

# THE OMBUDSMAN OF SPAIN

Summary of the report  
to Parliament

Year 2010



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Translation of *El Defensor del Pueblo. Resumen del Informe a las Cortes Generales año 2010*

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# An Institution that knows no rest

*María Luisa Cava de Llano y Carrió*  
*Acting Ombudsman*

Thomas Jefferson once said 'The most valuable of all talents is that of never using two words when one will do.' In keeping with this maxim, as every year, this Institution is presenting this summary of its Annual Report intended to be a more readily accessible publication so that the citizenry will be able to know the work done by this Office.



Nevertheless, it is difficult to summarize the work of an Institution such as the Ombudsman. The figures we are also presenting in this summary provide an idea of how difficult this is indeed.

In 2010, nearly 35,000 complaints were processed, meaning a 56% increase over those cases processed in 2009. More than 400 resolutions were put forth, which were accepted in eighty percent of the cases, not to mention the many times this Institution does not need to issue recommendations or suggestions in order for the administration to recognize its error and proceed to correct it on their attention being drawn to the error in question for the first time.

Added to this Institution's regular work this year were the tasks this office has had to undertake on being designated the National Prevention Mechanism Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM). Taking NPM tasks upon itself has also meant more work, as revealed in the ex officio inquiries – which is where the cases opened by the NPM are recorded – which have increased in number from 260 in 2009 to 466 in 2010.

This additional workload has been successfully undertaken without any budgeting compensation whatsoever, given that the current economic circumstances have meant that this Institution's Budget has had to be cut by 2.11 percent.

Following ten years in this Institution as the First Deputy, when Enrique Múgica ended his term of office, I have taken on the role of Ombudsman, as is set forth by the Law governing this Institution. My motto has always been and shall always be that 'standing in' is not a synonym for 'standing still', or a parenthesis in the defense of the fundamental rights. And it is with this motto that we have brought this year of 2010 to a close, this being a year in which this Institution has operated at top performance, proof of which are the results we are now presenting.

# Summary

- An Institution that knows no rest, by María Luisa Cava de Llano y Carrió, acting Ombudsman  
Page 3
- The crisis has marked 56% rise in the number of complaints dealt with by the Ombudsman in 2010  
Page 5
- Statistics. Close to 35,000 cases handled in 2010  
Page 15
- Year-end status of complaints filed in 2010  
Page 24
- 17,449 collective complaints  
Page 28
- 466 ex officio complaints  
Page 30
- 448 recommendations to the Public Administrations  
Page 35
- 106 recommendations, 219 suggestions  
Page 37
- Suggestions accepted  
Page 39
- Reminders of legal duties  
Page 43
- Appeals of Unconstitutionality  
Page 52
- Administrations which have failed to comply or have notably delayed their responses to the Ombudsman's official notifications requesting information  
Page 54
- Management summary  
Page 57
- Supervision of Public Administrations  
Page 61
- Justice: This Institution successfully saw to the widow's pension being granted to battered women who had waived the compensatory pension  
Page 62
- Prisons: Overcrowding, the major problem of Spain's prison facilities  
Page 66
- Citizenship and Public Safety: The Ombudsman's Office advises of a police circular which may give rise to massive arrests of aliens  
Page 71
- Migrations and Equal Treatment: This Institution believes the time has come to make a commitment to integration policies  
Page 76
- Education: The Ombudsman's Office calls for a pact on educational matters  
Page 86
- Health Care: The inequalities among Autonomous Communities in the health care benefits provided are the leading health care-related complaints  
Page 94
- Social Affairs and Employment: The inequalities among Autonomous Communities regarding dependency and problems resulting from rising unemployment are the major social policy-related complaints  
Page 98
- Taxes and Duties: The economic crisis and unemployment gave rise to numerous complaints related to paying taxes  
Page 105
- Economic Activity: Widespread discontent among the citizenry concerning the treatment dispensed by the financial institutions as reflected by the large number of complaints lodged in 2010  
Page 108
- Housing and Urban Planning: The Ombudsman's Office puts forth a reminder as to urban planning and housing meeting basic needs not necessarily linked to the market or profitability  
Page 114
- Environment: The Ombudsman's Office calls for more stringent environmental prevention by the public powers  
Page 121
- Civil Servants: The cutbacks due to the economic crisis, civil servants' leading complaint  
Page 127
- National Torture Prevention Mechanism: The NPM has visited 231 places where people are deprived of their liberty during its first year in operation  
Page 131
- Other Affairs  
Page 135
- Institutional Relations  
Page 139

## The crisis has marked a 56% rise in the number of complaints dealt with by the Ombudsman in 2010

**By sectors of administrative activity, the complaints lodged by citizens as individual complaints reflect the effects resulting from the economic crisis. Most outstanding are those related to the economic planning sectors, such as those regarding the measures taken by the banks and tax-related measures. Also outstanding were the employment and Social Security-related issues and the housing-related issues. Under the heading of collective complaints, most had to do mainly with public sector employees.**

Underlying many citizen complaints are problems related to the scarcity of budget resources at all levels of the Public Administration. Processing the complaints in these cases inevitably leads to it being possible to achieve effective solutions, as those responsible for administrative aspects proper excuse their insufficient response either openly or in a veiled manner based on the many economic difficulties dragging public budgets down today.

In many letters, citizens simply explain the precariousness of their situation, due to being out of work or as a result of the extreme difficulties they are confronting trying to make ends meet or provide a solution to personal or family conflicts which are beyond even the protective work of the administrations and hence that which this Institution can provide. These are complaints which, on not falling directly within the field of supervision entrusted to the Ombudsman, are not accepted for processing, although, in each case, an attempt is made to provide the citizens in question with the best guidance so that they may exercise their rights before the respective instances.

2010 has also been marked by a growing demand from private citizens and public groups who have been coming to the Ombudsman so that this Institution bring before the Constitutional Court an appeal of unconstitutionality regarding a certain provision of law. In 2009, the filing of an appeal was requested for the substance of seven laws, between state and Autonomous Community laws, whilst in 2010 these requests have risen to 41 regulatory provisions, although solely in three cases did this Institution deem it necessary to take the respective action before the high court.

Another matter of which special mention may be made is that related to the ruling handed down in the appeal of unconstitutionality which this Institution filed on 2006 against certain rules of Organic Law 6/2006 of July 19<sup>th</sup>, which passed the Statute of Autonomy of Catalonia currently in force. The Constitutional Court rendered a decision in June 2010 concerning the interpretational scope of most of the articles challenged by the Ombudsman, addi-



Aguilar y Cava de Llano with José Bono

tionally having proceeded to partially uphold the appeal. Among many other questions, the Court clearly redefined the framework of action and cooperation of this Institution with the Catalanian Ombudsman on ruling the phrase 'of an exclusive nature' which was included in the wording of Article 78.1 of the Statute as being unconstitutional. Thus, the legal doubts posed over these years regarding the scope of this Institution's field of supervision have been settled once and for all, said scope covering all of Spain's administrations, bar none, naturally including the administrations inherent to this Autonomous Community. Now that this period of legal uncertainty has been overcome, it has been possible to continue processing citizen complaints normally in regard to the actions taken by the Catalanian Administration.

Another of the challenges which this Institution has taken upon itself in 2010 was that of starting up the specific activity falling thereto in accordance with Spain's National Preventive Mechanism Against Torture and that which is set forth under the new sole final provision of the Organic Law governing the Ombudsman's actions. Even without availing of extraordinary resources for these purposes, the effort made by this Institution's entire staff has made it possible to undertake the mission entailed in this new assignment.

## Statistics

The statistics on the Ombudsman's annual activity aid toward weighing several matters, such as the institutional effectiveness of the complaint management but, above all, the evolution of the citizens' attitude with regard to the determination to voice their disagreement with the way the public administrations go about their business.

In regard to 2010, although two numerical results are particularly outstanding, those related to the increase in the number of collective complaints and of ex officio inquiries opened, it can be said that no major changes have taken place in terms of comparison with the fluctuations which have been occurring repeatedly year after year.

One aspect which is nevertheless indeed marking a decisive, logical evolution in the volume of work being managed by this Institution is the growing number of citizen complaints and requests which are being sent in via Internet. More than 16,000 complaints were lodged via the Ombudsman's website. Concerning the use of the computer-based means of communication, the Ombudsman has been recommending to the public powers for some time now to adopt measures to promote the enhancement of the information and communications infrastructures, as well as the passage of a regulation affording the possibility of accessing a quality internet under affordable conditions by means of redefining the universal service in this regard. Therefore, we can but congratulate ourselves on the increasingly more widespread use of these tools by citizens, also to access this Institution in defense of their rights and liberties.

### Number of complaints

In 2010, more than half of all of the 34,674 new cases managed by this Institution were collective complaints (17,449). The rest was processed based on complaints of an individual nature (16,759) and ex officio inquiries, which totaled 466 in number this year.

The collective complaints vary greatly in number from one year to another, depending on the various social situations which are mobilizing large groups of citizens to lodge identical complaints arising out of circumstances affecting them all alike. These groups of complaints, when admissible for processing, facilitate a joint inquiry although a person is notified individually of the steps that are progressively being taken and the outcome of the actions taken by this Institution.

As regards the 16,759 individual complaints, they are fewer in number than last year (18,392) but show a trend toward setting a year-end average higher than the customary figures a few years ago, when the figure of 15,000 complaints per year was not often surpassed.

The ex officio inquiries also underwent a major rise, having totaled 466 cases, compared to the 269 cases from the year before. This is due to Spain's National Preventive Mechanism Against Torture having been gotten under way, the main mission of which is to make preventive supervisory visits to detention and prison facilities nationwide, and which, precisely due to its preventive and non-reactive nature can only be ex officio inquiries. Hence, the National Prevention Mechanism Against Torture opened 211 of these cases, which are added to the 255 ex officio inquiries initiated with the different public administrations.

By geographic distribution, the largest number of complaints came from the Autonomous Community of Madrid (21.85%), followed by Andalusia (18.32%), the Autonomous Community of Valencia (14.15%) and Catalonia (10.29%).

On no further information being included on the citizens who lodge their complaints, as set forth by Law, it is not feasible for this Institution to make general assessments of a statistical or sociological type concerning circumstances such as age, educational level or the living situation of those who approach the Ombudsman.

As regards the administrative business sectors, it is once again necessary to distinguish between the complaints of a collective nature and the individual complaints. The collective complaints were lodged revolving mainly around two sectors, the civil service and the social policies, it being possible to note the incidence of the concern cause in wide-ranging groups in society by the measures adopted by the Government and Parliament during 2010 to combat the effects of the economic crisis.

The issues dealt with in the individual complaints also reflect the effects stemming from the economic crisis, revealing in this case the individual problems of many citizens with the sectors of economic planning, telecommunications, taxes, etc. Other issues which concentrate, as every year, citizen concern continuing to be the problems with the Justice Administration and those referred to as citizen security and highway traffic, urban planning and housing and the matters related to the management of aliens and immigration.

### Processing status

The first study of the complaints lodged leads to the decision on admitting the issue put forth for processing. If admitted, an investigation process is begun with the administration(s) involved. In many case, the formal admission of the complaint is postponed in order to request a preliminary report from the Administration for purposes of comparison, affording the possibility of ascertaining further details regarding that which has been put forth by the interested party.

In 2010, a total of 8,811 individual and collective complaints combined were admitted, a total of 4,889 of which were able to be concluded within the same year, in other words, action was taken with the respective administration, all of the aspects put forth were assessed and either a favorable or unfavorable decision was made regarding the properness of the administrative business. To evaluate all of the new cases for 2010 actually processed, we must add the figure of 420 ex officio inquiries opened during this time frame. Apart from this, yet another 5,681 complaints from previous years which were still being processed in 2010, a total of 4,055 of which were concluded, but also be added to this case processing volume.

In overall terms, therefore, a total of 14,912 cases have been being processed effectively with the Administration in proceedings often including requests for several administrative reports, various different steps for purposes of confirmation with the individuals who lodged their complaints or the preparation of institutional decisions, for example, In short, the year to which this report is devoted can be said to have required intense activity of this Institution in order to provide a proper response to all the problems brought before us.

In addition to the above, one must bear in mind that the data mentioned in the immediately preceding paragraph hereinabove does not include the management, study and response activity for the 23,181 complaints which were not finally admitted in the end for various reasons. The most common reasons for non-admittance are set out in the chapter devoted to statistics, the most outstanding being the lack of indications of administrative impropriety as the most frequent for individual complaints and, this year, that related to the lack of reasoned explanations for the filing of an appeal of unconstitutionality in the case of the collective complaints. In fact, in a good part of the collective complaints lodged in 2010, the Ombudsman was requested to exercise its legitimation of filing an appeal before the Constitutional Court, a request not granted for the provisions of law questioned by citizens (5,582). In many other collective complaints (6,801), there were several concurring reasons for non-admittance, and it was so explained in detail to each one of the interested parties.

The greater part of the complaints processed and of the ex officio inquiries have been with the different departments of the General State Administration, including the State Attorney General and the different public agencies. The rest of the complaints were processed with the Autonomous Community and Local Administrations. Special mention must also be made of the number of inquiries which have been carried out simultaneously with several administrations, at the same or at different levels of territorial organization, which has been the case of 2,344 complaints, most of which are the collective type.

Lastly, regarding the ex officio inquiries, it is advisable to mention the importance of the fact of swiftly responding to the situation of administrative impropriety or violation of rights which are brought to light by any means has for this Institution and for the public as a whole. The main source of specific information for this Institution is always the citizens who come, by one channel or another, to the Ombudsman. Added to the foregoing is the work done by the social media who inform on circumstances behind which, in some cases, hints of deficient administrative conduct can be noted. Additionally, when this Institution decides to delve into a certain matter which has a bearing on the public good, in order to prepare a monographic report or to carry out a full investigation on a specific sector of activity, it is indispensable to send out ex officio requests for information above and beyond the casuistic set out in the individual complaints. Therefore, a special effort has been being invested over the past few years in broadening the field of action which all those ex officio inquiries can offer.

#### **Supervisory effectiveness**

Calibrating the effectiveness of an institution such as the Ombudsman, whose main tools for taking action are always of the 'suggesting' type by opposition to the institutions and powers with decision-making executive authorities is a complicated and also at times hard to explain task. The data provided each year concerning the number of decisions (recommendations or suggestions) approved by the Ombudsman and regarding the degree of acceptance or rejection thereof by the public administrations are the main reference point of which we avail to carry out this gauging task. However, one must not overlook the many other either direct or indirect results which are achieved through the regular processing of complaints and the preparation of reports and sectorial investigations, as a result of which it is managed to have the public powers rectify certain undue types of conduct or at least convey to the public a greater attention to and concern for the problems of some individuals or groups. These achievements are not included statistically in the reports as they obviously cannot be put to accounting, but for this Institution mean, which they occur, reasons for satisfaction renewing the encouragement to continue striving, progressively harder by the day, in searching for spaces of harmony and respect for the rights of all citizens.

In relation to the data which is possible to 'account' for, the Ombudsman set out a total of 448 resolutions to the different public administrations in 2010: 106 recommendations, 197 suggestions, 140 reminders of legal duties and 5 warnings.

Of these four types of resolutions, those most highly indicative of the receptive attitude shown by those in charge of these administrations are the recommendations and suggestions, most of which were dealt with prior to the end of

2010 y resolved positively. In fact, of the 106 recommendations made to the State (51), the Autonomous Communities (22) and the City Halls (33), 70 had already been answered by December 31<sup>st</sup>, a total of 54 of them accepting the postulates set forth by this Institution. In the case of the suggestions, which promote some type of rectification on the part of the administration with regard to private situations of one or more citizens, 143 of the 197 put forth during the year had already been answered by the end of the year, the contents of 89 of them having been accepted.

In regard to the recommendations made in 2008 and 2009, by the end of 2010 a total of 77.78% (2008) and 70.52% (2009) of them had already been accepted; and in regard to the percentages related to the suggestions, they indicate a degree of acceptance for each one of these years of 65.26% (2008) and 59.82% (2009).

Thus, high degrees of understanding with the administrations continue to be maintained, these administrations normally adopting the opinion stated by the Ombudsman in defense of the citizens' interests, even though there are still many cases of delay in issuing the suitable reply, or those others in which it becomes necessary to repeat that which has previously been suggested or recommended on finding that the good resolutions announced by those in charge of public services have not been carried out in full. The main objective of the Ombudsman is to accompany the Public Administration in its ongoing process of evolving and improving by advising the same as to the faults and drawbacks which, for citizens, may go so far as to pose a serious problem, defenselessness or a dead end.

### Processes worthy of special mention

#### Justice

As 2010 was drawing to an end, the Central Government was finishing the drafting of two bills for a timely reform of the rules governing the proceedings of the civil, contentious-administrative and penal jurisdictional orders and, in a more integral manner, the procedure of the social jurisdiction. One of the main objectives of these reforms will surely be to update and therefore improve the structures of the respective processes in order to allow a more expeditious processing of the procedures. These new wordings of these provisions deal with matters including the endemic problem of the undue delays and long drawn out procedures, which are very much present in most of the complaints lodged by citizens regarding the functioning of the Justice Administration.

The first and strongest line of defense of the rights and fundamental freedoms of the citizens in a Democracy Under Rule of Law is comprised of the ordinary courts and judges. In following come other extraordinary resources, such as

the Constitutional Court proper or extra-jurisdictional resources, such as this very Institution. Therefore, conflicts must find a just answer in the judicial system, in other words, in keeping with the law and with the democratic principles and therefore, in time. If this first line fails due to lack of material or human means or due to being circumscribed to a rigid, obsolete or overloaded procedure of less than ideal steps to be taken for the purpose intended, citizens are then left at the expense of injustice, lose faith in the legal system and find themselves forced to seek informal solutions which do not guarantee the integrity of their rights or those of citizens as a whole.

The Ombudsman knows, through the complaints, the persistent concern about this situation of justice. Litigation, which had already been increasing for several years now, has suddenly worsened with the conflicts stemming from the economic crisis. But the efforts must continue toward consolidating and developing the plans for modernization and the political agreements to make a transformation of the judicial system a reality and meet the needs of these new times.

This Institution must warn of an added risk confronting the reform measures under way or planned. In view of the evident reduction in the public resources available to cover the expenses of the judicial administration, it would be a mistake to resort to legal reforms to solve all of the problems, such as the aforementioned measures aimed at 'expediting the processes', which can inevitably include some limitation on the guarantees as a whole which the individuals or groups appearing before the courts are entitled. In other words, one must avoid moving toward a scenario in which, without having solved the problems of covering the material needs of the judicial system, the number of legal resources of which citizens avail today were to be simultaneously lessened.

The shortage of material and human means gives rise to dysfunctions in almost all realms of the judicial administration. Some of the problems about which complaints were lodged in 2010 are staffing shortages or even the non-existence of specialized courts; the obsolescence of the infrastructures, including the information and communications systems; the loss or misplacing of court records; the deficient funding and support of the free legal aid services; the lack of coverage of psychosocial teams and of coroner staffing; or the persistent management problems in the Civil Registry offices.

As in all realms of activity under its supervision, this Institution seeks solely to propitiate constant attention to the problems of the justice system, based on the thought that all initiatives aimed at improving its functioning must be, first of all, welcome and, then debated and studied meticulously

to make its final objective a reality, which is that of safeguarding the rights and freedoms of all.

### Prisons

The data available indicates that the trend toward an increase in the number of prisons at in prison facilities (73,849) has halted. Even so, overcrowding continues to be the main problem confronting the prison system, and in this regard the recommendation to the competent administration of its evaluating the effects the shared use of prison cells has on the health of the inmates and to adopt the measures suited to the result of that evaluation is currently being maintained.

The Ombudsman is continuing to place special priority on the supervision, in situ, of the prison facilities, with a view to the vulnerability of the situation of those imprisoned therein. In 2010, visits were made to a total of 22 facilities: Albacete, Albocàsser (Castellón), Alcalá Men's (Madrid II), Alcalá Women's (Madrid I), Alcázar de San Juan (Ciudad Real), Alicante Cumplimiento, Basauri (Bilbao), Dueñas (Palencia), El Dueso (Cantabria), Estremera (Madrid VII), Martutene (San Sebastian), Monterroso (Lugo), Morón de la Frontera (Sevilla II), Nanclares de la Oca (Álava), Pereiro de Aguiar (Orense), Picassent Cumplimiento (Valencia), Soria, Soto del Real (Madrid V), Villabona (Asturias), Villanueva (Valladolid) and Villena (Alicante II), in addition to the military prison in Alcalá de Henares (Madrid). It must be said that this activity of visiting the prisons in person is carried out in addition to the preventive activity which this Institution is now also carrying out in its capacity as Spain's National Prevention Mechanism Against Torture and other cruel, inhuman or degrading treatments or punishments.

As a result of its own investigations and the studying of the complaints sent in by prisoners and their family members, the Ombudsman can carry out a monitoring over time of the evolution of the living conditions in the prisons and the problems which are still as yet pending a solution. For example, one question of special relevance, such as the Administration's response in view of the death of inmates or the reports of abusive treatment can be improved by pointing out, each time, the persistence of organizational errors or, on the contrary, highlighting the effectiveness of certain measures which solve specific dysfunctions, by shedding light on some 'shady areas'.

In relation to the reports of abuse, the advisability of always having photographic material for the medical reports which can then be reviewed in the investigations of the cases has been being indicated to the Administration, this being a highly relevant question for the cases of transferring inmates from one prison to another when coercive or restraining measures have even been used.

The constant monitoring done by this Institution also allows it to assess the progress that the prison system is making. Special mention must be made here of the respect modules becoming widespread among more prisons (62 in 2010), as well as the boost of the external units for mothers with children, the one in Seville having already been opened, and the one in Madrid scheduled for opening. It is cause for satisfaction to also see the expansion of the telemedicine programs to more prison facilities, and the favorable evolution, at least in principle, of certain dysfunctions such as the management of petitions the inmates want to lodge or the updating of the methods making proper identification of the prison staff possible.

### Citizenship and Public Safety

The complaints regarding public safety always put forth the need of adopting a particularly prudent approach in keeping with the importance of the legal assets and interests involved. The objective is to always maintain a difficult balance in exercising the fundamental rights to freedom and to the safety of the individual citizens and all citizens as a whole, makes it necessary for society and the State to maintain a discerning and, at the same time, a generous attitude.

A generosity which must be manifested specifically in the assistance with the public powers provided to crime victims. In particular, as this Institution has been saying is needed for some time now, it is necessary for the State to offer a suitable response and protection to the victims of terrorism, to whom the democratic society has a qualified debt. Hence, the Ombudsman trusts that the current bill for the integral recognition and protection of these victims will finally be passed.

The work of the law enforcement bodies is highly valued in general by citizens, in keeping with that which has been published in the sociological studies. This does not stand in the way of the specific actions of some police officer possibly at some time overstepping that fine line dividing the need of keeping public order and fighting crime from the inviolable freedom and integrity of the citizenry.

This Institution always tries to verify the circumstances of a citizen report as soon as possible, when some alleged abuse or police overstepping their bounds is reported. The communication with the State Attorney General affords the possibility of ascertaining whether or not the matter is under the supervision of the judicial authority, as well as the subsequent evolution and the outcome of the proceedings, a reminder being put forth to those responsible for the administration as to the obligation of preventively opening the respective disciplinary proceedings. Fortunately, the situations in which a serious police action is substantiated are not very frequent, although when they do occur, due to their substantial seriousness, they require a straightforward,

stringent response, in addition to an explanation for the public as a whole.

One of the reports which gave rise to most concern in 2010 is that related to the possible widespread interventions of identifying aliens on the part of police officers. At the beginning of the year, the existence of an internal circular of the General Alien and Border Affairs Police came to our attention, Circular 1/2010 of January 25<sup>th</sup>, the wording of which, mixing up legal terms and in its references to the rules of the Organic Citizen Safety Law could be interpreted as authorizing the undue detention of citizens who were not able to provide proof of their having their administrative affairs in order in Spain at the point in time of being approached by the officers in public places. This Institution conveyed its concern to the Ministry of the Interior due to the misleading wording of said internal circular and due to the reports which were being received from private citizens and different groups and associations and is continuing to keep close watch over this matter.

### **Migrations and Equal Treatment**

Although the flow of aliens into Spain has slowed over recent years, the administrative management work regarding immigration must continue at full speed, taking into account also of the presence of nearly five million aliens in Spain.

It is time to step up the efforts concerning integration policies, this Institution thus encouraging all administrations to put realistic, effective programs into practice to favor this process, bearing in mind that the objectives of integration will be possible solely by informing Spain's entire society as a whole. In this regard, it is as important to adopt plans addressing the aliens from third countries and different cultures, as the educational programs for raising awareness for Spanish nationals.

The tremendous complexity of the migratory phenomenon has required, once again this year, extensive investigation and intervention work in view of the many related problems. It has now been ten years since an area specialized in alien affairs was first created in this Institution, the work of which has followed quite closely the evolution of this phenomenon and therefore has well-organized protocols for taking action to deal with a wide variety of issues put forth.

Different types of measures have been taken in 2010. For example, concerning documentation-related matters, complaints have been lodged by foreign and Spanish citizens in view of the administrative irregularities in the procedures for documenting migrants. Urgent visa requests have been received by residents in Spain who have had to return temporarily to their country; problems and delays in processing return permits; undue hindrances in processing letters of invitation; errors in the processing of reunification visas; in-

consistent application of the new rules for the payment of fees on the residence permits, for extension or modification; problems in granting the residence permits for exceptional reasons and established residence; and other miscellaneous cases. Measures have also been carried out to ascertain the reasons for a generally deficient functioning at several alien affairs offices, particularly those in Las Palmas and Barcelona.

Apart from the above, this Institution has continued visiting both the physical land border and airport border posts in person to gain a first-hand knowledge of the procedures following in controlling the entry of aliens and the way in which the border rejection and return protocols are being applied. Recommendations have been made concerning two questions: the 'aircraft door' document check interventions at the El Prat and Madrid-Barajas airports and the how the Spanish and French authorities are construing the Spain-France Agreement on readmitting individuals in irregular situation when readmitting individuals turned back at the border.

Visits have continued being made to the different facilities sheltering foreign citizens in different administrative situations. In addition to the follow-up of the visits made the previous year, such as those related to the Motril First Shelter and Detention Center in Granada and the Temporary Immigrant Stay Center in Ceuta, the following facilities were visited in 2010: The Temporary Immigrant Center in Melilla, the 'La Esperanza' unaccompanied foreign juvenile assistance centers and 'Nuestra Señora del Cobre' (Algeciras); the foreign detention centers in Madrid, Murcia and Algeciras and police facilities on Palomas Island, Tarifa.

Lastly, the Office of the Ombudsman has opened an investigation of the protocols for determining the age of unaccompanied juvenile aliens. The acting Ombudsman held some workshops during the last quarter of the year devoted to this matter, which were attended by scientific specialists, coroners, representatives from the Administration and from the Autonomous Community Parliament commissions, as well as legal experts for the purpose of integrally gathering information on this practice and on the best way of preparing measures for the future. After investigating the complaints received at this Institution in recent years, it has been possible to say that the management of these protocols by the different administrations is, to say the least, inconsistent and deficient in many cases, which causes the foreign minors and youths problems. These individuals are often in a defenseless situation without the due safeguarding of the Spanish Administration when their age in determined contradicting, for example, what their legal documentation says. This Institution will be preparing a report on this subject over the upcoming months.

### Educational Administration

As has been mentioned in the respective section of this report, it is regrettable that the negotiation which was being carried out at the beginning of 2010 for the purpose of achieving a social and political consensus for education has failed. It is hardly comprehensible that it is not possible to come to an agreement concerning the minimum stable bases for combatting the high dropout and academic failure rate; to ensure sufficient budget resources earmarked for education; to improve the results of our system's international evaluation results; to implement under proper conditions the European Higher Education Area; to promote and update vocational training..., among many other tasks currently pending to which a social and political agreement would give a fundamental boost. Far from losing all hope, this Institution is once again putting out a call to the players involved to once again take up the efforts for seeking a major agreement or consensus on the subject of education.

The negotiating process proper has nevertheless afforded the possibility, at least, of reaching a certain consensus among the educational community concerning the objectives the educational system must be aimed at achieving and regarding the specific measures or actions which much be put into practice for achieving them. Hence, this has been set out in the document 'Educational Objectives for the 2010-2020 Ten-Year Period. 2010-2011 Plan for Action', prepared by the Ministry of Education, in which the objectives defined for the ten-year period in question are the goals and measures which met with the support of the majority aimed at improving, completing and innovating education in our country and in which a first plan for action is set out for 2011, in which measures are included which are considered a priority for meeting the aforementioned objectives.

Meanwhile, the report sets out the typology and nature of the matters most often dealt with throughout the year in question regarding educational matters. Once again here, the crisis is playing a leading role and is having consequences in this realm. Complaints have been lodged concerning school facilities and equipment, concerning the provision of some services, such as school bus transportation, concerning the limitation or elimination of some lines of aid for which provision was made for students and their families, or the staffing of faculty and supporting staff members.

Regarding other matters, the source of these deficiencies, in addition to the economic reasons imposed by the crisis, could seem to possibly be a certain degree of improvisation or insufficient thought invested regarding the provisions adopted, such as is the case of the design of tests for accessing the university following the implementation of the European Higher Education Area, subject to constant ups



Presentation to Rojo, the Annual Report, by Cava de Llano and Aguilar

and downs, to successive modifications which have given rise to widespread confusion and discontent on the part of those for whom it is designed.

### Healthcare Administration

Probably one of the main challenges currently confronting the National Health System is that which has to do with cohesion among the different Autonomous Communities. The existing diversity in relation to the healthcare benefits which the different Autonomous Community health services offer is one aspect which citizens find barely comprehensible, as is set forth in a good part of the complaints received by this Institution. These differences come to bear in aspects ranging from the recognition of the right to healthcare and pharmaceutical benefits, to the care offer which varies from one Autonomous Community to another.

In addition to the above, there is the added confusion and the logical rejection caused to citizens on finding themselves in situations in which no care is provided or where care is deferred as a result of the red tape related to one's medical records when one goes to a health center located in an Autonomous Community other than the one where one normally resides. In all, elements are lacking for determining the common minimums, which can only be remedied through the consensus of all the administrations involved in a staunch commitment to respect the principles of equity and universality on which the national health system is based.

On the other hand, waiting lists – whether for appointments to see a specialist or in order to undergo diagnostic or surgical testing – are another of the major causes of citizen-patient dissatisfaction. The incidence thereof also varies noticeably from one Autonomous Community to another.

In short, through the Ombudsman, without losing sight of the overall context of economic difficulties, it still continues to be necessary for all the administrations to be called to

adopt effective measures for bolstering the public health services, including those of a budget or staffing-related nature, which are compatible in turn, with the most well-updated management methods, given that the persistence in the restriction of resources lies at the bottom of many of the aforementioned problems. Only then will it be possible to safeguard the high levels of quality and cohesion which have come to characterize the national health system and which are, as set forth under the Spain's Constitution, a basic right of all citizens.

## **Social and Labor Policies**

### *Juvenile Protection Centers*

The Ombudsman has continued receiving replies from the different administrations to the recommendations made in the monographic report on the centers for the protection of juveniles and youths in social difficulties. In one overall assessment, a positive response and an initial commitment on the part of the public authorities is patent in view of the main problems which this institutional report highlighted. The basic protocol for action has been approved, has been well-accepted by the administrations involved, the juvenile attorney's office and the non-governmental organizations, although the advisability of putting this protocol into legal force is called for, given that it deals with the regulation of aspects such as the use of restraining methods at the centers.

Another new aspect is the publication of the first statewide agreement which will help clarify the employment situation of the personnel working at the juvenile reform and juvenile protection centers. With regard to all other aspects, this Institution regrets some tragic events having occurred in 2010 at certain protection centers, in which the situation of desperation experienced by some minors has led them to even attempt suicide at some point.

### *Disability and Dependence*

According to available data, there are around four million, one hundred thousand people with disabilities are living in Spain, approximately 9% of the total population. Most of these people live in their family homes, only approximately 270,000 are residing in living facilities or long-stay hospitals. The public powers are called to develop and put into practice the measures ordered by the legal framework of protection and assistance to these persons, now further strengthened with the attributes set forth under the United Nations Convention for the rights of persons with disabilities. Some specific problems which especially concern this Institution are related, for example, to the scales for determining the degrees of disability not being updated, with the problems that this causes for thousands of citizens, or the persistence of problems of accessibility, especially in transport infrastructures and buildings under public ownership.

With regard to the applications for gaining access to openings at centers adapted to disabilities or at senior citizen living facilities, the apparent drop in the number of complaints stems from the deficient management of the previous procedures in some Autonomous Communities for the assessment of the situation of dependence and, specifically, the serious delays which are caused for the approval of the individual care programs which determine a citizen's right to a place at a specialized center. In each community, the inconsistent regulation of the procedures for the enforcement of the dependence regulation additionally leads to confusion on the part of the interested parties, as a result of which this Institution calls for much more clarity when setting out the specifics of said procedures and a more transparent management of the items allocated to individual aid, it also being necessary to harmonize and duly notify the sums which the beneficiaries must provide. The situation differs greatly from one Autonomous Communities to another, there being 17 co-pay systems in constant evolution.

### *Social Security and Labor Administration*

Regarding social security benefits, in addition to the regular processing of complaints lodged for various reasons, such as the demands of compatibility for contributions to several regimens, the varied incidences in the processing of the temporary disability benefits or the difficulties of managing the tremendous volume of unemployment benefit applications, a widespread concern has also arisen in 2010 on the part of many citizens as a result of the decisions to reform the pension system.

In relation to the study of the labor Administration-related complaints, this Institution opened an investigation for the purpose of ascertaining the scope of the problems which the Wage Guarantee Fund was experiencing when managing the major increase in the number of compensation cases, which had overwhelmed its staff and resources structure. It will be necessary to continue with the investigation to know whether the steps taken expedite the processing of the cases without overlooking the exceptional nature of the situation being experienced, as a result of which the total amount of the sums being paid out by the Fund has possibly tripled compared to the 2007 data.

### **Finance and General Economic Activity**

Following the study and administrative research of many complaints concerning tax or economic planning-related matters, the conclusions usually drawn by this Institution reveal a clear divergence between its criteria for the optimization of public services and the different regulations and the criteria of fittingness on which the Administration often bases its opposition to that which has been recommended.

### *Taxes and Rates*

In regard to tax regulation, the Office of the Ombudsman often recommends the modification of tax criteria to adapt

the regulations to the changing economic situation. Countering this, the competent authorities state their rejection, insinuating or stating more or less openly that the acceptance of the measures proposed would compromise the public accounts at a point in time of a dramatic drop in revenues. However, in many cases, repeated emphasis must be placed on the need of evaluating the specific difficulties that a large number of people are facing when it comes to meeting their tax obligations. As one example, this Institution is trying to get the Administration to set criteria to relieve the tax burden of many taxpayers in view of the rise in the amounts they have to pay for the real-estate tax following the successive revisions of land registry values.

At this point, it is advisable to bear in mind that it does not fall to this Institution to issue an opinion concerning how the Government should manage the country's economic policy, especially when Spain is faced with such an extremely complex economic-financial situation as that which has arisen in 2010. What it is indeed called to do, nevertheless, is remind all those in charge of public affairs that in the decision-making process, it is their obligation to safeguard the rights set forth under the Constitution, quite particularly those of the groups of persons in the greatest difficulties. Hence the advisability, for example, of avoiding, insofar as possible, overloading the indirect taxing which lowers the purchasing power of the lowest incomes yet further and, therefore, of exploring taxing alternatives which will improve the progressiveness of the system.

At the Local Administration level, it is also necessary to call for the management and, above all, the collecting of municipal taxes, to be carried out properly. Any type of irregular interventions damaging to taxpayer guarantees in the procedure, such as is the case of undue bank foreclosures due to an error on the part of the taxpayer in question or by way of lapse of the procedures or the highly frequent faults in the notification processes, should be avoided.

#### *Financial Institutions*

The impact of the crisis on family economies has revealed the existence of practices on the part of the financial institutions which are far from proper and which add extremely serious risk factors for the national economy as a whole. This Institution has continued its pursuits in conjunction with the Bank of Spain to ascertain the results of its management of citizen complaints. The need was considered at the time of revising the banking practices which, following the collapse of the home mortgage market, have shown themselves to be highly damaging to private citizens, exposing them to serious detriments. The Ombudsman had already put forth the fittingness of studying questions including a management method inherent to situations of domestic insolvency and a new regulation of the cases of default on payment of the home mortgage loans, which, by adapting to

the model in force in other countries, reinterprets the concept of universal liability of the borrowers for these situations, moving toward accord and satisfaction-related approaches.

#### *Telecommunications*

The many complaints which are received every year regarding the actions of the large-scale telecommunications operators reveal their at times abusive management of the different services they provide and customer annoyance due to the impersonal treatment dispensed in their dealings. Additionally, the bill for these telecommunications services is too high in comparison to other countries, considering that the most part also integrate the regulatory concept of universal service. This Institution is working to provide citizens with detailed guidance as to how to process their claims through the consumer services or the authority having province over dealing with telecommunications issues.

Concerning this issue, the Ombudsman put forth a recommendation to the different agencies having authority over telecommunications and over the management of the related claims (Secretary of state, National Telecommunications Commission, Data Protection Agency and National Consumer Institute) as to it being advisable that they better coordinate their measures. This recommendation having been accepted, a meeting had already been held by the end of 2010 among the representatives of these organizations for the purpose of defining a joint strategy which will improve the systems for providing solutions to citizen complaints.

#### *Postal Services*

Also put to study, every year, although perhaps more often now, are the complaints having to do with the postal services. The new management models which the Postal and Telegraph agency has been implementing give rise to distortions in the functioning of the conventional postal service, especially when provided in widely-scattered localities and residential developments and also in regard to the management of the now centralized Customs services.

#### *Transportation*

In the report, an account is provided, on the other hand, of the processing of citizen complaints in relation to the different transportation services, mainly overland and air transport services. In addition to the complaints already known in previous years, such as those having to do with the recognition of discounts for certain groups, new situations have been investigated, some linked to the rise in the rates which citizens are having to pay, particularly in the larger cities. Those responsible for the administrative aspects often justify their decisions to raise prices as being due to the needs of balance in the operation of these services, despite users continuing to find these price rises to be excessively high.

## **Environment, urban planning and housing**

### *Environment*

Many different complex environmental measures have been taken. An insufficient degree of commitment to the true objectives of protecting the environment continues to be found in the attitude of many administrations. This is thus the case, for example, concerning the degree of importance placed on the environmental impact assessment reports on infrastructure development or urbanization projects. The same can be said for the degree of compliance with the regulations which set forth the duty of providing environmental information and citizen participation in the conversion processes which have a bearing on the environment. The unwarranted or erroneously warranted refusals to provide environmental information which often give rise to specific institutional suggestions being made are revealing of this highly limited understanding of the principles of transparency which are well-defined under law and even under the international agreements signed by Spain. Significant differences are found to exist among the responses provided by one administration and another.

### *Urban Planning and Housing*

As far as the processing of complaints related to urban planning and housing are concerned, this Institution is trying to convey to the Administration a view of the problems which are being posed far from the vicissitudes of the real-estate market and economic profitability and much more committed to the constitutional principles which must in all cases serve as the inspiration for administrative acts; the right to the use and enjoyment of decent housing and the obligation of combatting different forms of land-related speculation.

On investigating the complaints related to urban planning and management, better coordination among the administrations involved and a proper mutual understanding of the possibilities and limitations of one level and the other of the administrative management is found to be lacking. On undertaking or reforming a certain area of planning or management, a greater deal of functional involvement on the part of the Autonomous Community and local authorities must be demanded, such that the projects of local interest and the guidelines for the harmonization of the regional management will interact more effectively, doing away with the greatest possible number of unnecessary impediments and aspects which citizens find confusing.

### **Civil Service Employees**

This Institution has formerly underscored many times the more than well-known link of far-reaching importance between the quality of the administrative management and thus the proper functioning of the public services, and the quality in the working conditions of the civil servants and public employees. On studying and processing the complaints filed by

the public employees, the resulting findings afford the possibility of moving toward two objectives: reaffirming the rights of these workers or of those seeking public employment in keeping with the special employer-employee relationship linking them to the Administration and improving the ability to provide a response which the offices, departments and services at all administrative levels must provide.

With all the deficiencies which must be put forth and most certainly be corrected, this being a task which this Institution takes upon itself on studying the conduct of the civil servants with regard to the citizens under their administration, the truth is that most of the people working in the public administrations show a firm commitment to the public good. In view of debates having arisen in society which go so far as to more or less indiscriminately question the work being done by public employees, the Ombudsman must emphasize its confidence regarding this group of people to whom society has entrusted, in turn, the functioning and carrying out of the most indispensable services. This thought is even all the more fitting, if possible, when, during the period to which this report refers, the remunerations collected by public employees has generally been lowered within the framework of the pressing reforms aimed at saving the public accounts; a reduction which is added to the problem of the loss of actual purchasing power which has been being reported for years. Thousands of public employees lodged their complaints with this Institution to contest the legal decision which established the pay cuts, these being requests which could not be accepted in keeping with the existing jurisprudence concerning this matter.

Apart from the above, until whatever results may be offered can be evaluated, the creation of the Public Employment Monitoring System by Royal Decree 868/2010 of July 2<sup>nd</sup> must be welcomed. This new body, in which representatives from all of the administrative levels take part, can aid toward more clearly calibrating the scope of the future challenges facing the Administration for the sole purpose of achieving balanced staffs of public employees sufficient in number to meet the needs of the public.

On another order of matters, complaints have continued being processed which put forth problems previously dealt with in prior reports, such as those related to the incidents in the procedures for gaining access to public employment, the problems in the competitive transfer procedures, the issues concerning geographic and functional mobility and those having to do with reconciling family and working life, among other wide-ranging matters. And all this has been posed by the groups of employees manning the different sectors of activity: the General Administration and common services, education, healthcare services, Law Enforcement Bodies, Armed Forces, civil servants, both male and female prison guards, etc.

STATISTICS

## Close to 35,000 cases handled in 2010

Last year Spain's Ombudsman's office recorded 34,674 complaints for an increase of 55.58% over 2009 (22,287). The growth was mainly to the increase in collective complaints, which rose from 3626 in 2009 to 17,449 in 2010. Ex officio enquiries also rose from 269 to 466 in response to the Institution assuming the functions of the National Preventive Mechanism against Torture. The residents of Madrid, Andalusia, Valencia and Catalonia filed the most complaints.

We can draw a significant conclusion from the data in the following tables: collective complaints in 2010 increased significantly, rising by 381% over the previous year. Regarding the number of individual complaints, although the figure has declined somewhat over the previous year, it remains one of the highest figures in recent years.

There was also a noteworthy increase in ex officio investigations, which went from 269 in 2009 to 466 in 2010. This growth was due to the implementation of the National Preventive Mechanism against Torture.

As shown in the table, a total of 34,674 cases were handled in 2010, representing an increase of 12,387 cases for a percentage gain of 55.58%.

As for the 466 ex officio investigations, 211 were performed under the institution's function as the National Preventive Mechanism against Torture (NPM).

