlawful detention and protecting human rights: What is the institutional framework?" Paris (France), 18 January.
- Participation in the Council of Europe's pilot project on monitoring sentences handed down by the European Court of Human Rights. Strasbourg (France), 31 January and 1 February.
- The Ombudsman attended and gave a few welcoming words in a seminar on "Assistance for victims of terrorism and other violent crimes", organized by the Spanish Ministry of the Interior and the Ministry of Foreign Affairs and International Cooperation in collaboration with several Colombian legal and human rights institutions. Spanish Cooperation Training Center, Cartagena de Indias (Colombia), 26 February.
- Conference by the Ombudsman in a seminar on Ombudsmen and the Effectiveness of Human Rights, organized by the Colombian Ombudsman's Office, to celebrate the 15th anniversary of the Institution's creation, entitled "The Ethical Foundations of the State and Society in a Democracy". Bogotá (Colombia), 28 February.
- The First Deputy participated in a seminar on "Prisoner abuse: responsibilities of the NHRI (National Human Rights Institutions) that will

become the NPM (National Preventive Mechanism) of the OPCAT (Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment) and those that won't", organized by the Council of Europe. Padua (Italy), 9 and 10 April.

- International Conference: *Modern Challenges to Human Rights and Freedoms*, organized by the Ombuds(wo)man of the Republic of The Ukraine, Ms. Karpachova, and dedicated to the 60th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the creation of the Ukrainian Ombudsman. Meeting with several parliamentary authorities and with the President of the Republic. Kiev (Ukraine), 12 to 14 April.
- The Second Deputy attended the 20th Session of The International Committee for the Coordination of National Human Rights Institutions held at the United Nations Offices in Geneva (Switzerland), 13 to 17 April.
- Exchange visit to the Republic of Uzbekistan on an invitation from the Uzbek Ombuds(wo)man. The Spanish Ombudsman participated in several acts and in the International Conference on "The Ombudsman's tasks protecting human rights: the Spanish and Uzbek experiences", held in the Uzbek Parliament. Working meetings with the Foreign Affairs Minister, the President of the Senate, the acting President of the Constitutional Court and some magistrates, the Congressional Spokesman and the Attorney General of the Republic. Tashkent (Uzbekistan), 16 to 21 April.
- The Ombudsman attended the ceremony commemorating the 60th Anniversary of the proclamation of the State of Israel as part of the Spanish delegation headed by the Spanish Foreign Affairs Minister. Jerusalem (Israel), 13 May.
- Meeting with liaisons from the different European ombudsmen convened by the European Ombudsman. Strasbourg (France), 1 to 3 June.
- III Congress of the Interamerican Ombudsmen's Association organized by the same association, with the support from the Spanish Agency for International Cooperation and Development (AECID). Participation in the inaugural conference: "Justice for People in Risk of Social Exclusion". University of Buenos Aires (Argentina), 11 to 13 June.
- Participation in the European Council/NIHR round table and meeting of the European Group entitled *Domestic Protection of Human Rights. Strengthening Independent National Structures*. Dublin (Ireland), 16 and 17 September.
- The First Deputy participated in the International Seminar on "The Optional Protocol to the

Convention Against Torture: Challenges and Possible Solutions for Federal States", organized by the Association for the Prevention of Torture (APT), held in Buenos Aires (Argentina), 24 to 28 September.

- The 10th Anniversary celebration of the creation of the Raonador del Ciutadà (Ombudsman) of Andorra. Andorra la Vella (Principality of Andorra), 2 and 3 October.
- Participation in the "Congress to Promote and Protect Freedom of Speech and Information by the National Institutions of Human Rights", organized by the Council of Europe. Padua (Italy), from 21 to 23 October.
- International Conference on *Human Rights, the Promised Land of Law, but also of Fairness*, organized by the Ombudsman of The Republic of Bulgaria. Sofia (Bulgaria), 17 November.
- The 13th Congress and General Assembly of the Ibero-American Federation of Ombudsmen (FIO). It was decided that a thematic network should be included in the FIO's bylaws to boost and optimize its activities and achieve its goals. Mérida (Mexico), 20 and 21 November.
- The FIO's General Assembly gave its support to the statement issued by the Women's Defense Network on the occasion of the International Day for the Elimination of Violence Against Women, the 25th of November. Special emphasis was placed on condemning the gendericides perpetrated in Ciudad Juárez (México).
- The 7th Ordinary General Assembly of the National Institutions Network for the Promotion and Protection of Human Rights in the Americas took place, and the Seminar "The Future of Human Rights 60 years after the Universal Declaration of Human Rights".
- There was also a meeting of the Regional Committee Against Slave Trade of Mexico, Central America and the Caribbean (CORMECAC).
- The 2nd International Meeting of National Ombudsmen of the Mediterranean entitled "Mediterranean



Image from the XIII Congress and General Assembly of the Ibero-American Federation of Ombudsmen (FIO), which took place in Mexico.