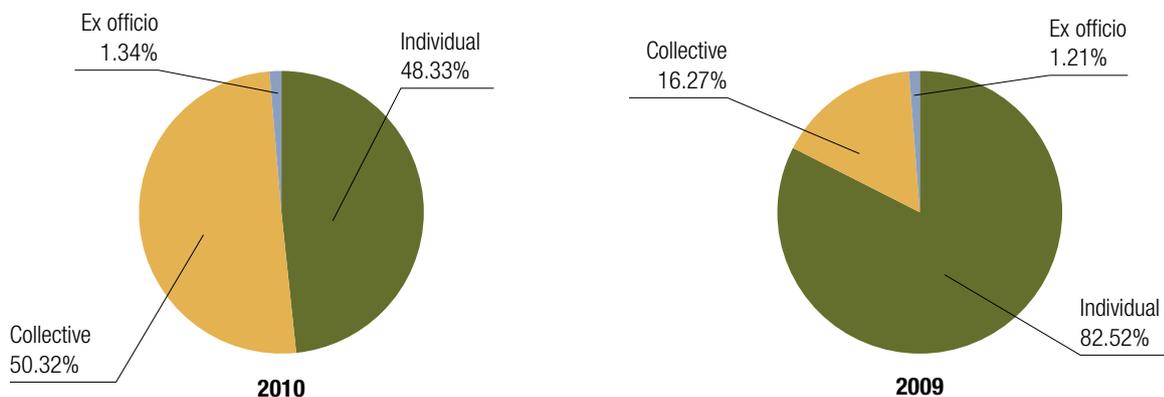
We would also highlight the slight decrease in complaints filed by individuals, a decrease of 8.88% percent from 2009. This corresponds to the usual year-on-year fluctuations, especially given the notable increase registered in 2009, when we recorded the highest number of complaints since the institution began its activities.

**TABLE 1**  
Complaints filed and ex officio investigations 2009 to 2010

Type	2010	2009
Collective	17,449	3,626
Individual	16,759	18,392
Ex officio	466	269
<b>Total</b>	<b>34,674</b>	<b>22,287</b>

Figure 1 shows that more than half of these cases derive from collective complaints, accounting for 50.32% of the total. However, in comparison with the cases registered in 2009, there was a notable increase in their weight compared to individual complaints, going from 82.52% last year to nearly half that in 2010 with 48.33%.

**FIGURE 1**  
Breakdown by percentage of complaints filed and ex officio investigations opened during 2010 compared to 2009



### Breakdown of complaints by geographical origin

The geographical breakdown of the 34,208 complaint cases recorded in 2010, excluding ex officio enquiries, is as

follows. Thus, 33,870 cases (99.01%) were of national origin, while only 338 originated abroad (0.99%).

**FIGURE 2**  
Breakdown of complaints by autonomous community. 2010



**TABLE 3**  
Breakdown of complaints of national origin, by province and autonomous community. 2010 and 2009

Autonomous communities and provinces	Number		% community		% total	
	2010	2009	2010	2009	2010	2009
<b>Basque Region</b>						
Álava	106	61	15.87	12.30	0.31	0.28
Guipúzcoa	164	168	24.55	33.87	0.48	0.77
Vizcaya	398	267	59.58	53.83	1.18	1.23
<b>Total</b>	<b>668</b>	<b>496</b>	<b>100.00</b>	<b>100.00</b>	<b>1.97</b>	<b>2.29</b>
<b>Catalonia</b>						
Barcelona	2,806	2,699	80.49	78.32	8.28	12.44
Girona	240	349	6.88	10.13	0.71	1.61
Lleida	128	136	3.67	3.95	0.38	0.63
Tarragona	312	262	8.95	7.60	0.92	1.21
<b>Total</b>	<b>3,486</b>	<b>3,446</b>	<b>100.00</b>	<b>100.00</b>	<b>10.29</b>	<b>15.89</b>

TABLE 3 (continuation)

Autonomous communities and provinces	Number		% community		% total	
	2010	2009	2010	2009	2010	2009
<b>Galicia</b>						
A Coruña	1,025	550	45.15	49.95	3.03	2.54
Lugo	136	138	5.99	12.53	0.40	0.64
Ourense	229	81	10.09	7.36	0.68	0.37
Pontevedra	880	332	38.77	30.15	2.60	1.53
<b>Total</b>	<b>2,270</b>	<b>1,101</b>	<b>100.00</b>	<b>100.00</b>	<b>6.70</b>	<b>5.08</b>
<b>Andalusia</b>						
Almería	398	173	6.42	6.20	1.18	0.80
Cádiz	764	399	12.31	14.29	2.26	1.84
Córdoba	619	244	9.98	8.74	1.83	1.12
Granada	766	352	12.35	12.61	2.26	1.62
Huelva	553	105	8.91	3.76	1.63	0.48
Jaén	456	157	7.35	5.62	1.35	0.72
Málaga	1,203	564	19.39	20.20	3.55	2.60
Sevilla	1,445	798	23.29	28.58	4.27	3.68
<b>Total</b>	<b>6,204</b>	<b>2,792</b>	<b>100.00</b>	<b>100.00</b>	<b>18.32</b>	<b>12.87</b>
<b>Asturias</b>						
<b>Total</b>	<b>1,041</b>	<b>459</b>	<b>100.00</b>	<b>100.00</b>	<b>3.07</b>	<b>2.12</b>
<b>Cantabria</b>						
<b>Total</b>	<b>251</b>	<b>247</b>	<b>100.00</b>	<b>100.00</b>	<b>0.74</b>	<b>1.14</b>
<b>La Rioja</b>						
<b>Total</b>	<b>182</b>	<b>174</b>	<b>100.00</b>	<b>100.00</b>	<b>0.54</b>	<b>0.80</b>
<b>Murcia</b>						
<b>Total</b>	<b>536</b>	<b>490</b>	<b>100.00</b>	<b>100.00</b>	<b>1.58</b>	<b>2.26</b>
<b>Community of Valencia</b>						
Alicante	2,690	906	56.11	38.67	7.94	4.18
Castellón	383	215	7.99	9.18	1.13	0.99
Valencia	1,721	1,222	35.90	52.16	5.08	5.63
<b>Total</b>	<b>4,794</b>	<b>2,343</b>	<b>100.00</b>	<b>100.00</b>	<b>14.15</b>	<b>10.80</b>
<b>Aragón</b>						
Huesca	88	80	13.15	13.54	0.26	0.37
Teruel	83	47	12.41	7.95	0.25	0.22
Zaragoza	498	464	74.44	78.51	1.47	2.14
<b>Total</b>	<b>669</b>	<b>591</b>	<b>100.00</b>	<b>100.00</b>	<b>1.98</b>	<b>2.72</b>
<b>Castilla-La Mancha</b>						
Albacete	99	112	9.81	14.81	0.29	0.52
Ciudad Real	398	159	39.44	21.03	1.18	0.73
Cuenca	51	75	5.05	9.92	0.15	0.35

TABLE 3 (continuation)

Autonomous communities and provinces	Number		% community		% total	
	2010	2009	2010	2009	2010	2009
Guadalajara	166	124	16.45	16.40	0.49	0.57
Toledo	295	286	29.24	37.83	0.87	1.32
<b>Total</b>	<b>1,009</b>	<b>756</b>	<b>100.00</b>	<b>100.00</b>	<b>2.98</b>	<b>3.48</b>
<b>Canary Islands</b>						
Las Palmas	1,483	504	61.54	56.44	4.38	2.32
Santa Cruz de Tenerife	927	389	38.46	43.56	2.74	1.79
<b>Total</b>	<b>2,410</b>	<b>893</b>	<b>100.00</b>	<b>100.00</b>	<b>7.12</b>	<b>4.12</b>
<b>Navarra</b>						
<b>Total</b>	<b>215</b>	<b>199</b>	<b>100.00</b>	<b>100.00</b>	<b>0.63</b>	<b>0.92</b>
<b>Extremadura</b>						
Badajoz	230	210	56.10	55.56	0.68	0.97
Cáceres	180	168	43.90	44.44	0.53	0.77
<b>Total</b>	<b>410</b>	<b>378</b>	<b>100.00</b>	<b>100.00</b>	<b>1.21</b>	<b>1.74</b>
<b>Balearic Islands</b>						
<b>Total</b>	<b>422</b>	<b>437</b>	<b>100.00</b>	<b>100.00</b>	<b>1.25</b>	<b>2.01</b>
<b>Community of Madrid</b>						
<b>Total</b>	<b>7,401</b>	<b>5,098</b>	<b>100.00</b>	<b>100.00</b>	<b>21.85</b>	<b>23.50</b>
<b>Castilla y León</b>						
Ávila	82	55	5.46	3.86	0.24	0.25
Burgos	231	200	15.38	14.04	0.68	0.92
León	271	314	18.04	22.04	0.80	1.45
Palencia	96	158	6.39	11.09	0.28	0.73
Salamanca	241	186	16.05	13.05	0.71	0.86
Segovia	90	87	5.99	6.11	0.27	0.40
Soria	59	34	3.93	2.39	0.17	0.16
Valladolid	272	315	18.11	22.11	0.80	1.45
Zamora	160	76	10.65	5.33	0.47	0.35
<b>Total</b>	<b>1,502</b>	<b>1,425</b>	<b>100.00</b>	<b>100.00</b>	<b>4.43</b>	<b>6.57</b>
<b>Ceuta</b>						
<b>Total</b>	<b>247</b>	<b>77</b>	<b>100.00</b>	<b>100.00</b>	<b>0.73</b>	<b>0.35</b>
<b>Melilla</b>						
<b>Total</b>	<b>57</b>	<b>114</b>	<b>100.00</b>	<b>100.00</b>	<b>0.17</b>	<b>0.53</b>
<b>Unspecific Origin</b>						
<b>Total</b>	<b>96</b>	<b>177</b>	<b>100.00</b>	<b>100.00</b>	<b>0.28</b>	<b>0.82</b>
<b>Total</b>	<b>33,870</b>	<b>21,693</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>

As tends to be the case, a significant number of complaints, both individual and collective, originated in those autonomous communities with the largest populations. The Com-

munity of Madrid (21.85%) occupied the top position, followed by the Communities of Andalusia (18.32%), Valencia (14.15%) and Catalonia (10.29%).

**TABLE 4**  
**Individual and collective complaints and percentage distribution by autonomous community. 2010 and 2009**

Autonomous communities	Individual				Collective			
	Number		% total		Number		% total	
	2010	2009	2010	2009	2010	2009	2010	2009
Basque Region	415	400	2.52	2.21	253	96	1.45	2.65
Catalonia	2,198	2,322	13.35	12.85	1,288	1,124	7.40	31.06
Galicia	706	882	4.29	4.88	1,564	219	8.99	6.05
Andalusia	1,959	2,393	11.90	13.24	4,245	399	24.39	11.03
Asturias	325	402	1.97	2.22	716	57	4.11	1.58
Cantabria	194	220	1.18	1.22	57	27	0.33	0.75
La Rioja	131	162	0.80	0.90	51	12	0.29	0.33
Murcia	431	437	2.62	2.42	105	53	0.60	1.46
Community of Valencia	1,926	2,056	11.70	11.38	2,868	287	16.48	7.93
Aragón	415	462	2.52	2.56	254	129	1.46	3.56
Castilla-La Mancha	637	674	3.87	3.73	372	82	2.14	2.27
Canary Islands	758	766	4.60	4.24	1,652	127	9.49	3.51
Navarra	174	163	1.06	0.90	41	36	0.24	0.99
Extremadura	302	353	1.83	1.95	108	25	0.62	0.69
Balearic Islands	343	398	2.08	2.20	79	39	0.45	1.08
Community of Madrid	4,380	4,650	26.60	25.73	3,021	448	17.36	12.38
Castilla y León	962	1,061	5.84	5.87	540	364	3.10	10.06
Ceuta	65	58	0.39	0.32	182	19	1.05	0.53
Melilla	51	102	0.31	0.56	6	12	0.03	0.33
Unspecified origin*	94	113	0.57	0.63	2	64	0.01	1.77
<b>Total</b>	<b>16,466</b>	<b>18,074</b>	<b>100.00</b>	<b>100.00</b>	<b>17,404</b>	<b>3,619</b>	<b>100.00</b>	<b>100.00</b>

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

### Complaints originating abroad

A total of 338 complaints originated abroad in 2010, which was in line with the previous two years.

**TABLE 5**  
Breakdown of complaints originating abroad, by country. 2008 to 2010

Country	2010	2009	2008
Germany	24	25	21
Saudi Arabia	0	1	0
Algeria	2	1	1
Argentina	27	18	37
Australia	3	1	1
Austria	2	2	3
Belgium	8	15	10
Bolivia	3	2	5
Brazil	7	10	15
Bulgaria	0	2	0
Burkina Faso	0	1	0
Canada	2	0	4
Chile	4	2	5
Cyprus	0	1	0
Colombia	14	17	23
Costa Rica	4	4	1
Cuba	14	16	11
Denmark	2	2	1
Ecuador	5	11	9
Egypt	0	1	1
El Salvador	1	0	0
United Arab Emirates	0	1	0
Slovakia	0	2	1
United States	12	15	17
Finland	0	1	1
France	23	26	26
Gabon	0	1	0
Greece	0	5	0
Guatemala	2	1	0
Equatorial Guinea	0	1	1
Holland	6	8	6
Honduras	2	1	3
India	0	1	0
Indonesia	0	1	0
Ireland	3	0	1
Israel	0	0	1
Italy	44	11	4
Japan	0	0	2
Latvia	0	1	0
Libya	0	1	0
Liechtenstein	0	0	1
Luxembourg	1	0	2
Malta	0	0	1
Morocco	22	15	25
México	9	2	12
Nepal	1	0	0
Nicaragua	1	0	3
Norway	1	1	3
Panama	0	2	1
Paraguay	1	0	1
Peru	12	12	17
Poland	4	4	3
Portugal	9	7	9
Andorra	4	1	4
Puerto Rico	0	1	1
UK	26	38	38
Czech Republic	0	1	1
Dominican Republic	13	5	3
Romania	2	0	0
Western Sahara	0	0	2
Senegal	0	2	0
South Africa	0	1	0
Sweden	1	1	1
Switzerland	8	9	5
Taiwan Province of China	1	0	0
Turkey	0	1	0
Ukraine	0	2	3
Uruguay	1	5	3
Venezuela	7	6	5
<b>Total</b>	<b>338</b>	<b>325</b>	<b>355</b>

### Breakdown of complaints by filing method

Complaints can be classified according to the method used to submit them to the Office of the Ombudsman (see Table 6). Of the complaints originating from the offices of the Parliamentary Commissioners of the autonomous communities, the largest number originated from the Valencian Ombudsman, followed by Galicia, Andalusia Catalonia, Castilla y León, Aragón, the Canary Islands and the Region of Murcia (see Table 7). The complaints filed by 'Other public institutions and organisations' are reflected in Table 8.

**TABLE 6**  
Origin of complaints submitted according to filing method. 2010

Filing method	Number	%
Direct (individual and collective)	29.999	87,70
Via Ombudsmen in Autonomous Parliaments	4.159	12,16
Via other entities and organisms	50	0,15
<b>Total</b>	<b>34.208</b>	<b>100,00</b>

**TABLE 7**  
Percentage distribution of complaints received from Autonomous Ombudsman. 2010 and 2009

Origin	Number		%	
	2010	2009	2010	2009
Ararteko, Basque Region	87	57	2.09	2.88
Síndic de Greuges, Catalonia	212	143	5.10	7.24
Valedor do Pobo, Galicia	437	325	10.51	16.45
Ombudsman of Andalusia	377	332	9.06	16.80
General Procurer of Asturias	27	34	0.65	1.72
Síndic de Greuges , Community of Valencia	2,170	293	52.18	14.83
Justicia de Aragón	168	155	4.04	7.84
Ombudsman Castilla-La Mancha	68	41	1.64	2.07
Ombudsman of La Rioja	64	65	1.54	3.29
Diputado del Común, Canary Islands	151	161	3.63	8.15
Ombudsman of Navarra	87	67	2.09	3.39
Ombudsman of Murcia	102	66	2.45	3.34
Procurador del Común, Castilla y León	209	237	5.03	11.99
<b>Total</b>	<b>4,159</b>	<b>1,976</b>	<b>100.00</b>	<b>100.00</b>

**TABLE 8**  
Percentage distribution of complaints received from Other public institutions and organisations. 2010 and 2009

Origin	Number		%	
	2010	2009	2010	2009
Parliament	7	0	14.00	0
Judiciary	2	0	4.00	0
Government Delegations	1	2	2.00	2.53
Autonomous organizations	8	14	16.00	17.72
City Halls	3	7	6.00	8.86
Municipal Ombudsman offices	15	18	30.00	22.78
Municipal Consumer Information Offices	6	23	12.00	29.11
Foreign Ombudsmen	8	15	16.00	18.99
<b>Total</b>	<b>50</b>	<b>79</b>	<b>100.00</b>	<b>100.00</b>

### Breakdown of complaints by sector

Table 9 sets out information relating to the subject matter of complaints filed in 2010, broken down into the eight management areas used by the Institution at the close of the year. Within each area, we specify the subject matter of the individual, collective, and ex officio complaints. Looking at all of the complaint cases filed by citizens, the largest number relates to Economic Administration, followed by those relating to issues of Security and Justice, as well as

Health and Social Issues. As for the most significant changes, the most noteworthy include the increase in collective complaints in the field of Civil Servants and Public Employment, along with those for Health and Social Issues.

The most numerous ex officio investigations refer to the NPM actions. Given the very nature of this activity, we have prepared a special report in the corresponding section of this report.

**TABLE 9**  
**Breakdown of complaints filed by management area and subject matter. 2010**

Sectors	Collective	Individual	Ex Officio	Total
<b>CIVIL SERVANTS AND PUBLIC EMPLOYMENT</b>				
Civil servants and personnel from General Administration, Social Security and autonomous and local administrations	8,289	841	23	9,153
Personnel from the Armed Forces	428	223	3	654
Judges and Magistrates, Attorney Generals, personnel at the service of the Justice, Administration and Penitentiary Institutions	201	28	4	233
Notary publics	1	1	0	2
Being studied	0	187	0	187
<b>Total</b>	<b>8,919</b>	<b>1,280</b>	<b>30</b>	<b>10,229</b>
<b>SECURITY AND JUSTICE</b>				
Citizen and road security	15	1,006	2	1,023
Home Affairs	0	281	8	289
Prisons	0	478	51	529
Defense	0	8	0	8
Justice Administration	28	1,267	4	1,299
Victims of crimes	19	18	0	37
Notary publics	0	18	0	18
Being studied	0	331	6	337
<b>Total</b>	<b>62</b>	<b>3,407</b>	<b>71</b>	<b>3,540</b>
<b>ECONOMIC ADMINISTRATION</b>				
Economic Administration	142	833	1	976
Internal Revenue and Taxes	0	781	48	829
Telecommunications and postal services	5	976	1	982
Infrastructure and Transport	2,127	494	2	2,623
Industry, energy and commerce	60	389	0	449
Agriculture, livestock, and fishing	0	25	0	25
Being studied	0	194	0	194
<b>Total</b>	<b>2,334</b>	<b>3,692</b>	<b>52</b>	<b>6,078</b>
<b>LAND MANAGEMENT</b>				
Zoning and housing	0	1,106	9	1,115
Environment	298	513	12	823
Land management and planning	116	5	1	122
Being studied	0	118	0	118
<b>Total</b>	<b>414</b>	<b>1,742</b>	<b>22</b>	<b>2,178</b>

TABLE 9 (continuation)

Sectors	Collective	Individual	Ex Officio	Total
<b>HEALTH AND SOCIAL ISSUES</b>				
Social policy	97	684	2	783
Labor and Social Security	5,245	1,041	1	6,287
Health	0	502	34	536
Consumer affairs	143	215	0	358
Being studied	0	335	0	335
<b>Total</b>	<b>5,485</b>	<b>2,777</b>	<b>37</b>	<b>8,299</b>
<b>MIGRATIONS AND EQUAL TREATMENT</b>				
Registry Offices	0	484	1	485
Religious freedom	0	17	0	17
Immigration and Foreign Affairs	0	1,199	10	1,209
Emigration	0	21	0	21
Foreign Affairs	0	71	1	72
Racism and xenophobia	0	48	0	48
Being studied	0	220	9	229
<b>Total</b>	<b>0</b>	<b>2,060</b>	<b>21</b>	<b>2,081</b>
<b>EDUCATION AND CULTURE</b>				
Education	235	773	20	1,028
Culture and sports	0	36	0	36
The right of association, electoral system and statistical	0	37	0	37
Communication media	0	101	0	101
Organization and legal system of the Local Corporations	0	287	1	288
Administrative procedure, property liability and official publications	0	61	0	61
Data protection and Intellectual property	0	148	1	149
Other subjects	0	209	0	209
Being studied	0	149	0	149
<b>Total</b>	<b>235</b>	<b>1,801</b>	<b>22</b>	<b>2,058</b>
<b>NMP</b>				
National Police	0	0	60	60
Guardia Civil	0	0	51	51
Armed Forces	0	0	6	6
Prisons	0	0	13	13
Regional Polices	0	0	1	1
Juvenile Facilities	0	0	9	9
Deposits held municipal	0	0	65	65
Being studied	0	0	6	6
<b>Total</b>	<b>0</b>	<b>0</b>	<b>211</b>	<b>211</b>
<b>Total</b>	<b>17,449</b>	<b>16,759</b>	<b>466</b>	<b>34,674</b>

## Year-end status of complaints filed in 2010

The data shown in Table 10 reflect the status of complaint cases and ex officio investigations at 31 December 2010

**TABLE 10**  
Status of complaint cases and ex officio investigations at 31 December 2010

Status	Individual		Collective		Ex Officio		Total	
	Nº	%	Nº	%	Nº	%	Nº	%
Admitted for processing	5,466	32.62	3,345	19.17	420	90.13	9,231	26.62
Being processed	2,960	17.66	576	3.30	322	69.10	3,858	11.13
Concluded	2,425	14.47	2,464	14.12	81	17.38	4,970	14.33
Suspended	81	0.48	305	1.75	17	3.65	403	1.16
Not admitted for processing	9,077	54.16	14,104	80.83	0	0	23,181	66.85
Pending information lacking from complainant	667	3.98	0	0	0	0	667	1.92
Being studied	1,549	9.24	0	0	46	9.87	1,595	4.60
<b>Total</b>	<b>16,759</b>	<b>100.00</b>	<b>17,449</b>	<b>100.00</b>	<b>466</b>	<b>100.00</b>	<b>34,674</b>	<b>100.00</b>

Regarding complaints that are rejected, we must reiterate that all of them are considered carefully, and that those that incur in one or more of the legal justifications for rejection as outlined in Organic Law 3/1981, which governs the Ombudsman's Office, they are classified as inadmissible. Furthermore, in all cases, without exception, information is promptly sent to claimants regarding the reasons for rejection and they are given any additional information that might help them to resolve their problem, along with suggestions for possible courses of action.

**TABLE 11**  
Causes of non-admission of individual complaints. 2010

Causes of non-admission	Number	Causes of non-admission	Number
Administrative authority regarding issues within its own jurisdiction	17	No formal complaint, information requested	154
Lack of basis	141	No evidence of administrative irregularity	2,822
Personal conflict unrelated to the Administration	329	No legitimate interest	39
Waiver of complaint	31	Unfulfilled requirements for the admission of an appeal	8
Inexistence of claim	30	Without basis to impose an appeal	140
Intervention by Autonomous Parliamentary commissioner	114	Several concurrent reasons for non-admission	1,899
Judicial intervention	863	Third party bias	4
No previous administrative action	1,320	Period over a year	37
No action involving public authorities	296	Anonymous complaint	5
No answer to resolvable defects	16	Resolved without Ombudsman's intervention	120
No answer to request for information	386	Irreversible sentence	152
No formal complaint, information sent	154	<b>Total</b>	<b>9,077</b>

### Individual complaint cases

The greatest number of individual complaints and ex officio enquiries filed before the public administrations were those concerned with the General State Administration.

**TABLE 12**  
Individual complaint cases processed by the Administration in 2010

Administration	Being processed	Concluded	Suspended	Total
General State Administration	1,278	1,411	7	2,696
Autonomous community administrations	430	370	0	800
Local Administrations	476	322	0	798
Attorney General's Office	72	66	0	138
Other public entities	40	58	72	170
Miscellaneous administrations	198	60	1	259
Investigation unnecessary	466	138	1	605
<b>Total</b>	<b>2,960</b>	<b>2,425</b>	<b>81</b>	<b>5,466</b>

Tables 13 and 14 set out the complaints, both individual and ex officio, filed in 2010 before the General State Administration and before organisations belonging to the various Autonomous Communities.

In relation to the number of complaints processed by the Regional Government of Catalonia, we would highlight the peculiarity that has resulted in previous years when initiating proceedings due to the arguments of the statutory remedies sought before the Constitutional Court, a circumstance already overcome with the enactment of Judgement 31/2010 of 28 June, from which this institution has resumed its normal oversight of said Administration.

**TABLE 13**  
Breakdown of the proceedings before the General State Administration. 2010.  
Individual complaint cases

Ministries	Being processed	Concluded	Suspended	Total
Prime Minister	1	1	0	2
Prime Minister's Office	7	3	0	10
Ministry of Foreign Affairs and Cooperation	122	79	0	201
Ministry of Culture	4	2	0	6
Ministry of Defense	14	18	0	32
Ministry of Economy and Finance	151	132	0	283
Ministry of Public Works	198	293	4	495
Ministry of Industry, Tourism and Trade	95	60	0	155
Ministry of the Interior	243	254	2	499
Ministry of Justice	222	93	0	315
Peripheral administrations	1		0	1
Miscellaneous Ministry Departments	66	157	0	223
Ministry of Science and Innovation		2	0	2
Ministry of Environment, Rural Areas and Marine Areas	27	14	0	41
Ministry of Labor and Immigration	52	149	1	202
Ministry of Territorial Policy and Public Administration		18	0	18
Ministry of Health and Social Policy and Equality	1	26	0	27
Ministry of Education	74	110	0	184
<b>Total</b>	<b>1,278</b>	<b>1,411</b>	<b>7</b>	<b>2,696</b>

**TABLE 14**  
**Breakdown of the proceedings before the Regional Administrations. 2010.**  
**Individual complaint cases**

Autonomous communities	Being processed	Concluded	Total
Catalonia	12	5	17
Basque Region	2	5	7
Galicia	14	13	27
Cantabria	10	7	17
Asturias	5	10	15
Andalusia	43	32	75
Murcia	14	7	21
Aragón	3	5	8
Castilla-La Mancha	12	18	30
Community of Valencia	45	53	98
La Rioja		3	3
Extremadura	12	10	22
Canary Islands	23	14	37
Castilla y León	10	20	30
Balearic Islands	11	13	24
Community of Madrid	208	152	360
Navarra	0	1	1
Ceuta	1	0	1
Melilla	2	0	2
Miscellaneous administrations	3	2	5
<b>Total</b>	<b>430</b>	<b>370</b>	<b>800</b>

**TABLE 15**  
**Types of conclusions in individual complaints, by administration 2010**

Administration	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
General State Administration	592	535	59	225	1,411
Autonomous Community Administration	130	121	18	101	370
Local Administrations	179	105	13	25	322
Attorney General's Office	42	9	1	14	66
Other public entities	30	23	0	5	58
Miscellaneous Administrations	20	15	0	25	60
Investigation unnecessary	53	48	6	31	138
<b>Total</b>	<b>1,046</b>	<b>856</b>	<b>97</b>	<b>426</b>	<b>2,425</b>

**TABLE 16**  
**Breakdown of types of conclusions for individual complaints received in relation to the General State Administration. 2010**

Ministries	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
Prime Minister	1	0	0	0	1
Prime Minister's Office	2	0	1	0	3
Ministry of Foreign Affairs and Co-operation	27	25	2	25	79
Ministry of Culture	0	2	0	0	2
Ministry of Defense	10	3	1	4	18
Ministry of Economy and Finance	55	60	5	12	132
Ministry of Public Works	135	129	11	18	293
Ministry of Industry, Tourism and Trade	43	15	1	1	60
Ministerio of the Interior	133	81	4	36	254
Ministry of Justice	33	25	9	26	93
Ministry of Science and Innovation	1	1	0	0	2
Ministry of Environment, Rural Areas, and Marine Areas	10	3	0	1	14
Ministry of Labor and Immigration	63	59	4	23	149
*Ministry of Territorial Policy and Public Administration	17	1	0	0	18
Ministry of Health and Social Policy and Equality		1	0	25	26
Ministry of Education	20	83	1	6	110
Miscellaneous Ministry departments	42	47	20	48	157
<b>Total</b>	<b>592</b>	<b>535</b>	<b>59</b>	<b>225</b>	<b>1,411</b>

**TABLE 17**  
**Breakdown of types of conclusions for individual complaints received listed by Autonomous Community Administrations. 2010**

Administration	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
Catalonia	2	2	0	1	5
Basque Region	3	0	0	2	5
Galicia	4	2	1	6	13
Cantabria	5	0	1	1	7
Asturias	3	5	0	2	10
Andalusia	18	3	0	11	32
Murcia	1	4	0	2	7
Aragón	0	2	0	3	5
Castilla-La Mancha	11	5	0	2	18
Community of Valencia	9	24	4	16	53
La Rioja	1	1	0	1	3
Extremadura	6	3	0	1	10
Canary Islands	4	6	1	3	14
Castilla y León	5	8	0	7	20
Balearic Islands	9	3	0	1	13
Community of Madrid	49	53	11	39	152
Navarra	0	0	0	1	1
Miscellaneous administrations	0	0	0	2	2
<b>Total</b>	<b>130</b>	<b>121</b>	<b>18</b>	<b>101</b>	<b>370</b>

## 17,449 collective complaints

The collective complaints handled in 2010 have generated a total of 17,449 cases. Shown below are complaints that were filed by a significant number of citizens, along with a summary of the issue involved:

- 626 citizens expressed their dissatisfaction with the extraordinary measures to reduce government spending adopted by the Regional Government of the Canary Islands.
- 143 affected users expressed their disagreement with the resolution issued by the National Consumer Institute, which denied the Association of Users Affected by Swaps and Financial Derivatives the right to register said organisation in the State Register of Consumers and Users.
- 166 stakeholders expressed their disagreement with the replacement of the Certificate of Pedagogical Aptitude (CAP for the Spanish initials) to access non-university faculties due to the requirement of holding a master's degree.
- 103 citizens showed their disagreement with the decline in public job offers for access to the Basic Scale of Guardia Civil Corporals and Officers.
- 138 citizens living in the Autonomous Community of Galicia, through the regional ombudsman known in the local language as Valedor do Pobo, objected to the informative study of the Atlantic Axis of the High Speed Rail A Coruña-Betanzos section.
- 5,057 people expressed their dissatisfaction with the new regulation on dismissals for objective reasons, the payment by the Wage Guarantee Fund of part of the compensation and the possibility that the Administration can recruit staff from temporary employment agencies, aspects established in Law 35/2010, on Urgent Measures to Reform the Labour Market.
- 235 applicants to obtain the specialist qualification in Clinical Psychology questioned the development process of recognition of qualifications and requested the suspension of the aptitude test provided for this purpose for alleged deficiencies contained in the test process.
- 2,858 citizens requested the application for review of constitutionality of the Decree-Law 5/2010 of the Regional Government of Andalusia approving emergency measures to reorganise the public sector.
- 489 people requested the lodging of an appeal of unconstitutionality against the transitional provisions of the Law of the Principality of Asturias 6/2009, on the Evaluation of teachers and their incentives.
- 116 citizens requested the lodging of an appeal of unconstitutionality against the law of the Parliament of Galicia 2/2010 on urgent measures to amend Act 9/2002, regulating urban development and protection of the rural environment.
- 188 people requested the lodging of an appeal of unconstitutionality against Law 35/2010, on Urgent Measures to Reform the Labour Market.
- 3,589 citizens requested the application for review of the constitutionality of the Royal Decree-Law 8/2010 approving emergency measures to reduce public deficit.
- 139 workers requested that the Post Office implement a 0.3% increase in their salaries in application of the State Budget Law for 2010.
- 165 residents of Madrid expressed their disagreement with the rising price of the Metrobus travel voucher.
- 1962 residents of the Valencia Region, through the regional Ombudsman known as the Síndic de Greuges, called for the construction and operation of a railway line that connects the towns of Gandia, Oliva and Denia.
- 305 Guardia Civil members called for the government to submit to a bill to Parliament to update the personnel system of the Guardia Civil with a new structure of scales.
- 74 citizens participating in the selection process for administrative assistants launched by the Madrid City Council stated their disagreement with the scoring system applied by the said city.
- 128 citizens requested the filing of an appeal of unconstitutionality against the whole of Royal Decree-Law 11/2010, on the governing bodies and other aspects of the legal status of savings banks.
- 97 people filed a complaint for lack of policy development on the consideration of single parents with two or more children as large families.
- 72 people involved in the selection process for the Legal Aid Corps held in Seville filed a complaint for the alleged violation of the rules of this process.
- 2,074 people stated their disagreement with the approval of the Law of Liberalisation Measures and Support for the Madrid-based Company, in force since 30 December 2009, Article 5 of which amends paragraph 4 of Article 9 of Law 1/1997, which regulates Street Vending within the Community of Madrid.
- 273 people questioned the terms governing the provision of elective subjects in mandatory secondary education and high school in Castilla y León.
- 22,102 people voiced their complaints over the alleged error in the quantification of the prison term of a person convicted of murder, which resulted in his release before the end of the sentence.
- 490 residents of Galapagar (Madrid) filed a complaint against the decision of the City Council not to withdraw a stork's nest in a church's belfry.
- 143 members of the Spanish Federation of Immigrant and Refugees Associations raised a complaint against the Circular 1/2010 issued by the General Office of Immigra-

- tion and Borders, considering that it adversely affects the rights of immigrants.
- 241 affected people denounced the criteria for allocating the productivity bonus of the National Tax Administration Agency.
  - 285 people questioned aspects of the legislation of the Community of Madrid, in relation to the implementation of the uninterrupted school day.
  - 174 residents of Castrojimeno (Segovia) expressed their disagreement with the criteria set by the Regional Government of Castilla y León regarding the options for receiving digital terrestrial television broadcasts.
  - 5,235 citizens of Antigua, Fuerteventura (Las Palmas) complained about the inadequate design of the 'El Castillo' beach.
  - 6,210 people complained about the actions of the Spanish Embassy in Venezuela in response to the alleged inadequate information provided after the death of a Spanish citizen in said country.
  - 1,233 English teachers questioned some aspects of the Order 4195/2009 of the Regional Ministry of Education of Madrid, which governs the selection of public secondary education schools where bilingual Spanish-English teaching will be implemented during 2010-2011.
  - 487 citizens raised doubts about the adequacy of the enactment of the Principality of Asturias 2/2010, on the integration of 'Hospital del Oriente de Asturias Francisco Grande Covián' and its staff in the Health Service of the Principality of Asturias, under a direct management regime.
  - 371 residents of Porto do Cabo (A Coruña) filed a complaint for lack of results in complaints to various authorities for failure to receive digital terrestrial television broadcasts.
  - 150 civil servants belonging to the Technical Corps of the Tax Authority assigned to the Special Delegation of the Canary Islands filed a complaint against the procedure applied by the State Tax Administration Agency in the transfer auctions.
  - 1,172 members of the Association of 'Valle Inclán' Neighbours in the Prosperidad district of Madrid requested the mediation of the Institution with the Community of Madrid to obtain the renewal of the grant of use of the premises where they have their headquarters.
  - 228 citizens raised a complaint against the inactivity of the Environmental Council of the Canary Islands with respect to the special plan of 'El Rincón'.
  - 653 affiliates of the 'Ocho Siglos en España' association expressed their disagreement with the meanings of the term 'gitanada' (literally 'gypsyism', Spanish meaning of 'wheeling'), contained in the latest edition of Dictionary of the RAE.
  - 1063 citizens filed a complaint against the City of Mecerreyes (Burgos) for ignoring their request to correct the location of the tomb of the Mazariegos corridor.

**TABLE 18**  
Causes for rejection of collective complaints. 2010

Reasons for non-admission	Number
Performance of regional Ombudsman	38
Lack of previous administrative action	29
No evidence of administrative irregularities	2,374
Without basis to impose an appeal	5,582
Several concurrent reasons for non-admission	6,081
<b>Total</b>	<b>14,104</b>

**TABLE 19**  
Collective complaint cases processed by the Administrations in 2010

Administrations	Being processed	Concluded	Suspended	Total
General State Administration	185	199	305	689
Autonomous Community Administrations	0	189	0	189
Local Administrations	28	74	0	102
Other public entities	0	9	0	9
Miscellaneous Administrations	123	1,962	0	2,085
Investigation unnecessary	240	31	0	271
<b>Total</b>	<b>576</b>	<b>2,464</b>	<b>305</b>	<b>3,345</b>

**TABLE 20**  
Breakdown of collective complaints handled by the General State Administration in 2010

Ministry of Foreign Affairs and Co-operation	0	19	0	19
Ministry of Economy and Finance	84	0	0	84
Ministry of Public Works	0	138	0	138
Ministry of Industry, Tourism and Trade	59	1	0	60
Ministry of the Interior	0	0	305	305
Ministry of Justice	0	36	0	36
Ministry of Environment, Rural Areas, and Marine Areas	42	0	0	42
Miscellaneous Ministry departments	0	5		5

**TABLE 21**  
Breakdown of collective complaints handled by the regional administrations in 2010

Autonomous communities	Concluded	Total
Community of Valencia	24	24
Community of Madrid	165	165
<b>Total</b>	<b>189</b>	<b>189</b>

**TABLE 22**  
Types of conclusions in collective complaints, by administration. 2010

Administrations	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
General State administration	163	36	0	0	199
Autonomous Community Administrations	165	24	0	0	189
Local Administrations	0	0	0	74	74
Other public entities	0	0	9	0	9
Miscellaneous Administrations	0	1,962	0	0	1,962
Investigation unnecessary	31	0	0	0	31
<b>Total</b>	<b>359</b>	<b>2,022</b>	<b>9</b>	<b>74</b>	<b>2,464</b>

## 466 ex officio complaints

The Ombudsman handled 466 ex officio investigations in 2010, representing a percentage increase of 73.23% compared to 2009. This increase was due to implementation of the National Preventive Mechanism against Torture (NPM), which acts exclusively ex officio, of the total number of investigations, 211 were of the NPM.

These actions are performed under the provisions of Article 12.1 of Organic Law 3/1981 of 6 April, on the Ombudsman, and are detailed in the following table, which specifies the situation at 31 December 2010, and the Administration before which they are processed. The table does not include the 46 ex officio investigations that on said date were under preparation.

**TABLE 23**  
Ex officio investigations in relation to different administrations. 2010

Administrations	Being processed	Concluded	Suspended	Total
General State Administration	203	47	17	267
Autonomous Community Administrations	82	26	0	108
Local Administrations	17	8	0	25
Attorney General's Office	3	0	0	3
Other public entities	1	0	0	1
Miscellaneous Administrations	16	0	0	16
<b>Total</b>	<b>322</b>	<b>81</b>	<b>17</b>	<b>420</b>

## Justice

The scarcity of material and human resources and the non-existence of courts were subject to ex officio enquiries. Thus, for example, the Institution initiated a case relating to the conditions under which La Coruña court officials of the violence against women court provided their services, and another regarding the structural problems in the Contentious-Administrative courts initiated at the General Council of the Judicial Branch. Regarding court delays, an ex officio investigation was opened at the Magistrate's Court no. 23 of Madrid for the existing delays in the processing of a procedure for alleged police mistreatment and abuse. Regarding violence against women, an ex officio investigation was launched for woman murdered despite prior restraining orders.

Other ex officio investigations were initiated at the Directorate General of the Agency for Rehabilitation and Reintegration of Juvenile Offenders in the Community of Madrid, relating to security at privately-run juvenile detention centres, at the General Directorate of the Police and Civil Guard, to promote research into child pornography websites, and relating to the lack of information from a mother about the whereabouts of her late daughter, who died and was interred in 2007.

## Prisons

The Office of the Ombudsman opens ex officio investigations whenever there is the death of an inmate at any detention centre and several such investigations were opened in 2010.

Other ex officio investigations included that opened for the constant assaults on prison officials Madrid III Prison in Valdemoro (Madrid), that initiated for the lack of health care to an inmate at the prison in Villena (Alicante), the investigation into improper relationships between an officer and several female inmates, as well as other abuse, at the Alicante Psychiatric Prison, and one for the entry of alcohol and the possible existence of improper relationships between staff and female prisoners at Madrid I. Similarly, the Ombudsman opened an investigation into the hunger strike by an inmate at the Palma Mallorca prison and another at the General Directorate of Prisons and Resources of the Autonomous Community of Catalonia, relating to an inmate riot at the Brians II prison and another relating to a fire at the Sevilla II prison.

The facilities and living conditions in prisons were the subject of five ex officio complaint cases: one for the absence of a maternity module at the Dueñas (Palencia) prison, one regarding the operation of video-conferencing, computers and other technologies at the Lanzarote prison, another for regarding the infrastructure in the women's module at Martutene (Guipúzcoa), one at the

Education Council of Castilla y Leon for the obstacles that have undocumented alien offenders have in enrolling in the educational unit at the Dueñas (Palencia) prison and, lastly, an ex officio investigation was initiated for the difficulties for a group of female prisoners to study high school at the Madrid V prison due to the absence of mixed groups.

22 prison visits were made in 2010 : Albacete, Albocaser (Castellón), Alcázar de San Juan (Ciudad Real), Alicante Cumplimiento, Basauri (Bilbao), Dueñas (Palencia), El Dueso (Cantabria), Alcalá Mujeres (Madrid I), Martutene (San Sebastian), Monterroso (Lugo), Morón de la Frontera (Sevilla II), Pereiro de Aguiar (Orense), Picassent Cumplimiento (Valencia), Soria, Soto del Real (Madrid V), Villabona (Asturias), Villanubla (Valladolid) and Villena (Alicante II).

## Citizens and Public Safety

Several cases of alleged mistreatment and police brutality were looked into in 2010, such as the case opened at the City Council of Barcelona for the release of mace by a municipal police patrol against a group of female citizens, allegedly prostitutes, in the Raval district, one initiated at the Department of Government and Institutional Relations of the Autonomous Community of Catalonia, due to injuries suffered by an Italian citizen who was shot by rubber bullets by regional police offices (Mossos d'Esquadra), and another at the City of Alcorcón (Madrid) for the assault by a local police officer against a detainee at a police station. Four ex officio investigations were initiated at the Directorate General of Police and Civil Guard, specifically a complaint by a repatriated Moroccan woman against an agent of the National Police Force for alleged sexual abuse, another for alleged abuse at the holding cells at the headquarters of the Criminal Courts of Seville, and two other cases, relating to the arrest of a professor of the University of Malaga Law School Civil against Civil Guard officers in the premises of said police force, and the lastly for the incidents in the National Police Station in Alameda de Hercules (Seville), where apparently several officers beat and humiliated a detainee.

The working conditions of the members of the State Security Forces triggered three ex officio complaints: one initiated at the City of Madrid for the inadequate equipment and vehicles of fire department personnel, one at the City of San Roque (Cádiz) on the working conditions of local police forces, and last that initiated at the City of La Línea de la Concepción (Cádiz) also on the working conditions of local police officers.

In addition, ex officio proceedings were opened to promote an investigation into an assault on a citizen in broad daylight in Granada, and lastly for the inconvenience suffered by

residents of central Seville caused by concentrations and the consumption of alcohol in public places.

### **Immigration and Equal Treatment**

Several ex officio investigations were opened in 2010 into victims of sex slavery. Thus, the office of the Ombudsman initiated an ex officio investigation at the General Directorate of Police and the Civil Guard and at the State Attorney General relating to a police operation to dismantle a sex trade network in Valencia that allegedly exploited a group of Romanian citizens. Ex officio investigations were also launched at the Government Sub-delegation of Lleida and to the State Attorney General's Office to know the outcome of police and judicial actions undertaken as a result of the arrest of an employee of the Unified Aliens Office of Lleida, who collaborated with two alleged pimps and at the Commissioner General of Immigration and Border of the Ministry of the Interior and at the State Attorney General, to know the actions being undertaken for victims following the arrest of several people suspected of a crime of sexual exploitation of Romanian minors. The arrest of several National Police officials in Lugo, suspected of the crime of sex trafficking, led to the opening of an ex officio investigation to know the actions carried out with the victims, and lastly, the Institution began an investigation into the police actions carried out in relation to several Nigerian women, alleged victims of sex trafficking, who were freed after the dismantling of two organised networks which forced them into prostitution.

Last year, advisers of the Institution visited the border post of the Madrid-Barajas Airport, the offices of the Immigration Office in Las Palmas de Gran Canaria, the Alien Services Centre in Murcia, the Alien Services Centre in Algeciras (Cádiz), the Underage Alien Service Centre 'Fuerte de la Purísima' in Melilla, the Temporary Alien Internment Centre in Melilla, and the facilities of the Immigration Office of Barcelona. Of all these visits triggered ex officio cases. Regarding abuse, an ex officio case was opened for the alleged abuse with injuries suffered by a Colombian citizen that occurred at the Alien Internment Centre of Madrid.

The attention received by Spanish citizens abroad was the subject of two ex officio investigations: One at the General Directorate of Consular Affairs and Assistance of the Ministry of Foreign Affairs and Cooperation, into the attention given by the Spanish consular authorities to a group of Spanish tourists who were on Robinson Crusoe Island (Chile) at the time of a tsunami, and another at the Secretary of State for Justice, to determine the impact of the application of Law 52/2007 (Historical Memory Act) on the workload of the Consulate General of Spain in Havana, in regard to the management of nationality cases.

Other ex officio investigations were initiated at the Ministry of the Presidency, Public Administration and Justice of the Autonomous Community of Galicia, on safety problems at the Civil Registry building in A Coruña. Another was initiated at the Government Sub-delegation in Castellón to determine the state of collapse that exists at the Department of Labour and Immigration, Alien Services Office of Castellón, and lastly an ex officio investigation was opened to determine the actions carried out regarding several boat people that arrived in Motril (Granada), particularly with regard to several pregnant women and a child born during the voyage.

### **Economic Administration**

An ex officio investigation was opened in 2010 with the Directorate General for Land Registry of the Ministry of Economy and Finance relating to a problem that can affect many rural property owners who can not access the cadastral registration of farms they own due to the review process carried out in one or more municipalities where the farms are located which led to changes in the numbers, location and morphology of the plots. Also, in this area, the office of the Ombudsman initiated an ex officio investigation at the national level with all the regional managers of land registries in order to obtain sufficient evidence to know their performance and conformity with regulatory obligations and the resources available to them. On the same subject, the Institution began an ex officio investigation with the Directorate General of Land Registry and at the Secretary of State for Finance and Budgets of the Ministry of Economy and Finance, following the Judgement of the National Court on 18 November 2009, which recognises the liability of the government for damages caused by the duplication of cadastral references of a property, leading to the duplication in the payment of Property Tax.

Other ex officio investigations were initiated at the Public Enterprise Infrastructure Administrator (ADIF) of the Ministry of Public Works, on the situation of the train line that runs from Palma to Manacor, on the island of Mallorca, which affects the safety of railway traffic, another with the Bank of Spain and the Ministry of Economy and Finance, on the supply of different financial products consisting of interest rate swaps to cover the risk of an increase in mortgage payments under the belief that what was contracted was really an insurance contract covering the contingency of a possible rise in interest rates. An ex officio investigation was initiated with the Secretary of State for Telecommunications and Information Society, for lack of a customer service of some of the mobile operators or, in other cases, the malfunction of this service, with the City Council of Nigrán (Pontevedra) and the Port Authority of Galicia, on the issues resulting from the renovation being done at the Port of Panxón and its surroundings. Lastly, ex officio in-

vestigations we initiated at the Secretary General of Prisons relating to the problems in the bus service to the Madrid VII prison.

### **Educational Administration**

In 2010 an ex officio investigation was launched at the national level with the competent authorities of all regions on the insufficient capacity of school facilities, the interim measures which sometimes are used to deal with the problem, and the negative consequences resulting from these practices, from the standpoint of the quality of the educational process for students.

In education, An investigation was also launched with the Ministry of Education of the Community of Madrid on the situation of a secondary education student who wanted to attend class wearing the Islamic veil but was refused entry under the rules of the school, and another complaint was opened with the General Directorate of University Policy of the Ministry of Education in order to know the possibilities that were revised in the policy measures to adapt existing regulations in order to design a system that, in line with the basic legislation on the matter, would allow students to adapt the curriculum to allow for early testing equivalent to that for access to college.

Two separate ex officio investigations were opened with the Spanish Data Protection Agency concerning judgments in infringement cases pending against various agencies and public entities that this Institution was notified of in compliance with the provisions of Law 15/1999 of 13 December, on the Protection of Data of a Personal Nature, which did not include any mention of concrete steps that the party responsible for the files must take to stop the infringement, or correct the effects thereof. Lastly, an investigation was launched with the City of Torrejón de Ardoz (Madrid) for the application of certain restrictive criteria for the registration of residents in said municipality.

### **Health Care**

In 2010 an ex officio investigation was launched nationally with the various public health care authorities in relation to waiting lists for the application of assisted human reproduction techniques. An investigation was also launched with the competent authorities in all Autonomous Communities to promote legal reforms to enable the establishment in pharmaceutical legislation and, more particularly, in the award of new pharmacies, a legal reserve for people with disabilities as affirmative action.

Another ex officio investigation was undertaken with Mayor of the City of Marmolejo (Jaén) following the appearance of human remains scattered in different places of public access.

### **Labour and Social Policy**

Once again, the child care centres in the different Autonomous Communities were the subjects of ex officio investigations opened by the Institution. Two separate ex officio investigations were initiated following the visit of the Institution's advisers to the 'La Esperanza' Child Protection Centre in Ceuta, and the 'Nuestra Señora del Cobre' Child Protection Centre in Algeciras (Cádiz).

Ex officio investigations were started at the Regional Ministry of Labour and Welfare of the Autonomous Community of Galicia on the death of a minor ward of the Regional Government of Galicia, and another with the Ministry of Social Welfare, Youth and Housing of the Autonomous Community of the Canary Islands and to the Island Council of Gran Canaria as a result of finding the body of a young man in the area of Tafira (Las Palmas) who was a ward of the Government of the Canary Islands.

### **Environment**

Investigations relating to the environment in 2010 have been numerous and varied. Thus, ex officio investigations were initiated with the Madrid City Council on the poor conservation of eight green zones in Madrid: Campo de la Paloma (Vallecas), Canto del Águila and Roquetas de Mar (Hortaleza), Parque de Valdebernardo and Cerro de Almodóvar (Vicálvaro), Casa de Campo and Cuña Verde de Latina (Latina) and Cuña Verde de O'Donnell (Moratalaz).

Moreover, a case was opened with the State Agency for the Evaluation of Public Policies and Quality of Services of the Ministry of Territorial Policy and Public Administration, asking them to report on the outcome of the evaluation of the management and operation of the Segura and Guadiana Hydrographic Confederations.

Other noteworthy investigations initiated included the Directorate General of the Merchant Marine and before the Secretary of State for Transport of the Ministry of Public Works on the transfer of fuel between ships (*bunkering*) in Gibraltar, that with the City Council of Píoz (Guadalajara) on the possible existence of substances not fit for human consumption in the water supply to the Valcastillo residential development, and another before the City Council of Leganés (Madrid) on the uncontrolled dumping of all kinds of waste in the municipality. An enquiry was also made with the Regional Ministry of Agriculture and Environment of the Autonomous Community of Castilla-La Mancha in connection with the burning of forest waste by the Public Environmental Management Company of Castilla-La Mancha (geacam) with the risk of fire and CO<sub>2</sub> emissions instead of disposal by shredding. An ex officio investigation was launched with the General Directorate of the Natural Environment and Forest Policy of the Ministry of Environment and Rural and Marine Affairs regarding the

Spanish Catalogue Invasive Species being prepared, and another before the City Council of Valencia on the authorisation given by the Board of the Albufera Nature Park to a power company to build a gas pipeline from El Saler to Les Gavines Urbanisation and through several nearby residential areas.

Lastly, on the occasion of the publication of the report by an environmental association on 'Mercury Immissions by the Chlorine Industry 2006-2010', based on measurements made in 2010 on eight chlorine plants that use mercury and compared with measurements conducted in 2006 and 2007 and exceeding the pollution levels marked by the World Health Organization triggered an ex officio enquiry with the Department of Environment and Housing of the Autonomous Community of Catalonia, the Regional Ministry of Environment, Land and Infrastructure Autonomous Community of Galicia, and the Directorate General of Quality and Environmental Assessment of the Ministry of the Environment, Rural and Marine Affairs.

### Urban planning and housing

In 2010 the office of the Ombudsman opened an ex officio enquiry with the Regional Ministry of Environment, Housing and Spatial Planning of the Community of Madrid on the need for a solution to social problems and management of the existing land in the Cañada Real Galiana area.

In housing matters, several ex officio investigations were opened, such as that initiated at the Madrid City Council on the lack of housing allocation under the 'Youth Home Rental Plan', the enquiry with the Directorate General of Housing and Rehabilitation of the Community of Madrid in connection with the denial of request by users to exchange the public housing occupied for others that best suit their current needs, and another initiated before the Municipal Housing and Land Company of Madrid on the auction of 42 homes that are empty and currently have no price protection.

On the issue of architectural barriers, two enquiries were opened. The first, before the provincial directorate of Seville of the Public Land Company of Andalusia on the situation of a young woman with osteogenesis imperfecta, who is unable to leave her home due to lack of a lift in the building and the second before the Directorate General of Housing and Rehabilitation of the Community of Madrid on the need to adapt housing units in the region to persons with disabilities who use wheelchairs, as well as to the blind and the deaf.

With regard to the poor maintenance of public spaces, an ex officio investigation was initiated before the City Council of Madrid regarding the poor maintenance of the public park in Plaza del Valle del Oro (Carabanchel) and another with

the City of San Lorenzo de El Escorial (Madrid) for the state of abandonment of the 'Fuentenueva' fountain

Other notable investigations include the one with the City of Los Molinos (Madrid) in relation to the closure of a road near the railway station which resulted in the isolation of those living on the other side of the tracks, a second before the City Council of Nigrán (Pontevedra) and the Port Authority of Galicia regarding the problems caused by renovations being done at the Port of Panxón and its surroundings, and a third with the City of Las Rozas (Madrid) and the Regional Ministry of the Environment, Housing and Spatial Planning of the Community of Madrid regarding a modification in the new Town Development Plan currently in process, which involves the reclassification of a protected area owned by the municipality as development land.

### Civil Servants

In 2010 an ex officio investigation was launched in all autonomous communities and before the National Health Management Institute of the Ministry of Health, Social Policy and Equality, in order to know and give uniform treatment across the public health system of the recognition of professional services rendered in the administrative status of temporary internal promotion.

The Institution also opened an ex officio investigation with the Ministry of Territorial Policy and Public Administration about the possibility of real and effective inter-administration mobility for professional staff and workers serving the government in order to allow for work-life balance. The office of the Ombudsman also launched an ex officio investigation with the Ministry of Labour and Immigration to investigate the possibility of amending Article 37 of the Workers' Statute regarding time off for breast feeding in the sense pointed to by the Judgement of the Second Chamber of the Court of Justice of the European Union.

Diverse ex officio investigations have been opened relating to working conditions and recruitment processes. Before the City Council of Madrid an ex officio case has been opened for the harm endured by students at the Police Academy of the Community of Madrid who have exceeded the period of theoretical training and are being required to provide effective service during regular rest periods. Similarly, a case has been opened with the Secretary General of Universities of the Ministry of Education on the discrepancy in the interpretation of Article 53 of Organic Law 6/2001, on Universities, in terms of the different rules for hiring university lecturers. Another investigation was opened with the Regional Ministry of Health of the Community of Madrid on the appointment of GPs with a temporary nature on the level of primary care to the detriment of other statutory temporary appointments. Lastly, an ex officio enquiry was opened before the Undersecretary of Labour and Immigra-

tion on the issues arising in the recruitment process of personal for the Labour and Immigration Council of the Spanish Embassy in Uruguay.

Regarding of public access administration management websites, an ex officio investigation was also launched with the Commissioner General of Immigration and Borders of

the Ministry of the Interior, and with the Secretary of State for Immigration and Emigration of the Ministry of Labour and Immigration, to enquire about the coordination activities, information and outreach efforts to facilitate citizens' access to various administrative websites due their relocation because of organisational changes in the structure of the Government.

## 448 resolutions of the Public Administrations

As a result of the individual, collective and ex officio complaints in 2010, 448 resulted in resolutions aimed at the different levels of government (see Table 24). Tables 25

and 26 contain more detail on the fate of the resolutions made by the Ombudsman, by type of resolution and target Administration.

**TABLE 24**  
Resolutions made in 2010

Resolutions	Accepted	Rejected	Pending	Total
Recommendations	54	16	36	106
Suggestions	89	54	54	197
Reminders of legal duties	0	0	0	140
Warnings	0	0	0	5
<b>Total</b>	<b>143</b>	<b>70</b>	<b>90</b>	<b>448</b>

**TABLE 25**  
Recommendations according to the Administration to which they were presented. Status at 31 December 2010

Administration	Accepted	Rejected	Pending	Total
General State Administration	26	9	16	51
Autonomous Community Administrations	13	2	7	22
Local Administration	15	5	13	33
<b>Total</b>	<b>54</b>	<b>16</b>	<b>36</b>	<b>106</b>

**TABLE 26**  
Suggestions according to the Administration to which they were presented. Status at 31 December 2010

Administration	Accepted	Rejected	Pending	Total
General State Administration	41	26	16	83
Autonomous Community Administrations	16	7	12	35
Local Administration	32	21	26	79
<b>Total</b>	<b>89</b>	<b>54</b>	<b>54</b>	<b>197</b>

**TABLE 27**  
Reminders of legal duties sent in 2010, according to the Administration to which they were presented

General State Administration	41
Autonomous Community Administrations	40
Local Administration	56
Other public organizations	3

Looking at the reactions of the various Administrations to the Ombudsman's resolutions, it is easy to see their degree of efficiency. Tables 28 and 29 set out the actual accept-

ance or rejection of recommendations and suggestions made in the two preceding years. As can be seen, these percentages vary within a very narrow range.

**TABLE 28**  
Recommendations 2009 and 2008. Data at 31 December 2010

Recommendations	2009		2008	
	Nº	%	Nº	%
Accepted	122	70.52	98	77.78
Rejected	44	25.43	27	21.43
Pending	7	4.05	1	0.79
<b>Total</b>	<b>173</b>	<b>100.00</b>	<b>126</b>	<b>100.00</b>

**TABLE 29**  
Suggestions 2009 and 2008. Data at 31 December 2010

Suggestions	2009		2008	
	Nº	%	Nº	%
Accepted	131	59.82	124	65.26
Rejected	63	28.77	60	31.58
Pending	25	11.42	6	3.16
<b>Total</b>	<b>219</b>	<b>100.00</b>	<b>190</b>	<b>100.00</b>

## 106 recommendations, 219 suggestions

At the close of the annual report, a total of 54 recommendations and 89 suggestions had been accepted, as shown on Tables 24 to 26.

### Description of accepted recommendations

#### General State Administration

##### *Ministry of Defense*

To the **Armed Forces Social Institute** concerning a duplicate health card being issued for the children under age still living at home.

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

To the **Office of the Undersecretary of Economy and Finance**. Concerning the official announcement of screening processes.

To the **Directorate General of Land Registry** concerning the violation of the protection of Land Registry data.

To the **Official Credit Institute** concerning an error in the terms used to describe the academic degree required for taking part in to the grants in aid screening process announced by the Official Credit Institute Foundation.

##### *Ministry of Education*

To the **Directorate General of Training and University Guidance** so that, prior to denying a scholarship due to not considering the Independence alleged by the applicant, the applicant be informed as to the documents which would be necessary for substantiating the same.

So that the telematics channel not be the only one accepted for formalizing the scholarship applications in general which are announced by the Ministry of Education.

##### *Ministry of Public Works*

To the **General Technical Office** concerning compliance with the environment-related guarantees of public participation.

To the **National Air Safety Agency (AESA)** concerning delivery and notification of acts and administrative decisions.

To the **National Postal Service** concerning the excessive delay in the delivery of the notice of the arrival of an international parcel.

To the **Public Company for Rental Housing** concerning the need of clearing up some aspects of a public enterprise's contracts

##### *Ministry of the Interior*

Concerning the way of proceeding of the civil servants of the National Police Corps and the use of systems for recording images at the Alien Detention Center in Madrid.

To the **Office of the State Secretary for Security** regarding the formal notification of administrative acts.

To the **Secretary of State for Penitentiary Institutions** regarding issuing instructions to the prison facilities aimed at ensuring that the requests for voting by mail are made by the inmates in due time to afford the possibility of mailing them by the Mail Service within the stipulated time frame.

To the **Directorate General of the Police and Civil Guard** concerning supply of uniforming to the members of the Civil Guard.

Recommendation concerning locating civil servants who are on sick leave. Recommendation for preventing the passports of unaccompanied alien minors from being retained by the police, except in certain assessed cases.

##### *Ministry of Justice*

That a new Civil Court be created within the Denia (Alicante) judicial district.

Recommendation to the **Secretary of State for Justice** for the staff of the Civil Registry of Inca (Balearic Islands) to be adapted to the actual work load.

##### *Ministry of Territorial Policy and Public Administration*

To the **Government Sub-delegation in Malaga** concerning obtaining sealed copies of the documentation filed.

To the **Government Sub-delegation in Segovia** concerning filing of writs with the Government Sub-delegation.

##### *Ministry of Labor and Immigration*

To the **Directorate General of Civil Service for State Employment** regarding covering job positions.

To the **Ministry of Industry, Tourism and Trade; Ministry of Justice and Ministry of Health, Social Policy and Equality**

Note: A summary is provided in following of the recommendations and suggestions accepted in full or in part. The full list of rejected or pending cases can be found in the full report published on the Ombudsman's website [www.defensordelpueblo.es](http://www.defensordelpueblo.es)

regarding the coordination among different bodies having authority over telecommunications in order to assure the coherence of the measures taken.

### **Autonomous Administration**

#### *Autonomous Community of Andalusia*

To the **Employment Department** regarding no decision having been rendered concerning application for subsidies.

To the **Department of Government and Justice** regarding the rationalization of their resources earmarked for Andalusia to carrying out proceeding notification acts, the travel of all civil servants employed in Attorney General's Office for the proceedings requiring their presence and to whatever travel the authorities and civil servants of the Justice Department must do, as well as regarding the implementation of the videoconferencing for the court proceedings.

To the **Department of Health** regarding the express decision concerning writs filed by the civil servants.

#### *Principality of Asturias*

To the **Public Administrations and Government Spokesperson Department** regarding the irregular Government of the Rural Parish of Corollos, La Fenosa, Villeirín and Orderias pertaining to the Municipal Government of Cudillero, for a Government Council illegally appointed, since the operating regime established for the same was that of a public council meeting.

#### *Autonomous Community of Castile and Leon*

To the **Department of Health** to assess the suitability and advisability of adopting the pertinent measures aimed a expressly issuing a decision regarding all those requests, claims and appeals which are filed by citizens.

#### *Autonomous Community of Galicia*

To the **Department of Health** for the competent bodies to assess the suitability and advisability of adopting the pertinent measures aimed at shortening the extraordinary delay, at least in some cases, for prostatectomy procedures being performed in the Urology Department at the Coruña University Hospital Complex.

#### *Community of Madrid*

To the **Office of the Undersecretary of Healthcare** for the competent bodies of the Madrid Health Service to assess the suitability of issuing the fitting instructions for strict compliance, at the 'Príncipe de Asturias' Hospital, of that which is set forth under Law 41/2002 of November 14th in regard to the formalization of the 'informed consent form' and the safekeeping and custody thereof.

To the **Family and Social Affairs Department** for an assessment to be made as to the suitability and advisability of modifying the automatic filing criterion for the personal care program files.

To the **Department of the Presidency, Justice and Interior** for an increase to be approved, to the extent possible, in the staff and a greater coverage for certain languages not assisted by the Interpreter and Translator Service operating under the Directorate General of Justice and in those cases in which there are no translators-interpreters in the offices of the government bodies.

For the **Department of the Presidency, Justice and Interior**, to issue, as soon as possible, in compliance with the sole transitory provision Decree 37/2006, the respective order approving the list of positions and the date on which the Legal Medicine Institute begins operating.

To the **Directorate General of Housing and Rehabilitation** due to the lack of information on the construction of a dwelling.

#### *Community of Valencia*

To the **Directorate General of Justice and Minors** concerning the Alicante Judicial Records Office.

### **Local Administration**

**City Hall of Aldea del Fresno (Madrid):** Regarding two town councilors being declared 'undesirables' by the Town Council Plenary Session.

**City Hall of Benidorm (Alicante):** For the allegations of citizens to be taken into account in the penalty proceedings.

**City Hall of Fuenlabrada (Madrid):** To facilitate the performance of the duties of the individuals lodging collective complaints as a municipal opposition party group in the exercise of their basic right to participate in politics.

**City Hall of La Vall d'Uixó (Castellón):** To proceed to the *ex officio* review of the substance of Municipal Decree 595/2009.

**City Hall of Las Palmas (Grand Canary Island):** Regarding no reply having been provided to a claim for damages at the home address of the interested party as a result of public works.

**City Hall of Madrid:** For the right of citizens to use the standard forms for allegations and proposal of means of proof in penalty proceedings.

**City Hall of Orihuela (Alicante):** To revise the Municipal Ordinance on accessibility to the environment of persons of impaired mobility.

**City Hall of Puerto Real (Cádiz):** For increasing the surveillance and imposing of penalties for unlawful conduct on plazas and streets in this locality.

**City Hall of San Fulgencio (Alicante):** Regarding no reply having been provided to the numerous reports filed concerning the existence of extremely dangerous animals in inappropriate settings.

**City Hall of San Miguel de Abona (Santa Cruz de Tenerife):** For the terms in which the requirements are set out for taking part in calls for applications for aid for studies to be correct and not give rise to confusion on the part of the participants.

**City Hall of San Sebastián de los Reyes (Madrid):** For the number of parking places reserved to individuals of impaired mobility be adapted to the number of residents in such circumstances.

**City Hall of Zafra (Badajoz):** For no-one to be deprived of the right to park where it is lawful to do so.

**City Hall of Zamora:** Regarding competitive entitlement to transfers.

#### **Other administrations**

**Cádiz Province Firemen's Consortium:** Regarding deficiencies in the instructions to bidders for the screening process.

**Regional Government of Guipúzcoa:** Recommendation on notification of the unaccompanied alien minor protection proceedings.

### **Suggestions accepted**

#### **General State Administration**

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

To the **Directorate General of Consular and Migratory Affairs** For the voiding of a resolution by which the Spanish Consulate in Lagos (Nigeria) denied the interested party a residence visa for family reunification.

Suggestion that the Spanish Consulate in New Delhi review the family reunification visa file and allow the interested party to furnish all the means of proof allowed under Law.

Suggestion of expediting the processing of the administrative appeal for review filed against the decision of the Spanish Consulate in Casablanca denying a family reunification residence visa, proceeding to the granting of the visa for which application was filed following substantiation of the existence of the son born to the couple in question.

Suggestion as to the decision denying the family reunification visa for which application was filed be revoked and a new decision issued granting the visa on proof of the reasons justifying the need of authorizing the residence thereof in Spain having been furnished.

Suggestion of the decision issued by the Spanish Consulate in Santo Domingo (Dominican Republic) denying the reunification visa being revoked and a new decision granting the visa be issued.

Suggestion of proceeding to revoke the decision rejecting the application for a family reunification visa and issuing a decision in favor of granting the visa in to the daughter of the interested party.

Suggestion of the fitting proceedings to be held for the purpose of clarifying whether the business owner undertakes to engage the interested parties at the lapse of a two-year period; proceeding, if so, to revoke the decisions denying the visas and to grant the visas for which application was made.

Suggestion as to the appeal for review filed against the decision of the Spanish Consulate in Guayaquil (Ecuador) being admitted and a stay visa being granted to the mother of the interested party who is going to undergo a surgical procedure.

Suggestion as to the Spanish Consulate in Lagos voiding the decision denying the family reunification residence visa to the interested party's spouse and proceeding to issue the same following substantiation of the existence of a daughter born to this couple.

To **Spanish Consulate in Rabat (Morocco)** as to revoking the denial of a visa resolved in the case of the interested party and proceeding to granting and issuing the same.

##### *Ministry of Defense*

To the **Office of the Undersecretary** so that the interested military personnel may have sufficiently clear knowledge of the lists of military positions for which they may apply.

##### *Ministry of Public Works*

To the **National Air Safety Agency (AESA)** concerning the requirement of paying fees for the issuing of a duplicate Flight Crew Member license.

To the **Asturias Government Road Demarcation** regarding claim for indemnification for damages caused by an expropriation process.

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

To the **Office of the State Secretary of Tourism and Domestic Trade** concerning refusal to return a bank guarantee

which had been furnished as a guarantee for a subsidy granted to promote the internationalization of the Spanish tourism enterprise.

*Ministry of the Interior*

Regarding disciplinary proceedings being initiated to determine whether improper use of force was involved on the part of police officers at the Alien Detention Center in Madrid and instructions being given to the Provincial Alien Affairs and Documentation Brigade of Madrid for the purpose of halting the processing of the deportation of the interested party until a deposition is taken from the same.

To the **Directorate General of the Police and Civil Guard** regarding the conduct of two officers of the National Police Corps assigned to the Ferrol-Narón Police Station in Coruña.

To the **General Department of Alien Affairs and Borders** regarding delaying carrying out the deportation the interested party from the country and beginning to take the necessary steps for the purpose of offering her the recovery and reflection period for which provision is made under Article 59.bis.2 of Organic Law 4/2000.

To the **Provincial Police Department of Salamanca** to proceed to re-assess the administrative situation of the interested party, the spouse of a Spanish national applying for Spanish citizenship and examining the befittingness under law of recognizing her status as a permanent resident.

*Ministry of Justice*

To the **Office of the State Secretary of Justice** for the Spanish Consulate in Mumbai (India) to expedite the remittal of the report necessary for processing the matrimonial proceedings requested by the interested party.

Suggestion for the Civil Registry of Alcorcón (Madrid) to expedite the remittal of the report necessary for registering a birth by acquisition of the nationality.

*Ministry of Territorial Policy and Public Administration*

To the **Government Delegation in the Autonomous Community of Extremadura**, concerning erradicating certain conducts on the order of protecting minors in the public restrooms at the Badajoz Bus Station.

To the **Government Delegation in the Community of Madrid** of revoking the decision refusing a residence permit and another decision being issued retracting the effects thereof to the date on which the application was placed at the disposal of the juvenile protection services.

Suggestion of proceeding to revoke the decision by which it was resolved to reject the application for renewal of a

residence and work permit filed by the interested party and issuing a new decision granting the same.

Suggestion of proceeding to revoking the penalty imposed after first substantiating that her situation of irregularity having inadvertently occurred is a result of an incorrect notification in the procedure of renewing her residence and work permit.

Suggestion of proceeding to free the interested party being held at the Alien Detention Center in Madrid so as to prevent any prejudice to her right to legal counsel and, in any case, for the proposal of deportation to be substituted for charging her a fine.

To the **Government Delegation in the Region of Murcia** concerning administrative silence.

To the **Government Delegation in the Autonomous Community of Valencia** concerning express rendering of a decision in reply to the brief filed by the interested parties.

Suggestion of proceeding to grant the second renewal of the residence permit requested by the interested party after first revoking the decision having refused the same.

To the **Government Delegation in the Autonomous City of Melilla** of granting the interested party the residence permit for which he is eligible by virtue of the length of time he remained under guardianship.

To the **Government Sub-delegation in Alicante** of considering the appeal for review filed against the decision by which a residence and work permit application is not accepted and of proceeding to accept the application for processing and the decision thereon according to Law.

Suggestion of urgently revoking the decision to deport the interested party in view of her personal circumstances and given the imminence of the date on which the deportation is to take place.

Suggestion of revoking the deportation of the interested party, who is the common law spouse of a Spanish citizen.

To the **Government Sub-delegation in Castellón** of revoking the decision in favor of the deportation from Spain of the interested party, who has a stable relationship with a European Union citizen with whom she has a daughter under age, charging her a fine instead of taking this measure.

To the **Government Sub-delegation in Ciudad Real** of voiding the decision by way of which the interested party having filed application for a residence permit has been charged a fine and placed under the legal duty of leaving the country.

To the **Government Sub-delegation in Granada** of revoking the deportation order issued as soon as he furnishes proof substantiating his meeting the requirements for attaining stable residence and begin the application for a residence permit for special circumstances.

To the **Government Sub-delegation in Guipúzcoa** of revoking, *ex officio*, the decision for refusing the renewal of a residence permit requested when he was in charge of the juvenile protection services, issuing another decision granting the renewal for which application was made.

Suggestion of revoking, *ex-officio*, the rejection of the residence permit for special circumstances for which application was filed by the interested party, who was a minor under guardianship, issuing another in lieu thereof granting the first renewal of his residence permit.

To the **Government Sub-delegation in Las Palmas** for proceeding to the revision of the decision to close the case of the application made by the interested party for a temporary residence permit for special circumstances, given that the request made thereby not having been dealt with does not prevent a decision being made on the basis of the request placed.

Suggestion of granting the interested party, in view of the special personal circumstances involved, the residence permit for special circumstances she had requested.

To the **Government Sub-delegation in Santa Cruz de Tenerife** of the interested party, who holds a residence permit obtained when he was under the guardianship of the juvenile protection services, being granted the renewal of said permit.

To the **Government Sub-delegation in Seville** of voiding the deportation order issued against the interested party, who is the spouse of a Spanish citizen and who is being held at the Alien Confinement Center in Madrid, proceeding to immediately setting him free, provided that no public order-related reasons prevent the same.

## **Autonomous Administration**

### *Autonomous Community of Andalusia*

To the **Department of Health** concerning an express decision.

### *Autonomous Community of the Canary Islands*

To the **Canary Island Housing Institute** regarding the payment to the complainant of the second annuity of tenant assistance authorized by resolution of the Canary Island Housing Institute.

Suggestion concerning delay in payment of the tenant assistance subsidy granted.

### *Autonomous Community of Castile and Leon*

To the **Family and Equal Opportunities Department** of the certificate for which provision is made under Article 92.5 of Royal Decree 2393/2004 being issued, recommending that the interested party be granted a residence permit for special circumstances on substantiating that he suitably took part in the training actions and activities scheduled for favoring social integration.

To the **Department of Health** on it being befitting for the competent bodies of this Department to give the appropriate instructions aimed at issuing an express decision concerning the appeal for review filed by the interested party.

### *Autonomous Community of Extremadura*

To the **Office of the State Secretary of the Presidency** regarding modification of administrative conduct.

### *Autonomous Community of Galicia*

To the **Department of the Presidency, Public Administration and Justice** regarding administrative silence.

### *Community of Madrid*

To the **Department of Education** of revising and modifying the notice sent by this Department's Directorate General of Universities and Research to the interested party, informing him of the irrevocable nature of his retirement, adapting it to the actual situation of the facts and, in any case, that he be informed as to the details of the reasons for having come to the conclusion that there is no existing exceptional circumstance allowing the school's management to keep him on staff.

To the **Environment, Housing and Land Management Department** concerning the legal duty of expressly stating in full to the City Hall of Moraleja de En medio (Madrid) all of the defects which are to be corrected in the General Urban Planning Plan (PGOU).

To the **Directorate General of Housing and Rehabilitation** concerning the interested party not having been provided with any additional information since he was informed that he had been granted, in the drawing held on February 28, 2007, one of the 164 dwellings on parcel 81.2 A of the 'Las Retamas Station Area' of APD-12 'University District'.

To the **Madrid Housing Institute (IVIMA)** concerning halting the measures related to the recovery of a dwelling located in Madrid on the part of the Madrid Housing Institute (IVIMA).

Suggestion regarding the Madrid Housing Institute's delay in turning over 42 garage parking spaces.

To the Madrid's Canal de Isabel II Water Supply Enterprise concerning a claim for damages.

#### *Region of Murcia*

To the Department of Health and Consumer Affairs regarding express decision on the requests placed.

#### **Local Administration**

**City Hall of Alhama de Murcia (Murcia):** regarding the legal duty of issuing an express.

**City Hall of Aranjuez (Madrid):** that the establishment regarding which the complaint was lodged to properly adapt its operation to the regulations in force.

**City Hall of Avilés (Asturias):** regarding penalty proceedings not having been brought against the owner of an establishment for operating his business without the compulsory municipal license.

**City Hall of Benidorm (Alicante):** regarding *ex officio* revoking of a traffic fine.

**City Hall of Boadilla del Monte (Madrid):** regarding express reply to the briefs filed by the interested party

**City Hall of Cabanes (Castellón):** regarding an express reply to all of the requests filed concerning access to environmental information in accordance with Law 27/2006 of July 18th, regulating the rights of access to information, public participation and access to justice regarding environmental matters.

**City Hall of Cáceres:** regarding the legal duty of processing and approving the Special Plan for the Protection of the 'Cáceres el Viejo' Archeological Site.

**City Hall of Cartagena (Murcia):** in accordance with Articles 70 and 72 of Law 1/1995 governing environmental protection in the Region of Murcia and due to the failure to carry out the corrective measures ordered in relation to the activity of a restaurant, for precautionary measures to be adopted and the activity to be closed or suspended.

**City Hall of Colmenarejo (Madrid):** regarding the measures which the City Hall can adopt for mitigating the annoyances caused to the residents by the holding of the Festival of the town's Patron Saint.

**City Hall of El Campello (Alicante):** regarding adaptation of the municipal licenses/permits to the Noise regulations.

**City Hall of Griñón (Madrid):** regarding the need of municipal services making inspections in order to ensure that the annoying activities are in keeping with the permits granted and, if not, to adopt the pertinent measures.

**City Hall of Helechosa de los Montes (Badajoz):** regarding verifying the closing time and the noise caused by a bar.

**City Hall of La Unión (Murcia):** regarding express decision of the appeal for review filed by the interested party.

**City Hall of Madrid:** regarding seizure in current account without any prior notice of the opening of the compulsory procedure, due to having sent the notice to a prior address.

Suggestion regarding revoking an administrative charge concerning parking by a handicapped person.

Suggestion regarding revoking, *ex officio*, of several traffic charges.

Suggestion on the legal duty of rendering a final decision concerning two procedures: 1) for reinstating the urban planning legality violated and 2) penalty proceedings.

**City Hall of Manacor (Balearic Islands):** regarding the destruction, on the part of the municipal authorities, of a vehicle seized by the Social Security Administration which has been continuing to generate the mechanical traction vehicle Tax.

**City Hall of Montserrat (Valencia):** regarding expressly responding, in due time and form, to the briefs filed by citizens.

**City Hall of Oviedo:** regarding revoking a traffic charge.

**City Hall of Parla (Madrid):** regarding failure to fulfill the commitments undertaken in the Bilateral Commission Agreement made on May 2006 for the Integral Rehabilitation Area of the town center referred to as 'Center of Parla'.

**City Hall of Pola de Somiedo (Asturias):** regarding adopting precautionary measures and filing penalty proceedings for carrying out a bothersome activity without a municipal permit.

**City Hall of Ribera del Fresno (Badajoz):** regarding the legal duty of adopting the necessary measures in order to proceed, as soon as possible, to paving an urban thoroughfare and installing all services inherent to urban land (sidewalks, water supply, sewerage, street lighting, etc.).

**City Hall of San Agustín de Guadalix (Madrid):** regarding the legal duty of processing the reports received and the enforcement of the precautionary closing of the noisy activity.

**City Hall of San Javier (Murcia):** regarding prohibition of drinking alcoholic beverages in a public place.

**City Hall of San Sebastián de los Reyes (Madrid):** regarding availability of parking for a physically handicapped citizen.

**City Hall of Santander:** regarding the legal duty of replacing the compensatory action system for a combined or public management system, on the owners having clearly failed to comply with the time periods allowed for developing a unit quantity in urban planning terms.

Concerning the need of providing a solution to the situations which are arising in a building of municipal rental homes due to the problems of living together in peace and the destruction of common elements which some of the tenants are causing.

**City Hall of Zafra (Badajoz):** regarding redress to a citizen who had to leave a show he was attending to remove his properly-parked vehicle.

**Government Delegation of Cádiz:** regarding no notice and an error in the taxpayer in the executive collection of municipal rates on the part of the managing body of the Government Delegation of Cadiz.

#### **Other Administrations**

**Department of Industry, Energy and Environment of the Autonomous Community of Extremadura and City Hall of Calzadilla de los Barros (Badajoz):** For the Autonomous Community Administration to exercise duties of coordination, collaboration and assistance the Local Corporation for the sake of providing a solution to the problem posed.

**Department of the Environment, Housing and Land Management of the Autonomous Community of Madrid and City Hall of Torreldones (Madrid):** regarding the need of signing a working agreement between the Autonomous Community and local administrations for the better upkeep and maintenance of the Hoyo de Manzanares driving road.

#### **Reminders of legal obligations**

In 2010, the Ombudsman issued 140 reminders of legal duties, 41 to the General State Administration, 40 to the Autonomous Community Administrations and 59 to the local administrations and other organizations (See Table 27).

#### **General State Administration**

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

To the **State Secretary for International Cooperation** regarding the legal duty of the procedural proceedings

thereof being in keeping with that which is set forth under Law 30/1992.

To the **Directorate General of Consular and Migratory Affairs** regarding the legal duty of not requiring of the interested parties documents not required in the family reunification procedure pursuant to the terms of Article 35.f) of Law 30/1992 of November 26th, as well as the legal duty of strictly abiding by that for which provision is made under Article 43.1 of the Aliens Regulations.

Regarding the legal duty of full compliance, on the part of the consulates, of the addendum to Circular Oder 3252 concerning Spanish nationals under arrest and imprisoned abroad.

Regarding the legal duty incumbent upon it of issuing decisions taking into account the regulatory family reunification-related provisions, there being no room for issuing decisions entailing any restriction of the rights of resident aliens.

Regarding the legal duty incumbent upon it of giving the instructions befitting under law for the purpose of assuring full compliance, on the part of the Spanish Consulate in Casablanca (Morocco) of that which is set forth under Article 35.g) of Law 30/1992.

Regarding the legal duty requiring two civil service employees to be present at the interviews for the processing of visas and, wherever necessary, also an interpreter, in accordance with Article 51.8 of the Aliens Regulations.

##### *Ministry of Defense*

To the Office of the **Undersecretary** regarding the legal duty incumbent upon it of providing a response, in due time and form, to the claims and requests lodged with the same, acting in keeping with criteria of efficiency and service, in accordance with that which is set forth with regard thereto under Law 30/1992 of November 26<sup>th</sup>, revised by Law 4/1999, as well as to serve citizens' interests by virtue of Article 103 of Spain's Constitution.

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

To the **Central Economic-Administrative Court** regarding the legal duty of expressly rendering a decision within the time periods set forth under law in accordance with Article 240 of General Taxation Law 58/2003.

To the **Regional Economic-Administrative Court of Galicia** regarding the legal duty of issuing an express decision regarding the claim with the established time periods in accordance with Article 240 of General Taxation law 58/2003.

To the **Regional Economic-Administrative Court of Valencia** regarding the legal duty of providing an express decision

concerning the claim within the time periods for which provision is made under law in accordance with Article 240 of General Taxation Law 58/2003.

To the **Regional Office for the Cadastre in Murcia** regarding the legal duty of fully complying with the process of furnishing notice as a preliminary measure.

To the **Regional Office for the Cadastre in Castellón** regarding the legal duty falling to thereto of aiding citizens in fulfilling their legal duties, as well as that of facilitating citizens with access to the information concerning their properties, so that they will not be deprived, by way of an administrative act, of the enjoyment thereof in accordance with Articles 34 of General Taxation Law 58/2003 and Article 35 of Law 30/1992.

#### *Ministry of Education*

To the **Office of the State Secretary for Education and Professional Training** regarding the legal right of abiding by the regulations in force in the student admission procedure planning measures.

#### *Ministry of Public Works*

To the **General Technical Secretariat of the Ministry of Public Works** regarding the legal duty incumbent upon it of furnishing information on the requirements for renewing an aeronautical license based on the right recognized to citizens under Article 35.g) of Law 30/1992 and Article 4 of Royal Decree 208/1996.

To the **National Air Safety Agency (AESA)** regarding the legal duty of providing a decision and notifying all the administrative proceedings within the stipulated time period, as well as acting under the principles of efficiency and citizen service by virtue of Article 3.1 of Law 30/1992.

To the **Spanish Airports and Aviation Administration (AENA)** regarding the legal duty of providing a decision and notifying the decision made in accordance with Article 42.1 and Article 42.2 of Law 30/1992 and, in the event of the same not coming under the authority thereof, of informing the interested party as to the government agency which has authority over the same

To the **National Postal Service** regarding the legal duty of suitably providing information concerning the steps to be taken for voting by mail and, specifically, that in order to re-issue the documentation in relation to mail-in votes to a post office other than that where it was mailed, it suffices to go to any post office and so request in person.

Regarding the legal duty of offering a universal public postal service such that it will be reliable for the users.

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

To the **Office of the State Secretary for Tourism and Domestic Trade** regarding the legal duty incumbent of respecting the Law, in accordance with Article 103 of Spain's Constitution, in the case of cancellation of a special guarantee with the resulting return to the interested party.

#### *Ministry of the Interior*

To the **Secretary General for Penitentiary Institutions** regarding the legal duty of providing an express decision as to the claims, requests and appeal filed by citizens.

To the **Directorate General of the Police and Civil Guard** regarding the legal duty incumbent upon it to fully comply with the Instruction of May 7, 2008 on notifying a person's death to their family members, making a record of the aforementioned notice in the respective procedure and proceeding to ensure the sufficient degree of relationship of the family member to whom the notice is given.

To the **Directorate General of Traffic** regarding the legal duty of penalizing solely those behaviors regarding which there is certainty as to the citizen being charged having committed an offense.

Regarding the legal duty incumbent upon it of providing due, adequate response to requests lodged by citizen and that the processing of the proceedings abide by that which is set forth under the rules of law governing the different proceedings.

#### *Ministry of Justice*

To the **Free Legal Aid Commission of Murcia** regarding the legal duty incumbent upon it of winding up the proceedings within the stipulated time periods.

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

To the **Directorate General of Coastal and Sea Sustainability** regarding the legal duty of adapting the relations with other government administrations, when authorities have a bearing on one same spatial scope, to the principles of mutual information, collaboration, coordination and respect, rendering due assistance to ensure the effectiveness and coherence of the measures in the processing of an integrated environmental permit.

Regarding the legal duty of issuing an express decision in all proceedings and notifying the same, regardless of the form in which brought, as set forth under Article 42 of Law 30/1992.