Enrique Múgica meets with the media in Marseilles, during the meeting of the Ombudsmen of Spain, France and Morocco, to promote the Association of Mediterranean Ombudsmen.

Mediators: Challenges in a Common Space". Twenty-two countries and 5 supranational organizations attended to consolidate the Mediterranean Ombudsman Association, promoted by the Spanish Ombudsman in collaboration with the Médiateur of the French Republic and the Wali Al-Madhalim (Ombudsman of Morocco). Marseille (France), 18 and 19 December.

### Visits and official events

- Courtesy call by the First Secretary of the Embassy of The Republic of Uzbekistan to monitor the agreement signed between the Ombudsmen of Spain and Uzbekistan. The Ombudsman's offices, 16 January.
- Courtesy call by the Spanish Ambassador to the United Nations and International Bodies in Geneva, Javier Garrigues. The Ombudsman's offices, 5 February.
- Visit by the Executive Secretary of the Presidential Advisory Committee for the Protection of the People's Rights in Chile, Sebastián Kraljevich Chadwich, to look into the characteristics and operation of the Institution and study the possible creation of an ombudsman in Chile. The Ombudsman's offices, 3 March.
- Visit by the Cuban Ambassador to Spain, Alberto Velasco, and 2 of his collaborators, accompanying the wives of Cuban prisoners in The US. The Ombudsman's offices, 13 March.
- Meeting with a delegation from the Angolan Ombudsman. The Ombudsman's offices, from 15 to 17 April.
- Visit by the Bolivian Ambassador to Spain, Carmen Almendras, and the Deputy of Promotion and Analysis of the Bolivian Ombudsman, Patricia Flores Palacios. The Ombudsman's offices, 25 April.
- Meeting with the Ombudswoman of the Republic of Argentina, Stela Maris Martínez. The Ombudsman's offices, 24 April.
- Visit by a delegation headed by the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism of the United Nations, Mr. Martin Scheinin, on official visit to our country. The Ombudsman's offices, 13 May.
- Meeting with the Ambassador of the Kingdom of Morocco to Spain, Omar Azziman. The Ombudsman's offices, 21 May.
- The Ombudsman was invited by the Legislative Committee of the Senate of the Republic of France to a special audience to provide elements of analysis before debating a bill to change the constitution in order to create an institution similar to the Spanish Ombudsman. The Luxembourg Palace, Paris (France), 21 May.
- Visit by the Ombudsman of the Province of Santa Fe (Argentina), Carlos A. Bermúdez, and the President of The Supreme Court of Justice of that province, Roberto H. Falistocco. The Ombudsman's offices, 16 June.
- Meeting with a delegation headed by a special representative of the OSCE to fight against the slave trade, Eva Blaudet. Madrid, 23 June.
- Reception upon a visit to Spain by the British Parliament's Joint Committee on Human Rights. Other guests to the reception included Spanish government officials, members of Parliament from different parties and magistrates. The members of the British committee wanted a first-hand account of the Spanish situation regarding social rights and the practical application of basic rights in cases of isolation or marginalization (prisons, immigration centers, minors, road safety...), and the role played by the Ombudsman in the whole of Spanish institutions and the specific tasks of the Spanish commissioner. Embassy of Great Britain in Madrid, 30 June.
- Visit by the Diwan Al-Madhalim of Morocco, Moulay Mhamed Iraki, returning the visit made by the Ombudsman to his office in Rabat. From 7 to 11 October.
- Visit by the Director of the Human Rights Center "Miguel Agustín Pro Juárez", Luis Arriaga Valenzuela. The Ombudsman's offices, 6 November.
- Visit by a delegation of the Shanghai Office of Complaints (People's Republic of China), headed by its Director, Mr. Zhang Shiming, to learn more about the activities and duties of the Ombudsman. The Ombudsman's offices, 16 December.