To the **Hydrographic Confederation of the Duero River** regarding the legal duty of providing express response to the requests for cleaning, conditioning and/or defending public waterways lodged by the interested parties, informing as to

whether or not the same are befitting under law within a one-year period in accordance with that which is required under Article 42 of Law 30/1992 as worded by virtue of Law 4/1999 and Supplementary Provision Six of the revised text of the Water Law enacted by Royal Legislative Decree 1/2001.

To the **Hydrographic Confederation of the Ebro River** regarding the legal duty of diligently exercising the authorities over levy of execution conferred thereto under Article 95 through 99 of Law 30/1992 and Article 119 of the Water Law.

Regarding the legal duty of providing express response to requests for environmental information within a one-month period, stipulated by Law 27/2006 governing rights to access information, public participation and access to justice concerning environmental matters.

To the **Hydrographic Confederation of the Júcar River** regarding the legal duty of providing express response to all of the requests for access to environmental information in accordance with the limits, requirements and time periods stipulated under Law 27/2006.

To the **Hydrographic Confederation of the Miño-Sil Rivers** regarding the legal duty of providing express response to all of the requests for access to environmental information in accordance with the limits, requirements and time periods stipulated under Law 27/2006.

*Ministry of Territorial Policy and Public Administration*

To the **Government Delegation in the Region of Murcia** regarding the legal duty incumbent upon the Alien Affairs Office of Murcia of adapting their actions to that which is set forth under Articles 40 and 48 of Law 30/1992 and Organic Personal Data Protection Law 15/1999, requesting that this Delegation issue the fitting instructions for this purpose.

To the **Government Delegation in the Autonomous City of Ceuta** regarding the legal duty of abiding by that for which provision is made under Article 31.2 of Organic Law 4/2000 and Articles 36.2 and 37.4 of Royal Decree 2393/2004 in relation to the length of time the initial permit and the renewals remain valid in the decisions made granting residence permits to underage aliens under guardianship.

To the **Government Sub-delegation in Barcelona** regarding the legal duty incumbent upon the Administration of submitting in its actions to the legal system in force.

*Ministry of Labor and Immigration*

To the **Directorate General of Public Employment Services** regarding the legal duty incumbent upon it of providing a

response, in due time and form, to the claims and requests filed with the same, acting in keeping with criteria of efficiency and service, in accordance with that which is set forth with regard thereto under Law 30/1992, as well as serving the citizens' interests by virtue of Article 103 of Spain's Constitution.

To the **Directorate General of Social Security Planning** regarding the legal duty incumbent upon it of the decisions refusing the right to the compensation for temporary disability, especially those related to workers under the Special Regimen of Self-Employed Workers, by virtue of that which is set forth under Article 132.1.a) of the General Social Security Law, are sufficiently reasoned for the purpose of specifically setting out the facts determining the existence of fraudulent conduct on the part of the beneficiaries of the benefit in question.

Regarding the legal duty incumbent upon it such that, on the part of a Mutual Fund for Occupational Accidents and Diseases, the just, well-founded claims which the interested parties may file in disagreement with the agreements or resolutions adopted will be sufficiently assessed so as to prevent them from finding themselves in the need of filing court actions and, that, the aforesaid mutual fund abide by the criterion adopted by this general directorate as a result of the recommendation put forth in 2008 and that it inform the interested parties that, against the initial decision issued regarding the recognition of entitlement to benefits placed under the management thereof, it proceed to filing a preliminary claim through the respective provincial office of the National Social Security Institute, indicating the time period allowed for the filing thereof.

To the **National Social Security Institute (INSS)** regarding the legal duty incumbent upon the National Social Security Institute's Provincial Office in Seville, of issuing decisions on the proceedings for the review of degree of permanent disability within the 135-day time period allowed for providing a decision as stipulated under aforesaid Article 14 of the Order of January 18, 1996, also abiding by that which is applicable thereto as set forth under Articles 41 and 42 of the also aforementioned Law 30/1992.

**Autonomous Administration**

*Autonomous Community of Andalusia*

To the **Education Department** regarding the legal duty incumbent upon it, when a request is made thereto to know the reasons for which an error has been caused in a qualification recognized by the qualifying panel proper, of abiding by that which is set forth under Article 3.1 *in fine* of Law 30/1992, as well as Article 35.a) of said law.

To the **Department of Justice and Public Administration** regarding the legal duty incumbent upon it for all the befitting measures to be taken to repair the flagpole and reinstate the Spanish flag at the Court building in Fuengirola (Malaga), thus rendering full compliance with that which is set forth under Royal Decree 142/1997 concerning transfer of duties from the State Administration to the Autonomous Community of Andalusia on the matter of providing material and economic means for the functioning of the Justice Department.

To the **Environmental Affairs Department** regarding the legal duty of adapting the relations with other government administrations, when authorities have a bearing on one same spatial scope, to the principles of mutual information, collaboration, coordination and respect, rendering due assistance to ensure the effectiveness and coherence of the measures in the processing of an integrated environmental permit.

To the **Andalusian Water Agency** regarding the legal duty of duly and diligently exercising its authorities of surveillance, inspection and investigation concerning all those alleged offenses against the public water domain and its protected areas of which it has a knowledge, so as, were the case to be, to penalize the same and demand that they be put into proper order or the rapid restoring of the choses to their former state.

#### *Autonomous Community of the Canary Islands*

To the **Office of the Presidency** regarding the legal duty incumbent upon the Administration of aiding taxpayers in complying with their legal duties.

To the **Department of Social Welfare, Youth and Housing** regarding the legal duty incumbent upon it of providing a response, in due time and form, to the claims and requests lodged with the same, acting in keeping with criteria of efficiency and service, in accordance with that which is set forth with regard thereto under Article 42 of Law 30/1992 as well as to serve citizens' interests by virtue of Article 103 of Spain's Constitution.

Regarding the legal duty incumbent upon it of issuing an express decision concerning the prior claim lodged by a citizen in regard to the management of non-contributive pensions in accordance with that which is set forth under Article 42 of Law 30/1992.

To the **Directorate General for Family and Juvenile Protection** Regarding the legal duty of granting unaccompanied underage aliens a residence permit within the nine months immediately following their having been placed at the disposal of the protection services, it not being possible for this period to lapse if the protection entity requests authorization

almost twelve months following the date on which the minor in question is admitted to said services.

To the **Canary Island Housing Institute** regarding the legal duty of providing an express decision and notifying the respective decision, in due time and form, for all those requests and claims filed by the interested parties in the proceedings.

#### *Autonomous Community of Castile-La Mancha*

To the **Provincial Delegation of Toledo of the Department of Health and Social Welfare** regarding the legal duty incumbent upon it of adopting the measures necessary to eliminate the obstacles preventing, hindering or delaying the exercise of the interested parties' rights.

#### *Autonomous Community of Castile and Leon*

To the **Department of Culture and Tourism** regarding the legal duty incumbent upon it of guaranteeing the conservation of the Roman bridge in Vinuesa (Soria) without detriment to the legal duties falling to all other public powers, independently of the ownership of the bridge or whether or not it be declared an asset of cultural interest, by means of the fitting regimen, in terms of the interest found to exist in said asset, in accordance with the provisions set forth under Castilla y León Cultural Heritage Law 12/2002.

To the **Department for the Family and Equal Opportunities** regarding the legal duty incumbent upon protection agencies in accordance with that for which provision is made under Article 172.1 of the Civil Code, by operation of law, in the guardianship of all those minors in a situation of helplessness who are located within its territory. Similarly, it is reminded that, in accordance with that for which provision is made under Article 35 of Organic Law 4/2000 the report from the juvenile protection services necessary for assessing the repatriation of an unaccompanied minor on the part of the General State Administration must be issued by whomever has guardianship over the minor in question.

Regarding the legal duty incumbent upon it of acting in accordance with the principle of efficiency recognized under Article 103 of Spain's Constitution.

#### *Autonomous Community of Extremadura*

To the **Office of the State Secretary of the Presidency** regarding the legal duty incumbent upon it of proceeding in the actions taken thereby in keeping with the principles of good faith and legitimate rights and respect of citizens, in accordance with the principles of efficiency and service thereto, transparency and participation.

#### *Autonomous Community of Galicia*

To the **Department of Labor and Welfare** regarding the legal duty incumbent upon it, in application of Law

39/2006 governing Promotion of the personal autonomy and provision of care of the persons in a situation of dependency; of issuing a decision, in due time and form, to the claims and request which have been filed with the same, acting according to criteria of efficiency and service, in accordance with Law 30/1992 as well as serving the interests of citizens by virtue of Article 103 of Spain's Constitution.

*Autonomous Community of Madrid*

To the **Vice-Department of Healthcare** regarding the legal duty incumbent upon it of expressly providing a decision regarding all those requests, claims and appeal filed by citizens in accordance with that for which provision is made under Article 42 of Law 30/1992.

To the **Department of Family and Social Affairs** regarding the legal duty incumbent upon it, in accordance with Articles 41 and 41 of Law 30/1992. Similarly, a reminder is put forth of the legal duty of acting in accordance with the principle of efficiency recognized under Article 103 of Spain's Constitution.

Regarding the legal duty incumbent upon it, in accordance with Article 41 of Law 30/1992, which sets forth that those responsible for the administrative units and the personnel at the service of the public administrations who were to be in charge of deciding upon or dispatching the affairs shall be directly responsible for the processing thereof and shall adopt the fitting measures so as to eliminate the obstacles preventing, hindering or delaying the exercise of the rights of the interested parties or the respect for their legitimate interests, by providing for that which is necessary to prevent and eliminate all abnormality in the processing of the proceedings.

Regarding the legal duty incumbent upon it of issuing a decision, in due time and form, concerning the proceedings and requests entrusted thereto.

Regarding the legal duty incumbent upon it of issuing an express decision concerning all those requests, claims and appeals which are filed by citizens in accordance with that for which provision is made under Article 42 of Law 30/1992.

To the **Madrid Institute for Juveniles and Family** regarding the legal duty incumbent upon it of immediately informing the Attorney's General's Office as to the presence of an alien bearing no official identification, whose situation of being under age cannot be determined in all certainty, so that the Attorney General's Office may be the one to make provision for that which is necessary to determine the age thereof, also putting forth the reminder as to the legal duty of rendering full compliance with

the juvenile's right to be heard; lastly, putting forth the reminder as to the legal duty of the juvenile protection services of notifying the respective bodies of the Directorate General of the Police and Civil Guard as to the details which are progressively learned about the juvenile in question.

To the **Department of Environment, Housing and Land Management** regarding the legal duty of acting in accordance with the principles of efficiency, economy and expeditiously as set forth under Article 103 of Spain's Constitution and under Article 3 of Law 30/1992.

To the **Directorate General of Housing and Rehabilitation** regarding the legal duty of adapting its actions to the principles of efficiency and efficacy set forth under Article 3.1 and Article 3.2 of Law 30/1992, in accordance with Article 103.1 of Spain's Constitution.

To the **Regional Transport Consortium** regarding the legal duty incumbent upon it of notifying the decision issued in the appeals for review under the terms set forth under Article 59 of Law 30/1992.

*Region of Murcia*

To the **Department of Public Works and Land Management** regarding the legal duty incumbent upon it concerning acting according to the principles of efficiency and fully abiding by Spain's Constitution and the Law in accordance with Article 103 of Spain's Constitution and Article 3 of Law 30/1992.

*Community of Valencia*

To the **Department of Social Welfare** regarding the legal duty incumbent upon it, in accordance with Articles 41 and 42 of Law 30/1992, of issuing an express decision within the stipulated time periods to all those requests, claims and appeals which are filed by citizens, as well as eliminating the obstacles preventing, hindering or delaying the exercise of the rights of the interested parties or the respect for their legitimate interests, by providing that which is necessary to prevent and eliminate all abnormality in the processing of the proceedings.

Regarding the legal duty incumbent upon it of issuing a decision, in due time and form, concerning the claims and requests filed.

*Autonomous City of Melilla*

To the **Department of Social Welfare and Health** regarding the legal duty incumbent upon it of safeguarding those under guardianship, guaranteeing prime importance being placed upon the juvenile's best interest and the prevention of all those situations which may be detrimental to the personal development thereof.

### Local Administration

**City Hall of Alcalá de Xivert (Castellón):** Regarding the legal duty incumbent upon it of issuing an express decision concerning all those requests, claims and appeals filed by the interested parties, as well as facilitating the exercise of the right to access the records and documents of the administrative archives, fully complying with that which is set forth under Law 30/1992.

**City Hall of Alcorcón (Madrid):** Regarding the legal duty incumbent upon it of proceeding to the immediate payment of the sums owed to the interested party resulting from the contractual relationship maintained with this city hall, by means of calculating the respective interest for arrears.

**City Hall of Alhama de Murcia (Murcia):** Regarding the legal duty of issuing an express decision concerning all of the requests and appeals filed by the interested parties, thus fully complying with that which is set forth under Law 30/1992.

**City Hall of Almuñécar (Granada):** Regarding the legal duty of issuing and notifying, in due time and form, an express decision stating the reasoning for the same in relation to the requests lodged by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Boadilla del Monte (Madrid):** Regarding the legal duty incumbent upon it under the legal system of issuing an express response regarding the requests for information lodged by the interested parties, thus fully complying with that which is set forth under Articles 35, 42 and 89 of Law 30/1992 and Article 18 of Law 7/1985 revised by Law 57/2003 governing measures for the modernization of the Local Government.

**City Hall of Cáceres:** Regarding the legal duty incumbent on it of accommodating its measures to the principles of efficiency, economy and expeditiousness in accordance with Article 103 of Spain's Constitution and Article 3 of Law 30/1992.

**City Hall of Cartaya (Huelva):** Regarding the legal duty of incumbent upon it of issuing and notifying, in due time and form, an express decision stating the reasoning for the same in relation to the requests lodged by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Cehegín (Murcia):** Regarding the legal duty incumbent upon it of issuing and notifying, in due time and form, an express decision stating the reasoning for the same in relation to the requests lodged by the interested

parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Cistérniga (Valladolid):** regarding the legal duty incumbent upon it of keeping watch on supervising the proper performance of the development works and facilities which are being carried out, this responsibility being exigible regarding both that which has to do with the technical characteristics of the development work performed and the time periods within which the same must be completed and delivered to the Administration.

**City Hall of Cistierna (León):** Regarding the legal duty of publishing the call for tenders which is approved, either in the *Spanish Official Gazette* (BOE) or in the official autonomous community journal, when it has been resolved in favor of entering into contracts in which the unannounced negotiated procedure is applied. Similarly, it must see to the custody, ordering, classification and cataloging of the documents and dossiers, including therein all those documents, tests, opinions, agreements, notifications and other formalities which must comprise the same.

**City Hall of Curiel de Duero (Valladolid):** Regarding the legal duty incumbent upon it under the legal system of issuing an express response regarding the requests for information lodged by the interested parties, thus fully complying with that which is set forth under Articles 35, 42 and 89 of Law 30/1992 and Article 18 of Law 7/1985, revised by Law 57/2003 governing measures for the modernization of the Local Government.

**City Hall of Ferrol (A Coruña):** Regarding the resulting from that for which provision is made under Article 36.3 Law 30/1992, as worded by virtue of Law 4/1999, according to which the documents, dossiers or parts thereof which must be valid outside of the territory of the Autonomous Community must be translated into Castilian Spanish.

**City Hall of Fuengirola (Málaga):** Regarding the legal duty incumbent upon it of guaranteeing fulfillment of the legal duty which the owners of all types of lands and structures have of keeping the same in conditions of safety, healthfulness and publically presentable under the protection of Article 9 of Royal Legislative Decree 2/2008, by virtue of which approval was rendered of the revised Land Law and of Article 155 of Andalusian Urban Planning Law 7/2002.

**City Hall of Gondomar (Pontevedra):** Regarding the legal duty incumbent upon it of issuing and notifying, in due time and form, an express decision stating the reasoning for the same in relation to the requests lodged by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

Regarding the legal duty incumbent upon it resulting from that for which provision is made under Article 36.3 of Law 30/1992 as worded by virtue of Law 4/1999, according to which the documents, dossiers or parts thereof which must be valid outside of the territory of the Autonomous Community must be translated into Castilian Spanish.

**City Hall of Huesca:** Regarding the legal duty incumbent upon it, resulting from Article 42.1 of Law 30/1992, of issuing express decision concerning all those requests and appeals lodged by the interested parties.

**City Hall of Lobón (Badajoz):** Regarding the legal duty incumbent upon it of abiding by that which is set forth under Organic Law 4/1997 governing the use of video cameras in public places by the Law Enforcement Bodies, such that when it is deemed necessary for video cameras to be installed, the installing process is not to begin until the required permission of the Government Delegation has been granted.

**City Hall of Madrid:** Reminders were put forth regarding both the legal duty resulting from Article 42 of Law 30/1992 of issuing express decision concerning all those requests and appeals lodged by the interested parties.

Regarding the legal duty incumbent upon it of informing this Institution of the proceedings regarding which information has been requested, without it being legally authorized to postpone or defer the same, making the response depend upon whatever is decided in the processing of the claims or appeals filed through administrative channels.

Regarding the legal duty incumbent upon it of applying and interpreting penalizing law restrictively and interpreting doubts in the manner most favorable to the person intended to be penalized, and that the penalizing rules not be applied retroactively.

Regarding the legal duty incumbent upon it to use the attributes and powers conferred thereto by the urban planning legislation so as to fully correct the defects which have been being reported in a building, adopting for this purpose all of the coordinating tasks which are necessary among the different municipal services, and so that the urban planning violation committed entailing a direct and individualized detriment to a third party, such as in the case in point, be penalized.

Regarding the legal duty incumbent upon it of acknowledging receipt of the complaints filed by the citizens in the terms stipulated under Article 11 of the Regulations governing the procedure for the exercise of the penalizing power, approved by Royal Decree 1398/1993.

Regarding the legal duty of issuing express decision setting out the reasoning for the same within the time period allowed for administrative appeals, adopting measure to eliminate the obstacles preventing, hindering or delaying the full exercise of the rights of the interested parties or the respect for their legitimate interests.

**Municipal Economic-Administrative Court of Madrid:** Regarding the legal duty incumbent upon it of issuing express decision concerning the claim within the time period allowed under law.

**City Hall of Marbella (Málaga):** Regarding the legal duty incumbent upon it on the order of placing lands at the disposal of the education administrations for educational use.

**City Hall of Mazarrón (Murcia):** Regarding the legal duty of making the necessary means available for the precautionary intervention of potentially dangerous dogs, rendering compliance with the legal duties included under the municipal rules of law proper and under Law 50/1999.

**City Hall of Morón de la Frontera (Seville):** Regarding the legal duty requiring assessing *ex officio* the expiration of the Administration's right to settle or carry out tax-collecting acts following the lapse of the four-year period stipulated by law, by virtue of Article 69.3 of General Taxation Law.

Regarding the legal duty of adopting the necessary measures for preventing the urban development violations detected from consolidating due to the mere lapse of time, thus failing to fulfill the legal mandate assigned to these municipal administrations under the urban planning legislation of inspecting, preserving and reinstating the urban planning order violated, by acting with due diligence and preventing those committing the violation from benefitting from the delay in administrative action being taken and thus causing detriment to other citizens.

**City Hall of Móstoles (Madrid):** Regarding the legal duty incumbent upon it of fully complying with Article 18.1 of the Organic Law on Ombudsman 3/1981.

**City Hall of Murcia:** Regarding the legal duty incumbent upon it of providing a response, in due time and form, to the claims and requests lodged with the same, acting in keeping with criteria of efficiency and service, in accordance with that which is set forth with regard thereto under Law 30/1992, revised by Law 4/1999 and Articles 150 and those in following of the Regulations governing organization, operation and legal regimen of the local entities.

**City Hall of Petrer (Alicante):** Regarding the legal duty incumbent upon it of providing a response, in due time and form, to the claims and requests lodged with the same, act-

ing in keeping with criteria of efficiency and service, in accordance with that which is set forth with regard thereto under Law 30/1992 and Articles 150 and those in following of the Regulations governing organization, operation and legal regimen of the local entities.

**City Hall of Píoz (Guadalajara):** Regarding the legal duty incumbent upon it of issuing express resolution in all proceedings and of notifying the same, regardless of the manner in which first filed, in accordance with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Puebla de Guzmán (Huelva):** Regarding the legal duty incumbent upon it of not proceeding to issue a decision without first having obtained the officer's ratification in his/her complaint when the person penalized has requested to be informed of said ratification.

**City Hall of Quintanilla del Olmo (Zamora):** Regarding the legal duty incumbent upon it of adopting, within the shortest length of time possible, the measures for safeguarding and restoring legality proposed in the reports of the Provincial Delegation of Zamora in accordance with that which is set forth under Article 336 of the Urban Planning Regulations of Castilla y León, approved by Decree 22/2004 of January 29th of the Autonomous Community of Castilla y León Government Council and to request the collaboration for this purpose of the Provincial Delegation of Zamora.

**City Hall of Ribera del Fresno (Badajoz):** Regarding the legal duty of issuing a decision concerning all of the requests and appeals filed by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Rivas-Vaciamadrid (Madrid):** Regarding the legal duty incumbent upon it of complying with the authorities recognized thereto under Articles 25 y 26 of Law 7/1985 governing the bases of the Local System and the general and local environmental regulations, in particular that for which provision is made under Articles 53, 55 and 68 of Community of Madrid Environmental Assessment Law 2/2002.

**City Hall of San Fernando de Henares (Madrid):** Regarding the legal duty incumbent upon it of eliminating the obstacles preventing, hindering or delaying the exercise of the interested parties' rights or the respect for their legitimate interests, by providing for that which is necessary to prevent and eliminate all abnormality in the processing of the proceedings in accordance with Article 41 of Law 30/1992.

**City Hall of Santiago de Compostela (A Coruña):** Regarding the legal duty incumbent upon it of collaborating in a swift and preferential manner with the Ombudsman in the

proceedings thereof in accordance with that which is set forth under Article 19 of Organic Law on Ombudsman 3/1981.

**City Hall of Santovenia de la Valdoncina (León):** Regarding the legal duty of incumbent upon it of issuing and notifying, in due time and form, an express decision stating the reasoning for the same in relation to the requests lodged by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Segovia:** Regarding the legal duty of adopting all those measures which are necessary so that, within the shortest length of time possible, the fitting decisions will be issued in the foreclosure proceedings for a group of dwellings under the ownership of this City Hall.

**City Hall of Tineo (Asturias):** regarding the legal duty incumbent upon it of investigating and, wherever applicable, setting the bounds and protecting the lands under municipal ownership, *ex officio* or due to a complaint filed by the local residents in accordance with the legislation governing the local system.

**City Hall of Torrox (Málaga):** Regarding the legal duty incumbent upon it of keeping the beaches in conditions of cleanliness, hygiene and healthiness, of dealing expeditiously and effectively with the complaints with regard thereto and of penalizing the offenders, making provision for the necessary surveillance services, especially intensely during summertime, to exercise and have people comply with the preservation of the quality and good condition of the beaches.

**City Hall of Trabazos (Zamora):** Regarding the legal duty resulting from Article 42.1 of Law 30/1992.

**City Hall of Tres Cantos (Madrid):** Regarding the legal duty resulting from Article 42.1 of Law 30/1992.

**City Hall of Vallada (Valencia):** Regarding the legal duty of incumbent upon it of issuing and notifying, in due time and form, an express decision stating the reasoning for the same in relation to the requests lodged by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**City Hall of Villafranca de los Barros (Badajoz):** Regarding the legal duty incumbent upon it of collaborating in the proper management of public resources and in fully abiding by the rules of law, one of which is the attributing of pensioner status to that stipulated under law, correcting whatever discrepancies may be known to the Administration, informing those bodies which have authority thereof with utmost expeditiousness in order to appropriately serve the

public good inherent thereto without causing any detriment to the citizens.

**City Hall of Villagarcía de la Torre (Badajoz):** Regarding the legal duty of issuing express decision in all proceedings and of notifying the same, regardless of the manner in which initially filed, within the time period allowed for this purpose.

**City Hall of Villajoyosa (Alicante):** Regarding the legal duty incumbent upon it of completely reinstating the urban development legality of the area in question, given the patent widespread detriment being caused thereby to the residents as a whole.

**Regional Government of Guipúzcoa:** Regarding the legal duty incumbent upon it of fully complying with Article 9 of Organic Law 1/1996 governing legal protection of juveniles, which sets forth the right of juveniles to be heard, both in the family environment as well as in any administrative or judicial proceeding in which they may be directly involved and which leads to a decision which has a bearing on the personal, family or social sphere thereof.

**Provincial Delegation of Coruña:** Regarding the legal duty of fully complying with Article 36.3 of Law 30/1992 as far as translation of documents into Castilian Spanish is concerned.

**Provincial Delegation of Badajoz:** Regarding the legal duty incumbent upon it of collaborating in the proper management of public resources and in fully abiding by the rules of law, one of which is the attributing of pensioner status to that stipulated under law, correcting whatever discrepancies may be known to the Administration, informing those bodies which have authority thereof with utmost expeditiousness in order to appropriately serve the public good inherent thereto without causing any detriment to the citizens.

**Provincial Delegation of de Valencia:** Regarding the legal duty of issuing a decision concerning all of the requests and appeals filed by the interested parties, thus fully complying with that which is set forth under Article 42 of Law 30/1992.

**Provincial Delegation of Zamora:** Regarding the legal duty incumbent upon it to adopt, in collaboration with the City Hall of Quintanilla del Olmo, within the shortest length of time possible, the measures for safeguarding and restoring legality proposed in the reports of the technical services of this provincial corporation and to directly exercise the authorities indicated, wherever applicable, in accordance with that which is set forth under Article 366 of Castilla y León Government Council Decree 22/2004 of January 29<sup>th</sup>.

#### **Others**

**Bar Association of Segovia:** regarding the legal duty incumbent upon it of suitably adapting to the regulations in force the processing of cases which are brought following the complaints filed by citizens, taking care to ensure that the legitimate rights of the interested parties are fully guaranteed.

**Official Licenses Property Administrator Association of Albacete and Cuenca:** regarding the legal duty of fully complying with Article 42 of Law 30/1992 and Article 20 of Royal Decree 1398 /1993.

**Official Association of Master Builders, Technical Architects and Construction Engineers of Badajoz:** regarding the legal duty incumbent upon it of expressly issuing a decision on an appeal for review filed, in accordance with that which is set forth under Article 42 of Law 30/1992.

#### **Warnings**

##### **General State Administration**

###### *Ministry of Defense*

**To the Office of the State Secretary of Defense:** Advising the same as to the legal duty of appropriately responding completely to the requests for information placed by this Institution and, in the event of not doing so, as to the possibility of considering this department hostile and obstructing the exercise of the duties constitutionally entrusted to the Ombudsman.

##### **Autonomous Administration**

###### *Autonomous Community of Andalucía*

**To the Andalusian Employment Service:** in view of the insufficient and inadequate information furnished, in which the institutional authority for gathering information was additionally challenged, it was advised of the legal duty falling to the public powers of aiding the Ombudsman in a swift and preferential manner in the investigations being carried out thereby.

##### **Local Administration**

**City Hall of Arbo (Pontevedra):** Advising the same that this City Hall repeatedly furnishing incomplete, partial and/or insufficient reports could be interpreted as a hostile way of proceeding obstructing the actions being taken by the Ombudsman.

**City Hall of Madrid:** Advising the same as to the legal duty of collaborating and not obstructing the Ombudsman's inquiries by furnishing contradictory reports from different departments of this corporation, in which answers are not provided either to all of the questions posed by this Institution.

**City Hall of Móstoles (Madrid):** In view of the insufficient, inadequate information furnished, it was advised that no

response being provided may be incurring in unwarranted failure to collaborate, which, in turn, may be mentioned in particular in the report which this Institution must present to Spanish Parliament.

### Appeals of Unconstitutionality

In 2010, the filing of appeals of unconstitutionality was requested against 41 laws, appeals having been filed in the end against 3 laws.

### Requests for Appeals of Unconstitutionality

The laws regarding which the Ombudsman was requested to file an annulment petition based on allegations of unconstitutionality were as follows:

- Organic Law 1/2009, of November 3rd, supplementary to the Law governing the reform of the proceedings legislation for the implementation of the new Judicial Office, by virtue of which Judiciary Branch Organic Law 6/1985 of July 1st was revised.
- Organic Law 1/2010, of February 19th, modifying of the organic laws governing the Constitutional Court and the Judiciary Branch.
- Organic Law 2/2010, of March 3rd, governing sexual and reproductive health and termination of pregnancy.
- Law 10/2009, of October 20th, governing the creation of State advisory bodies in the agrofood field and determining the bases of representation in of the professional agricultural organizations.
- Law 12/2009, of October 30th, governing the right of asylum and of subsidiary protection.
- Law 18/2009, of November 23rd, in revision of the established detailed text of the Law governing traffic, motor vehicle driving and road safety, approved by Royal Legislative Decree 339/1990 of March 2nd.
- Law 25/2009, of December 22nd, in revision of the different laws for the adaptation thereof to the Law governing free access to services activities and the exercise thereof.
- Law 35/2010, of September 17th, on urgent measures for reforming the job market.
- Autonomous Community of Andalusia Law 2/2010, of April 8th, on rights and guarantees of personal dignity in the dying process.
- Autonomous Community of Andalusia Law 5/2010, of June 11th, on local autonomy of Andalusia.
- Autonomous Community of Aragón Law 2/2010, of May 26th, governing equality in family relations in view of the parents splitting up to live separately.
- Principality of Asturias Law 6/2009, of December 29th, governing the evaluation of the teaching function and the incentives thereof.
- Canary Island Autonomous Community Law 13/2009, December 28th, governing General Budgets of the 2010 Canary Island Autonomous Community Budgets.
- Canary Island Autonomous Community Law 14/2009, of December 30th, in revision of Law 7/1995, of April 6th, governing Canary Island tourism planning.
- Canary Island Autonomous Community Law 4/2010, June 4th, of the Canary Island Protected Species Catalogue.
- Autonomous Community of Castile and Leon Law 3/2010, of March 26th, in revision of Law 10/1998, of December 5th, governing the Regional Planning of the Autonomous Community of Castilla y Leon.
- Autonomous Community of Castile and Leon Law 5/2010, of May 28th, in revision of Law 4/2000, of June 27th, on the Declaration of the Nature Park of Fuentes Carrionas and Fuente Cobre-Montaña Palentina (Palencia).
- Autonomous Community of Castile and Leon Law 6/2010, of May 28th, for the declaration of the 'Complejo de Ocio y Aventura Meseta-Ski' as a Regional Project.
- Autonomous Community of Catalonia Law 5/2010, of March 26th, governing the bases of devolvement to the Government of the legislative power for adapting rules of law to EC Parliament and Council Directive 2006/123/EC of December 12th 2006 regarding the services on the domestic market.
- Catalan Labor Inspection Agency Law of the Autonomous Community of Catalonia 11/2010, of May 19th.
- Autonomous Community of Catalonia Filmmaking Law 20/2010, of July 7th.
- Autonomous Community of Catalonia Law 25/2010, of July 29th of the second book of the Civil Code of Catalonia regarding the individual and family.
- Autonomous Community of Catalonia Law 28/2010, of August 3rd, in revision of Article 6 of the revised text of the Animal Protection Law approved by Legislative Decree 2/2008.
- Autonomous Community of Galicia Law 8/2009, of December 22nd, governing the harnessing of wind power in Galicia and creating the wind power charge and the Environmental Compensation Fund of the Galician Parliament.
- Autonomous Community of Galicia Law 10/2009, of December 30th, in revision of Legislative Decree 1/2005, of March 10th, in approval of the revised text of Law 7/1985, of July 17th, and Law 4/1996, of May 31st, governing Galician Savings and Loan Banks.
- Autonomous Community of Galicia Law 2/2010, of March 25th, governing urgent measures for the revision of Law 9/2002, of December 30th, governing urban planning and the protection of the rural environment in Galicia.
- Autonomous Community of Madrid Law 8/2009, of December 21st, governing liberalizing measures in support of Madrid's enterprises.
- Autonomous Community of the Basque Country Law 1/2010, of March 11th, on the revision of Law 16/1994, of June 30th, governing conservation of the natural environment in the Basque Country.

- Autonomous Community of La Rioja Law 3/2010, of March 10th, passed in approval of the change in the municipal districts of Torremontalbo and Uruñuela.
- Autonomous Community of Valencia Law 12/2009, of December 23rd, governing tax-related, administrative management and financial and organizational measures of this Autonomous Community Government.
- Autonomous Community of Valencia Law 8/2010, of June 23rd, governing Local Government System of the Autonomous Community of Valencia.

#### **Appeals filed**

In 2010, the decision was made to appeal various rules of Autonomous Community of Catalonia Law 24/2009 of December 23rd on the Catalan Ombudsman.

Paragraphs Two, Four and Five of Article 9 of Autonomous Community of Catalonia Law 10/2010 of May 7th governing welcoming persons who have immigrated and those having returned to Catalonia were raised to the Constitutional Court.

Lastly, Article 128-1, Paragraphs 1 and 2 of Autonomous Community of Catalonia Law 22/2010, of July 20th, on the Catalan Consumer Code was appealed.

#### *Appeals of Unconstitutionality*

In 2010, express petitions were received requesting that an action be filed for the protection of constitutional rights which patently failed to fulfill the requirements set forth under Article 44 of the of Constitutional Court Organic Law 2/1979, as the interested parties either had not exhausted all of the means of protest for which provision is made under the procedural rules of law for the specific case in point within the judicial channel, or they had not formally reported in the process, had the opportunity existed, the violation of the constitutional right as soon as, once known, had it been befitting or rather, lastly, they had requested the petition outside of the time period allow under the aforesaid law for filing the same.

## Administrations which have failed to heed (obstructing) or have patently delayed providing a response to the Ombudsman's calls for action

A list is provided in following of different government agency bodies and divisions which have not provided an adequate response to the Ombudsman's requests or calls for action, therefore failing to fulfill the public powers' obligation of collaborating with this Institution 'urgently and preferentially' as ordered under Article 19 of Organic Law 3/1981 governing the same. In these cases, Article 18.2 of the aforesaid Organic Law empowers the Ombudsman to declare the administrative division or body in question as 'hostile or hindering its functions' and also make the same known to Spanish Parliament.

### Uncooperative Administrations

#### Central Government Administration

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

To the **State Secretary for Telecommunications and for the Information Society**. The many telecommunications-related complaints lodged by citizens make the request for reports from the Office of the State Secretary for Telecommunications and for the Information Society quite common, therefore requiring a special collaboration on the part of this Government Agency. Although a response has finally been received to most of the requests for reports, these answers have almost always been provided following long delay after several requests having been made.

#### Autonomous Community Administration

##### *Autonomous Community of Madrid*

To the **Madrid Minor and Family Institute** for the repeated delay in furnishing the reports requested thereof, particularly in the course of complaint proceedings investigating the documentation-related situation of the unaccompanied underage aliens who have been under the charge thereof. In 2010, up to five times, the report requested was not furnished after a third request having been placed. At other times, the replies are furnished, but solely after having placed several requests.

#### Local Administration

- **City Hall of Aranjuez (Madrid)**, regarding annoyances caused by noise from two bars on Verderón Street.
- **City Hall of Bedia (Vizcaya)**, regarding the request for drawings of the municipal sewer system.
- **City Hall of Bollullos Par del Condado (Huelva)**, regarding the delay in this municipality's General Urban Planning Plan.

- **City Hall of Burguillos de Toledo (Toledo)**, regarding this City Hall's failure to take action concerning works not complying with the Special Interior Reform Plan (PER)
- **City Hall of Castro Urdiales (Cantabria)**, regarding this City Hall's failure to have repaired the sunken sidewalks and roadways.
- **City Hall of Ciudad Real**, regarding the annoyances caused by youth drinking in outdoor public places in the area of the gardens known as 'Jardines del Torreón'.
- **City Hall of Las Torres de Cotillas (Murcia)**, regarding this City Hall's failure to take action in view of the violations in one residential complex.
- **City Hall of Navajas (Castellón)**, regarding the irregularities in a re-parcelization proceeding.
- **City Hall of Pedrezuela (Madrid)**, regarding disagreement with an order for suspension of works where were not as per building permit.
- **City Hall of Robledo de Chavela (Madrid)**, regarding this City Hall having failed to provide any response concerning a request for urban planning information.
- **City Hall of Santa Margalida (Balearic Islands)**, regarding the annoyances caused by a parking place and a chicken coop.
- **City Hall of Tui (Pontevedra)**, regarding this City Hall's failure to grant a building permit.

### Administrations which have not provided any reply in 2010 following the third request

#### Central Government Administration

##### *Ministry of Education*

To the **Directorate General of University Policy**, regarding the delay in processing a request for homologation of a university degree granted in the Netherlands to the Spanish national in question.

##### *Ministry of the Environment & Rural and Marine Affairs*

To the **Directorate General of Water**, regarding the use of aquifers in Castile-La Mancha. Only after contacting the Directorate General by telephone was it possible to obtain a response.

To the **Hydrographic Confederation of the Miño-Sil Rivers**, regarding the works entailed in the 'Project for the Hydrological-Forestry restoration of the areas affected by the slate slag heaps along the shores of the Casajo and Santana Rivers along their course running through the meander

of San Cosme and the convergence of the Casajo and Ardemouros Rivers in the municipal district of Carballada de Valdeorras (Ourense), affecting properties numbers 104, 115 and 123 of estate 22, parcels 1464, 1461 and 1950, respectively.

### Autonomous Community Administration

#### *Autonomous Community of Andalusia*

To the **Department of Economy, Innovation and Science**, given that, the interested party having taken part in a 2008 call for applications for incentives for the training of teaching and pre-doctorate personnel at the public universities in Andalusia in fields of knowledge considered deficient due to needs for teachers, despite the decision for the same having been issued in march 2009 and having taken up his position on the following October 1<sup>st</sup>, he has still as yet not been given the grant in question as a result of the final award not having been made which would have given rise to the economic and administrative effects inseparable from said grant. The third request was placed on December 29, 2010.

Regarding the deficient running water supply in the locality of Bormujos (Seville) due, allegedly, to the failure on the part of the supply company to comply with a resolution passed by the Department.

#### *Autonomous Community of Galicia*

To the **Department of Labor and Welfare**, regarding the existing provisions in said Administration for expediting to the utmost the processing of proceedings pending a decision regarding the recognition of the benefits for which provision is made under the Dependency Law.

#### *Autonomous Community of Madrid*

To the **Office of the Vice-Presidents, Department of Culture and Sports and Government Spokesperson**, regarding the further expansion upon regulations concerning access of blind persons using guide dogs to the area for the purposes of determining the bodies having province over hearing the penalty proceedings for the violations classified under the law regulating this matter.

To the **Directorate General of Housing and Rehabilitation**, regarding the urgent award of housing for a special need.

#### *Region of Murcia*

To the **Department of Health and Consumer Affairs**, regarding the employer-employee conflict detected in the digestive apparatus section of the Hospital Santa María del Rosell.

Regarding no express resolution having been issued regarding the administrative appeal filed by the interested party.

#### *Autonomous City of Ceuta*

To the **Department of Development**, regarding housing due to a major degree of need not having been awarded.

### Local Administration

- **City Hall of Alboraya (Valencia)**, regarding the error made in the classification of a parcel under a bargain agreement.
- **City Hall of Alcalá de Xivert (Castellón)**, regarding no express reply having been given to a request for information concerning dumping.
- **City Hall of Algete (Madrid)**, regarding a locksmith shop doing business without a license.
- **City Hall of Alicante**, regarding the reindustrialization of the port of Alicante.
- **City Hall of Anchuelo (Madrid)**, regarding a construction personnel hut located on public land without a permit.
- **City Hall of Aranda de Moncayo (Zaragoza)**, concerning no reply having been given to a request for information.
- **City Hall of Arrecife (Las Palmas)**, regarding noises caused by a supermarket. A third request was placed on December 23, 2010 (09021932).
- **City Hall of Atarfe (Granada)**, concerning incomplete planning in a residential complex not received by the City Hall and deficient provision of public services
- **City Hall of Azuqueca de Henares (Guadalajara)**, regarding noise pollution.
- **City Hall of Benacazón (Seville)**, regarding annoyances caused by a materials storehouse.
- **City Hall of Borja (Zaragoza)**, regarding a certificate of good performance of the jobs performed which had been requested of this Administration not having been furnished.
- **City Hall of Burjassot (Valencia)**, regarding the reporting of construction work not adhering to the design plans.
- **City Hall of Chelva (Valencia)**, in regard to the lack of electric power supply to an occupied country house in Chelva.
- **City Hall of Collado Mediano (Madrid)**, regarding irregularities in the functioning of a collaborating urban planning conservation concern.
- **City Hall of El Molar (Madrid)**, regarding the granting of a first occupancy permit for a dwelling without utilities.
- **City Hall of Esplegares (Guadalajara)**, regarding the request of several residents for a special public Council meeting to be held to deal with certain pressing matters having not been met.
- **City Hall of Galapagar (Madrid)**, regarding the delay having arisen in granting a first occupancy permit.
- **City Hall of Garrucha (Almería)**, due to the City Hall having breached the conditions approved and published in the call for Tender Ideas for the design of the project for improving the Pedro Gea Plaza.
- **City Hall of Gozón (Asturias)**, regarding an emergency foreclosure proceedings, the occupancy certificates being null and void.

- **City Hall of Guadalupe (Cáceres)**, regarding alleged irregularities of a bar in this locality.
  - **City Hall of Jávea (Alicante)**, regarding the request on the part of a resident for two street lights to be put into operation.
  - **City Hall of La Carolina (Jaén)**, regarding a claim due to the existence of an abandoned premises full of all types of insects located beside the dwelling of the persona lodging the complaint.
  - **City Hall of La Oliva (Las Palmas)**, regarding this City Hall granting the certificate of occupancy to a dwelling with no utilities.
  - **City Hall of La Pobla de Farnals (Valencia)**, regarding pedestal tables being installed in the outdoor section of a bar, causing annoyances due to noise.
  - **City Hall of Langreo (Asturias)**, regarding the noise and dust created by the activity of a factory. Regarding no reply having been given to a request for information on a building permit.
  - **City Hall of Llanes (Asturias)**, regarding the violation of an order to halt construction which violates the general urban planning plan for this municipality. Regarding urban planning irregularities in Celorio.
  - **City Hall of Los Alcázares (Murcia)**, regarding failure to make payment of the amount for the 2006, 2007 and 2008 annual payments resulting from a collective bargaining agreement made on December 9, 2004 between the City Hall and a trade union organization for the provision thereby of certain services
  - **City Hall of Mochales (Guadalajara)**, regarding the closing of public roads with wire mesh hunting fencing.
  - **City Hall of Pollença (Balearic Islands)**, regarding replacement of an old road for a path impossible to use, especially for disabled persons.
  - **City Hall of Pradales (Segovia)**, regarding the default on the duty of keeping up real-estate.
  - **City Hall of Puebla de la Calzada (Badajoz)**, regarding a high-tension tower located on private property and the adapting thereof to urban planning and environmental requirements.
  - **City Hall of Rionegro del Puente (Zamora)**, regarding the no solution having been provided to a problem of dampness caused in the dwelling of the person having lodged the complaint.
  - **City Hall of San Fernando de Henares (Madrid)**, regarding no reply having been given to a claim of pecuniary liability for damages sustained as a result of a fall in a public place.
  - **City Hall of Sanlúcar de Barrameda (Cádiz)**, regarding a gas station being installed near homes.
  - **City Hall of Santa Margalida (Balearic Islands)**, regarding failure to reply to a report made to an animal protection association due to live ducks being let loose in the sea to be captured by bathers on the occasion of the festival of the locality of Can Picafort.
  - **City Hall of Solosancho (Ávila)**, in regard to the ownership of some lands whose deeds of ownership have not been furnished to them, as they are stated in the name of the City Hall.
  - **City Hall of Soto del Real (Madrid)**, regarding the failure to comply with an order to halt construction work.
  - **City Hall of Teguiise (Las Palmas)**, regarding the suspension of the second catering course of the Lanzarote Catering School, which left the first-year studies completed the previous year without any continuity.
  - **City Hall of Úbeda (Jaén)**, regarding the alleged violation, on the part of the Mayor, of the sessions regimen agreed upon at the City Hall Plenary Session.
  - **City Hall of Valdés (Luarca, Asturias)**, regarding the closing of an exhaust fan facility.
  - **City Hall of Vigo**, regarding a traffic fine for not identifying the driver.
  - **City Hall of Villanueva del Conde (Salamanca)**, regarding no reply being given from the City Hall to requests and claims filed.
  - **City Hall of Vitigudino (Salamanca)**, regarding performance bonds not being returned by the City Hall once the development and dwelling had been completed.
  - **Formentera Island Government**, regarding problems regarding being granted a building permit due to the coastal limit.
- Others**
- **Bar Association of Huelva**, regarding failure to provide court-appointed legal aid to a citizen in the expulsion proceedings brought against the same.
  - **Bar Association of Lanzarote**, regarding the reporting of an attorney for no end having been put to the proceedings brought against the same.
  - **Bar Association of Toledo**, regarding the appointment of a court-appointed attorney.
  - **Aranda Canal Irrigation Community (Burgos)**, concerning claim of the irrigation quotas following expropriation.
  - **Zorita Canal Irrigation Community (Salamanca)**, regarding undue charging of a rate due to not being provided with the respective service.
- Administrations which finally replied following a third request can be found in the complete report.