### Cooperation

- Technical meeting with representatives from the Chilean Government to study the rationalizing of

- public works and the improvements in relations with users. The Ombudsman's offices, 15 January.
- Meeting with the current President of the Ibero-American Federation of Ombudsmen, Omar Cabezas Lacayo, Ombudsman of Human Rights in Nicaragua, to finalize the transfer of documents related to the Presidency of the FIO. The Ombudsman's offices, 31 January.
  - Meeting with representatives of the Ministry of Foreign Affairs and International Cooperation, and from the International and Latin American Foundation for Administration and Public Policy (FIIAPP), once the Ombudsman's participation in a tender for a European project to advise and exchange with the Georgian Ombudsman was confirmed. The Ombudsman's offices, 12 March.
  - Visit by Mikael Keller, from Cowi Consultancy, and Dorien Van Veelen, from the Danish Institute for Human Rights, to present a study on homophobia in the European Union. The Ombudsman's offices, 13 March.
  - The Ombudsman attended a work meeting with the Governing Board of the Ibero-American Federation of Ombudsmen. Mexico, D. F., from 26 to 30 March.
  - Meeting with the head of the FIO's Chief Administrative Office, Ambassador Javier Moctezuma, to work on several issues concerning the Governing Board. The Ombudsman's offices, 10 April.
  - Visit by the Ombudswoman for the Bolivarian Republic of Venezuela, Gabriela del Mar Ramírez Pérez, accompanied by her head of International Affairs, Raizabel Díaz, to discuss several institutional issues. The Ombudsman's offices, 11 April.
  - First meeting between representatives from the European Union Agency for Fundamental Rights and The European Group of National Human Rights Institutions, promoted and organized by the European Union Agency for Fundamental Rights (FRA). Hotel de France, Vienna (Austria), 16 May.
  - Meeting with the Ombudsman of Puerto Rico, Carlos J. López Nieves, accompanied by Mr. Robledo y Romano, and the Director of CICODE, Manuel Guedán. The Ombudsman's offices, 20 May 2008.
  - Meeting between the Ombudsmen of Spain, Andorra and Portugal, organized by the Portuguese Ombudsman. Lisbon (Portugal), 23 June.
  - Meeting with the Ombudsman of the Municipality of Vicente López (Argentina), Carlos Constela, the Ombudsman of Montevideo (Uruguay), Fernando Rodríguez, and the Secretary General of the Chilean Ombudsman, Sebastián Cox, to discuss several questions regarding the different activities carried out by each institution, and to learn how the Ombudsman works and its procedures. The Ombudsman's offices, 24 June.
  - The Second Deputy attended a meeting with the Governing Board of the Latin American Ombudsmen (FIO) to approve the Federation's biannual program and to organize the General Assembly and the Federation's 13th Congress in Mérida, Yucatán (Mexico). Nuevo Vallarta (Mexico), from 7 to 10 September.
  - First International Meeting for institutional reinforcement and passing on of good practices among the different Ombudsmen of Latin America. Organized by the Ombudsman of the City of Buenos Aires (Argentina). Participation in the "Ibero-American Federation of Ombudsmen as the focal point of the Ombudsmen". Salon San Martín de la Legislatura of the City of Buenos Aires (Argentina), 9 and 10 September.
  - The First Italo-Latin American Congress of Ombudsmen. Organized by the Latin American Ombudsman Institute to celebrate its 25th anniversary. Buenos Aires (Argentina), 11 and 12 September.
  - Informative visit by members of the Myrna Mack Foundation of Guatemala to study a possible cooperation project. The Ombudsman's offices, 17 September.
  - Work meeting with representatives of the Ombudsmen of France and Morocco to prepare the 2nd International Meeting of National Ombudsmen from the Mediterranean on 18 and 19 December, in Marseille (France). The Ombudsman's offices, 7 October.
  - Joint work sessions among experts from the offices of the Armenian, Georgian and Azerbaijani Ombudsmen within the framework of the joint European Commission/Council program on "Promoting the culture of human rights in the Caucasus and the Ukraine". The Ombudsman's offices, from 14 to 17 October.
  - Conference-breakfast with the European Ombudsman, Nikiforos Diamandouros, organized by the Forum for a New Society. Presented by the Ombudsman. Hotel Ritz, Madrid, 13 November.
  - Official visit to the Council of Europe organized by the Division of Legal Reinforcement and Human Rights of the Cooperation Department, Directorate General of Human Rights and Legal Affairs, to hold meetings with members of the Council regarding the following: the Council of Europe's work in migration and Roma/Gypsies; presenting The European Court of Human Rights' recent jurisprudence and its impact on legislation; execution of sentences from The European Court of Human Rights by the Committee of Ministers.

There was also a visit to the aforementioned Court. Strasbourg (France), from 18 to 21 November.

- Meeting with contacts from the National Human Rights Structures, the office of the European Commissioner of Human Rights of the Council of Europe. Strasbourg (France), 19 and 20 November.

### Technical cooperation, education, and dissemination

This section lists the Institution's activity in cooperation, collaboration with social and educational organizations and training initiatives. Providing information on the Institution's activity gives people, especially students, the chance to learn more about their rights, their practical application and how to exercise them.

#### Cooperation Activities

- Meetings with the Managing Committee of the Chair on Democracy and Human Rights of the University of Alcalá. Alcalá de Henares (Madrid), 28 January and 13 October.
- The Ombudsman participated in a ceremony for Peace in the Santiago Bernabéu Stadium during the 7th Congress on "Schools, promoting a culture of peace (2001-2010)", organized by a group of Andalusian teachers. Madrid, 29 January.
- Interview with the Director of the Spanish Data Protection Agency, Artemi Rallo Lombarte. The Ombudsman's offices, 6 February.
- Meeting to study ways of collaborating with The Scientific Advisory Committee on Radio Frequencies. The Ombudsman's offices, 14 February.
- Attendance at the presentation of a document entitled "Day Care Center Model for People with Acquired Brain Damage", in the State Center for Treating Brain Damage (CEADAC). Madrid, 18 February.
- Visit by the President of the European Institute of Health and Social Welfare to prepare the presentation of a book that the Ombudsman collaborated on. The Ombudsman's offices, 10 March.
- Attendance at the opening of the First Work Session for the Legal Assistance of the State CERMI Organizations. Madrid, 24 April.
- Presentation ceremony for a study on Human Rights and Disability in Spain in a congress organized by the ONCE Foundation, in collaboration with the Ombudsman and the Spanish Committee of Representatives of Disabled People, CERMI. One of the Ombudsman's advisors participated in a round table on the "Legislative impact of applying the International Convention on the Rights of



Enrique Múgica, the Ombudsman, chats with Pere Navarro, Director General of Traffic, during the Summer Courses on Road Safety that took place in El Escorial. Photo: Nacho Calongue.

disabled people". Assembly Hall, ONCE Foundation, Madrid, 28 April.

- Closing words by the Ombudsman in the presentation ceremony for the Quality Study and credentials for companies providing services for dependent senior citizens, organized by the Edad&Vida Foundation (The Age & Life Foundation). Auditorium CaixaForum, Madrid, 8 May.
- Special presentation for the media of the book "Patient Satisfaction", coordinated by Dr. Manuel Peña Castiñeira, President of the European Institute of Health and Social Welfare. The Ombudsman participated in the writing of the book and was the host of the ceremony. The Ombudsman's offices, 10 June.
- Visit by the Head of the Police Academy, Agustín Carretero Sánchez, to offer the Ombudsman the chance to give a conference at the Police Academy of the Community of Madrid. The Ombudsman's offices, 6 October.
- Guest at the opening of the Social Reintegration Center for Mothers "Joaquín Ruiz-Giménez Cortés", by invitation from the Secretary General of Correctional Facilities. Palma de Mallorca, 23 October.
- Attendance at the opening of the Congress on Social Exclusion and Development, organized by the Foessa Foundation and by Cáritas. Madrid, 29 October.
- Attendance at the Congress "Citizens' Rights and Mechanisms of Guarantees", on the 10th Anniversary of the creation of the Ombudsman's Office of Cordoba. Cordoba, 30 October.
- Meeting of the jury that awarded the III King of Spain Human Rights Award to The Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM). The Ombudsman's offices, 12 November.
- Meeting of the jury that awarded prizes to primary and high school students that participated in the



The Ombudsman gives the closing speech at the IV International Congress of Victims of Terrorism. Photo: Universidad San Pablo CEU.

Ombudsman's Drawing Contest 2008 to promote Human Rights. The Ombudsman's offices, 11 November.