## MANAGEMENT REPORT

## Nearly 49% of the complaints lodged with this Institution were via Internet

Assisting the public, stringent economic and budget management and the development of the information technologies, in conjunction with the other activities carried out by the Ombudsman's Office linked to international projection and communication have continued to be given top priority attention in 2010.

### Economic and Budget management

This Institution's final Budget for 2010, following the pay cuts approved by the Ombudsman for the high-ranking officials and the staff, in line with that which is set forth under Royal Decree Law 8/2010 of May 20th enacted in passage of the extraordinary measures for lowering the public deficit, totaled 15,631,824.34, 2.11% below that of the immediately previous year. By headings, that earmarked for personnel expenses totals 78.36% of the budget, the remainder (21.63%) being for expenditures in goods and services.

### International projection

The Ombudsman's activity in the international realm is devoted mainly to the cooperation with other like institutions and with the international organizations committed to human rights and the consolidation of the democratic institutions. In 2010, the Ombudsman took active part in different international forums on human rights.

Thus, the 4th Meeting of the Mediterranean Ombudsman Association (MOA) was organized in Madrid in June, this being an organization bringing together institutions aiding more than 280 million citizens regarding the safeguarding and guarantee of fundamental rights. In October, María Luisa Cava de Llano, the acting Ombudsman, attended the annual meeting of the Ibero-American Federation of Ombudsmen (IFO) which was held in the Colombian city of Cartagena de Indias.

Work also continued on bilateral cooperation activities for the purpose of sharing experiences among this Institution and some foreign ombudsmen, on one hand, and to bolster the process of democratization and homologation of the international standards of human rights in certain countries, on the other. Mention may be made, in this group, of the contacts and meetings with representatives from countries such as Morocco.

The Ombudsman Institution has also collaborated in different technical assistance missions provided to fellow institutions

by providing advice concerning the organization and operation of ombudsmen's offices, especially by way of the projects known as 'twinning' promoted by the European Union. This Institution carried out a project of this type in Armenia throughout 2010 and commenced the preparatory tasks for another in the Former Yugoslav Republic of Macedonia.

Lastly, special mention may be made of the international activity related to Spain's National Preventive Mechanism Against Torture, the duties of which have been entrusted, by Organic Law, exclusively to the Ombudsman's Office. Within the framework of the European Preventive Mechanism Against Torture, which is coordinated by the Council of Europe and which is for improving the training of all the Preventive Mechanisms of this type which have been created or are being created in Europe in the countries which have ratified the Optional Protocol of the Convention Against Torture (OPCAT), Spain's Preventive Mechanism has taken part in several theme-based workshops in Albania, Armenia, Italy and France.

### Studies and Modernization

In 2010, a course was organized within the framework of the 'El Escorial' Summer Courses which was officially opened by the acting Ombudsman, María Luisa Cava de Llano, and which revolved around the monographic study which this Institution has already presented in Spanish Parliament 'Water in Urban and Regional Planning. The Public Administrations in Relation to Planning and Pollution'. Also taking part in the opening ceremony were Josep Puxeu, the State Secretary for Rural Environment and Water and Manuel Aguilar, the Assistant Ombudsman. The course was structured into several working units: water and urban planning, hydrological planning, pollution of continental waters and organizational problems of the public administration.

Similarly, the Institution hosted the seminar '*Democratic Values in the Educational Process*', a seminar attended by leading figures in the educational world, and was officially closed by Ángel Gabilondo, the Minister of Education.

An attempt has also been made to promote a knowledge of the Ombudsman among social organizations and groups of all types by facilitating their access to the Institution's headquarters, so that they may gain a first-hand knowledge of the different types of work that is being done.

### Drawing contest prizes

Once again this year, the acting Ombudsman awarded the prizes for the 2010 Human Rights drawing contest. The awards ceremony, organized by the Institution in collaboration with the Autonomous Community of Valencia Human Rights Foundation and the NGO Globalizing Human Rights, was held, as usual, in the Congress of Deputies with the attendance of several hundred children and youths who had come from elementary and secondary schools from different Autonomous Communities.

### Computer System

One of the aspects of major importance falling within the framework of the plan for the modernization of this Institution's infrastructures and technological services is the completion of the project of revamping this Institution's website and intranet, which has entailed building a new Web platform based on free software standards, revamping its infrastructure (computers and operating systems, search engine, content manager...) and the migration of all the contents to the new platform. The prime objective was to correct the shortcomings of the prior platform, which had been operating since 2003, by enhancing it with new functionalities and services, seeking to facilitate bringing citizens closer to our Institution, as well as to establish an agile channel of services, communications and in-house information by way of a new intranet. Some of the most outstanding of the many new aspects this website now has to offer are:

- The biggest and best level of accessibility ('AA'), certified on the website by an external company pertaining to the ONCE Foundation.
- The creation of an Electronic Registry in keeping with Law 11/2007 to facilitate citizens sending complaints with or without a digital certificate.
- The translation of the main contents into French and English and into Spain's co-official languages such that the information is offered in seven languages.
- A new search engine based on Google technology, making it possible to search the entire website or to search by sections and paragraphs.
- A new statistics section, with comparative data for the last four years.

In line with this environment of development and in keeping with the institutional strategy of creating new specific sites for processing and managing special contents, whether they be by their subject matter or by the audience for whom they are intended, a new site has been created (<http://mnp.defensordelpueblo.es/>), offering contents on the Ombudsman function as Spain's National Preventive Mechanism Against Torture.

It has also been possible to enhance the means of analysis available to those in charge of the Institution concerning the

management indicators for complaints and other proceedings, which can also be a valuable aid for determining issues subject to ex officio inquiry.

Another highly important project which ended last year was that of digitizing the log of this Institution's complaints, this being a project which began in 2007 for the purpose of preserving, in digital format the contents of all of the cases recorded since 1983, the point in time at which the Ombudsman's work commenced, up to 1997, the years in which the institutional case management information system was first put into production. This project has entailed digitizing 303,686 case files containing 1,962,473 images. For each digitized document, a TIFF format copy has been made, as the master copy for preservation, and another in PDF format for integrating into the case file management system. The master images have been signed with a digital certificate for the purpose of guaranteeing their inalterability and authenticity. Additionally, all of the images have also been recorded on DVD and are kept in custody in fire-resistant safes.

Also worthy of special mention is the participation of the staff from the computer field in the Spain-Uruguay Cooperation Program promoted by Spain's Ombudsman's Office, Spain's Agency for International Development Cooperation and the Ombudsman of the Citizenry of Montevideo to contribute, out of our institutional experience, to the information and communications technologies being put to better use as tools for contributing to boosting that institution.

### Public assistance

Throughout 2010, the use of this Institution's website as a means for lodging complaints has been consolidated, up to the point of this channel now exceeding the mail service as the way of filing complaints. Nevertheless, the number of complaints mailed in also increased in 2010, given that this channel was that most used for collective complaints, which underwent a major increase the previous year.

Table 30 shows the details of the complaints lodged, according to the channel by which received:

As far as citizen assistance is concerned, whether in person or by telephone, the data shown in the following table indicate a slight increase in the assistance provided in person as compared to 2009, in conjunction with some slightly lower figures for telephone assistance, at both the regular number and the toll-free 900 number.

### Website visits and pages visited

The comparison of the data for the last two years reveals an increase in the visits made to the Ombudsman's institutional website in 2010, showing an increase of 9,959 visits,

**TABLE 30**  
Percentage and number of complaints, by channel through which received in 2010, as compared to 2009

	2010		2009	
	Number	Percentage	Number	Percentage
e-mail	1,127	3.29	1,550	7.04
By post	14,976	43.78	7,754	35.22
Fax				
Bureau fax	24	0.07	16	0.07
Printed fax	852	2.49	771	3.50
Web page				
With certificate	368	1.08	275	1.25
Without certificate	15,890	46.45	10,483	47.61
In person	971	2.84	1,168	5.30
Telegram	0	0	1	0.00

**TABLE 31**  
Number of calls and visits received in 2010 as compared to 2009

	2010	2009
In person	2,898	2,845
Telephone	9,187	9,313
900 Line	4,658	4,979
<b>Total</b>	<b>16,743</b>	<b>17,137</b>

**TABLE 32**  
Ombudsman Website Visits

	2010	2009
Visits	263,804	253,845
Pages visited	3,735,541	3,716,460
<b>Total</b>	<b>3,999,345</b>	<b>3,970,305</b>

meaning a 3.92% increase over those recorded last year. The same trend is shown regarding the number of pages visited in 2010.

The progressive increase in the use of this Institution's website by citizens is related to a greater use of these technologies by the society as a whole, in conjunction with the increase in the informative contents provided on the website, such as the site called: [enclase.defensordelpueblo.es](http://enclase.defensordelpueblo.es), the contents of which are intended for facilitating a better knowledge of human rights and of the missions which the Ombudsman carries out to safeguard and defend these rights among the educational community by furnishing teaching staff with access to information which may be useful to them in preparing lesson plans.

Similarly worthy of special mention under this heading is the aforementioned website having been made available in December 2010, being intended for gathering information on the activities carried out by Spain's National Preventive

Mechanism Against Torture. All of this can be verified by reading the figures in the Table in following.

**TABLE 33**  
Breakdown of the Ombudsman Website visits for 2010

	Visits	Visited pages
<a href="http://defensordelpueblo.es">defensordelpueblo.es</a>	230,498	3,554,673
<a href="http://premioddh.defensordelpueblo.es">premioddh.defensordelpueblo.es</a>	5,134	36,292
<a href="http://concursodibujos.defensordelpueblo.es">concursodibujos.defensordelpueblo.es</a>	4,041	27,832
<a href="http://enclase.defensordelpueblo.es">enclase.defensordelpueblo.es</a>	23,031	110,642
<a href="http://mnp.defensordelpueblo.es">mnp.defensordelpueblo.es</a>	1,100	6,102
<b>Total</b>	<b>263,804</b>	<b>3,735,541</b>

### Communication

With the intention of drawing citizens even nearer to the Ombudsman's Office and fostering the relations with the mass media, making it possible to better convey the work done by the Ombudsman's Office to the public, an attempt has been made to bolster the available communications channels.

### Magazine

The online magazine 'El Defensor al día' [The Ombudsman Up To Date], which is published monthly by the communication department, has continued increasing the number of its subscribers, now exceeding one thousand e-mails (Autonomous Community Commissioners, Central Administration and Government, State Institutions, Autonomous Community Parliaments, Government Delegates and Sub-delegates, Joint Commission for Relations with the Ombudsman, Ibero-American Ombudsman Federation, non-governmental associations and organizations, journalists and interested private citizens), which are multiplied by way of this publication being forwarded by many of those who receive it. In fact, increasingly more private citizens are writing to this Institution to request

to be sent this magazine. As of December 2010, those interested can request subscription online by way of the institutional website. Additionally, at the end of 2010, work was begun on redesigning this publication, which came out with a new appearance and reorganized contents in 2011.

Apart from the above, in addition to the regular issues, a special Newsletter was launched in 2010 on safeguarding the rights of mental patients in Europe, which included all the information from the seminar which this Institution organized with the Council of Europe in Bilbao.

### **Media impacts**

Another outstanding part of the work done by the Ombudsman's communication department is the relations with the

media, sending out press releases, announcing and organizing press conferences. In 2010, the work done in this field took the form of more than three thousand media impacts in newspapers and magazines, radio, television and Internet.

Additionally, in the last quarter of 2010, theme-based memorandums started being sent out on the work done by this Institution in different areas in order to delve yet deeper into bringing the Ombudsman concept closer to citizens and show the usefulness of this Institution by way of practical examples. Hence, memorandums on gender violence and immigration were sent out coinciding with the International Day Against Gender Violence and the International Migrants Day, respectively.

# Supervision of Public Administration



ADMINISTRATION OF JUSTICE

## This Institution successfully saw to the widow's pension being granted the battered women who had waived the compensatory pension

Undue delays in civil and criminal jurisdiction continue to be the reason, once again this year, for a large number of complaints and several different measures taken by this Institution. Regarding gender violence issues, there were two highly important measures in the measures taken by this Institution: the reform of the General Social Security Law, which backed the criterion defended by the Ombudsman of a widow's pension being granted to battered women who had waived the compensatory pension, and the inquiry into the protocol for putting anti-battering bracelets in place, this having been an inquiry which ended satisfactorily in view of the Secretary for Equality having agreed to the recommendation made.

### Undue delays

Undue delay is currently one of the Justice Administration's most serious problems, it being of prime importance for this problem to be solved.

### Civil Jurisdiction

In recent years, the number of complaints as a result of undue delays in the civil jurisdiction have totaled a high percentage of all complaints lodged, the collective institutions (Supreme Court, the majority of the Higher Courts and some Provincial Courts) having been those showing longer delays.

For purposes of example, in one of the complaints lodged, a female citizen expressed her great concern regarding how long and drawn out her divorce proceedings were, stating the existing delay in the procedure for settling the community property which had been filed in 2007 with Court of First Instance Number 3 of Cuenca. The Attorney General's Office's report pointed out the different judicial proceedings which had been conducted in the process in question, having set the date of the court hearing for February 24, 2010. The Attorney General's office has been requested to follow up on the aforesaid proceedings and has reported that, at the beginning of 2011, debate, voting and the decision of a first appeal was pending before the Provincial Court of Cuenca.

### Criminal Jurisdiction

A major number of complaints have been lodged in 2010 regarding delays in the Criminal Jurisdiction.

As a result of a news item having been published in the media, an *ex officio* inquiry was begun on having found that Examining Magistrate's Court Number 23 of Madrid was hearing proceedings for certain events which had taken place in 1994. As stated on record, on November 20, 1994, three officers entered a bar located on 'Carrera de

San Jerónimo' in Madrid, where they encountered three young people who allegedly insulted them, this being the reason why these young people were then subdued. On April 1995, the magistrate of the Examining Magistrate's Court Number 23 apparently deemed the events recounted by the police officers not to have been substantiated by proof, and that the events had occurred quite differently, since the officers actually entered the establishment and, after ordering alcoholic beverages, were reprimanded by one of the young ladies with regard to the Police being able to drink alcoholic beverages while on duty. Similarly, the forensic report included numerous injuries sustained by the young people arrested. According to what was stated in the news, on November 8, 1996, the Anti-Torture Association filed a bill of indictment in which, following a detailed account of the events, different members of the Police Force were accused of being alleged perpetrators of all the offenses of illegal arrest, assault and battery, privation of civil rights and omission of the duty of preventing crimes, it having also indicated that fourteen years of inquiry has lapsed since that time. The cause was apparently materially lost, having come out shortly afterward. It also seems that stumbling blocks had been encountered in the processing.

The opinion of the Attorney General's Office having been requested, it has been possible to break the stalemate in the proceedings, although the issuing of a court decision is still as yet pending.

Another Justice Department delay gave rise to the mother of a young man who was run over on April 9, 2004 while doing his military service to approach our Institution more than seven years after the event which had confined the young man in question to a wheelchair, without the inquiry of the proceedings having been completed. The Examining

Magistrate's Court of Purchena, in which the case was being heard, stated that, once the bills of indictment had been filed, the Attorney General's Office requested that further inquests be held, the parties being newly notified, they then having filed a bill of indictment on July 22, 2009. Similarly, it was informed that, despite the existence of sixteen cases in every stage of higher-priority proceedings, an order for opening a public hearing had been issued.

On the other hand, it was stated for the record that the situation of the sole Examining Magistrate's Court of Purchena was untenable, given that, in 2009, 2,004 civil cases and 2,200 criminal cases were docketed, it being one single court which has to reconcile all of the civil and criminal cases on the docket scheduled for the five days of the week with the police court proceedings, and that in 2010 alone, more than fifty detainees had been lodged. To provide a solution to such problems, it was stated that a second court had been being requested through different means, and in view of the negative response of the Higher Court, a civil service employee had been requested to serve as back-up and a remunerated afternoon schedule for all of the civil servants, given that part of them are coming in to work such periods without any pay at all, including the court clerk and the examining magistrate proper.

### **Administrative Law Jurisdiction**

As regards the complaints lodged before this Institution by private citizens throughout the course of this year, two major groups may be defined along general lines: on one hand, mention must be made of the complaints entailing a delay in a public hearing being held and, on the other, the complaints regarding a delay in the enforcement of the decisions handed down by the administrative law bodies.

In many cases, the cause of the delay in the administrative law proceedings lies in what is referred to as administrative inertia, in other words, the unjustifiable delay in conducting the different proceedings on the part of the Government bodies which cannot in any way whatsoever justify the undue delays.

### **Labor Jurisdiction**

In the 2009 Annual Report, this Institution's concern had already been expressed at the time regarding the rise in litigation in the Labor Jurisdiction as a result of the current major economic crisis.

In this regard, in mid-2009, the Government set a Preventive Plan in motion as back-up to expedite the work load of the courts of this jurisdiction, and the nineteen legal jurisdictions which were backlogged to the greatest degree had the support of thirty-five magistrates along with court clerks and civil service personnel.



Nevertheless, complaints have continued being lodged concerning this issue, such as that set out by a citizen of Extremadura who explained that he had filed a claim for a disability benefit in Labor Court Number 3 of Badajoz on October 8, 2010 which had been docketed for 2012.

There is a draft bill regulating the Labor Jurisdiction prepared by the Ministry of Justice aimed at replacing the Revised Text of the Labor Proceedings Law currently in effect for the purpose of providing a solution to the current situation.

In short, the existing draft bills for reforming proceedings which have a bearing on all jurisdictional orders show that the expeditious, effective administration of justice desired by the Constitution as currently being a goal still as yet to be accomplished, despite the efforts of the successive administrations.

### **Domestic violence**

The delays in the court proceedings, the lack of providing the psychosocial teams or different issues concerning the shelters are some of the most frequently recurring complaints regarding the subject of gender violence.

Two outstanding measures were taken in 2010. As a result of the complaints lodged by several female citizens, this Institution opened an inquiry with the State Secretary for Social Security on finding that Article 174.2 of the General Social Security Law did not include the cases in which the separation or divorce were to have taken place as a result of battering, which gave rise to many women who had been victims of battering having waived the compensatory pension after divorcing or separating from their attackers. As a result of this inquiry, the aforesaid Article was revised, thus having successfully seen to a widow's pension being granted to the battered women who had waived the compensatory pension.

The second of the measures to be highlighted is that which came about as a result of the complaint lodged through the mediation of the Castile-La Mancha Ombudsman. In this

complaint, a woman stated that after petitioning the Criminal Court that her attacker, who had been sentenced to respect a restraining order, be monitored by way of GPS bracelets, she received a letter from the 'Cometa' Control Center, which had been requested to implement the monitoring device saying that, in accordance with the agreement signed by the Ministry of Equality – now Office of the State Secretary of Equality – the telematic means this control center installs are aimed solely at verifying compliance with the precautionary restraining measures concerning gender violence.

The foregoing called the attention of this Institution, which proceeded to conduct a study of the situation, delving for this purpose into the Agreement between the Ministry of Justice, the Ministry of the Interior, the Ministry of Equality, the Judiciary Council and the Attorney General's Office for the implementation of the 'Protocol for taking action for monitoring gender violence-related restraining measures by telematic means'.

In the aforesaid Agreement, it is set forth that Article 48.4 of the Penal Code stipulates that, in the event that the judge or court rules in favor of the sentence of prohibiting coming near the victim, the judge or court may rule that the monitoring of such a measure be carried out by means of 'those electronic means which so allow' in the same sense as Article 64.3 of the Organic Means of Integral Protection for Gender Violence Law, which makes provision for the use of tools of suitable technology for immediately verifying violation of the restraining measures, agrees to said measure being imposed both as a precautionary measure as well as in serving a sentence.

Having examined the 'Protocol for taking action for monitoring gender violence-related restraining measures by telematic means', the first paragraphs voided the possibility of enforcing this monitoring measure in serving a sentence on making reference solely to the monitoring of compliance being rendered with the restraining orders of a precautionary nature imposed in those proceedings which are prosecuted for gender violence.

In the answer received from the Ministry of Equality, following a legal analysis of the situation, it was stated that, given the importance of the issue put forth, at the last meeting of the Monitoring Commission on the Agreement for the implementation of the Protocol for taking action for monitoring gender violence-related measures by telematic means, the possibility had been discussed of being able to extend the current Monitoring System by Telematic Means of gender violence-related restraining orders to the cases entailing a restraining sentence imposed as a result of a gender violence-related crime having been committed.

At a point in time nearing the conclusion of this report, this Institution learned that the State Secretary of Equality had

decided, in keeping with the Ombudsman's criterion, to broaden the use of these telematics monitoring devices to the batterers who are in the process of serving sentences.

On the other hand, on the subject of gender violence, the councilwoman for Social Action of the Menorca Island Government addressed this institution to report the non-existence on that island of any court duly specialized in gender violence, considering this to be in contradiction of that which is set forth under Organic Act 1/2004 on the Integral Measures for Safeguarding Against Gender Violence, in which it is stipulated that 'in any case, specialized legal counsel will be guaranteed immediately to all victims of gender violence who so request, without dismissing the possibility that were their entitlement to free legal counsel not to be recognized at a later point in time, these women must pay the attorney the fees due and payable for the intervention thereof'.

The Free Legal Counsel Commission of Spain's General Bar Association replied that the Ministry of Justice had solely endowed the Balearic Island Association with four police court lawyers per day on this subject for the entire country. However, in keeping with the population and number of cases generated daily, it was deemed necessary to cover Palma de Mallorca with three of the lawyers and assign four to Ibiza. Therefore, a specific training course in defending gender violence victims has been organized for the attorneys included in the Menorca Island Court-Appointed Criminal Lawyer List, such that whoever has to deal with gender violence victims will possess this specialized training, the only solution possible in accordance with the material means available.

Nevertheless, this Institution contacted the State Secretary of Justice to ascertain the possibility of increasing the existing budgeting for the purpose of being able to expand the number of court-appointed lawyers specialized in gender violence issues rendering their services within the confines of the Balearic Islands.

### **Juvenile offenders**

Since Organic Act 5/2000 governing the criminal liability of minors entered into effect, the Ombudsman has been focusing particular attention on the enforcement being given to this law in practice. One of the main aspects of said enforcement is where and how the court-ordered confinement measures are carried out. As the legislators would have it, the place for this purpose are the young offender centers operating under the Autonomous Communities, each one, in the exercise of the authorities, designing, organizing and managing the same in keeping with their own criteria.

The mother of a young man who had a disorder causing him serious problems in social learning wrote to the Ombuds-

man, explaining that, in the company of this minor, who had been part of a reform case, she held an interview with a technical team assigned to Madrid's Office of the Juvenile Defender, where they were informed of the possibility of making redress out of court in the case in point, to which they agreed. In the settlement out of court made at the Autonomous Community of Madrid Agency for Juvenile Offender Re-education and Reinsertion, it was agreed that the young man in question attend eight group sessions in a social skills and assertiveness program for the purpose of offsetting his lack of friends.

Next, they were referred to a day center. It seems that, while the sessions were being carried out, they found that the program was far from being a program of group social skills but was rather more focused on a reinsertion of juveniles and young people in social strife. Thus, the juvenile in question had been attending sessions dealing with illegal drug use, driving violations, dealing with violence among young people, etc., all of which was combined with entertainment and leisure time sessions. All this despite the center's director having told them that he was going to be carrying out a specific social skills program. The truth of the matter is that he had been going seven days a week to different groups and workshops which had nothing to do with the aforementioned social skills.

On realizing that the need of carrying out a treatment suited to this juvenile's characteristics and symptoms had apparently never been taken into account at any time, as well as the redress having been carried out seemingly not having been monitored either, an inquiry was then opened through the Attorney General's Office and the Council of the Presidency, Justice and Interior of the Community of Madrid. On the date of the writing of this report, both opinions have been received. In its opinion, the council details the measures carried out in the course of carrying out the proposed out-of-court solution, no circumstances detrimental to the interests of the juvenile having been found to exist, it additionally being deemed that the overall evaluation of the activity carried out by the same throughout the eight work sessions to be positive. Similarly, it is stated that his solution was covenanted with the juvenile and his mother, as a supplement to the treatment with which the young man in question is being provided and, therefore, taking into account his characteristics, deficits and needs. On its part, the Attorney General's Office stresses there being no knowledge as to these facts having been made known thereto and that, once the objectives of the extrajudicial redress were found to have been satisfactorily met, the district attorney took concern for the discontinuance and declared the case closed. The court then subsequently issued a decision in this same regard. Taking into account this information, this inquiry is now going to be closed once the lady who lodged this complaint has been informed.

### Lawyers and Solicitors

Entitlement to legal counsel and defense is a right recognized under Article 24.2 of our Constitution, which also recognizes the right to free legal counsel under Article 119 thereof, a right further expanded upon under Free Legal Counsel Law 1/1996 of January 10<sup>th</sup>. The functions of the Bar Associations include the obligation of guaranteeing the benefits of such an important right by therefore performing a public duty, the reason for which the Ombudsman watches over ensuring said professional groups fulfilling this fundamental mission.

Once again, the Ombudsman has made different inquiries at the request either of private citizens who have approached our Institution or on an *ex officio* basis, in which measures resulting from the provision of this service or from other measures related to the activity of lawyers and solicitors have been analyzed.

A lady wrote the Ombudsman's Office explaining that, on December 9, 2009, she had filed a request to the Toledo Bar Association to be assigned a court-appointed attorney and solicitor for filing a suit for separation and precautionary measures, having not received any express reply to her request on the date of her letter to this Institution. The complaint having been accepted for processing, this institution is currently awaiting the opinion requested of said Bar Association after now having placed a second request.

Apart from the above, another inquiry is being made through this same Bar Association after it having come to our knowledge that eviction proceedings filed in 2009 and prosecuted before Court of First Instance Number 2 of Ocaña had come to a complete standstill pending solely said Bar Association proceeding to appoint a lawyer to undertake the defense of the defendant's interests. This corporation has regrettably not issued the opinion requested either, despite the three requests placed in this regard.

An inquiry was also been undertaken through the Solicitors' Association of Lugo, following a citizen having stated that this corporation had appointed a professional assigned to the group of court-appointed attorneys to undertake the representation thereof in different proceedings which, according to his/her lawyer, could not undertake his/her representation given that she was representing the interests of the other party. The aforementioned Association furnished a report explaining that it could not cancel the appointment made and appoint another professional until it received the letter from the office of the solicitor appointed stating that she could not take on the case due to representing the interests of the other party. After having received the letter, the aforementioned Association appointed another professional, informing the Bar Association thereof for the fitting processing. This information led to the closing of the inquiry.

PRISON ADMINISTRATION

## Overcrowding, the greatest problem at Spain's prison facilities

**In 2010, the inmate population dropped slightly, although this drop has not completely done away with the problem of overcrowding at penitentiaries which particularly concerns this Institution. Despite the Administration have planned to open several prison facilities, only three have actually started operating. The Ombudsman has continued to visit the prisons and has detected a growth in the respect modules. However, the Ombudsman has continued detecting isolated events which must be eradicated, such as the incidents for which male prison guards and female inmates were responsible at the Madrid I prison facility.**

Unlike previous years, Spain's inmate population showed a slight downward trend in 2010.

At the end of the year, there were 73,849 people in prison, the year having started off with 75,937 people imprisoned. This year (2010) has ended with the prison inmates totaling a number similar to the start of 2009. This item of data in-somuch as it marks a break with the constant growth the prison population has undergone over the past few years.

At the end of 2010, the prison population by Autonomous Communities was divided up as follows: Andalusia, 17,173 inmates; Aragon, 2,609; Asturias, 1,530; Balearic Islands, 1,870; Basque Country, 1,428 Autonomous Community of Ceuta, 276; Autonomous Community of Melilla, 275; Canary Islands, 3,023; Cantabria, 683; Castile-La Mancha, 2,193; Castile and Leon, 6,912; Catalonia, 10,535; Extremadura, 1,440; Galicia, 4,401; Madrid, 10,273; Murcia, 881; Navarre, 234; Rioja, 363; and Autonomous Community of Valencia, 7,750.

The Córdoba and Zuera prisons in Zaragoza were the most densely-populated prisons in Spain at the end of 2010, respectively having 1,826 and 1,846 inmates.

Thus, the problem of overcrowding continues to be one of the most salient problems. Secondly, the need has been detected of adequately staffing the prisons with guards in order to prevent the aforementioned overcrowding from becoming yet worse due to any shortage of personnel suited to the surveillance and care-related needs to which the inmates are entitled in accordance with that which is set forth under prison legislation.

In 2010, the Ombudsman visited the following prison facilities: Albacete, Albocasser (Castellón), Alcázar de San Juan (Ciudad Real), Alcalá Men's Prison (Madrid II), Alcalá Women's Prison (Madrid I), Alicante Penitentiary, Basauri (Bilbao), Dueñas (Palencia), El Dueso (Cantabria), Estremera

(Madrid VII), Martutene (San Sebastian), Monterroso (Lugo), Morón de la Frontera (Sevilla II), Nanclares de Oca (Alava), Pereiro de Aguiar (Orense), Picassent Penitentiary (Valencia), Soria, Soto del Real (Madrid V), Villabona (Asturias), Villanubla (Valladolid) and Villena (Alicante II), in addition to the military prison in Alcalá de Henares (Madrid).

### Prison deaths

According to data from the General Secretariat for Prisons, a total of 160 inmates died in 2003; 180 in 2004; 201 in 2005; 218 in 2006, 202 in 2007, 225 in 2008 and 224 in 2009.

In this regard, mention must be made of the fact that every time the death of an inmate becomes known, either by way of a media news report or by letters sent by other inmates or their relatives, an individual case investigation is undertaken.

As far as suicides are concerned, the prison facilities of Zaragoza, A Lama and the Psychiatric Prison in Alicante, with 4% of Spain's prison population, were found to concentrate nearly 36 percent of the suicides which occurred within the 2003-2008 period. This circumstance led to the Administration being encouraged to conduct an in-depth study of the events having occurred to reach the respective conclusions for the purpose of reducing the suicide rates detected at these three prisons. From the report furnished by the Administration in this regard, it followed that, despite the large amount of accurate data on each one of the prison facilities it manages and on the inmates having committed suicide at one of these facilities, it had not been possible to come to any hypothesis making it possible to explain why only three prisons out of all those comprising the prison system have such a relatively high suicide rate.

The report on the death rate at Prison Institutions in 2009 revealed the large number of inmate deaths at the Teixeiro Prison, the Bonxe Prison and the Psychiatric Facility in Alicante and at the Albolote Facility, those at this last-named

facility having been related to illegal drug use. In the course of this year, information has been furnished revealing that such deaths have been the subject of a special study on the part of the Subdirector General of Prison Health Coordination by the Office of the State Secretary for Prison Institutions.

### Abuse

The Ombudsman was appointed as the National Torture Prevention Mechanism within the framework of the Professional Protocol of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by virtue of Organic Law 1/2009 of November 3<sup>rd</sup>. This appointment has given rise to some major organizational changes in this Institution, clearly distinguishing between the preventive action entrusted to the National Prevention Mechanism and the reactive action, which is the Institution's response to the complaints concerning torture and abuse entrusted to the competent areas. The Ombudsman drafts a specific report addressing Spanish Parliament and the United Nations Subcommittee on the Prevention of Torture headquartered in Geneva on its prevention actions as a National Mechanism.

One inmate appeared before this Institution stating that before leaving one prison facility for his transfer to another prison, he was beaten by prison guards at the center he was leaving. At the time of his admission to the facility to which he was being transferred, his attending physician at the time found him to have some injuries. This inmate was certain that the medical report made concerning him did not accurately detail the injuries he actually had at the point in time at which he was admitted to the facility to which he was transferred.

In the course of the inquiry, it became possible to see that, up to that point in time, nobody from the Administration had interviewed him directly to delve into the events which had caused his injuries, how they happened, in what context the occurred, which prison guards might have been involved, etc.

Despite the fact that the official form (report on care provided for injuries) includes a space for recording the statements made by the injured inmate, the physician attending this inmate wrote nothing into this section. Nor did the warden of the facility order this to be done when it was brought to his attention due to the report made to him by the chief of services, concerning the appearing inmate having reported having been struck by some prison guards and so stated on the medical report for admission to his facility. Nor did the central services carry out this measure to look into the matter.

On the part of the Administration, it is alleged that the length of time having elapsed between the certification of the injuries sustained (September 2008) and the point in

time at which the report of abuse came to the knowledge of the central services (December 15, 2008) advised against delving any further into the matter than that which had been done up to that point, which did not include even taking the least statement from the inmate. It cannot be acceptable and has thus been stated that the length of time having elapsed (three months) can be used as an argument for not taking a statement on the part of the Administration which makes it possible to avail of a first-hand account of what events are attributed to what prison guard(s) and how the inmate explains the alleged attack reported having occurred. In short, this would entail obtaining a ratification of the report which would enable the Administration to weigh, in conjunction with the rest of the inquiring measures taken, based on warranting of facts, whether or not the report filed has elements of truth and to take action accordingly.

The facility to which the inmate in question was transferred apparently failed to inform the police court of the injuries sustained by the inmate, such an omission being surprising, thus confirming this to be a matter of events as yet to be cleared up in full, but which, in any case, reveal a certain degree of seriousness if, in the end, it is possible to attribute any sort of responsibility to the prison guards involved.

Apart from the above, as previously mentioned, the inmate in question has maintained from the very beginning that the medical report which was written did not accurately include the injuries he had sustained. It was for this reason that information was requested from the Administration regarding the existence of photographs concerning these injuries, and the Administration having replied that it was not the responsibility of the prison physicians to take photographs and that the reports issued, as regards official reports, are presumed truthful.

What is known to date leads one to consider – independently of the necessary measures having to be adopted to improve the Administration's actions with regard to taking complaints concerning possible cases of abuse and it being necessary to demand greater care in the drafting of injury reports – that the incorporation into the medical reports, on an overall basis, of photographs of the injuries which inmates may have at the time of their admission to prison facilities or rather as a result of the use of coercive means is a pressing need which cannot be put off any longer, although now not being possible in this specific case, although it would have been advisable. The incorporation of this information is undoubtedly not an attack on the presumed truthfulness of the contents of the physician's report, but rather further upholds the report. The widespread availability of modern devices for capturing and saving images in digital format makes their incorporation into everyday practice as soon as possible on the part of the prison Administration advisable. As a result of the foregoing, a recommendation was made, which is currently pending a reply, that the

necessary instructions be given for proceeding to take photographs of any injuries inmates under the custody of the prison Administration may have as a result of coercive means or for any other reason, whether fights among inmates or self-inflicted injuries, as well as the injuries they have at admission to prison from freedom or from another prison facility.

The media echoed both the verbal and written complaints lodged with the warden's office of the Psychiatric Prison Facility in Alicante by prison guards revealing the irregular behavior of one of the employees at the facility, attributing him with irregular contacts with female mental patients housed at that facility. This employee was also related to some case of abuse of patients at the same facility. The Administration confirmed that, in fact, a patient had indeed reported an orderly for abuse. A disciplinary case investigation was ordered, the employee's temporary suspension having been agreed, as well as all of the documentation being sent to the Attorney General's Office. An inquest is currently under way for the following offenses: one count/offense for injuries, one count of offense against human dignity and one count of continued sexual abuse as a result of the accusation made to them by a female patient, said official accusation having been attached to the proceedings already under way for injuries. It was subsequently agreed to continue the proceedings as a personal injury lawsuit due to what happened to the patient making the official accusation and continue the investigation of the cause as an offense with regard to that which is related to the patient's accusation of sexual abuse. The latest available information reveals that both of these court proceedings are still currently under way.

### **Situation of the Psychiatric Prison Hospitals in Alicante and Seville**

The proper treatment of mental disease in prison at both its specialized facilities and in the regular prisons is one of the major challenges, once again this year, facing the prison Administration as a whole. The fact must not be overlooked that the inmates suffering from mental illness (nearly 40 percent of the inmates have some disorder of this type) comprise a group of a majority of inmates whose rights are most vulnerable in prison.

The 2009 report provided a detailed record of the situation of both of these prison hospital facilities and the commitment undertaken by the Administration of preparing what was referred to as the 'Plan for Strategic Action Concerning Psychiatric Prison Hospitals' as a tool for correcting the deficits detected. This institution does not as yet have a copy thereof making it possible to even ascertain its general characteristics. The commitment was also undertaken by the Administration of undertaking certain improvements which had been left pending from the previous year.

At the Seville Psychiatric Hospital, these improvements consist of enlarging offices, conditioning the courtyards, improvements in the physician/psychiatrist visiting rooms and in the treatment rooms, as well as completely refurbishing the bathrooms in the patient's rooms, this last measure to take more than one year. Some of the most outstanding improvements at the Alicante Psychiatric Hospital include the refurbishing of the dispensary department, the building of which has been completely remodeled as regards the residential part and the medical/healthcare personnel and treatment offices, the pharmacy and the medical record archive. The drafting of the project for the fire detection facility and call buttons in cells is still currently in progress. All of the foregoing will be monitored, especially the installation of the intercom facility and fire detection systems.

As far as the suggestion made by this Institution for the family members of the patients to be able to make phone calls to the hospital to talk to these patients in view of their special situation, this suggestion has regrettably not been possible to put into practice for technical reasons, whilst we trust that future technical innovations will be making it possible, on one hand, to identify the person receiving the call and, on the other, to make certain whether the person identified has approved communications with the inmate, which will afford the possibility of carrying out this initiative, as it would be a tool which, in certain cases, would help toward a better treatment and the favorable evolution of some mental patients admitted to prison psychiatric hospitals.

### **Respect modules**

Respect modules have continued being implemented to an increasingly more widespread degree throughout 2010 at the prison facilities managed by the State Secretary of Prison Institutions. In this regard, the role of the prison guards must be given public recognition, who, as a whole, perform their difficult work quite properly. The 2008 data showed there to be 5,708 inmates incorporated into this program comprised of sixty-four modules pertaining respectively to twenty-eight prisons. In mid-2010, the number of inmates housed in this type of modules had practically doubled, being divided among 119 modules and sixty-two prison facilities. The interesting aspect of this initiative, as well as the firm belief that the maximum number of inmates which may be benefitting from this program has not as yet been reached, makes it necessary for the Ombudsmen to keep track of their future evolution.

### **Inmate rights**

#### **Telemedicine**

In 2010, this Institution has continued following up on promoting telemedicine in prisons as a necessary measure for alleviating the existing problems involved in physicians coming to the prisons, as well as the prisoners going to

hospitals. Hence, a report has been requested on whatever new aspects might have arisen in regard to the desirable boosting of the development of telemedicine in the prison setting.

The prison Administration has informed this Institution of the fact that, following a workshop being held in Extremadura aimed at bolstering telemedicine being practiced in prison settings, a stable working group has been set up with the Autonomous Communities of Madrid and Andalusia for the purpose of attempting to expedite the prison network being connected to the available telemedicine services for the medical centers in both of these Autonomous Communities.

The following medical centers currently have services operating: Caceres, Badajoz, Palma de Mallorca, Malaga, Sevilla II, Madrid II and Castellón II, and negotiations are currently being held with the Health Departments of Asturias and Murcia.

As regards the Autonomous Community of Aragon, the connection was pending the telephone company installing optic fiber at the Zaragoza prison as had been requested by the Secretary of Penitentiary Institutions at the beginning of 2010, it not being possible without this connection to continue moving forward in the telemedicine-related endeavors for this prison with the Aragon Health Department.

This Institution highly values: the progress which the prison Administration has been making regarding telemedicine, whilst also encouraging this Administration to continue to persevere in this type of pursuits.

Also this year, the Administration has reported that the Telephone Company has answered the request for installing optic fiber at the prison in Zaragoza and that it is therefore anticipated to be moving ahead regarding this matter with the Aragon Health Department. Regarding the Basque Autonomous Community, work is progressing well with its healthcare authorities, it being expected to have all the prison facilities in this Autonomous Community connected to the Osakidetza system as soon as possible.

#### **Female inmates with underage children**

The prison Administration has informed that, on December 31, 2009, the minors who were living with their mothers at facilities operating under said Administration totaled 206 mothers and 218 children, eight of whom are older than three years of age and are in External Mother Units and Dependent Units.

At present, mothers with small children mainly from mothers units in the Autonomous Community of Andalusia are now being assigned to Seville's External Mothers Unit newly opened in January 2010, Madrid's External Mothers Unit also being scheduled for opening.

At the time of the writing of this report, the prison Administration has been requested to further expand upon the investigation concerning the situation of the children younger than three years of age housed at any of the facilities operating under the Administration, as well as the number of minors living with their mothers, the facility and type of infrastructure in question. Generally speaking, the dependent mothers units are progressively being used to a lesser degree as a result of the increasing decisions to grant Grade 3 classification to mothers with children in prison.

#### **Serving community service sentences**

This complaint, which had previously been put forth in the 2009 annual report, has continued being processed throughout 2010.

From the report furnished by the prison Administration, it follows that it is not possible to determine exactly whether the current number of spaces available for serving community service sentences suffices to accommodate the number of sentences of this type handed down in Spain. In this regard, it is also reported that it is not possible either to know or even intuit what the growth potential of this type of sentencing may actually be. The only one single item of data provided is that of 119,466 condemnatory sentences up to the third quarter of 2009.

The Administration continues by reporting that it is not possible either to furnish data regarding the number of spaces the prison systems has for those serving community service sentences, since the agencies providing this data do not make any specific commitment and the number of spaces therefore cannot be accounted for in all certainty.