### Education and Information

- The Ombudsman participated in the closing ceremony of the 4th International Congress on Victims of Terrorism. University CEU San Pablo, Boadilla del Monte (Madrid), 23 January.
- Visit by students from the course "Knowing Madrid", organized by several cultural centers and coordinated by the "Julio Cortázar" Cultural Center. The Ombudsman's offices, 14 February; 4 and 5 March, and 12 December.
- Conference by the First Deputy on "The Ombudsman in the Health and Pharmaceutical Fields", as part of the 12th Professional Conference and the 5th International Conference on OTC Medicine and Drugstores, organized by the Pharmaceutical Association of Madrid. Madrid, 20 February.
- Visit by a group of students from the course "Knowing Madrid", organized by the Volturno del Prado Cultural Center of Somosaguas, Pozuelo de Alarcón (Madrid). The Ombudsman's offices, 21 February and 20 May.
- The Second Deputy attended the Conference on Equality in the Workplace for Disabled People organized by the ONCE Foundation. Madrid, 21 February.
- Visit by a group of students from the 6th Course for Parliamentary Legal Advisors organized by the Spanish Parliament and composed of civil servants from Latin American Parliaments and from countries that recently joined the European Union. The Ombudsman's offices, 27 February.
- Visit by a group of students from the Albayzín Residence Hall of the University of Granada. The Ombudsman's offices, 28 February.
- Course given by personnel from the Institution to civil servants from the General State Administration on the Ombudsman Institution in compliance with the Collaboration Agreement signed with the Ministry of Public Administrations in June 2007. Held at the INAP offices, Madrid, February and March.
- Conference by the Ombudsman in a University Expert Course on "Immigration, Exclusion and Social Integration Policies", organized by the Universidad Nacional de Educación a Distancia (The Open University), entitled "Defending the excluded and immigrants in Spain". Faculty of Political Science and Sociology, UNED, Madrid, 7 March.
- Presentation ceremony presided by the Ombudsman for the book: "Immigration, the State and the Law", published by The International Institute of Political Science, in collaboration with Editorial Bosch. Casa de América, Madrid, 12 March.
- Visit by students doing internships from the "Pedro Ibarreche" Law School, of the Bar Association of Vizcaya. The Ombudsman's offices, 13 March.
- Speech by the Ombudsman at the opening of the 10th Conference on "Products and Services for the Elderly and Applying the Law of Dependence", organized by the Grupo Júbilo Comunicación. Ramón Areces Foundation. Madrid, 26 March.
- Visit by Latin American students from the Applied Politics Masters organized by the FIIAPP and the Ministry of Public Administrations. The Ombudsman's offices, 27 March.
- Speech by the Second Deputy in a round table at the 6th Conference on the Law of Minors organized by the Universidad Pontificia de Comillas. The speech was entitled "Responses to Violence in Schools and Group Violence: Integration Mechanisms". Madrid, 3 April.
- Participation by the First Deputy in a meeting on "The Relation between the Ombudsmen and the Justice System", organized by the Ombudsman of the Islas Canarias. Santa Cruz de la Palma (Islas Canarias), 3 and 4 April.
- The Second Deputy attended the presentation ceremony of the "Debate Notebook on Equal Treatment, Equal Opportunities and the Social Economy", by the Luis Vives Foundation. Madrid, 30 April.
- Attendance by the Second Deputy to the presentation of the report on "The Future of the National Health System: The Citizens' Perspective", by the Delphi Analysis Prospective (Análisis Prospectivo Delphi), in the Ministry of Health and Consumer Affairs. Madrid, 6 May.
- Visit by a group of students from the Teresa de Calcutta Cultural Center from the Barajas District, Madrid. The Ombudsman's offices, 7 May.