Based on this premise, this Institution can only acknowledge the major effort the prison Administration has been making over the past few years in order for a penological innovation (as was, at the time, acceptance of the community service sentence) to meet with actual acceptance in the Spanish prison system.

#### **Infrastructures**

For carrying out the current plan for building new prison facilities and amortizing the obsolete ones, the Administration had scheduled the opening of the following prison facilities for 2010: Social Insertion Center in Albacete, Social Insertion Center in Murcia, Mothers Unit in Madrid, Open Section in Teruel and the East Coast prison facilities in Murcia and Mahon. Despite this fact, solely the new Open Section in Teruel, the Social Insertion Center in Murcia (Guillermo Miranda) and the Social Insertion Center in Albacete actually began operating.

In 2010, the Council of Ministers passed a resolution by virtue of which the Plan for the Amortization and Creation of

Prison Facilities is updated with respect to the 2006-2012 period. This updating process entails changing the use anticipated for certain lands and earmarking funds for the processes of remodeling and/or enlarging facilities for which provision had not previously been made at the current facilities in Almeria and Teruel. New social insertion facilities are also planned to be built in Jerez de a Frontera, Zaragoza Vigo, Asturias, Castellon and a Mothers Unit in Leon.

The construction of a prison facility in Puerto del Rosario (Fuenteventura) is being postponed for economic reasons. Permission is being granted to replace some of the restricted access units in hospitals in the public sector for other units which it is necessary to build at other hospitals in Spain's public system.

This revision will make it possible to create 1,232 prison spaces above and beyond those currently planned, as well as cutting the investments allocated to carrying out the plan by 2,700,000 euros. These measures aimed at relieving the high increase in the prison population over the past few years must be adopted, as previously mentioned, along with adequate staffing of personnel in order to make it possible to fulfill the constitutional mandate of re-educating and re-inserting the individuals sentenced to imprisonment.

The measures will be continued to be followed up on since the new East Coast prison facility (Murcia), the Mahon facility and the Grand Canary Island facility (San Bartolomé de Tirajana) are planned to be officially opened, as well as the new Mothers Unit in Madrid (Victoria Kent Social Insertion Center).

### **Improper relations at Madrid I**

The dismissal of those in charge of the Madrid I (Women's) Prison Facility and the fact that the actions of a numerous group of prison Administration employees was being investigated in view of the constant rate at which episodes of alcoholic beverages entering the prison for the female inmates to drink and the well-founded suspicion of the existence of sexual relations between prison guards and prisoners in exchange for indulgence were being brought to the attention of this Institution.

The Administration reports that since late 2009, some comments had been being made thereto concerning irregular situations. In January 2010, there is a record of an accusation reported by a female prison guard in conjunction with a report from the chief of services. In this accusation, an account is provided of an incident which took place on December 31, 2009. Following the preliminary inquiries, an internal investigation was undertaken, it having been found that one morning a male guard left his station on repeated

occasions, failing to perform his professional duties, leaving the establishment without permission to do so and acquiring alcoholic beverages which he brought into the facility to drink them with different inmates to which he allowed access to a certain area of offices, violating the most basic security measures and the existing management order in this regard.

Days later, this same guard was disrespectful to and publicly and blatantly insulted a female guard who was on duty at the facility, his attitude thus undermining the image and prestige of his fellow employees at the facility.

A small group of female interns were also found to be keeping exceedingly familiar relations with a small number of male guards, overstepping the bounds which must govern the relationship between this Administration's employees and the inmates at the facility. As a result of the foregoing, it was resolved in April for two disciplinary proceedings to be opened, temporarily suspending the male guard in question from his duties.

Apart from the above, another incident came to fore in April 2010, the degree of seriousness of which gave rise to the prison inspector visiting the facility, having found that a male guard on the night shift on one of the modules opened the doors of two cells without the chief of services being present, as is mandatory, and without any sufficiently justifiable causes. He also then opened the cells of the inmates in charge of the module's economat, waking both these inmates and their cellmates for the purpose of acquiring products from the economat, meaning disturbing the nighttime rest of the female inmates for the sole purpose of satisfying a person whim which had nothing to do with his duty, knowing full well that his higher position in the chain of command would prevent these female inmates from refusing to do so. The possibility exists that he had improper relations in one of the cells opened during the nighttime hours entailing the presence of individuals other than the female inmate who occupies the cell in question.

After opening the respective disciplinary proceedings, the guard involved was temporarily suspended from his duties, and the events were notified to the Madrid District Attorney's Office.

Subsequently, part of this facility's management team was dismissed for neither having appropriately assessed the degree of seriousness of the events in question nor having acted with the due diligence or resolve in view thereof. At the time of the writing of this report, this Institution's proceedings are still in progress.

## CITIZENSHIP &amp; PUBLIC SAFETY

## The Ombudsman's office advises of a police circular which may give rise to massive arrests of foreigners

Problems regarding the issue of Spanish National Identity Cards, traffic-related matters and alleged cases of police abuse are the subjects repeated most often under this heading. It is for this reason that many of this Institution's Suggestions and Recommendations were aimed at requesting the improvement of the material and personal means for processing these matters. Apart from the above, a circular of the General Alien and Border Police Station came to our knowledge in early 2010 which gave rise to private citizens and members of different associations approaching this Institution to report abusive practices on the part of police officers in the identification and arrest of aliens. In the opinion of this Ombudsman's Office, the confusing way in which written and various concepts being mixed up together in the Circular may favor massive arrests of aliens being made. It is for this reason that this Institution is continuing to take complaints regarding this subject, has conveyed its concern to the competent authorities and continues maintaining a vigilant position to assess each one of the cases in which the rights of aliens might possibly be unjustifiably restricted.

### Terrorism victims

The Ombudsman's office has always kept watch over the defense of the rights of terrorism victims, which has taken the form of careful care regarding the complaints received from citizens who have been – themselves or their family members – victims of a terrorist attack and a detailed monitoring of any new development which might arise in the regulatory field which were to lead to the implementation of improvements in the existing legal system of solidarity and protection of the victims.

Following the passage of the bill for the recognition and integral protection of terrorism victims in 2010, this institution trusts that this bill will serve to provide a fitting response and protection of the terrorism victims which it has been demanding for years.

### Law Enforcement Bodies

#### Abuse

The complaints received by this Institution concerning alleged abuse inflicted upon citizens by members of the Law Enforcement Bodies have made it necessary to draft a methodology for processing these complaints throughout the full length of their procedures from the start of their operation, which has been based on several cornerstones. Firstly, on the principle of caution which stems, on one side, from the important constitutional mission of police officers and, on the other, out of the indispensable respect for the rights set forth under Article 15 of the Constitution. In other words, it is necessary to weave together two serious risks: on one hand, false accusation, exaggerations, an ideologically-based 'anti-police' attitude; and on the other, 'police

abuse' in all its manifestations, from the most serious (attempts to kill, attempts to injure) to other less serious ones but which must also be eradicated, such as what is referred to as 'mistreatment' in the Ombudsman's terminology.

One interesting practice within the aforementioned methodology is that of gathering the version of the witnesses, if any, in any investigation in which abuse caused by Law Enforcement officers have been reported. This practice has provided major nuances in matters in which problems exist with regard to determining the truth, due to the fact that, along general lines, it is difficult for the police authority to recognize 'prima facie' that some bound may have been overstepped in the police's actions.

Another one of the Ombudsman's lines of action with regard to this subject, which has been repeatedly stressed in the different annual reports has been that of requesting the Administration to which the officer questioned reports for the befittingness under law of filing restricted information and disciplinary proceedings without dismissing the possibility of the suspension thereof until a penal judgment has been issued on the order of preventing the statute of limitations from having a bearing on the possible disciplinary offenses.

It is in this regard that the investigation started in the case posed by the actions of several members of the Local Police of Ceuta is situated, which, as the individual appearing explained, were subjecting his son to police abuse, to whom they had caused injuries regarding which, up to the date of the filing of the complaint, he had not as yet fully recovered. As a result of the battering he underwent, the interested party filed a report at the Police Station, inquest proceed-

ings Number 780/08 having been held by Examining Magistrate's Court Number 6 of Ceuta. In parallel to this report, the individual appearing placed a request to the Office of the President of the Autonomous City of Ceuta for the purpose of disciplinary proceedings being filed against the officer in question as a result of deeming the events to constitute a highly serious offense, to which he received no response whatsoever.

Following the request of an opinion placed by this Institution and after the Administration having notified that no disciplinary proceedings whatsoever could be filed against the Local Police office of Ceuta on the matter having been filed, the Ombudsman's criterion was conveyed to the Office of the President of the Autonomous City of Ceuta concerning the fact that a distinction has to be made between the duplicity of administrative and penal sanctions, given that the use of the disciplinary power which the Administration has over its civil service employees differs from that pursued by the penal sanction imposed for the same events.

Hence, the Ombudsman has been repeatedly putting forth before all of the government agencies that the perverse effect of the statute of limitations on disciplinary liability as a result of the lengthiness of the penal processes which have all the other proceedings set aside. Therefore, it always suggests that the disciplinary proceedings be filed although left put aside until the penal process is adjudged.

Based on the aspects explained, a suggestion was put forth aimed at the filing of the respective disciplinary proceedings being agreed upon in view of the existing accusation in court made by the injured party and the existence of the injuries sustained and reported in due course by means of the furnishing of the respective medical report, this being a suggestion which has not been taken to date.

In another case, the investigation was begun before the police authorities, which has not reached completion to date, when a father reported the physical assault on his son at the Granada bus station, who, on being asked for his identification by two National Police officers, on finding it stated on his national identity card that he was born in Guatemala and having judged him by his physical appearance, they assaulted him, insulted him and handcuffed him, taking him to jail, where he spent the entire night. He similarly explained that the Police reported him and a fast-track trial was seemingly held, regarding which he provided no details, although he did furnish a copy of the medical report stating the injuries sustained.

In view of the explanation set out in the foregoing, there are other complaints in which their processing has ended in

revealing the non-existence of responsibilities of the officers for the abuse of which they were being accused, these being complaints in which it is necessary to combine the basic principle of prudence with the necessary investigation of the events reported such that the intervention of this Institution is not devoid of a businesslike attitude and precision in such a delicate matter.

Thus, one clear example is the complaint for the treatment dispensed by several citizens on the occasion for the intervention of the National Police in a hotel establishment in Alicante. According to the account provided by the interested parties, the officers involved burst into the establishment which was closed to the public, requesting those inside the establishment to identify themselves, striking them and starting a fight, as a result of which different individuals suffered contusions and wounds. During the fight, the officers – according to those appearing – treated the person testifying and the other individuals who were inside the establishment in a degrading, xenophobic manner. The investigation showed that the young woman who had filed the complaint assaulted one of the officers using a crystal drinking glass and a ballpoint pen, having managed to injure the officer twice. Afterward, the interested party barricaded herself behind the bar of the establishment, throwing several glasses at the officers on the scene until she could finally be subdued.

This incident gave rise to Expedited Proceedings 160/09 of Examining Magistrate's Court Number 2 of Alicante and, subsequently, to Oral Hearing 467/09 of Penal Court 7 of Alicante, which handed down a condemnatory sentence against those having filed the complaint as having committed the offense of assaulting a law officer, and Examining Court Number 2 of Alicante having issued a judgment of temporary stay of Preliminary Proceedings Number 3676/2009 held for an alleged degrading and xenophobic treatment on the part of officers of the Alicante National Police Force 'as a result of the perpetration of the act not being duly justified'.

### **Citizen Security**

This Institution maintains a critical position concerning Circular 1/2010 of January 25<sup>th</sup> from the State Alien and Border Police Office in which instructions are issued for the identification and arrest – in the event of non-identification and/or of not providing proof of legal residence – of persons from outside the European Union. This institution considers several concepts to be mixed with one another in said circular, in a certain degree of disorder, which leads to a certain degree of ambiguity and could favor mass arrests being made.

In relation to this issue, complaints were lodged with this Institution from the State Federation of Associations of Im-

migrants and Refugees in Spain, the group for Peace and Solidarity and a large group of 140 associations, unions and other organizations.

Based on that which is stated in the report furnished by the Directorate General of the Police and Civil Guard on the occasion of the processing of the aforementioned complaints, it follows that there is a commitment, without detriment to the construal-related problems set out by this Institution, to respect legality and makes it clear that the identification processes in public places will continue being carried out as has been being done up to the publication of the circular in question or, what is the same, in each case in which posed to the officers, these officers shall act in accordance with the applicable provisions of law.

The complaints lodged also revealed that setting up identification checks on a routine basis in public places for the sole purpose of locating aliens who are not legally residing in Spain is a police action lacking the necessary legal coverage in light of that which is set forth under Articles 19.2 and 20.1 of the Citizen Security Act, those having lodged complaints having stated their concern as to the possibility of identification being demanded without any other basis than the ethnic traits or other outer signs indicative of nationality.

According to the Directorate General of the Police and the Civil Guard, the circular in question in no way implies or implicitly states that the police activity is to be oriented systematically, routinely setting up identification checks, nor much less that they target any one specific group, such as that of aliens not legally residing in Spain, it being pointed out that the preventive police activity is prepared, planned and carried out by the Law Enforcement Bodies in terms of the needs which progressively arise and after analyzing intelligence and information.

Nevertheless, numerous complaints have continued to be lodged by citizens having witnessed identification checks in public places apparently aimed at locating aliens living illegally in Spain and which are made on the sole basis of the ethnic traits or other external signs of nationality, this being the reason why this Institution is continuing to carry out measures in this regard and will be keeping a watchful eye for assessing each one of the cases in which an alien's rights might be unjustifiably restricted.

#### **Spanish National Identity Card-Issuing Offices**

Complaints have continued being lodged throughout 2010 by citizens putting forth the problems they are finding at the offices where Spanish National Identity Cards and Passports are issued, taking into account the existing obligation and right for all Spanish citizens to avail of their personal identification and documentation.



The action taken by the Ombudsman in processing these complaints has revolved around making recommendations for the purpose of increasing and improving the material and human means of these offices so that citizens may obtain their personal documentation within the shortest length of time possible. Similarly, it was recommended in due course to the Ministry of the Interior that the prior appointment system be reinstated for the purpose of avoiding the unnecessary waits at the offices where these documents are issued.

Without dismissing the possibility of the prior appointment system existing, today chosen by most citizens as the preferred system when renewing their National Identity Card or passport, there are still certain offices where numbers are handed out daily to establish the order for waiting in line for obtaining identity cards, these being numbers which are handed out among the individuals physically present who have opted not to use the telephone or telematic systems for making a prior appointment. There may be times when there are not enough numbers to go around when they are handed out, which has given rise to complaints from citizens who have opted for going to the office in person rather than making an appointment telematically or by telephone.

Nevertheless, it must be taken into account that during certain vacation periods, problems are still arising in regard to prior appointments, as citizens having more free time and taking advantage of this time to tend to these matters coincides in time with an increased need for National Identity Card and passport renewals in preparation for the trips which are usually taken more often at these times and a smaller number of civil service employees on duty due to the staff being on leave for their vacations.

#### **Traffic: Fining procedure**

Throughout 2010, complaints have continued being received setting out the existence of irregularities in the noti-



fication of the charges or the penalty proceedings, in many of which notice has been served by publication as a result of it not being possible to serve notice at the address stated in the Highway Administration records due to the driver or the vehicle owner having failed to fulfill the obligation of notifying any address changes.

Nevertheless, in some cases, the Administration has proceeded to cancel the fines charges on finding that the notice had been sent to the wrong address without the driver or the vehicle owner having failed to fulfill the aforementioned obligation.

#### **Other traffic issues**

On this Institution having learned, through the media of the existing problem at some points around the capital city with regard to the fines for parking in loading zones also governed by parking meters, an *ex officio* investigation was begun through the Municipal Government of Madrid.

From the information published, it follows that, in certain loading zones, there are also blue or green markings on the pavement indicating that they are parking places, where, in principle, it can be construed that it is possible to park there as a regulated parking area, which may cause some confusion to drivers, who, on seeing the markings painted on the pavement, decide to park their vehicle, with the respective parking meter sign only to then be fined for parking in a loading zone.

In the report furnished by the Municipal Government of Madrid, it was pointed out that the reserved parking areas of any type may or may not be signposted with a time limit, depending on several factors, such as the type of use for which they are intended, the mobility-related conditions of the area in question and the demand for parking.

Similarly, it was indicated that in the specific case of the loading zones, especially in the downtown area, where the Regulated Parking Service has been implemented, they are signposted with a time limit, normally from 8:00 a.m. to 2:00

p.m. and from 4:30 p.m. to 7:00 p.m., that is to say, allowing the parking zone in question to be used as a loading zone in the morning and in the afternoon, these times normally being the same times that shops are open and therefore when there is a greater demand on the part of the delivery truck drivers, but similarly allows the residents and all other vehicle to be able to use these same parking places at lunchtime and in the evening and at night, given the great demand for parking there usually is in the downtown sections of Madrid.

The aforementioned report continues by pointing out that this limit on the time schedule for using the reserved parking area, which is mainly in the loading zones, but which may arise in any type of reserved parking space, implies that, in the zones where the Regulated Parking Service is implemented, the parking strip be marked in accordance with the current Mobility Ordinance for the City of Madrid, in blue or green, given that there are times of the day when the parking place is not reserved as such and the parking strip of any vehicle can be used, in keeping with the limits in the length of time parked and the payment of the rate in accordance to that which is set forth under the regulations in force.

Regardless of there possibly having been some case of confusion on the part of citizens, the truth of the matter is that the current regulation adapted to the provisions of law in force, and the markings are sufficiently visible on each and every one of the reserved spaces. Nevertheless, an attempt is being made through the Mobility Administration to proceed to progressively reinforce the markings so as to more clearly mark the shared parking spaced. The markings which are being used consist mainly of large-sized yellow street markings specifying the space reserved as a loading zone located next to the blue or green paint on the parking space and of upright signposts also including the phrase 'all other times Regulated Parking Service'.

In view of that which is stated in the report furnished by the Municipal Government of Madrid, the aforementioned *ex officio* investigation was then closed.

#### **Spanish citizens in prison abroad**

Throughout 2010, complaints have continued being received from Spanish nationals imprisoned abroad, in a lesser number than in previous years.

From the statistics requested, for the purposes of completing this report, from the Directorate General of Consular and Migratory Affairs of the Ministry of Foreign Affairs and Cooperation, we have been able to find that the number of Spanish nationals imprisoned abroad on December 30, 2010 totaled 2,366. Most of these Spanish nationals are in Peru (278) and, in descending order, starting from Peru,

Morocco (232), France (212), Brazil (205), Portugal (177), Italy (147), Colombia (136), Argentina (106) and Germany (101), others being imprisoned in numbers totaling less than 100 in other countries.

All of the aforementioned countries hold agreements with Spain for the transfer of convicts so that they may serve their sentences in their homeland, either bilaterally or rather because they comprise part of the multilateral agreement signed for this purpose in Strasbourg. Recognizing the fact that our country is one of those which has the largest number of bilateral agreements signed on this subject, we are pleased to be able to now add yet one more to the list, that signed on November 24, 2009 with the United Arab Emirates which was approved and ratified on August 27, 2010.

Lastly, always as per the Ministry data, an agreement was signed with Uruguay in May, which, due to form-related issues, has not as yet entered into effect.

A total of 19 of the 29 complaints lodged with this Institution regarding this matter were admitted, fifteen of which have finalized the investigations initiated. Grouping them by issues, we can form two major groups which have existed year after year and which always include most of the complaints from prisoners abroad: the Consulate's performance, as a result of considering it to be deficient as regards the obligations assigned thereto; and the delays in the processing and subsequent completion of the transfer to Spain for serving the sentence.

#### **Transfer to our country of Spanish nationals imprisoned abroad for serving their sentences**

Most of the Spanish nationals who have been sentenced abroad opt for requesting to be transferred to Spain to serve their sentences by virtue of the agreements signed for these purposes. Experience goes to show, based on the steps taken in these complaints by this Institution, that, as of the point in time at which an individual requests to be transferred, it may take even as long as twelve months for the transfer to finally be approved by both countries. Nevertheless, one must not overlook the fact that the request is not processed until the condemnatory sentence is final, as a result of which, added to the time period subsequent to the approval necessary for the coordination of the police services in turning over the convict, this may amount to as

long as a two-year period to be able to return to Spain commencing as of the point in time at which the person is arrested.

In this regard, a woman approached our Institution requesting the supervision of the measures taken by the Spanish government in view of the fact that the approval of the transfer of a family member of hers who had been sentenced in Peru (arrested in May 2009) had taken place in June 2010 and, it then being in early November 2010, they had not received any notice at all regarding the date of transfer, all of which gave rise to the start of the fitting inquiry with the Directorate General of the Police and the Civil Guard, in which the Interpol services are included, requesting a report with regard thereto.

An identical procedure is being employed for dealing with a complaint lodged by the mother of a Spanish national serving a sentence in Brazil, the case being that in November 2010, the transfer which had been approved since the month of March according to the information furnished by the lady lodging the compliant had not as yet been made.

Lastly, in this same regard, we must make special mention of the complaint from a Spanish citizen serving a sentence in Italy, from where he requested a transfer once the sentence of three years and ten months for his involvement in illegal drug trafficking was final. The person in question was extradited in February 2009, his transfer having been approved in May 2010, and in October of that same year we receiving the final report from the Directorate General of the Police and the Civil Guard, informing us that Spain's Central Interpol Office is currently waiting for the pertinent permission to be granted on the part of the Italian authorities.

#### **Institutionals Visits**

It must be stated for the record at this point that, on the occasion of institutional commitments, the Ombudsman visited the Oslo Women's Prison (Trondheimsveien 375) and the Oslo Men's Prison (Akebergveien, 11) on October 21, 2010, having met with three female Spanish nationals and one male Spanish national imprisoned at these facilities, having been able get a firsthand look at their situation and the problems they are having, as well as the consular assistance provided to them and the possibilities of being transferred to Spain.

## MIGRATIONS AND EQUAL TREATMENT

# This Institution believes the time has come to make a commitment to integration policies

**This Institution has found that the number of aliens residing in Spain has not noticeably decreased due to the economic crisis, therefore believing that the time has come to make a commitment to integration policies. In 2010, work began being done on preparing two monographic reports, one on determining the age of unaccompanied underage aliens and the other on trafficking victims. Additionally, the large number of complaints from Spanish citizens who, having married outside of Spain, were finding it impossible to register their marriages in the Spanish Civil Registry or who had found their marriage to a citizen of another country to be thwarted due to Consuls refusing their marriage being performed or registered has given rise to a general inquiry concerning this matter.**

### **Emigration and assistance to Spanish nationals abroad**

Problems concerning collecting benefits for economic precariousness, health care or complaints regarding the way of doing of the missions abroad in emergency situations have given rise to a high percentage of the investigations under this heading. The problems of returning to Spain due to one's documents having been stolen or lost and the emergency assistance provided in the course of tourist travel have also been reason for complaint on the part of Spanish nationals abroad.

#### **Emigrant assistance**

Most of the complaints under this heading are focused on the criteria for granting and processing benefits for reasons of need which Spanish nationals residing abroad receive. For example, a ninety-nine year-old Spanish lady residing in Mexico reported that she had no means of livelihood and was indigent. After opening an investigation, she was informed that the Directorate General of Spanish Citizens had recognized her right to collect an old age benefit.

#### **Assistance and protection abroad**

The way of proceeding of the foreign missions in emergency situations and problems of returning to Spain due to stolen or lost documents have been some of the complaints lodged most often.

In 2010, the investigation opened following the complaint of a citizen whose trip to Iran coincided in time with the start of uprisings which came about following the elections to the office of President of the Republic in June 2009 has been closed. She maintained that she received no response from the Spanish Embassy in that country despite calling by telephone and sending e-mails requesting advise concerning the safety in that country. The investigation ended by setting out the differences between what was said by the interested party and that which has been stated by the Embassy.

As regards emergency assistance during tourist travel, several investigations have been opened. One of these investigations, after having read in the news the report of five Spanish nationals who had survived the tsunami which battered Robinson Crusoe Island (Chile) as to their not having been dispensed proper treatment on the part of the Spanish Consulate in Santiago de Chile. Following the fitting investigations, it was concluded that the assistance in question had not been provided with the expeditiousness required by the exceptional circumstances those involved were suffering, given that the authorization of aid for their accommodations was excessively delayed.

However, in another case, the way of proceeding of the person in charge of the Consulate, outside of office hours for providing assistance to the public, made it possible for a Spanish lady who had been robbed in Brussels to be able to return to Spain that same day.

The disappearance of a Spanish citizen in South Africa gave rise to another investigation which still remains open following the Spanish Consulate in that country having reported that the police authorities had located a corpse which might be that of the man who had disappeared. This investigation is being kept open until the national or, wherever applicable, the foreign body can perform the DNA test necessary for identifying the corpse.

### **Immigration and alien affairs**

Organic Law 7/1985 of July 1st governing rights and freedoms of aliens in Spain, which was in force up to February 1, 2000, first entered into effect twenty-five years ago this year (2010). It has also been ten years since a specific area was created for studying the complaints concerning migrations at the Ombudsman's Office.

We are living in an era marked by the economic crisis. Despite the forecast which linked immigration to the labor

market, the number of residents in Spain has not noticeably decreased due to the economic crisis. This is why the challenge now is that of integration policies. We must be capable of creating, on one side and the other, an awareness of belonging and adhesion, but such feeling are the result of the life experiences and the habit of living together in peace and not so much structured processes which can be designed and governed entirely by way of provisions of law.

### Entry into National Territory

Despite a procedure existing which sets forth the terms and requirements for the letter of invitation to be issued in favor of aliens who are travelling to Spain as tourists or for personal reasons, it has once again been found in 2010 that no uniform criteria exist concerning the documents required at the different police stations. The General Department on Alien Affairs and Borders was therefore requested to prepare some clarifying instructions, this being a request to which is showed itself to be favorable. Even so, complaints still continue being lodged, especially from residents in Barcelona, information therefore having been requested once again from the aforementioned General Commissioner's Office.

In view of this Institution's discrepancy with entry being refused at border checkpoints to underage Spanish nationals accompanied by their ascendant relatives who are nationals of third countries, a reminder of legal obligations and a recommendation were sent to the General Commissioner for Alien Affairs and Borders so as to prevent hindering access into Spain on the part of Spanish citizens and that the measures to be taken at the border stations be protocolized for investigating the location of the other parent when the person accompanying the minor does not meet the requirements to enter the country.

### Visits and activities at border control posts

This Institution has once again recommended that the attorney be allowed to speak to the citizen refused entry prior to speaking with the examining magistrate investigating the case for refused entry at the Barajas Airport. The General Commissioner for Alien Affairs and Borders has not accepted this recommendation on considering the rights of foreign citizens to be involved in an administrative procedure for refusal of entry are guaranteed. This Ombudsman's Office differs with this criterion, given that it considers that adequate legal counsel is not being provided when the confidential interview between the traveller and the attorney is not allowed prior to the appearance which takes place in the presence of the examining magistrate. This Institution also considers that the attorney must have immediate access to the case filed when called to provide assistance.

A supervisory visit has once again been made to the room for the passengers not allowed to enter the country and those seeking asylum at Barajas Airport Terminals 1 and 4.



Although the conclusion has been reached that the facilities and procedures for taking action fully comply the internationally-accepted parameters, it being considered necessary for the video surveillance to be extended to the holding rooms, and it is recommended that, among other things, the interviews held during the entry refusal procedure be recorded. The competent authorities agree with this idea of extending the video surveillance, but tied it to budget-related issues. However, they do not consider it necessary for the interview to be recorded given that it is held with an attorney present. This Ombudsman's Office is continuing its supervising and monitoring work for the purpose of improving the functioning of these facilities.

The Irún-Biratou (Guipuzcoa), La Junquera and Portbou (Girona) land border checkpoints were also visited, it having been cause for particular concern to have found that the police practice of not going through an entry refusal procedure with the respective explanation of the reasons for such a decision has not been corrected, which means obviating the mandatory legal counsel for which provision is made under law.

### Re-entry permits and related issues

This Institution recommended to the State Secretary for Immigration and Emigration that some instructions be drafted so that the interested parties in the re-entry permit applications would not be required to appear in person. The Directorate General of Immigration issued Instruction 07/2006 of August 31<sup>st</sup>, according to which, voluntary representation approaches may be employed when the interested parties are renewing their permits, but not in those cases in which they have only a decision in favor of an initial permit. The investigation was suspended on a NGO filing a contentious-administrative appeal before the Supreme Court of Madrid concerning this same matter. The appeal was rejected, but the judgment accepts this document being collected in cases in which sufficiently well-substantiated pressing reasons warranting the need of making the trip and the impossibility of waiting to collect and deliver the same personally are involved.

In 2010, complaints have once again often been lodged lamenting the delays and difficulties involved in obtaining a visa allowing them to return to Spain. In the Ombudsman's judgment, this issue is a good example of the need of incorporating the new technologies into the management of the migratory phenomenon in order to prevent these delays.

#### **Treatment of stowaways**

An investigation is currently still as yet open concerning the treatment dispensed to some stowaways who arrived in Valencia in October. They were not assisted by an interpreter despite not understanding Castilian Spanish and although three of them said they were under age, the Attorney General's Office was not informed of such a circumstance or of the content of the radiological tests conducted.

#### **Unauthorized border crossings**

In 2010, mention was once again made to the Directorate General of the Police and the Civil Guard of the fact that the Motril first aid and detention center does not meet the minimum conditions to house the immigrants arriving illegally by boat. The State Attorney General's Office was also once again requested to take steps to improve the age-determining procedures being used at the aforementioned center.

Apart from the above, the investigation opened following the visit made in 2008 to the Temporary Holding Facilities for Immigrants in Ceuta has now ended. The decision to reunite family members in one certain area is found to be positive, given that this marks a step forward from the prior situation.

A visit was also made to the Temporary Holding Facilities for Immigrants in Melilla for the purpose of carrying out a follow-up on the visit made in 2008. This Institution still continues to be concerned regarding the overcrowding at this center. It additionally regrets that no continued program is as yet available for the prevention, detection and treatment of human trafficking victims.

Lastly, special mention must be made of the fact that the suggestion put forth to the Government Delegation in Melilla and repeated to the State Secretary for Immigration and Emigration so that a favorable decision be issued with regard to the applications for residence on the part of several citizens from Bangladesh who had been at the Temporary Holding Facilities for Immigrants in Melilla for several years now.

#### **Unaccompanied Foreign Minors**

##### *Determination of Age*

It must be stressed that the subject of determining the age of unaccompanied foreign minors especially concerns the Ombudsman's Office, a monographic report therefore being in the process of being written on this subject.

In 2010, the greatest number of complaints regarding determining the age of unaccompanied foreign minors have been having to do progressively more often with the tests being conducted for determining the age of persons documented with a passport of their nationality on which it is stated that they are minors. Additionally, the Central Registry for Unaccompanied Minors not being put into practice and there being no computer system making it possible for the data to be read among the different provincial public defenders' offices makes it possible for one same person to be treated as a person of full age and also as a minor within a short time frame depending upon the Autonomous Community in which the person is question is located and on whom age tests giving contradictory results are conducted.

In 2010, a practice has been detected on the part of one Autonomous Community which has been notified to the Attorney General's Office, The juvenile protection services of the aforementioned Community was automatically referring all unaccompanied foreign minors under their custody to a private clinic. There, after they had been X-rayed, they determined an age and, at the same time, the protection entity sent the passports, along with a report of false documentation to the Examining Magistrate and ceased the protective measure regarding the party in question, who was left out on the street without any assistance whatsoever. It is currently being waited for the court proceedings for which many of the interested parties had filed to be completed in order to set out the position taken by this Institution.

Apart from the above, this Institution has continued calling for the guardianship of minors who leave the centers voluntarily not to be declared to have ceased. Some protection entities, such as the Government Delegation of Guipuzcoa, have already remedied this practice, but others, such as the protection entity in Melilla, have still as yet not done so.

The discrepancy with the practice detected in several Autonomous Communities of keeping minors in the protection system without declaring their situation of being completely on their own to fend for themselves and therefore without the entity undertaking their guardianship has also been reiterated.

##### *Legal Residency Documentation Issues*

The complaints in which irregularities are detected in regard to the legal residency documentation continue to be numerous, but improvements have been noted in the measures being taken by the agencies having authority over requesting and issuing the permits.

For example, the Government Delegation in Madrid has accepted several suggestions and has recognized that the applications for residence renewals were not being remedied in due time and form, on understanding that they were

extinguished on reaching full legal age. Additionally, it has also admitted that, in keeping with the regulations in force and the suggestions put forth by this Institution, the period for which the residence permits are valid is now no longer dependent on reaching legal age or ceasing to be under guardianship.

#### *Movement of Minors to Different Autonomous Communities and Central Registry for Unaccompanied Foreign Minors*

The investigations on the situations of the minors which are in one Autonomous Community whilst their guardianship is held in another different Autonomous Community have continued throughout 2010.

This Institution deems it necessary for the Central Registry for Unaccompanied Foreign Minors to actually be put into practice in order to do away with these situations. One of the most outstanding of the deficiencies detected in their functioning was the impossibility of permanently accessing this Registry, given that it is subject to a time schedule, and the lack of data such as the grounds for attributing an age and the problems stemming from authorities being assigned to different State law enforcement bodies, since not all Autonomous Community police forces have access to the Registry.

The General Commissioner of Alien Affairs and Borders and the Directorate General of the Police have reported that they are working to improve the functioning of the aforementioned Registry, but they have not specifically stated a date for putting these improvements into practice.

#### *Repatriation Proceedings*

After having found the Passports of unaccompanied foreign minors to have been held for an undetermined length of time for the purpose of carrying out measures aimed at their repatriation, a recommendation has been made to the General Commissioner of Alien Affairs and Borders for correcting this illegal practice in the cases for which providing is not made under Law. The aforementioned agency has reported that, as of the last reform of the Alien Affairs Law, the mission of police officers has changes, given that the State Administration must request an opinion from the diplomatic mission of the minor's country concerning the family-related circumstances thereof.

Apart from the above, further to an investigation which had begun in 2009, a recommendation has been made to the Government Delegation of Guipuzcoa as to its correcting its protocol for taking action so that prior to making any decision which has a bearing on minors – particularly regarding repatriation cases and transfers to other centers – their right to be heard and assisted by whomever is designated thereby be guaranteed. This recommendation was accepted.

#### *Situation of Those No Longer Under Guardianship*

A problem has been detected regarding the recommendation which the protection institutions may issue for a residence permit to be granted to minors under guardianship who have reached full legal age without this document. In the report from last year, it was stated that the Regional Working Group for Unaccompanied Foreign Minors of Madrid had set out certain criteria for issuing said recommendation, and that this Institution was of the understanding that the wording of said criteria might be incompatible with the right to actual judicial guardianship on the part of the minor in question.

During 2010, this Institution has managed to learn that the Government Delegation of Madrid is requiring the recommendation of the protection institution in order to grant the residence permit to those no longer under guardianship and is refusing the same on the basis of unfavorable opinions from the protection agency in Madrid. This Institution disagrees with such a measure.

#### *Visits to Centres*

In 2010, a follow-up was made of the visits which had been made during the previous year, three new centres having been visited: The 'La Esperanza' Emergency Shelter for Unaccompanied Foreign Minors in Ceuta, the 'Nuestra Señora del Cobre' Emergency Shelter for Unaccompanied Foreign Minors in Algeciras and the 'Fuerte de la Purísima' Shelter for Minors in Melilla.

The 'La Esperanza' centre had been visited in 2008, at which time the conditions of this centre had been reported, this centre not meeting, in the opinion of this Institution, the minimum requirements for housing and carrying out educational work with these minors. After the previous visit, the construction of a new centre had been announced, work not as yet having begun on said construction. This Institution has therefore requested information for the purpose of ascertaining whether the project has now been designed and whether a call for tenders has been made for these works. Until the time at which this new centre is built, the Ombudsman's Office considers it necessary for doors to be installed on the spaces used as latrines and that a solution must be provided to the unhealthful situation resulting from the existing uncleanliness. It has also been recommended that divider panels be installed in the showers, especially when there are residents of different ages. Additionally, due to the overcrowding at this centre, information has been requested regarding the amount of clothing and the amount of food with which the minors are provided. At the closing of this report, no reply has as yet been received from the agency having authority over these aspects.

At the 'Nuestra Señora del Cobre' Centre, the facilities were found to have been remarkably deteriorated compared to

the visit made in 2006. The immediate integral rehabilitation of this centre or maintenance work on the homes where the minors are lodged was therefore urged. Additionally, on the date of this visit, four of the minors lodged there had been there for nine months, despite this being a shelter for immediate lodging. This has given rise to information being requested in this regard.

At the 'Fuerte de la Purísima' Centre, which had been visited in 2008, improvements were found to have been made, but in the opinion of this Institution, the conditions for being considered a long-term shelter resource have still as yet not been met. There are minors who have been living there for five years. This Institution has additionally once again reiterated its concern regarding the incorrect enforcement of the legislation regarding documentation of unaccompanied foreign minors on the part of the Government Delegation in Melilla. Attention must be given to this way of doing by the Attorney General's Office, and the criterion followed by the protection institution of waiting nine months to request the documenting of the foreign minors under guardianship must also be reviewed.

#### **Alien Internment Centres**

In 2010, visits were made to the alien internment centres in Madrid, Murcia and Algeciras, in addition to the police facilities on the Isla de las Palomas in Tarifa. Apart from these visits, a follow-up has been conducted on the visits made in 2009.

Since the previous visit made to the Internment Centre in Madrid in 2008, improvements have been detected in response to the requests made by this Institution. For example, a second meal shift has been created, public telephones have been installed on the modules allowing inmates to receive calls from outside, further improvements planned including that of starting construction on the visiting rooms. However, neither any call buttons nor any roofing on the courtyards have as yet been installed, and there is still no protocol for dealing with matters such as those of inmates who are pregnant.

The visits to the Centres in Murcia and Algeciras and to the police facilities on Isla de las Palomas were made jointly with advisors to the Institution assigned to the National Mechanism for the Prevention of Torture. On the first of these visits, it was recommended that the video surveillance be extended to all buildings, preserving the logical right to privacy. Improvements were also requested, including that the number of inmates per cell be reduced and the visiting regimen be expanded.

Concerning the centre in Algeciras, this Institution recommends that this centre be shut down immediately on considering the facilities to be absolutely inadequate and the condition of upkeep and cleanliness to be deplorable. Regarding the Isla de las Palomas facilities, the improvements

suggested by this Institution we found to have been adopted following the previous visit.

In relation to the measures at the internment centres, special mention must be made of this Institution's concern regarding minors being put into these places, regarding which several actions have been taken. We have also conducted investigations concerning alleged abuse in the aforementioned internment centres. Hence, proceedings have been opened in regard to several cases of alleged abuse at the internment centres in Madrid and Barcelona.

#### **Expel and Return**

The reform made of the Penal Code in 2010 takes in the classification of human trafficking as a crime. In previous reports, this Institution had set out the importance it places on combating this crime and the Administration's need of improving the prosecution thereof, the detection of possible victims and the structuring of measures making actual protection against this crime possible. In 2010, proceedings of a general nature have been carried out in regard to this matter and of an individual nature in view of possible trafficking victims.

The investigation opened with what is now the Office of the State Secretary for Equality for the purpose of knowing the results of the Integral Plan Against Human Trafficking for Purposes of Sexual Exploitation is still currently open. Within this plan, it was agreed to conduct a study which has been requested by the Institution and which has still not as yet been received at the closing of this report.

Different non-governmental organizations have approached the Ombudsman's Office pointing out that the investigations for detecting trafficking victims on the part of the State Secretary for Security is insufficient. An investigation was therefore opened with the General Commissioner for Alien Affairs and Borders for the purpose of ascertaining the progress made in the registry of cases regarding human trafficking victims which should have been operating as of January 1, 2010. At the closing of this report, the Office of the State Secretary for Security had not furnished any information in this regard.

After learning of a case which had ended in an alleged victim who had requested asylum having been expelled, despite a favorable opinion having been issued by ACNUR, a recommendation has been issued to the Asylum and Refugee Office so that, in those cases in which there is a favorable opinion issued by ACNUR, a protocol be activated for notifying the police authorities of this circumstance so that the alleged victim may be granted the cooling-off period prior to proceeding to expelling the same.

Regarding return procedures, the Directorate General of Immigration has taken favorably the request of issuing instructions in which it specifies it not being necessary to express-

ly decree the cancellation of the decisions for return once the time period prohibiting entry therein has lapsed, as well as the same not be applicable in those cases of time period lapse. The instructions are currently pending the opinion of the General Commissioner of Alien Affairs and Border, the investigation therefore currently remaining open.

Regarding the expulsion procedures, it has been suggested to the Directorate General of the Police and the Civil Guard that the system for searching the police database regarding alien affairs should be modified so as to make it easier to locate the information furnished therein regarding the expulsion-related penalties and thus avoid any errors. This overview has been accepted. The Directorate General of the Police and the Civil Guard has allowed urgent searches to be run in the aforementioned database through the Ombudsman's Special National Police Commissioner's Office so as to make it possible to assess those complaints received to which a solution must be provided without delay. This coordination has meant achieving expeditiousness re-rounding particularly in this Institution's ability to provide a faster response regarding this type or urgent measures.

This Institution has stressed the need of the penalties imposed under the protection of the Alien Affairs Law respecting the principle of proportionality. In this regard, proceedings have been opened in cases detected at different points in Spain which, following the measures taken by the Ombudsman's Office, have then proceeded to charge a fine in lieu of expulsion.

Incidents having taken place in the course of some expulsions have also been investigated. In this regard, a follow-up is being made of the judicial procedure for clearing up the death of a Nigerian citizen in the airplane that was taking him back to his country and other judicial proceedings due to possible abuse during the process of carrying out the expulsions. To avoid these events, this Institution is of the opinion that the aspects related to the physical restraint techniques described in the police action protocol for repatriations and transfer by sea and air must be reinforced.

## Administrative Departments

### *Consular Offices*

The investigation begun in 2008 with the Directorate General of Consular and Migratory Affairs on the occasion of different complaints received regarding the difficulties involved in obtaining information on document legalization by telephone and regarding the poorly-functioning online appointment system via the website of the Ministry of Foreign Affairs and Cooperation has concluded this year, this Institution being pleased to say that the implementation of an appointment-making system has meant an improvement in the service being provided to citizens.



Apart from the above, this Institution has put forth its disagreement regarding the documentation required of attorneys and other representatives of the interested parties for carrying out steps through the Ministry of Foreign Affairs Legalization Service, when the requests are not made by means of the requesting parties themselves appearing in person. In this regard, a recommendation was made on the order of the changes being made in the criteria but did not meet with acceptance.

Many complaints have been lodged concerning the Legalization Service having to do with the delay in answering requests and citizens stating it to be impossible to access the telephone service. The Administration having authority over these matters has announced improvements being made in this service, but said improvements have not as yet been put into practice to date.

In 2010, irregular measures at different Spanish Consular Offices have been investigated. In many of the cases investigated, improper treatment or the delay in assisting citizens was justified as being due to their lacking staff and being overburdened with work. However, this Institution would like to repeat the fact that being overloaded with work cannot justify failure to abide by the rules of administrative procedure. The Ombudsman's Office recalls that the public services must be provided to citizens in an appropriate, efficient manner.

Here once again, this Institution had to set forth its concern in view of the contradictory assessment made of one same requirement by two agencies of the Administration in one single administrative proceeding. In this regard, several investigations have been conducted with different Consular Offices.