- The Ombudsman participated in a meeting on the legal transition, with representatives from Egyptian civil society organized by the Carolina Foundation, as part of the International Visitors Program. The Madrid Club, 8 May.
- The First Deputy participated in a Training Congress on Expert Evidence organized by The Forum for Justice and the General Council of Spanish Lawyers. She moderated the round table entitled "Expert Evidence in Family Law". Madrid, 8 May.
- The Ombudsman's Conference on "The Ombudsman and Citizens' Complaints" in a series of conferences organized by The Institute of Spain and the Fundación Sistema (The System Foundation) on "Society and Politics in 21st Century Spain". The Institute of Spain's offices, Madrid, 14 May.
- Opening words by the Ombudsman in a seminar on the occasion of the 60th anniversary of the State of Israel organized by the Casa Sefarad-Israel and The Real Instituto Elcano. Círculo de Bellas Artes, Madrid, 20 May.
- Visit by students from the Zazuar Cultural Center of Madrid. The Ombudsman's offices, 28 May.
- Visit by members of the Friends of Music, Museums and Palaces Association. The Ombudsman's offices, 28 May.
- Bicentennial celebration of the 2nd of May uprisings in 1808, organized by the Centro Riojano of Madrid. Closing conferences by the Ombudsman, the Rector of the King Juan Carlos University and Deusto University Professor Fernando García de Cortázar on "The historical importance of the 2nd of May". Centro Riojano of Madrid, 28 May.
- Speech by the First Deputy in the 5th Forum Against Road Violence organized by the Asociación Stop Accidentes (Stop Accidents Association) on "After the Sentence. The Re-Education Role of the Justice System". Madrid, 4 June.
- The First Deputy participated in the opening ceremony of the 2nd Conference on the Application in Spain of The Optional Protocol of The Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment, organized by The University Institute of International and European Studies "Francisco de Vitoria" in collaboration with the Ministry of Foreign Affairs and International Cooperation, The Ministry of Labor and Social Affairs, and The Inter-America and European network on Human Rights (LAEHR). Madrid, 11 June.
- Visit by students from the Arganzuela Centro Dotacional Integrado School (sports and culture center), Madrid. The Ombudsman's offices, 12 June.
- The Ombudsman attended the commemorative dinner for the 25th Anniversary of Dialogue, The Franco-Spanish Friendship Association. Palacio Municipal de Congresos of Madrid, 16 June.
- The First Deputy participated in the 2nd Seminar on Human Rights, with a conference entitled "National Human Rights Institutions: The Ombudsman", organized by The Diplomats School and the Office of Human Rights of the Ministry of Foreign Affairs and International Cooperation. Madrid, 24 June.
- The First Deputy participated in a conference entitled "Towards a World Without Poverty; Companies with a Social Objective", organized by The Rafael del Pino Foundation. Madrid, 3 July.
- The Second Deputy participated in a summer course at the King Juan Carlos University on "Legal Protection for the Mentally Ill", with a conference entitled "The Ombudsman and the Mentally Ill". Aranjuez (Madrid), 11 July.
- The First Deputy participated in a summer course on "Penal Justice", organized by the Del Mar International University in collaboration with The School of Legal Practice of Murcia, with a conference entitled "Terrorism and Criminal Justice". Águilas (Murcia), 21 July.
- Conference by the Ombudsman in the opening ceremony of the 5th Masters on Protecting Human Rights by the University of Alcalá. Rectorate of the University, Alcalá de Henares (Madrid), 13 October.
- Visit by a group of students from the Senior Citizens Municipal Center of Pozuelo de Alarcón (Madrid). The Ombudsman's offices, 17 October.
- The Second Deputy participated in the 2nd National Conference on School Violence organized by the Law Faculty of the University of Granada, with a speech entitled "School Violence from the Ombudsman's Perspective". Granada, 4 and 5 November.
- The First Deputy participated in the 6th International Congress on Information Ethics and Law, with the conference "Protecting personal rights in Police and Judicial Information". Valencia, 7 November.
- Speech by the First Deputy in the 5th Masters on Protecting Human Rights (2008-2009) from the University of Alcalá, in the session entitled "The Spanish Ombudsman. Complaints of the First Deputy's Office". Alcalá de Henares (Madrid), 10 November.
- The Ombudsman participated in the opening ceremony of the International Seminar on Anti-Semitism entitled "Old Hatreds, New Debates", organized by the Jewish community of Madrid. Círculo de Bellas Artes, Madrid, 25 November.
- The Second Deputy attended the unveiling of the campaign "50/50 for Democracy" in the Spanish

Parliament by the European Women's Lobby. The Spanish Parliament, Madrid, 2 December.

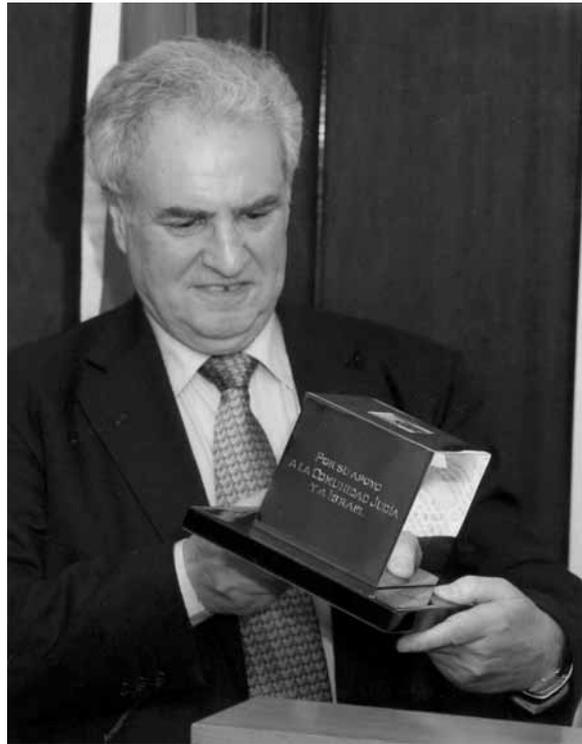
- Visit by the "Friends of Art and History". The Ombudsman's offices, 5 December.
- The Second Deputy participated in a Colloquium organized by the Manrique School in Tres Cantos (Madrid), on the occasion of the 60th Anniversary of the Declaration of Human Rights". Tres Cantos (Madrid), 9 December.
- Conference by the Ombudsman on "Meeting the objectives for the Millennium", in the Millennium Objectives Conference, organized by the Barcelona Bar Association to commemorate the 60th Anniversary of the Universal Declaration of Human Rights. Barcelona, 10 December.

### Specific courses

- Course on "Road Safety and the Citizens' Guarantees" organized and directed by the Institution, as part of the summer courses given every year by the Complutense University of Madrid in El Escorial. The course was structured in 8 speeches and 4 round table debates with the participation of the main representatives of the sector as speakers and moderators, as well as staff from the Institution, to analyze the current state of road safety, the problems affecting accident victims and the development of roads, among other things. San Lorenzo de El Escorial (Madrid), 30 June to 4 July.

### Visits, tributes and official acts

- Tribute to the State Security Forces and Corps who have died in the line of duty. The Moncloa Complex, Madrid, 8 January.
- Gala Dinner on the 70th birthday of H.M. The King. Royal Palace of El Pardo (Madrid), 9 January.
- The Ombudsman participated in several ceremonies to commemorate the Holocaust Memorial Day and the Prevention of Crimes Against Humanity in the Madrid Assembly (24 January), at the Complutense University (24 January) and in the Parliament (28 January). Speech by the Ombudsman in the opening ceremony of the International Seminar "Remembering The Holocaust and the Prevention of Crimes Against Humanity: Nuremberg (1933-1945). From the abyss to the rebirth of The Rule of Law". The Senate, Madrid, 29 January.
- Opening Session of the Senate for the 9th Legislature. The Spanish Senate, Madrid, 1 April.
- Awards ceremony for the 11th Vocento Award for Human Values, presided by H.R.H The Prince and Princess of Asturias, and awarded to Enrique Figaredo, for his humanitarian work and his dedication



The Ombudsman with the Senador Ángel Pulido Prize 2008.  
Photo: FCJE.

to the underprivileged; and to Daniel Barenboim, for his efforts to promote a cultural dialogue between Israelis and Palestinians. Real Fábrica de Tapices, Madrid, 1 April.

- The 2008 Humanities Award was given to the Ombudsman in the 6th Corporate Awards, organized by the Northern Madrid Entrepreneurs Association. San Sebastián de los Reyes (Madrid), 24 April.
- The Ombudsman attended and participated in a tribute to the deceased Rogelio Baón Ramírez, ex President of the Ombudsman's Joint Committee and Head of the Chair "Memory of the Transition" of the European University of Madrid, organized by said university. The honoree received the University's Gold Medal posthumously. University Campus at Villaviciosa de Odón (Madrid), 7 May.
- State Funeral for the ex President of Spain, Leopoldo Calvo-Sotelo y Bustelo. Santa María la Real de la Almudena Cathedral, Madrid, 8 May.
- Medal of Honor awarded to Gregorio Peces-Barba by the Carlos III University of Madrid. Main Lecture Hall, Getafe (Madrid), 23 May.
- The Senador Angel Pulido 2008 award given to Enrique Múgica Herzog, the Ombudsman, by The Federation of Jewish Communities of Spain, for his support of the Jewish Community and Israel from a human rights point of view. Hotel Occidental Miguel Ángel of Madrid, 2 June.