In 2010, there have been frequent cases in which the consular agencies have refused a residence visa for family re-

unification on deeming the marriage of the parties involved to be a marriage of convenience.

#### *Alien Affairs Offices*

In its annual reports, the Ombudsman has stressed the need of Alien Affairs Offices being set up in the different provinces in Spain. Therefore, a follow-up has been made of these Offices having being set up in those provinces in which there are still none.

Apart from the above, measures have been carried out at some offices after learning of deficiencies in their functioning through those using their services.

At the end of 2010, a visit was made to the Alien Affairs Office in Barcelona due to the delays found to exist in providing a reply to the requests for a residency permit due to exceptional circumstances, renewals and granting an appointment to the interested parties. Following this visit, a recommendation was made so that, this office be urgently staffed with a sufficient number of permanent civil service employees to deal with the current bottlenecked situation. At the end of 2010, they had 55,531 cases in processing. This investigation is currently ongoing.

Investigations were also begun toward the end of the year which are still currently ongoing at the offices in Castellón, Cádiz, Jerez de la Frontera and Malaga due to the shortage of staffing and the facilities being less than ideal for the use intended, having given rise to long lines of citizens and telephone lines being overloaded at these offices.

The major workload being withstood by the provincial Alien Affairs and Documentation Brigade of Madrid over the past few years has given rise to an ex officio inquiry being opened with the Office of the State Secretary for Immigration and Emigration in order to ascertain what material and human means have been made available for dealing with the remarkable increase in the number of permit renewal applications resulting from the alien normalization process which ended in 2005. This investigation is currently ongoing, news regarding the actual impact of the measures previously announced by the aforementioned Administration also currently pending receipt.

#### **Residency Procedures**

##### *EU Scheme*

In 2010, the Supreme Court Contentious-Administrative Court ruling was issued, voiding several precepts of Royal Decree 240/2007 of February 16th on entry, freedom of movement and residence in Spain of citizens from the European Union Member States and from other States party to the European Economic Zone Agreement. The aforesaid ruling agreed with the allegations put forth by this Institution and meant a substantial change in the sta-

tus of European Union citizens and their family members in Spain.

In the previous report, it was stated that the existence of a deportation order or an order of refusal of entry due to an irregular stay on the part of a family member of a European Union citizen prior to having such status could hinder and even prevent the granting of the visa as a result of merely administrative dysfunctions. The investigation begun last year with the Directorate General of Immigration and the Directorate General of Consular and Migratory Affairs has led to this Directorate General having issues some instructions, according to which, in these cases, once status as a beneficiary of the EU scheme has been proven, the visa is then granted. Therefore, with the exception of cases which may arise from time to time, this dysfunction is considered to have now been overcome.

Apart from the above, the overzealousness of some consular offices for the purpose of preventing marriages of convenience has given rise to measures having been taken at some consular offices which have had to be investigated by this Institution so as to prevent visas under the EU scheme from being refused in cases of persons deserving these visas.

After conducting a wide-ranging investigation, the situation of suddenly not having one's documents in proper legal order in which spouses reunited by foreigners who subsequently acquire Spanish citizenship was reported upon in the 2009 report. IN short, the Administration deems that the marriage must be registered in order for it to be possible for the marriage to be recognized according to the laws of Spain, but this process takes longer than a year due to the bottleneck at the Central Civil Registry. During this period, the Administration does not recognize the application of either the general scheme or the EU scheme with regard to the reunited spouse.

In 2009, the Directorate General of Immigration rejected this Institution's suggestion for providing a solution to these cases by means of granting a temporary EU card, nor did it accept the application of the general alien scheme. In 2010, the aforementioned Directorate has changed its position and has requested an opinion from the Directorate General of the Registries and Notariat prior to issuing some instructions by way of which to provide a solution for these situations. The investigation is currently ongoing pending knowing the contents of the aforementioned instructions.

##### *General scheme on Immigration*

In previous annual reports, ample reference was made to the measures taken with the Directorate General of Immigration and the Spanish Federation of Municipalities and Provinces for the purpose of passing a regulatory instrument affording the possibility of harmonizing the housing suitability-related reported which must mandatorily be fur-

nished for the family reunification case files. The insufficient degree to which the regulations actually regulate the same has meant some agencies adding aspects for the assessment of the reports for which provision had not been made under regulations.

The Directorate General of Immigrations considers the ideal framework for undertaking the necessary homogenization of these matters to be the upcoming reform of the Alien Regulations. This Institution is of the understanding that it is necessary for the reform of this matter to be dealt with in the future regulation and expects for it to be possible for the deficiencies of the current regulation to be corrected thereunder.

Another matter pending being expanded upon since 2004 is the Ministerial Order to which the Alien Regulation defers the determining of the economic means which may be required of the reuniting individual in order to exercise the right to reunification. The Government delegations and sub-delegations are attempting to overcome this deficiency by applying instructions from the Directorate General of Immigration issued for application in other procedures, such as that of the employer's economic means for dealing with a case of hiring and the needs of their family. These instructions are not in response to the regulatory order of specific development of this matter and the application thereof to family reunification may give rise to refusals which are not sufficiently justified. Therefore, it is indispensable that this matter be dealt with duly in the upcoming regulatory reform.

In 2010, cases have continued to be reviewed in which the entire core family is not reunited, the consular offices thereof refusing the visas for which application has been made. The suggestions put forth to the Administration in this regard by this Institution have met with acceptance and have determined the granting of the visas for which application had been made.

As in previous years, in the case of reunification of spouses, the main reason for the refusal of these visas continues to be the consular agent being convinced that the marriage is one of convenience. In some cases, this conviction is broken down by the existence of children born to the couple in question, the initial decision refusing the visa therefore having been revised following the intervention of this Institution. In several of the complaints processed, this Institution has found that it was not possible to achieve the degree of certainty which would be required in order to consider the marriage to have been held fraudulently or that the reasons for the respective decision refusing the visa had not been sufficiently detailed, the respective investigations having therefore been conducted.

With regard to residence and stay permits, many of the complaints have been a result of the new aspect introduced



by Organic Law 2/2009 of December 11<sup>th</sup> of charging the fees when the permit, extension, modification or renewal of the permits is requested. Almost all of the complaints have to do with procedures carried out at the Government Delegation in Madrid. The complaints revealed that this agency was not in any way facilitating access to the forms for paying the fees prior to filing the respective application. The form was being mailed to the home address designated by the interested for purposes of notifications through the postal service with the respective demand for payment. In the cases reviewed, the interested parties had not received said forms at their home address or had not had knowledge of it being mailed, as a result of which their case files had then been closed. This system was clearly dysfunctional, as a result of which this Institution initiated the respective investigation with the Government Delegation of Madrid. In September, a report was received from said administration in which it was announced that the system had now been modified and it was possible to obtain the respective forms at the Alien Affairs Offices in Madrid and by downloading them via Internet, the dysfunctions which had given rise to the present investigation being conducted therefore having been overcome. Without detriment to the foregoing, the proceedings are currently ongoing for the purpose of a solution being provided for those citizens who had had their application for renewal set aside as a result of this situation.

On another order of matters, the Alien Regulations determine that the granting of a residence permit for exceptional circumstances in the cases of rootedness, with the exception of that which is granted to minors, is granted in combination with a permit to work in Spain throughout the period for which it is valid. Nevertheless, the Instruction issued by the Directorate General of Immigration in 2005 on the rootedness procedure determines that the residence permits which are granted without the need of having an employment contract shall not be issued in conjunction with the work permit. This case of restriction of rights exceeds the regulatory provisions. Therefore, the fact of the aforesaid instructions therefore apparently not adapting completely to the Alien Regulations was put forth to the Directorate Gen-

eral of Immigration. We are currently waiting to know the Administration's thoughts concerning this matter.

### *Asylum*

In 2010, an investigation was begun with the Directorate General of the Police and the Civil Guard in relation to the intervention of officers from the Central Brigade Against the Networks of Illegal Immigration and Document Fraud who interviewed a group of applicants for asylum at the Barajas Airport. The interested parties stated their concern and fear as a result of the interviews conducted, saying that they had been treated inconsiderately and that they had felt pressured to make statements. The Directorate General stated that the objective of these interviews was to identify possible victims of the crime or illegal immigration or human trafficking, providing them, in that case, with due protection. As was informed, the officers knew that they should only carry out questioning in those cases in which the request for asylum were not to have been admitted for processing. The aforesaid executive body was of the opinion that no interference had been caused in the asylum procedure and that the presence of an attorney was not necessary on the reason for the interviews having nothing to do with the asylum procedure. The interested parties maintained that they did not get the impression that their collaboration and much less the protection of the Spanish Administration was being intended. This Institution is of the opinion that even when the objective of identifying trafficking victims is commendable, the measures employed were unbecoming, especially those carried out on individuals who were waiting to know the outcome of their request and that, in the case of it being considered indispensable for such questioning to be carried out, one must wait until the asylum procedure has been fully completed and an attorney is present. A reminder of legal obligations shall therefore be put forth to the Directorate General of the Police and the Civil Guard.

An investigation was also opened with the Melilla and Ceuta Police Headquarters after learning that the police officers were preventing people requesting asylum, holding the respective card identifying them as such, from being transferred to the mainland. Following the start of an investigation, the Administration insisted that it was proceeding properly by virtue of the reserve clause concerning the Autonomous Cities of Ceuta and Melilla which was included under the Arrangement for the Enforcement of the Schengen Agreement. This Institution stated its disagreement with such an action on deeming that the restriction of the right of movement within the national territory of a person holding a document identifying them as a person requesting asylum issued by the Spanish Ministry of the Interior was not justifiable, given that said document authorizes said persons applying for asylum to remain in Spain throughout the full length of time which said document is valid. This matter was taken into court, the proceedings therefore having ended. Several

decisions handed down by the Court of Andalusia ruled the right to free movement within the national territory which the interested parties possessed, in their status as persons requesting asylum, to have been unlawfully impaired.

### **Equal treatment and non-discrimination due to ethnic, racial or national origin**

The Ombudsman's Office has continued the investigations opened over the past few years concerning the use of internet by racist and new Nazi groups for disseminating message of hate and violence against individuals or social groups for racist, xenophobic, anti-Semitic or homophobic reasons. In this regard, the Ombudsman is collaborating with the Spanish Monitoring System for Racism and Xenophobia to combat the dissemination of hate and violence on the net.

In the report presented last year, an account was provided of the investigation which had been being carried out since 2006 with the State Secretary for Security and the Spanish Monitoring System for Racism and Xenophobia on the differentiated patterns of treatment on the part of the Law Enforcement Bodies toward ethnic minorities or foreigners. In 2010, a report was received on the measures of the Monitoring System in which mention is made of the fact that work is currently being done with the Ministry of the Interior on the contents of the National Integral Strategy for combating racism and xenophobia in the Law Enforcement Bodies. After receiving this information, it has been requested that the specifics be provided regarding a description of the design of the future data collection system, the contents thereof, the planned follow-up and the practical implementation thereof.

Numerous complaints have been received recently from citizens of foreign origins who have been arrested as a result of identification checks conducted systematically at different points of Madrid. Prior to having received these complaints, the Ombudsman had already opened an investigation with the General Commissioner of Alien Affairs and Borders for the purpose of ascertaining how the identification processes were being carried out in public places following the entry into effect of Circular 1/2010 of January 25.

The agency having authority over these matters reported that the identifications were being made fully respecting that which is set forth under the Criminal Procedure Law, Organic Citizen Security Protection Law and Alien Affairs Law, independently of the entry into effect of the aforementioned Circular. Nevertheless, it seemed to follow from the complaints lodged that an interpretation restrictive of the rights of foreign citizens was being given to the Circular in terms of their ethnic traits. Many of those having lodged complaints stated having been arrested 'preventively' and taken to police facilities, being documented, when their be-

ing legally in Spain had not been fully substantiated in the identification check. Due to the large number of complaints, another report has been requested from the General Commissioner of Alien Affairs and Borders in order to report once again whether the systematic identification checks in public places are continuing in terms of ethnic traits. An account is provided of the interpretation of Circular 1/2010 in the section hereof devoted to Security and Justice.

### Civil registry

A follow-up has been conducted in 2010 regarding the impact which the measures agreed upon in the Justice Modernization Plan have entailed for the situation of the Civil Registries. In this regard, the State Secretary of Justice has presented a report detailing the progress made.

Apart from the above, in view of the overall delays found to exist in decisions being rendered concerning appeals filed, this Institution has opened an investigation of a general nature with the Directorate General of Registries and the Notariat in order to ascertain the average lengths of the delays in a decision being issued regarding these appeals. Within the framework of said investigation, the Administration has reported the average length of time to a decision to be handed down regarding appeals to be eighteen months. From the information received, it seems to follow that these eighteen months are calculated starting when the case is in the administrative offices of the Directorate General, complete with all reports and opinions. Based on the foregoing, this investigation is currently ongoing for the purpose of further expanding upon the data provided by the Administration.

Once again this year, a large number of complaints have been lodged due to the current bottlenecked situation of the Central Civil Registry. This bottleneck situation especially concerns this Institution, which deems it unavoidable to deal with the extremely serious situation this registry is experiencing.

The Administration has informed of the measures included under the Plan of Action to relieve this bottleneck situation. At the closing of this report, the State Secretary of Justice has been requested once again to provided information on the measures of the Plan of Action already put into practice and on their impact on the functioning of the Central Civil Registry and, specifically, information has been requested on the citizen assistance service and on the problems users are encountering for contacting this registry by phone. The problems with both of these services are pointed out in most of the complaints lodged by citizens.



Apart from the above, numerous complaints have been lodged by Spanish citizens who, after having married outside of Spain, are finding it impossible to register their marriage in the Spanish Civil Registry or find their marriage to a foreign citizen to be thwarted due to the consul refusing the registration or holding of their marriage. Due to the burgeoning number of complaints, a general investigation has been opened on this matter, an account of which shall be given in the 2011 report.

Lastly, in regard to the Central Registry of Criminal Records, another letter has been written to the State Secretary of Justice stating that, in the judgment of this Institution, the foreign citizens who are intending to request certificates or cancel said entries with the Central Criminal Registry must be required to present solely their passport or similar document, given that this document is that which substantiates their identity. Therefore, it is our understanding that the necessary measures must be adopted to eliminate the requirements in addition to the passport which must currently be fulfilled. Specifically, the added requirement of 'sufficient visa' must be deleted from the website, and access must be allowed to the Registry on the part of those foreigners who produce their passport to substantiate their identity.

## EDUCATION

# The Ombudsman's Office calls for a pact on educational matters

**The Ombudsman's Office once again calls for a new pact on educational matters. This institution has been repeatedly bringing up the need, since 2004 of the political forces coming to an agreement concerning an educational system focusing on being permanent. The consequences of the economic crisis have also become noticeable in the complaints related to this subject. Deficiencies in the facilities, lacking student equipment, problems with providing some services such as school bus transportation, limiting or doing away with aid for students or their families or shortage of teachers and supporting staff are some of the complaints lodged most repeatedly.**

### Non-University Education

#### School Facilities

Deficiencies of widely-differing nature and scale in school facilities give rise to complaints year after year. Those most often lodged concern the public schools where students in the second cycle of kindergarten are enrolled. In many cases, children ages 3-6 who are in kindergarten are being enrolled in public schools where the facilities are already in existence and have initially been designed for enrolling older, primary school students, at times being adapted precariously to their new use.

The existence of architectural barriers, the deterioration of facilities, the need of carrying out repair or rehabilitation work or of expanding facilities designed to serve a much smaller number of students and thus lacking the necessary number of classrooms and areas of suitable capacity to meet the needs of the volume of students who are currently being enrolled have given rise to complaints. Installing prefabricated classrooms at the schools is one of the approaches to which the educational administrations are resorting to provide a solution, in principle temporary, to the actual demand for enrollment when the forecasts are exceeded. At times, the schools' insufficient capacity is supplemented by increasing the number of students per classroom above the maximum number stipulated under regulations. The delay in undertaking the construction of new facilities, taking as a reference point the lengths of time stipulated in the scheduling or commitments taken on by the respective educational administrations is also reason for complaint every year.

In October 2010, once the school year had begun and the adjustment measures necessary for commencing the year had been adopted, the Ombudsman began an ex officio inquiry with the Ministry of Education as the managing body of the educational system in the Autonomous Cities of

Ceuta and Melilla and with each one of the Autonomous Community educational administrations for the purpose of obtaining data in order to determine the actual incidence of situations with solutions of a temporary nature, given the negative effects resulting for the same for the students' welfare and for achieving the proper level of quality in the educational process.

Data was collected making it possible to quantify, based on the 2010-2011 school year, situations such as those described, to know the number of units which would be operating in habilitated spaces or prefabricated facilities; the number of students affects; the incidence of cases in which it had been resorted to increasing the number of students per classroom above the classroom capacity or exceeding the maximum stipulated for the units of each educational stage. Similarly, information was also requested regarding the reasons for adopting decisions along the aforementioned line and on the modifications which could be made in the current planning systems so that the process of new school facilities being built or the currently-existing ones being enlarged could be undertaken more ably.

Up to the point in time at which this report is being written, replies have been received from only nine of the eighteen educational administrations consulted. Replies have been received from the Ministry of Education and from the Autonomous Communities of Andalusia, Asturias, Canary Islands, Castile-La Mancha; Castile and Leon, La Rioja, Madrid and Navarra. Extremadura and Galicia have replied by must expand upon the data furnished. To give a full impression of the conclusions the ex officio inquiry begun affords the possibility of obtaining, it seems indispensable to avail of the data from all the administrations consulted. One part of the replies received up to this time have focused on answering solely one of the aspects posed, that related to the use of modular or prefabricated classrooms, in some cases to state that none exist within their bounds.

To summarize, given the shortage, if not complete lack, of data obtained until now, general conclusions can hardly be drawn or specific proposals put forth concerning the deficiencies in school facilities. More specific, accurate data will be required, and the measures initiated in October last year shall therefore be continued throughout 2011. This does not stand in the way of noting some field in which a staunch intervention seems indispensable. A direct, immediate connection is needed between urban planning and educational facility programming, guaranteeing not only setting aside the land necessary for this purpose but also the coordination among the different phases of planning and putting the necessary schools in operation for meeting the needs of the population resulting from the urbanization process. Likewise necessary is for prospective demographic studies to be made so as to forecast the foreseeable demand for enrollment openings within each population-related scope, thus making precautionary planning possible to prevent resorting to temporary solutions. It would be advisable to review, without lessening the guarantees of proper use of public resources, the procedures for preparing projects for the tender and award of school improvement, rehabilitation or new building works and the granting of permits, so as to shorten the length of time between when the need for taking action is detected and finally met.

### Student enrollment and admission

The enrollment of kindergarten students has given rise to complaints which have in common their reference to the insufficient number of openings offered, but the regulatory legal framework for the first cycle of the aforesaid schooling configures the same as non-compulsory, as a result of which the educational administrations do not have to necessarily provide openings free of charge to all those so requesting, although they must indeed promote 'a progressive increase in the number of public openings offered'.

Complaints have also been lodged this year questioning that the Spanish educational system not allow students of the age to be studying compulsory school-leaving studies be allowed to opt for homeschooling. The Ombudsman, who had set forth the approaches on which the complaints were based to the General Secretary of Education the previous year, deduced from the situation existing in countries in our surrounding environment for the purpose of requesting information on the Ministry's possible future projects aimed at setting out a regulatory framework within which educational approaches such as that advocated by those lodging the complaints were to be included, met at the time with a negative response. Those having put forth complaints concern this same matter in 2010 have been informed of what has been done and the outcome having resulted from the aforementioned informative process.

They have also been informed as to the Ombudsman not being vested with the authority to question laws unless they



are in violation of that which is stipulated in the text of Spain's constitution, this being a circumstance which, in this Institution's judgment, does not concur in the rules of law regarding education which impose that students who are of the age to study compulsory school-leaving studies attend school. It seems fitting to stress that, in recent Constitutional Court Decision 133/2010 of November 2<sup>nd</sup> expressly ruled the constitutional adaptation of the rules of law configuring basic compulsory education as a period of school enrolment, this term being understood as a period of actually attending a school.

In the area of special education, there were some complaints referring to the students and their families disagreeing with the school enrolment model decided upon by the administration which has authority over the same. Without questioning the authority of the educational administration to ultimately decide on the ideal school enrolment model, it seems necessary to insist upon the process of adopting this type of decision having to be in conjunction, in any case, with dialogue with the students and their parents or legal guardians and, wherever possible, with an agreement between the two sides for the purpose of assuring the right decisions is made and the greatest benefit for the students.

As in previous years, the complaints regarding student admissions question either aspects of how they are carried out or the outcomes resulting from specific admissions processes, either the regulatory configuration of the system proper for admitting students to public or state-funded private schools. For the most part, those lodging the complaints do not provided any indications of possible irregular administrative measures, therefore not being admitted for processing. In other cases, they challenge aspects of the regulatory configuration of the system for admitting students, related mostly to kindergarten-level education. The Ombudsman determines whether his intervention is befitting by evaluating whether or not they are in keeping with the legal standards, to the end purposes for which the aforesaid system is intended within our body of education-related law and whether it is in keeping with the principles

put forth by the same. Other aspects have been added to these priority criteria stipulated by law in regard to circumstance which have a particular bearing on reconciling family and working life, such as the case in which the parents work or have a justified impediment for caring for their child, children born in multiple births, foster families, disabilities, etc.

### **Academic planning**

At the high school level, reference has been made to issues including those related to the academic planning of these studies, homologations of equivalent studies completed fully abroad and the lack of further expansion upon Royal Decree 102/2010 governing the double Spanish-French diploma.

One of the complaints related to the planning of vocational training studies worthy of special mention is that lodged by citizens with accredited work experience in different professional fields who expressed their concern because, the period which had been granted to the Autonomous Communities for the purposes of implementing the procedures for evaluating and accrediting the professional skills acquired through work experience having fully lapsed, said evaluation had not been made.

In this regard, this Institution requested a report from the Ministry of Education's State Secretary of Education and Vocational Training regarding the suitability and legal feasibility of enacting a basic regulation which, by homogenizing the structure of the tests for accessing vocational training (which must be passed by those who hold no established diploma), the subjects with which they deal and the exemptions from the different parts thereof, were to allow all Autonomous Community education administrations to validate those parts of the aforementioned tests which had been passed within the scope of another administration.

This Institution conveyed the aforesaid point of view to the Ministry of Education's State Secretary of Education and Vocational Training. In his reply, the State Secretary pointed out that he will evaluate the possibility of proposing to the Autonomous Communities, by way of the Sectorial Educational Conference, a more precise regulation on the validity of the tests for accessing training cycles which will guarantee an identical interpretation throughout the entire country.

Similarly, in relation to vocational training studies, current students and graduates holding Healthcare Technicians Degrees have approached this Institution with the serious difficulties they have been having for being admitted to exchange programs, on their not having the same academic level and equivalent training as their European counterparts. The Ombudsman has conveyed these complaints to the Ministry of Education and has requested a report with regard thereto with the intention of collaborating in the shared task of improving the educational system.

### **School bus transportation**

School bus transportation routes having been eliminated in the 2010-2011 school year for children living in different shanty settlements in Madrid has given rise to complaints having been lodged in which it was noted that the decision challenged would give rise to a major increase in absenteeism from school among the students from these settlements, whose daily transportation to school was having to be undertaken by their families, these being families in many cases affected by situations of being socially disadvantaged and profoundly alienated, making it difficult for them to regularly care for their children. Additionally, the aforementioned measure would be in conjunction with the withdrawal of the school lunch allowance, although this Institution is currently awaiting additional information which it has requested in view of having received a new brief in which it is specified that the transportation service has not been made to cover all of the children involved.

Also questioned has been the elimination of bus routes which had been being used by students from districts or colonies which, due to their location, deficient conditions of accessibility or socioeconomic situation of the families had been being provided with this service free of charge. Those lodging these claims question this elimination as a result of their being of the understanding that there is an obligation to keep these routes, both by virtue of commitments made by Madrid's educational administration when the parents conditioned to this commitment their acceptance of the closing of the public schools which were located in their respective districts or colonies as well as due to the difficulties and dangerousness involved in the students walking to school and the deficiencies in the public transport existing in the area. In the reports issued by the Autonomous Community of Madrid Department, it is stated that the routes have not been maintained. The decision does not entail any violation of the legislation in force, given that the legal obligation of providing the aforesaid added service free of charge covers only those students enrolled at schools located in a locality other than their place of residence. The Autonomous Community regulations applicable in the Autonomous Community of Madrid attributes to the educational administration a wide margin of discretion in scheduling and planning this service and conditions the same to the existence of available budgeting. Nevertheless, the Ombudsman has pointed out his concern in view of budget cuts which have such a negative bearing on students and families particularly in need of support for accessing the educational system and the students staying in school.

### **Faculty and other staff**

Questions are dealt with here which have nothing to do with their statutory or employment regimen or the relations stemming from the same which have a bearing on the edu-

cational service and which are put forth to this Institution rather often. Beginning with the issues regarding the kindergarten level, a matter already dealt with in previous reports is the hygienic care and clothing changes for the students, for which neither the appropriate means are available at the school nor the assistant staff to perform these tasks, given that the teaching staff considers this to be outside of their professional duties. This Institution stated its criterion already in 2006, based on legal aspects resulting from the definition of the objectives and methodology inherent to this level, that the hygienic care was to be undertaken by the schools by way of the assistant staff or by the teachers themselves were they not to be assigned any assistant.

In regard to the primary school faculties, investigational administrative measures were taken at a private school in the Autonomous Community of Madrid, having revealed irregularities such as some teachers lacking the necessary degree to be teaching certain subjects, as well as discrepancies with regard to their being correcting identified on the school's organizational document. Considering that such a measure could constitute a violation of law, the Attorney General's Office was informed. Similarly, the educational Administration opened proceedings for revoking the operating license of the school in question.

This Institution began taking measures to determine the suitability of the system for covering teaching staff leave and also the faculty being deficient as far as having majored in fields inherent to special education at integration schools. Precautionary attention may be called here to the risks to which the current budget restriction may give rise in this area. Any service suffers if it lacks the staffing necessary to provide the same and even more so if those staff members are the main, indispensable element of the benefit which the service in question is providing. In the educational field, the detriments of insufficient staffing of faculty and supporting staff are immediately reflected in the quality of the service, but these detriments are not confined to the point in time at which they occur, but rather are extended over time insofar as the students who have suffered them will be carrying them along with them throughout their entire educational process.

In this regard, this Institution believes that taking the easy, shortsighted way out of impoverishing the staffing of faculty and supporting staff, of restricting the coverage of vacancies or of limiting substitutions to the days of leave which arise throughout the school year should all be avoided. A call must therefore be put out to the policymakers and executives responsible so that they will prevent the current economic restrictions from affecting public spending on education, which, in Spain, is still far from reaching the percentage of the gross national product advised by the international bodies.

### **University Education**

Several years ago, complaints having been lodged questioning the procedural processing of the disciplinary proceedings filed by universities against their students justified the measures already previously having been taken by the Ombudsman decades ago with what was then the Ministry of Education and Science in relation to the period of validity and applicability of the decree of September 8, 1954 (Official Spanish Gazette Of October 11<sup>th</sup> and 12<sup>th</sup>), by virtue of which approval was rendered of the Regulations Government Academic Discipline, a rule of law which, despite being the only one currently in force regarding the basic disciplinary system for university students, includes aspects which must be construed as being revoked in full or in part or which are affected by the Constitution or by the general principles setting forth the Administration's penalizing power. In 2008, the Ombudsman made an inquiry of a general nature with all of the public universities, the findings of which, included in the respective report, reflected the unanimous difficulty involved in enforcing the rules of the aforesaid Regulations due to the interpretative effort required to properly adapt the contents thereof to the legal system in force.

Due to the need of modifying the legal framework regulating this matter without further ado, a recommendation was put forth in due course to the State Secretary for Universities, which was expressly accepted, for a provision of law to be drafted, with the proper rules status, which would set out the regimen of academic discipline at the universities and would authorize the same to further expand upon the standards and guarantees applicable to their students. It must regrettably be said that, at the point in time of the writing of this report, the only news is the recently approved University Students' Statute by means of Royal Decree 1791/2010 of December 30<sup>th</sup>. This Statute includes a provision regarding a future drafting of a bill to govern the penalizing procedures in the university realm. A call must be made for the urgent fulfillment of the recommendation expressly accepted in 2009 by the aforementioned State Secretary, and the commitment undertaken at that time of most expeditiously commencing the measures aimed at regulating the system of academic discipline for universities.

### **Access to the University**

The numerous complaints lodged regarding the new test which secondary school students must pass in order to gain access to the different degrees from Spain's universities reflected the concern having arisen among the students in view of the eminent enforcement of the provisions of Royal Decree 1892/2008, especially those related to the contents and organization of this new test and to the priority criteria for admitting students to study at university, where situations of competition were to arise.

Students who had already begun secondary studies in a certain modality would find their legitimate academic prospects jeopardized when the rule of law regulating the new criteria for admission was published. This situation having been taken up with the respective administrative bodies, the Ministry of Education agreed to take measures to prevent this.

Another controversial issue was that of universal access to official university degree studies from all of the Advanced Vocational Training Specialist, Advanced Plastic Arts and Design Specialist and Advanced Sports Specialist degrees and therefore no provision being made for any test whatsoever for the aforesaid degree holders to access university studies, as well as the elimination of the enrolment reservation quota which had been being applied to these students in accordance with the previous regulations. This meant that the students coming from secondary studies who took the new test for admission could total a score of 14 points, whilst those who were coming from advanced specialist degrees managed a maximum of 12 points, which led the Ministry of Education to set out the possibility of the latter thereafter being able to take the admission test in order to raise their point score. This duty of the Government's of establishing these basic rules for access with respect to the principles of equality merit and capability, principles which, in keeping with the situation reported in these complaints, have not been found to exist in some cases during the process of admitting students to being their university studies in the 2010-2011 academic year.

Numerous complaints have also been received due to the discrepancies among university districts and Autonomous Communities regarding the point scores awarded to their studies for accessing studies for which there is a greater demand. Mention is also made of the difficulties brought to light by numerous students who sat the second round of the tests for accessing official university degree studies at different Spanish universities to begin their studies during the 2010-2011 academic year, and who, as a result of the academic time periods, were not able to take part normally in the second phase of the award of the admissions openings and were not able to begin the year at the same time as all of the other students.

It is the mission of the General Conference on University Policy to see to the procedure for admitting students to official university studies being general, objective and universal, that it be valid at all Spanish universities and that it be in keeping with criteria in accordance with the European Higher Education Area, which makes it necessary to take on the necessary harmonization of times in the processes of access Spanish universities. An inquiry of a general nature is currently under way for the purpose of ascertaining the criterion of the aforesaid department concerning these deficiencies in the current access system and the measures which can be taken to correct the same.

Apart from the above, an ex officio investigation has been started with the Ministry of Education's University Policy Administration concerning the difficulties secondary school students are finding with adapted course work due to their status of having a disability, to be accepted for taking the tests to access the university in accordance with the adapted studies they have completed. The current legal system sets forth the duty of the public powers of adopting positive action measures making it possible to fully guaranteeing the equal opportunities of disabled persons and access to university training is undoubtedly an important factor for achieving full integration into society of the persons affected by a certain degree of disability, which would justify, in the judgment of this Institution, the creation of any measure making it possible to do away with the problems which are preventing or limiting the right of equal opportunities in accessing the university on the part of these individuals.

#### **Scholarships and student aid**

The different types of economic student aid are the main way of guaranteeing equal opportunities in accessing education and are a valuable tool for encouraging students to stay in the educational system and provide an incentive for their effort and ability. The State exercises the authority over regulating the basic aspects guaranteeing equal possibilities for obtaining and having the enjoyment on the part of the potential awardees homogeneously throughout the country, these being basic aspects including the setting of the economic requirements which the students must meet in order to gain access thereto, without detriment to the authorities of the Autonomous Communities, to whom it falls to develop, carry out and control the general system of scholarships and student aid within their respective realms of authority and in collaboration with the universities.

The complaints which put forth discrepancies with some aspect of an economic nature rose by over 40% in 2010 compared to those lodged the previous year, especially those which questioned the criteria employed by the screening bodies to assess the economic situation of the households. Complaints have repeatedly been lodged in disagreement with the requirements set for those students who state themselves as living independently and being economically self-dependent, especially those which reflected how difficult these students find it to be to get a scholarship due to the excessively restrictive application of the rules included in the different scholarship application announcements on the part of the screening bodies for evaluating whether or not they meet the conditions to be considered independent. It was recommended to let applicants know, with the utmost degree of accuracy, what the fitting documents for substantiating their independence are prior to setting out the final proposal for the refusal of the aid, a recommendation which was expressly accepted.

Numerous complaints have also been lodged in 2010 as a result of the administrative decisions regarding the obligation of scholarship holders to pay back the amounts of the scholarships previously awarded to them when the granting thereof were to have been found not to be fitting after the fact. Full compliance is often not rendered with the rules governing the making of these notifications, on omitting the indication as to the two-month period of which the students avail to return the scholarship for the purpose of avoiding the opening of the repayment proceedings, which was giving rise to situations of defenselessness.

In the 2009 report, reference was made to the difficulties which had been caused by the sudden implementation of the single system for formalizing scholarship applications via the Ministry of Education website. These problems were not confined to the logical drawbacks in the event of not having an internet connection in their homes. During the process, numerous cases had arisen including those of it having been impossible to make the telematics connection if not in the very early morning hours up to the deadline for filing applications had run out, as well as repeated backlogs due to different system faults, the students' repeated attempts to make this situation known to the Ministry of Education by calling the telephone number provided for this purpose having almost always been useless. Many of them did not manage to file the scholarship application by the official deadline. Citizens dealing with the government agencies by electronic means is a right and not an obligation. The formalization of the scholarship applications via Internet should be considered solely one option, not ruling out that of the conventional application filing system unless it is in a position to guarantee citizens to means for completing the specific procedural process without restrictions. This complaint has not been echoed in the Ministry of Education and in the announcements made public by this department for the 2010-2011 academic year, the students have once again been required to complete the application form telematically, numerous complaints being lodged once again questioning this requirement.

Apart from the above, it is once again considered positive that the Ministry of Education has announced, for the second consecutive year, the call for application for the scholarships for university degree holders who are unemployed in order to enroll in a Master's program. In the current economic crisis situation, the unemployed are those most unprotected and in need of support. Additionally, one of the factors making the overall implementation of the European Higher Education Area absolutely necessary is to encourage the procedures of insertion into the job market of university degree holders, which leads to the need of promoting the acquisition of advanced training among those who have lost their jobs for the purpose of trying to improve their prospects of rejoining the job market. This last call for ap-

plications has continued to require that the scholarship awardees be within the 25-40 age range, a condition against which numerous complaints have been lodged on the part of unemployed degree holders who were either younger or older than said age group.

Worthy of praise, however, is the effort made to maintain initiatives for the 2010-2011 academic year aimed at funding master's and doctorate degree studies supplementing other scholarships and types of aid. Nevertheless, it must be pointed out that the publication of the call for applications took place when the first quarter of the school year had ended, which led to the possible awardees not having been able to avail of the economic resources necessary for the registration fees and for the ordinary lodging, meal and transportation expenses when they actually needed them, which gave rise to a great many complaints.

As was indicated in the previous reports, the calls for scholarships and student aid were requested to be made accessible to the aliens under 18 years of age without any need of substantiating their status as legal residents of Spain, as well establishing precise measures for carrying out the verification and control of the economic means of the households of the non-resident applicants, given that they do not file the Personal Income Tax Form. At present, the right to access the public scholarship and student aid system is recognized for all alien students under 18 years of age under the same conditions as the students who are Spanish nationals.

#### **Achieving healthcare specialty degrees**

The process for achieving the official degree of Psychology Specialist in Clinical Psychology has given rise, as in previous years, to a large number of complaints having been lodged. General disagreement was repeated with how the process for granting this degree and the regulation thereof was being carried out, with the long drawn out processes and delays involved and with the action of the National Commission for the Clinical Psychology Specialty (CNEPC). More specifically, the announcement of the test on both textbook knowledge and practical skills which was made on November 27, 2010 was questioned, complaints being lodged regarding the insufficient explanation of reasons of many of the decisions for rejection or which conditioned to awarding of the degree to the applicants passing the aforementioned test. Other complaints requested the Institution to issue an opinion-report on how the process in question was being carried out and on the legitimacy of the rules of law under the protection of which it is carried out. This request does not come under the authority of this Institution, which is not that of a body either reporting on or advising the Administration or of citizens, and it would additional be extemporaneous by way of the dates of approval and publication of the rules to which reference is made.

It falls to the Ombudsman to issue a statement on the specific determining of the ways of accessing this degree, not on the specific requirements set in each one of these ways nor on the CNEPC composition, nor on the assessment which is made of each one of the cases submitted for their consideration, nor on the contents of the test on both textbook knowledge and practical skills among other aspects, unless any of these actions were to be found to have a negative bearing on the rights and liberties which the Constitution recognizes for citizens under Title I. And in the judgment of this Institution, this negative bearing occurred in two specific aspects of the process of achieving the degree. On one hand, in the insufficient explanation of reasons on many of the decisions refusing the same, and on the other, in the excessive delay of the aforesaid process having started more than twelve years ago and not as yet completed, which is giving rise to a patent legal uncertainty for a considerable number of citizens whose professional prospects are uncertain.

However, given how far along the process is of granting specialist degrees by ways of the transitory channels regulated under Order PRE/1107/2002 and the dates on which the decisions refusing the direct issuing of the degree took place, this Institution agreed not to take any action whatsoever against the responsible government agencies, although it does wish to spread upon the record its criterion and call for the decision refusing to grant the degree or condition the issuing of the official degree of Specialist Psychologist in Clinical Psychology to the passing of the test on both textbook knowledge and practical skills henceforth including the respective decision in a manner duly explaining the reasons for the same, thus allowing the interested party to know the cause of the insufficiency found to exist in the case thereof.

This Institution has also conducted an analysis of the exceptional, transitory system for obtaining the degree of Specialist in Family and Community Medicine for which provision is made under Royal Decree 1753/1998 of July 31<sup>st</sup>. Whilst Royal Decree 1497/1999 made provision for a single examination to be held in each specialty, Royal Decree 1753/1998 allowed an ample margin of time – up to January 1, 2008 – for the accreditation of the merits required of candidates to be awarded this degree, setting out the need of passing an objective test of practical content for being awarded the Family and Community Medicine degree, which would have to be held at least once every calendar year for the purpose of evaluating the professional competence of the candidates in the exercise of their duties as Family Physicians. In January 2010, it was learned that despite the stipulated annual periodicity, this test had not been announced to be held since 2007, which gave rise to a general inquiry with the National Health System's Directorate General of Professional Planning and Cohesion and

High-Level Inspectorate of what was then the Ministry of Health and Social Policy. From 2002 to 2007, examinations have been being announced and held annually, and in all of these examination, the design, the actual holding of the examination and the evaluation of the test have been carried out by tender, to which proposals have been presented solely by the Spanish Society of Family and Community Medicine. In 2008, the deadline for the accreditation of the candidate's merits closing gave rise to an avalanche of application forms among the interested parties, up to the point of 4,320 having been admitted. The proceedings for awarding the contract for the design, holding and evaluation of the E.C.E.E. test was returned from the Department's Directorate of Human Resources and Economic-Budgeting Services due to insufficient credit available.

In 2008, the proceedings for awarding the contract for the ECOE test were once again opened, however the insufficient available credit once again prevented this test from being held. In May of 2008, yet another contract award proceeding was opened for the purpose of evaluating 1,900 candidates, the tender having been declared void in the end. According to the data provided by the Ministry of Health and Social Policy, the only headway made in 2010 regarding this situation was confined to a proposal having been made by the National Health System's Human Resources Commission's Delegated Technical Commission regarding the possible modifications in the conventional format of the test which, within the characteristics defined under Royal Decree 1753/1998, were to make it possible to improve the efficiency of this test.

The truth of the matter is that the test stipulated under regulations to be held regularly every year has not been held for the past three years, which means not only a detriment to each one of the 4,320 citizens who were entitled, under law, to take this test in 2008 after having been admitted, but also the failure to abide by Royal Decree 1753/1998 of July 31<sup>st</sup> governing special access to the degree of Specialist in Family and Community Medicine, which is unacceptable and requires any measure to be taken to make it possible for those involved to submit their professional competence to evaluation regarding the exercise of their duties as a family physician under the protection of that which was set forth in due course by the aforesaid rule of law, although it be necessary for this purpose to undertake the modification of the current design of the test or simplify its complexity.

Apart from the above, after having received several complaints from Bulgarian citizens due to delays in recognizing the Nursing degrees awarded in their country, it was learned that in view of the large number of applicants requesting recognition of degrees in order to work as nurses in general care and so as to avoid the organization and economic im-

fact that could arise as a result of carrying out a practice period in the National Health System once healthcare management had been transferred to the Autonomous Communities, the Ministry of Health and Social Policy had eliminated the option falling to the interested party, under the regulations, to choose between the aptitude test and the practice period and had resolved that the compensatory measures for obtaining the recognition of these degrees would consist of the obligation of passing a test on both textbook studies and practical skills, which would be designed by experts and held annually commencing as of 2011. Therefore, in order for the aforementioned considerable volume of applicants to be able to access the awarding of the degree necessary for working at their profession to be able to fulfill the requirements and conditions of the test on textbook studies and practical skills they must pass, the contents of which are still as yet unknown, it was recommended that, as soon as possible, if they have not already commenced, the preparatory of tasks of the Committee of Experts be set into motion for designing the test in question, that, by way of whatever means are deemed fitting, the characteristics and contents of the test be made known so that those who are to take the test may be informed regarding the same far enough in advance of the date on which the test is to be given and that, in accordance with that of which this Institution has been informed, that in 2011 and in successive years, the fitting announcements be made, without exception, of the holding of the test on textbook studies and practical skills in order to enable to applicants to work at their profession.

#### **Homologation and recognition of foreign university degrees**

The frequent failure to meet the deadlines set by the Ministry of Education for the homologation of degrees has been being repeatedly underscored in the Reports issued by this Institution, in which the different measures that the Directorate General of University Policy states having adopted to control this irregularity, some of which are the result of successive recommendations and suggestions made by the Ombudsman.

The effectiveness of the adjustments and corrections periodically agreed upon for attempting to provide a solution to this situation is regrettably often cancelled out by many different exceptional circumstances which have been intermittently affecting the administrative divisions which are responsible for processing the homologation proceedings – structural reforms, offices being physically moved to a different location, etc. – which has a negative effect on slowing down the regular management of affairs in general and therefore also on the processing and issuing of a decision concerning these cases.

This has once again been reflected in the large number of complaints lodged due to failure to comply both with the time period allows for issuing the compulsory decision on the academic training accredited in each homologation dossier, as well as that stipulated for issuing the final decision, these being time periods which, in practice, can take longer than two years. The exceptional reasons for the delays in this case were due mainly to the search for new evaluators. Additionally, one of the causes stated for this standstill was that of the work overload of the Sub-directorate General of Degrees and Grade Recognition, which is responsible for processing tens of thousands of homologation dossiers yearly besides being in charge of other processes entailing a large number of applications, such as exceptional access to healthcare specialist degrees, the coordination of the community guidelines for professional degree recognition and the custody of the National Registry of degrees and entries on all those who have graduated from universities in Spain. In view of this situation, the Directorate General of University Policy conveyed the Ministry of Education's intention of giving the recognition of foreign degrees in Spain a new orientation and a new set of regulations.