The Ambassador of Bolivia in Spain, Carmen Almendras, made a courtesy visit to the Institution, accompanied by Patricia Flores, Deputy of Promotion in their Ombudsman. She was received by Enrique Múgica, the Ombudsman; his First Deputy, M<sup>a</sup> Luisa Cava de Llano; and Manuel Ángel Aguilar Belda, Second Deputy.

- The Ombudsman participated in a tribute to ex prisoners and anti-Franco politicians that suffered reprisals, organized by the Former Prisoners Association and the National Coordinator. Plaza de Vista Alegre, Madrid, 14 June.
- The second “Gumersindo de Azcárate” award given to Luis Díez-Picazo y Ponce de León by the Registrars of the Community of Madrid. Madrid Casino, 17 June.
- The 6th Tomás y Valiente Award for the Defense of Freedom and Basic Rights awarded by the Fundación Instituto de Cultura del Sur. Fuenlabrada (Madrid), 3 October.
- The First Judicial Independence Award Federico Carlos Sáinz de Robles given to the Ombudsman by The Francisco de Vitoria Judges and Magistrates Association. Palacio de Congresos de la Feria de Muestras of Gijón (Asturias), 7 November.
- The Ombudsman participated in the awarding of the 14th Pelayo Award for Prestigious Jurists given to Joaquín Ruiz-Giménez Cortés by the Pelayo Judicial Forum. Madrid Casino, 13 November.
- The OCU Consumer Prize 2008 awarded to Joaquín Ruiz-Giménez Cortés given by the Consumer and Users Organization (Organización de Consumidores y Usuarios). The OCU offices, Madrid, 21 November.
- The 7th Reading of the Declaration of Human Rights and awarding of the Ombudsman’s Drawing Prizes 2008, organized by Globalization and Human Rights and the Human Rights Foundation of the Community of Valencia. The ceremony was presided over by the Vice-President of The Congress, the Ombudsman and Councilor for Immigration and Citizenship of the Generalitat Valenciana (President of the Foundation). Hall of Columns, Parliament, Madrid, 1 December.
- Awarding of the Plaque of Honor of the Order of Isabella The Catholic by the Ombudsman to the Spanish Committee Representing Disabled People granted by H.M. The King and, in his name, The Minister of Foreign Affairs and International Cooperation. The Ombudsman’s offices, 2 December.
- The Second Deputy attended the awards ceremony for the 7th CERMI.ES Award. CaixaForum, Madrid, 2 December.
- Reading of the Preamble of the Universal Declaration of Human Rights on the 60th Anniversary of said Declaration, organized by the Lleida Bar Association. Lleida, 10 December.
- Awarding of the 2008 Júbilo Award and the celebration of the 10th Anniversary of *Vivir con Júbilo Magazine* (Live with Joy Magazine). The Ombudsman



The Ombudsman at one of the proceedings of Holocaust Memorial Day.  
Photo: Jewish Organizations of Madrid.

gave the Social Responsibility Award to the Edad & Vida Foundation (Age & Life Foundation), which was received by Higinio Raventós. Círculo de Bellas Artes de Madrid, 15 December.

## Accords and agreements

- Collaboration protocol between the Ombudsman and the Consumers and Users Committee, signed in Madrid on 30 January.
- Collaboration agreement between the Ombudsman and the Complutense University of Madrid to develop a conference-workshop on Humanitarian Aid and Social Exclusion 2008, which took place on 12, 13 and 14 June 2008, signed in Madrid on 28 February.
- Cooperation agreement between the Ombudsman and the Ukrainian Parliament's Commissioner for Human Rights, signed in Kiev on 13 April.
- Collaboration agreement between the General Foundation of the Complutense University of Madrid and the Ombudsman to organize the course "Road Safety and Citizens' Guarantees", which was held in San Lorenzo de El Escorial on 30 June to 4 July 2008, signed in Madrid on 30 April.



Enrique Múgica, Ombudsman, and Francisca Sauquillo, President of the Board of Consumers and Users, during the signing of the Agreement to defend the rights of consumers.

- Framework agreement between the Ombudsman and the General Foundation of the Complutense University of Madrid, signed in Madrid on 2 June.
- Collaboration agreement between the Ombudsman and the Egyptian National Council on Human Rights, signed in Madrid on 16 October.