In those cases in which the homologation-related decision issued by the Ministry of Education determines more than one way of meeting the training requirements, the regulatory provisions unequivocally stipulate that it falls to the interested party to choose the way in which he/she wishes to attempt to fulfill the condition required for obtaining homologation. However, in practice, the interested parties do not always have the possibility of choosing freely. Apart from this, with regard to homologation of foreign secondary school diplomas, authorities are also attributed to the universities by way of the different bilateral agreements signed by Spain with other States in which the terms in which the applications for recognition of degrees and higher learning degrees must be decided upon are included under the protection of the commitments undertaken in the different Cultural, Scientific and Technical Cooperation Degrees signed between the two countries. Some universities stated not being familiar with the Agreements and it being compulsory to abide by the same. This problem having been conveyed to the Ministry of Education, it was decided to be advisable to instruct all universities in Spain regarding the obligation they have of knowing and respecting the contents of these Agreements, which was done through the Office of the State Secretary of Universities, who sent a memorandum to all of the universities reminding them as to all of the existing agreements currently being in force and the authorities attributed to them for enforcing these agreements.

## HEALTHCARE

# Healthcare benefit-related inequalities among Autonomous Communities top the complaints on this subject

From the healthcare-related complaints lodged with the Ombudsman, it follows, among other aspects, that the perception citizens have regarding access to healthcare benefits, regardless of the place of residence, is not provided under true conditions of equality. This feeling is corroborated in the Spanish Sociological Research Center's gauging systems. A growing number of citizens are demand more coordination and cooperation among the Autonomous Communities' health services and are of the opinion that inequality or a lack of equity exists in the services being provided by the public health system for reasons of the Autonomous Community where one lives, depending on whether one lives in an urban or rural area or whether or not one is a legal resident.

### The right to universal, free health care

It is important to bear in mind that the Constitutional Court, interpreting the scope of the basic conditions of equality, has ruled in different decisions that the criteria of equality and equity in the area of healthcare benefits place the State under the obligation of guaranteeing a minimum common denominator, that is to say, a minimum level which must be compatible with the development of differential benefits by the Autonomous Communities with regard to their content, forms or requirements for implementation. 'An equality of the fundamental legal positions' must be guaranteed.

In the 2009 report, it was said that the right to healthcare is not as yet fully in effect, and continues to be so in 2010. There are no legal or economic reasons, and this was so acknowledged at the time by the Ministry of Health, Social Policy and Equality in a report issued at the request of this Institution which may justify the existence of groups excluded from the public health system.

Healthcare continues to be one of the benefits of the Social Security system's safeguarding action. Whilst the responsibility for managing this benefit falls to the Autonomous Community health services, the recognition of the right to healthcare falls to the National Social Security Institute. Hence the contradiction which the fact that the recognition of a non-contributive Social Security benefit may require proof of affiliation and enrollment in the system or, were the case to be, of not availing of sufficient economic means.

Within the framework of the twofold 'universality' and 'gratuitousness' perspective, the Ombudsman has repeatedly said that one of the Spanish health system's main challenges is that having to do with completing the fitting legal reform which will afford the possibility of stipulating

the contents and nature of the right to healthcare as a subjective, personal and non-contributive public right. This is, therefore, a process still as yet pending and on which not few complaints from citizens residing in Spain are lodged.

On March 18, 2010, the National Health System's Interterritorial Council resolved in favor of measures including the 'approval of a rule for the full universality of access to the National Health System's healthcare services. While full universality is coming into being. One Autonomous Community and another (the latest of which is Catalonia) have recognized the right to healthcare for all individuals officially registered with the municipal government as legal residents of that community. However, in other Autonomous Communities, there are still as yet some groups being excluded from the public health system.

### Information and clinical documentation

As is set forth under Law 41/2002 of November 14th, governing patient autonomy and rights and obligations regarding the subject of information and clinical documentation, personal dignity and respect for the autonomy of their wishes and their privacy must guide all activity aimed at obtaining, using, filing, safeguarding and transmitting the clinical documentation and information. Complaints are still being lodged which, when processed, reveal the need of continuing to delve deeper in the practical specifics of this right, given that situations are still as yet being created which would lead one to believe that compliance with the aforesaid basic law is not as intended. Faults have been found in the processing of personal data which have enabled third parties to gain knowledge of data and, on the other hand, delays in the access to medical records on the part of interested parties.

The Autonomous Community of Madrid's Health Department made mention, following an investigation, of the fact that measures suggested by the Ombudsman had been put into practice, these measures being: restricting access to the documentation; computerized registry with traceability of the medical record at all times; periodic check of the clinical records out of the file; total, express prohibition of turning documentation over to patients or family members; alerts in the computer program regarding response delay times; check of documentation delivered; and overall supervision of the deliveries.

Other investigations conducted were related to the formalization of the 'informed consent form' and the conservation and custody thereof. It must be stressed that, even when Law 41/2002 of November 14<sup>th</sup> undoubtedly means a noticeable improvement in the regulatory rules as far as the autonomy of one's wishes and clinical documentation are concerned according to the latest annual report on the National Health System by the Ministry of Health, Social Policy and Equality, the situation of the different Autonomous Communities with regard to the further expansion of regulations and specific measures for consolidating actual, real participation of the users in the public health system is heterogeneous in aspects such as the free choice of medical professionals, formalization of the informed consent form, services guides or menus and prior instructions/living wills.

### Planning benefits

Just as in previous years, the need of delving deeper into the strategy and updating of the regulatory planning of the benefits and of bolstering the coordination mechanism, especially the National Health System's Interterritorial Council, still continues to be present and in not few of the complaints lodged with regard to the scope and extension of the healthcare benefits. These complaints are warranted on the grounds of the unceasing advancement of the knowledge in the field of biomedicine and increasingly greater territorial imbalances and differences being found to exist in the portfolios of supplementary services of the Autonomous Communities.

Within the framework of different measures and investigations carried out by the Ombudsman over the past few years, it has been found that these approaches to differences in the portfolios of services, depending on whether one territorial scope or another is involved, are focused on aspects including those such as the right to healthcare and to the pharmaceutical benefit, new therapies and medicines, vaccination schedule, mental health, rare or highly infrequent diseases and treatment of fibromyalgia and chronic fatigue, pre-implant genetic diagnosis, palliative care and pain treatment, implementation of assisted human reproduction techniques on HIV-positive individuals, catalogs or orthopedic prosthesis benefits, dental care, sex change surgery, traumatic brain injury, podiatry on diabetic patients,



therapies for quitting smoking and economic aid for individuals with celiac disease.

In 2010, investigations have been conducted on dental care for individuals with severe or profound disabilities, assistance and funding of orthopedic material for children with agenesis, surgical procedures without using blood products, formalizing disability evaluation protocols, preparing consensus documents on disease diagnosis and treatment and employing assisted human reproduction techniques.

As far as fibromyalgia, chronic fatigue and multiple chemical sensitivity is concerned, it must be said that this Institution has taken many actions through the Ministry of Health and the National Social Security Institute in relation to research projects and the drafting of a protocol for evaluating disabilities, from which, as a result of the aforementioned diseases, the individuals in question may be suffering. In 2010, the aforementioned Institute published a 'National Social Security System Physicians' Protocol for Action. Fibromyalgia, Chronic Fatigue Syndrome and Multiple Chemical Sensitivity', unquestionably useful for assessing the degree of work-related disability, in the introduction to which it is stated as having been prepared at the request of the Ombudsman.

In connection with the above and bearing in mind that the complaints have continued throughout 2010 in relation to multiple chemical sensitivity, this Institution has addressed the Ministry of Health, requesting information on the possible preparation of a consensus document on the diagnosis and treatment thereof. Regarding this initiative, the aforesaid Ministry has stressed that it has set up a working group of experts for preparing this study.

As regards assisted human reproduction, some health services were systematically refusing any possibility of HIV-positive individuals undergoing these techniques, this being an exclusion which meant a discrimination which was neither objective nor reasonable. Also, at other hospitals, they were excluding those individuals who had a living healthy child from the 'in vitro fertilization' technique. The Ombuds-

man made a recommendation and the services in question have revised the criteria for including them on the waiting lists. Also placed under investigation was the use of the 'in vitro fertilization' technique with donation of oocytes, which is currently still undergoing an *ex-officio* inquiry, another investigation on the criteria and requirements set out in the different health services regarding the use of said 'in vitro fertilization' technique.

As an initial conclusion, it can be said that significant differences exist with regard to the subsidiary treatment population and the scope and extension of the clinical procedures, depending on whether one health service or another is involved.

As far as health prevention and promotion are concerned, emphasis has been placed on the non-existence of a legal framework affording the possibility of an adequate control of the quality and idoneity of the activities and products used in what are referred to as 'natural therapies'. The health Administration has stated that a working group has been set up coordinated by the aforementioned Ministry on the order of writing a report on the current situation of the natural therapies and studying the future regulation thereof. And, regarding calls for applications for subsidies, the Administration verbally informed that the no applications for subsidies would be decided upon as a result of the budget items having been eliminated. By way of fact, that for which provision had been made in the aforesaid orders was being voided. The Ombudsman put forth a reminder as to the legal obligation of expressly rendering a decision regarding all those applications, claims and appeals which are filed by citizens.

### Waiting lists

According to the successive healthcare gauges prepared by the Sociological Research Center, healthcare is, far above other areas, the care in which citizens are most interested. Within the framework of this interest, citizens state their opinion by stressing the public health system's main problem as being the lengthy waiting times for being provided with the elective care they need. Even when almost all Autonomous Community health services have designed systems making it possible to avail of information regarding the patient registrations and the calculation, classification and measurements of the waits, the institutional information disseminated by the healthcare Administration does not make it possible to know data broken down by healthcare services with regard to the respective delays in providing care.

However, the major number of complaints in regard to the delays in health care being provided reveals the existence of a large number of patients who are having to wait months or even years to be diagnosed or to be provided with specialized treatment. As regards waiting times, generally speaking, the respective healthcare administrations have been in agreement with the recommendations made by the

Ombudsman in this field or have informed on the adopting of measures to shorten these times.

The large number of complaints to the Ombudsman for delays in the implementation of assisted human reproduction techniques throughout the National Health System as a whole has given rise to the previously-mentioned *ex-officio* investigation of a general nature throughout the different Autonomous Communities.

### Primary and specialized care

Based on the detailed analysis of the 2008 National Health System report disseminated by the Ministry of Health, Social Policy and Equality, the indicators on resources within the scope of primary care show some major differences between some health services and the others.

Apart from the resource indicators, the complaints lodged with this Institution revolve mainly around restrictions on patient mobility as regards travel to Autonomous Communities outside of the one where they live; problems accessing healthcare at medical centers; structural inadequacies of services and centers and insufficient staffing of professionals at the same.

As regards patient mobility, special mention must be made of the as yet insufficient to degree to which certain tools necessary for achieving information systems shared by all health services (including common electronic prescriptions and health cards) are being developed and implemented, which can limit user mobility.

Concerning access to health care, after it having been found that those patients who are requiring care a medical center's emergency services and are not providing proof at that point in time of their right to Social Security healthcare are being referred to a hospital, at times far away from the center where they are asking to be provided with care, this Institution has put forth a recommendation for the care to be provided based on strictly and exclusively clinical reasons and in terms of true equality with all other patients.

Regarding structural problems, architectural barriers must be said to still as yet exist at one state-assisted private center or another; and regarding the shortage of specialists on staff, there were complaints due to shortages of pediatricians and midwives.

The indicators of resources within the scope of specialized care also show some major differences throughout the National Health System as a whole. The structure, organization and functioning of the specialized care centers have given rise to a major number of complaints difficult to present in a systematic order, most having been related to access to care, delays in processing and inadequacies in

the organization and functioning of health care services and centers (waiting lists for rehabilitation, for example, or lack of space or obsolete facilities for specialized care).

Regarding the emergency areas, the complaints stress especially remarkable delays in the provision of care, the inadequacy of the services structure due to lack of beds free for use; and, as a result of this lack, the impossibility of guaranteeing the patients' right to privacy. In one case or another, staffing shortages were also mentioned.

### **Patient safety**

One of the causes – perhaps the main cause – for patient conflict or dissatisfaction is directly related to the lack of sufficient, adequate, understandable information before, during and after the care-providing process. The complaints, although set out organized around patient safety or other aspects related to professional practice, are aimed at achieving sufficient, comprehensible information for forming an opinion and, were the case to be, effectively defending their rights.

Citizen rights must be harmonized to health protection, which includes the redress for whatever cases of harm may have been caused when providing health care, and the rights and interests of healthcare professionals, not to mention the need of bolstering the healthcare Administration's liability procedure when the functioning of the services have caused unlawful injury to private citizens. A certain degree of passiveness on the part of the Administrations in the settlement of disputes is inferred, thus upholding the need of consolidating a new culture of safety and responsibility.

It must be stressed, once again this year, that no major headway has been made with regard to creating the medical specialization of urgency and emergency medicine as core training.

### **Other benefits**

Regarding Mental Health benefits, according to the report from the 'Mental Health Strategy' document monitoring committee, in which express mention is made of the aspects posed by the Ombudsman with regard to this subject, the following issues are still as yet pending: insufficient staffing of specialized professionals and of quality social reinsertion and rehabilitation resources, lack of information, heterogeneity of resources, disparity of focuses, insufficient human resources and specific programs... Other aspects posed have to do with the admission and length of stay of individuals at psychiatric facilities when they actually need a different care organization.

It must be pointed out, once again this year, that despite the extraordinary importance of the training on the subject of

child psychiatry, no major headway has as yet been made in the regulation of this specialty.

Regarding the pharmaceutical benefit, medicines and pharmacy control, citizens have lodged complaints to the Ombudsman concerning the supply, distribution, efficacy, advertising and prescription of medicines.

The Ombudsman has been paying particular attention to the serious problems people who have rare diseases (hereinafter, RDs) or highly unusual diseases are having, approximately three million people in Spain, as a result of marked difficulties in their diagnosis and treatment. Within the framework of this concern, this Institution has emphasized the need of promoting actions including aid programs for research on drugs for human use, in which research on orphan drugs is included as a social priority.

In the reports over the past few years, it has been shown that not few measures have been carried out with the Ministry of Health, Social Policy and Equality and the Ministry of the Presidency in relation to persons affected by thalidomide in Spain, a medicine which caused highly serious limb malformations and degeneration of the organ system in the late 1950's. Despite the serious sequelae, a result of treatments undergone in the public health system, the government agencies in Spain had not taken up any initiative whatsoever in related to the protection the persons affected indubitably require, there not even being a census of these persons. As far as the possible indemnifications to those affected by thalidomide, the healthcare Administration published Royal Decree 1006/2010 of August 5<sup>th</sup> by virtue of which the procedure for granting and aids to the persons affected is regulated, recognizing a painful reality has conventionally remained out of sight.

Lastly, mention may be made of the fact that the Ombudsman has been proposing the need of adopting measures aimed not only at reducing the enticement to smoke, but also to promote the legitimate rights to health protection on the part of non-smokers.

Complaints have been lodged by citizens supporting a more restrictive law. Regarding this group, the citizens who smoke are defending their right to smoke and take a position against the restriction of their rights and public freedoms. There are several reasons for this disagreement, which are: the defense of smokers' rights or the consequences it would have for the restaurant owners who had made the necessary improvement for adapting to the previous law, just to mention a few.

SOCIAL POLICY AND LABOUR

## Unemployment and problems in collecting social benefits are the leading social policy-related complaints

**In 2010, this Institution has continued visiting residential shelters for the protection of minors with behavioral disorders and social problems. Special attention has been focused on the enforcement of the Dependency Law, as well as the situations resulting from the shortage of economic resources having repercussions on the means for social assistance and benefits. The problems resulting from the rise in unemployment have also been one of the major issues in the complaints lodged by citizens.**

### Social Action

#### Minors

The follow-up on the recommendations made in the monographic report on 'Shelters for the Protection of Minors with Behavioral Disorders and Social Problems' has continued. Perhaps the most significant progress made with regard to putting the aforementioned recommendations into practice has been the approval of a Basic Protocol for Action at Centers and/or Residences with Minors Diagnosed with Behavioral Disorders. In this document, some minimums are set out serving as a basis so that it may be adapted, in each Autonomous Community, to the circumstances of the centers and situations brought to bear by these minors and the Autonomous Community legislation.

The Protocol has been well-accepted by the administrations involved, the Juvenile Prosecutor's Office and the non-governmental organizations. However, many of them lament its lacking binding force and expressly state the advisability of this matter being regulated under Law. This is the case of the Report from the Juvenile Division of the Prosecutor's Office, which terms this protocol as being a highly useful initiative. Nevertheless, it reiterates the need for greater legal guarantees and specifically sets out a proposed legislative reform, detailing the minimum issues which would have to be dealt with and stressing that a multidisciplinary approach combining the healthcare measures with the social, educational and judicial measures is necessary, for which it is necessary to coordinate and approach all available resources, in addition to creating other new ones.

In the monographic report from the Ombudsman, reference was made to the problems posed by the personnel at these centers. This year, the first nationwide collective bargaining agreement on juvenile reform and protection of minors has been published. This agreement may be expected to provide a response to the most pressing problems of this group and to their vindications of professional recognition and continuing training.

The replies related to the acceptance of the recommendations put forth to the different public administrations have continued being received, these replies generally expressing good acceptance thereof. Responses have been received from Ceuta, Navarre, Asturias, Cantabria, Canary Islands, Basque Country, Guipuzcoa, Vizcaya and the Island Government of Tenerife. On the other hand, the Dianova Association reported having begun taking steps with the educational authorities of Murcia for the purpose of getting a second chance school Classroom under way. A similar project was begun in Navarre.

From the information received, it can be said that all of the administrations involved have heightened their concern regarding the quality of the care which is being provided to minors at the shelters. And, at the same time, they are attempting to join forces to move ahead in the procedures and guidelines for taking action which will guarantee the respect for the rights of these minors.

In 2010, visits were made to shelters for minors for the purpose of either checking for possible changes or as urged by complaints received. This Institution must check to ensure whether or not the allegations put forth by citizens are true and, in most cases, then proceed to take action as soon as possible by requesting information from the Administration having authority over the matter in question.

A visit was made to the 'Hogar Galapagar' center after having received a complaint regarding alleged abuse of minors, and an investigation was begun by requesting information from the Autonomous Community of Madrid concerning the constraint systems, minors to whom they had been applied and reasons, the inspection processes carried out by the Institute for the Family and Minors, as well as another type of additional information. Investigations were opened and are currently ongoing at the writing of this report concerning reports of abuse at a center in Torrelozón and on the situation of several minors who are currently at the Picón del Jarama Centre, against their own will and that of their parents.

Complaints have been received from minors or from their family members reporting other serious events. A fifteen-year-old girl also admitted to the Picón de Jarama psychosocial center reported sexual harassment on the part of an instructor. And the mother of another adolescent reported that her son had been restrained quite violently and locked up for long periods of time.

Apart from the foregoing, a seventeen-year-old girl became pregnant, according to this minor's own statement proper, as a result of the affective relationship she was maintaining with a security guard at the center where she was an inmate. The acting Ombudsman informed the State Attorney General of this case in the case that the events having taken place might infer presumably criminal behavior. Once this teenager gave birth, the Autonomous Community of Madrid Department for Family and Social Affairs took her child from her, without the mother knowing where her baby is or its future destiny at the closing of this report, the child apparently having been given to a foster family.

Complaints have also been received from former instructors who worked at some of the Autonomous Community of Madrid centers, specifically at the 'El Escorial' center and at the Juvenile Residence in Torreloz. They reported having witnessed 'beatings' and 'abuse of the children admitted'. On all of these occasions, the reports received from the Autonomous Community of Madrid have been confined to flatly denying the accounts related to alleged abuse at the centers operating under its authority. In regards to the complaints filed by former instructors at the centers – such as that reporting having witnessed a brutal beating of two adolescents which one employee of the residence beat with a stick – the Department confined itself to stating that 'it has no knowledge of such events' and the reports are aimed at 'discrediting the work with minors in the Autonomous Community of Madrid'.

Apart from the above, as far as measures concerning the subject of adoption and foster parenting of minors, one must bear in mind that the Autonomous Communities has exclusive authority over the subject of juvenile protection attributed to them, including the intervention with minors with social problems, it therefore being within this scope that the applicable decisions are made and the regulations are interpreted. Lengthy institutionalization of minors must be avoided, thus one suitable measure, as soon as a solution is provided for their situation, would be that of setting up a foster family.

### Disabled Persons

Law 49/2007 of December 26th sets forth the regimen of violations and penalties with regard to the subject of equal opportunities, non-discrimination and universal accessibility of persons with disabilities. In order for the system to be fully effective, this regimen of violations and penalties should be put under classification by the Autonomous Com-

munity lawmakers. Nevertheless, up to the point in time of the writing of this Report, solely the Autonomous Community of Navarre had regulated the regimen of violations and penalties applicable within its territory. In this Institution's judgment, persons with disabilities should not be left unprotected due to no administrative penalty procedure existing at the Autonomous Community level.

Mention must be made of the presentation, toward the end of 2010, of a bill for the regulatory adaptation of the International Convention on the rights of persons with disabilities, as well as the draft Royal Decree further expanding thereupon, which included the work of different ministerial departments for promoting the necessary reforms. Lastly, mention may be made of the fact that, continuing along the line of delving deeper into the defense of the rights of persons with disabilities, the Ombudsman received the delegates from the Spanish Committee of Representatives of Persons with Disabilities (CERMI), who set out their 2008 and 2009 reports and expressed their desire to increase the joint endeavor, especially the monitoring and enforcement in Spain of the Convention of the Rights of Persons with Disabilities.

By way of Royal Decree in December 2009, Royal Decree of December 1999 on Procedures, Declaration and Classification of the Degree of Disability was amended. This amendment was confined to replacing the term handicap for the more suitable term of 'disability'. However, it did not deal with the reform of the scale and the procedure sued for determining the degree of disability which has been being demanded. The Congress of the Deputies Session of February 17, 2009 passed a motion by way of which the Government was urged to promote measures for the passage of new scales for evaluating disability in accordance with the International Classification of Functioning, Disability and Health (CIF). Three working groups have been created with experts from the Autonomous Communities and the National Institute of Social Services for Retirees and Pensioners (IMSERSO) for drafting a document to be debated and a consensus reached with regard thereto in the pertinent bodies on 2011 and which, wherever applicable, would give rise to the passage of a Royal Decree in which the new scale and applicable procedure would be set forth.

Given this situation, the Ombudsman has deemed it to be of interest to inform the Institute of Social Services for Retirees and Pensioners as to the problems which the citizens most often point out in related to the lack of assessment of their disabilities.

### Accessibility

Along this line, concerning the subject of transportation, an amendment is planned of Royal Decree 1544/2007 of November 23<sup>rd</sup>, governing the basic conditions of accessibility and non-discrimination for access to and use of the

means of transportation by persons with disabilities, including the Accessibility Plans in all transportation sectors and to determine a criterion for setting the limits between large-scale and small-scale infrastructures. The Ombudsman endeavors to see to it that the Administrations make it possible for these persons to access facilities, public transportation, leisure time entertainment establishments, etc., as well as eliminating architectural barriers.

Access to Spanish Railway System stations has also been put to study. The State Secretary for Transportation furnished a full report stating that 'Renfe Operadora' was working actively on developing a Plan for the purpose of universalizing accessibility in rail service and that it had the collaboration for this purpose of expert stakeholders such as the Spanish Committee of Representatives of Persons with Disabilities (CERMI) and the Spanish National Organization of the Blind (ONCE). It is important to stress another of the contributions made by the Accessibility Plan, which is the Attendance Service, by way of which personnel specifically trained for this work assist travellers with difficulties for accessing the train.

On another order of matters, the persons with reduced mobility have expressed their concern for the difficulty involved in accessing places of leisure time entertainment, such as movie theatres or parks. Despite the efforts made by the Administration, there are historical elements which do not make it possible to adapt to the desirable measures of accessibility because they are either not technically feasible or would alter the historical value of the element in question. Other aspects posed by citizens revolve around accessibility to public agencies.

### **Resources for persons with disabilities**

A drop has been noted in the number of complaints, but some are still as yet being lodged by persons requesting a place in a center suited to their disability that are not being answered with the required diligence. However, the largest part of the complaints are focused on the difficulties encountered for having their degree of dependency evaluated and the Individual Care Program approved, granting them a place in a resource suited to their needs.

Complaints have also been received related to the amounts which the administrations bill the users for the assistance provided in the different services. On the Autonomous Communities having full authority over this matter, they have set out their own rules and provisions of law and have determine their own policies which deal differently with the economic contributions which citizens must make in exchange for the services they receive. In these cases, the Ombudsman's endeavor consists of checking to ensure that the competent Administration has applied the rule of law correctly to each citizen. Nevertheless, it is necessary to stress the advisability of imbuing whatever system is established

with the utmost clarity and transparency so that citizens will be able to know at all times what sums they are going to have to pay and the description of the items for which they are requested to pay. The Ombudsman's measures will continue until it is ensured that the rules of law take on a desirable degree of stability and security for all citizens.

The successive cutbacks which individual aid to persons with disabilities have been undergoing have led the Ombudsman to set out a reminder as to the legal obligation of expressly providing a decision within the stipulated time frames to all those applications, complaints and appeals which are filed by citizens.

### **Senior citizens and situation of dependency**

In order to gain access to senior citizen living facilities, preference is given to persons evaluated as being dependent. Therefore, the complaints are aimed at achieving a major degree of dependency or expediting the processing for the approval of the Individual Care Program, which includes the granting of the required place. A considerable number of complaints lodged in this regard have been concluded favorably, but others have also been received explaining that, to award these places, the Administration does not take into consideration the adaptation of the senior citizen to the environment in which he/she is already located and offers them a place at another different center. It is therefore urged that a more individualized study of the cases be provided.

Apart from the above, the need of accessing a place in a living facility is sometimes not directly related to the applicant's situation of dependency, but rather to other reasons of pressing social need.

Different measures have also been carried out urging the administrations to inspect and supervise the centers at which care is being provided for the elderly, who are often not capable of exercising their rights for themselves. In all cases, it is exigible that the Administration provide an express response to the complaints related to the centers for the elderly.

The situation of elderly persons who live alone and who are not capable of going to the social services to ask for the aid or benefits necessary to meet their basic needs are cause for concern to this Institution. The importance of effective, positive action must be stressed, although the shortage of staffing and the growing number of administrative duties assigned to the basic social services makes an intervention of a scope any larger than that merely of red tape difficult to assist and provide a solution to the situations in which there is a direct demand on the part of the interested party due precisely to his/her lack of capability.

The application of the Dependency Act involves the General State Administration as well as the Autonomous Communi-



ties and the local entities which provide their residents with social services. The Government must jointly fund, on an equal basis with the Autonomous Community in question, the expense of the services or benefits. Given the complexity of this system, it is highly difficult to make an economic assessment of the costs, this being a matter which, on one hand, falls more to the Court of Audit than to this Institution. However, as is stated in the report from the State Association of Social Services Directors and Managers, from the studies conducted in 2010, the existence is inferred of remarkable differences from one Autonomous Community to another, not only in the length of time they take to recognize the benefits, but also in the percentage of services or benefits recognized and the contributions which the users must make on a copay basis. Each service has a different cost depending on the territory in question, giving rise to remarkable disparities when the local entities are also involved.

In previous reports from the Ombudsman, constant reference has been made to complaints posing the need of access to services. On single access lists having been created for all the services of the System catalog for personal self-dependence and care for dependency, on priority having been given to access to the aforesaid services for those individuals who have a higher degree of dependency, a change has taken place in the aspirations of the interested parties who set forth as their immediate aim that of being evaluated so as to then be able to gain access to the aforementioned lists. It is therefore difficult to make a quantitative assessment based on figures from previous years. However, it would seem important to stress that, generally speaking, the administrations are making an effort to increase their resources.

In this regard, it would be desirable to convey to the beneficiaries and to the persons close around them the true meaning of the Act and the System for Self-Dependence and Care for Dependency which this Act sets forth. In many cases, citizens have understood the Dependency Act to be a rule of law recognizing their right to a further economic benefit, most especially in those cases in which they were already users of

some service, due to their situation of disability or advanced age, and they feel disappointed and even swindled when the Administration recognizes their right to collect the benefit or to be provided with the service they had been enjoying previously, by simply changing the title, on this being turned into a subjective right demandable of the Administration.

Apart from the above, the complaints have revolved once again this year around the delays and thus the effective date granted to the recognition of the benefits, this being an issue regarding which considerable differences have been found to exist. The rulings related to the application of this Law are as yet few in number, and there is no consolidated case law. On the other hand, at the beginning of 2011, the moderate, Grade 1, Level 2 dependents will be incorporated into the system, it therefore being foreseeable that these new incorporations will be added to the delays expressed in previous years.

Most of the complaints lodged with the Ombudsman regarding the application of the Dependency Act are still affecting the Autonomous Communities of Madrid and Valencia and make reference to the delays in receiving the respective benefits or services. When an economic benefit is involved, the discussion revolves around the date on which the same enters into effect. In this regards, it is inadmissible, when an application is filed for evaluation of dependency for the purpose of gaining access to a place in residential care, that it take a year for the assessment to be made and access to the center in question therefore take even longer. Without detriment to the foregoing, during the year to which this report refers, the most frequent reason for complaint has been the lack of effectiveness of the right recognized.

This Institution cannot agree with the criterion of some administrations that, on learning of the death of a person in a situation of dependency, prior to signing and even the effectiveness of the Individual Care Program (PIA), they proceed to the closing of the case file without even notifying the interested party thereof, on considering that 'the object of the procedure has suddenly ceased to exist, it therefore not being possible to recognize any right whatsoever concerning the resources in the catalogue for the heirs'. This gives rise to the intervention of the Ombudsman in compliance with Article 17.2 of the governing Act, which imposes thereupon the duty of ensuring that the Administration expressly render a decision, in due time and form, regarding the applications and appeals filed therewith.

### Large Families

Once again this year, mention must be made of the repeated failure on the part of the Government to present the draft reform of the Law governing the protection of large families. This failure to fulfill its duties has given rise to more than one hundred complaints having been received during the year to which this Report refers.

The aforementioned reform should take in at least these cases: the recognition as a large family for those families with two dependent children of one single parent, and consider as such those families with a spouse who has a disability and two dependent children. Lastly, the considerable differences which have been occurring in the interpretation and resulting application of this Act on the part of the Autonomous Communities must be curtailed.

## **Social Security and Labor Administration**

### **Quota payment and collection**

Some complaints have been received stating disagreement with the error or omissions found in reports on contribution bases. On the subject of Social Security collection management, a large number of complaints are lodged related mainly to the payment of the amounts claimed as owed as a result of collection procedures filed for this purpose and more specifically complaints in which the interested parties put forth their disagreement with the court order and, above all, with the steps taken for the seizure of assets. The causes having given rise to such amounts owed vary, although they are mainly the consequence of amounts uncovered in the contributions due to the Social Security System, with a special incidence among workers under the Special Regimen of Self-Employed Workers, who, due to the economic crisis, are having difficulties paying the contributions claimed.

### **Benefits**

Numerous complaints have continued being received related to the temporary disability benefit. The workers set out mainly their disagreement with the issuing of the medical release reports, both on the part of the public health services and on the part of the National Social Security Institute, once the twelve-month period has elapsed or during the subsequent six-month extension. The number of complaints has increased in disagreement with the medical releases given by the occupational accidents and diseases mutuals, as well as the medical examinations of the situations of temporary disability conducted by the same, complaints especially related to the workers included under the Special Regimen of Self-Employed Workers, whose coverage is entrusted to said collaborating entities.

Regarding the issuing of the medical release reports, there are difficulties for this Institution to intervene, given that they are based essentially on medical criteria for evaluating the disorders and whether or not the same make the worker in question unable to perform his/her job. Regarding incidents in the payment of the benefit, some complaints have been received which affected occupational and on-the-job accidents mutuals and the National Social Security Institute, others more specifically in relation to the payment of the benefit of the Special Household Employee Regimen. The problems set out in relation to the permanent disability

pensions revolved around issues related to the processing steps and decisions adopted for the recognition of the right to the same. A reminder was put forth of the legal obligation for the Administration to issue the decisions on the cases for the revision of the degree of permanent disability within the time period of 135 days.

Apart from the above, numerous complaints have been lodged concerning retirement pensions. In some, those lodging these complaints expressed their disagreement with the decisions denying their pensions due to not having covered the minimum period of contributions required. Other complaints are in regard to the planned reform of the current pension system, especially related to the retirement pension, in which the interested parties stated their concern regarding the most relevant aspects of the reform which have been being discussed in the media.

On January 1st, certain modifications entered into effect in relation to the recognition of the right to a widow's pension on the part of divorced or separated women who were able to substantiate their status as victims of gender violence. As was disclosed in the 2009 annual report, it was deemed advisable to request clarification concerning the recognition of the benefit to the causal events having occurred within the January 1, 2008-December 31, 2009 period. On the Office of the Secretary of State notifying that the request had to be placed by the interested party, informative letters concerning this subject were sent to numerous women who had lodged complaints with the Ombudsman. And the possible beneficiaries of the widow's pension were informed in similar terms.

Regarding family benefits, it can be said that the beneficiaries of the Social Security benefits for a dependent child over 18 years of age with a disability of greater than sixty-five percent can maintain the benefit whilst the child giving rise thereto remains a 'dependent'. Said condition is not lost for the mere fact of being gainfully employed in the dependent work force or on a self-employed basis, provided that the child in question continues to reside with the beneficiary of the benefit and the income collected by the child as personal income does not exceed 100% of the minimum inter-professional wage in effect at each point in time in the annual calculation. And regarding non-contributory pensions, one must bear in mind that the non-contributory modality of the permanent disability pension is for the purpose of providing for situations of special need. Therefore, the need of expediting the processing procedure must be reiterated.

The recognition of unemployment benefits resulting from downsizing processes entails a number of unique aspects making it different from other benefits, the processing thereof therefore being centralized in the Provincial Sub-Directorates of the State Public Employment Service. In 2010, in view of the growing number of applications as a result of

the current economic crisis, the aforementioned Service has reported the adopting of administrative simplification measures, reinforcing information to employers and workers, holding meetings with those affected for a coordinated action and the creation of a specific email address for channeling and answering all the queries or processing management incidents or on the use of telematics means or computer media.

Numerous early retiree and pensioner associations have addressed this Institution setting out queries as to the constitutionality of the suspension of the revaluation of the pensions for 2011. In the complaints lodged, the Ombudsman was urged to file an appeal for a ruling of unconstitutionality against this rule of law, but an appeal for unconstitutionality must be filed within the three-month period commencing as of the publication of the rule of law being protested, this being a requirement which was not met in the requests made.

A large number of complaints were also lodged regarding the recognition of the right to supplements for minimums and for dependent spouse.

#### **Procedural aspects**

This section groups together some complaints related to the steps involved in processing and decisions issued by the occupational accidents and diseases mutuals. The workers involved put forth their disagreement with the suspension or extinguishment of the subsidy for temporary disability based on their having acted unlawfully to obtain the benefit in question. The reports issued having been studied, the Ombudsman put forth a Reminder to the Administration as to the reasons for the denials of the temporary disability benefits being sufficiently well-explained in order to determine whether or not any fraudulent conduct exists and for the mutual society to sufficiently evaluate the allegations put forth by the workers in their claims, thus avoiding drawbacks and economic damages. Similarly, a reminder was also put forth as to the need of informing the interested parties as to it being befitting to proceed to filing a prior claim through the National Social Security Institute against the initial agreement concerning recognition of the right to benefits, the management of which is entrusted to these collaborating entities.

In the realm of health care, special mention may be made of complaints related to the delays and difficulties encountered by the interested parties for the remittal of documentation comprising part of their medical records as a result of the medical care dispensed by the occupational accidents and diseases mutuals.

In regard to the excessive delays which had been arising in the processing and issuing of decisions regarding the pension application cases, under the protection of Bilateral Agreements signed by Spain with Argentina, Brazil and

Venezuela, measures were promoted through the Departments of Labor and Immigration.

#### **Vocational training**

During 2010, this Institution has continued taking cognizance of the different problems entailed in accessing this training, its effectiveness and its specificity, expressing disagreement in many cases with the screening criteria. Therefore, the Ombudsman took an interest in being informed as to the screening mechanisms and the actual situation regarding the possibilities of gaining access to this training.

Due to the Andalusian Ombudsman having conveyed to this Institution the problems posed in the procedures for selecting Vocational Training Centre students, the State Secretary for Employment of the Ministry of Labor and Immigration has reported that a draft Royal Decree is currently under study by way of which all of the active employment policies will be combined under one single regulatory text.

This Institution trusts that in Royal Decree 1675/2010 of December 10th, in which the amendment of the royal decrees by virtue of which the certificates of occupational qualification of the respective occupational families were set forth by means of the inclusion thereof in the National Repertory of occupational qualification certificates is introduced, will make it possible for the processing steps which the applicants for the aforementioned certificates to be simplified.

#### **Hiring and employment**

On the occasion of the signing of the agreement between Spain and the Kingdom of Morocco concerning seasonal workers in the agricultural industry, a call was made among the women of Morocco to work in the field, specifically for harvesting strawberries in southern Spain. By way of the news broadcast in different media, as well as the complaints lodged in this regard, this Institution detected noncompliance with the minimum working, health and hygiene conditions, and these workers not being enrolled in the Social Security Regimen.

The Directorate General of Labor Inspection and Social Security investigated, at the request of the Ombudsman, and issued several official reports of violations on finding conditions of overcrowding in one of the dwellings, as well as a total of 44 non-enrollments, two of which were for people collecting unemployment and finding that twenty foreign workers were in an illegal situation.

#### **Employment offices**

In the report for 2009, it was pointed out that, for the purpose of preventing delays in the recognition of benefits, the State Public Employment Service was incorporating organizational, managerial and technological changes to deal with the increase in the number of users. In fact, the aforemen-

tioned Service has set up online recognition of the unemployment benefits on the [redtrabaj@](mailto:redtrabaj@) website. Similarly, measures are being employed by the different Public Services to avoid users having to come in to the office in person, as a result of which the long lines and hours of waiting will foreseeably be shortened.

Notwithstanding the foregoing, through the media and the complaints lodged by not a few citizens, attention was drawn to the long lines lasting up to 14 hours which were forming at the employment office in Villalba due to the increase in the population of this municipality and the fact that this office provides assistance for the unemployed from 23 municipalities throughout the northeastern portion of the Autonomous Community of Madrid. The staff of the Collado Villalba office was increased, and the available space has been tripled. Nevertheless, this Institution would like to stress the need of complying with the Modernization Plan as far as the opening of an auxiliary Office is concerned. The Ombudsman would like to underscore at this point that in order to expedite the formalities and avoid waiting lines, it is important for there to be coordination among the different Administrations.

A considerable increase has also been noted in the complaints regarding the treatment the security guards are giving the users. Even though it has been specified that the security guards cannot perform the tasks of informing, providing advice or any other type of administrative work, as it set out under the Nationwide Bargaining Agreement, as of the action of the Ombudsman, the State Public Employment Service has given the fitting orders for the purpose of reminding of these guidelines.

#### **Employment promotion measures**

EC Directive 76/207/EEC of February 9, 1976 on the application of the principle of equal treatment among males and females with regard to access to employment, training and occupational promotion and working conditions, firmly sets forth the principle of equal treatment among males and females. But in Spain, Article 37 of the Workers' Statute, in the case of breastfeeding leave, sets forth that males, fathers of a child who are workers in the dependent work force may enjoy the aforementioned leave solely when the mother is also a worker in the dependent work force.

An ex officio investigation was begun to ascertain whether the possibility of amending Article 37 of the Workers' Statute would be taken positively on the part of the Ministry of Labor and Immigration. The Ministry does not deem it necessary to do so, as it would suffice to change the interpretive criterion in accordance with that which is set forth by the European Court of Justice, since this Article recognized the right to breastfeeding leave in all modalities thereof for both parents in the event that both work. Nevertheless, for the sake of greater legal security, it deems it advisable that, in

the near future, the text of aforesaid Article 37 be amended to clearly and expressly recognize the right to breastfeeding leave on the part of workers in the dependent work force even though the mother be a self-employed worker.

The deficient management of the Plan for the Promotion and Consolidation of Self-Employment by the Autonomous Community of Andalusia Government has been stated in Reports from previous years, the Administration involved not having carried out any measure conducive to remedying this problem. What is more, the lengthy time framework for processing this aid have meant, in most cases, that negative decisions were always issued for these cases due to lack of funds allocated in the budgeting.

In 2010, the Ministry of Labor and Immigration informed, in an extensive report, that the Global Strategy for Action for the Employment of Persons with Disabilities includes as a specific measure the study of the promotion of the employment of persons having suddenly become disabled. Additionally, the suitability of the already existing selective employment measures is stressed, such that more workers with sudden disabilities can seek the protection thereof, and in the review of the bonus system so that employers can also obtain incentives in these cases. This Institution will carry out a follow-up of these measures.

#### **Wage guarantee fund**

On the delay in issuing a decision of the cases on the part of the Wage Guarantee Fund (FOGASA) being made known, it was deemed fitting to request a report on the measures which might be adopted for expediting the rendering of decisions concerning the cases pending processing and the average length of time for a decision to be rendered.

The Wage Guarantee Fund pointed out in its report that, generally speaking, the delays are due to the volume of applications for benefits which are received, the case files processed as well as the number of workers and companies involved, which tripled over the number the previous year, and that its activity doubled without there being any staff increase.

The use of the new technologies has played a major role in implementing measures to expedite processing. The modernization and expediting of the administrative procedures, the support to the deficient Administrative Units and the reorganizing of the extraordinary work have been the main pillars of this revamping process in view of the impossibility of increasing the staff by hiring temporary personnel.

The Ministry of Labor informed that, after having confirmed the increase in the work being done by said agency, specific steps were being taken to for measures to be adopted. Without detriment to evaluating these measures as being positive, the Ombudsman will following up on the implementation thereof.

## TAXES AND DUTIES

## The economic crisis and unemployment gave rise to numerous complaints related to paying taxes

The errors made by the Tax Agency staff proper in preparing the tax returns for those citizens who so request have given rise to numerous complaints, given that those affected find themselves involved in a process and are even fined. Another cause of complaints in 2010 was that of not raising the age to sons and daughters older than 25 years of age who are not as yet living on their own due to the economic crisis and the major degree of unemployment among young people. The real-estate tax-related complaints continue to be the same as for other years: disagreement with the amount of this tax, given the drop in the value of the home over the last three years. An ex officio inquiry has additionally been opened nationwide regarding the functioning of the Land Registry, this being an issue regarding which the Office of the Ombudsman will be preparing a monographic report.

### State taxes

#### Personal Income Tax

In 2010, the problems having arisen concerning the Personal Income Tax have been varied and numerous and have not revolved around one single aspect in particular, although one common denominator has been citizen concern regarding the problems involved with a view to paying this tax.

Given Spain's current socio-economic situation with a high degree of unemployment among young people, the problem was put forth of the sons and daughters older than twenty-five years of age who are not economically independent but who cannot be included either on the personal income tax return for the purpose of applying some type of deduction for their support. An investigation was begun for this reason with the State Secretary of Finance and Budgeting, whose reply concluded by saying that it is not a suitable time to extend the age to twenty-five for purposes of charging this Tax.

Complaints were also lodged on the part of a considerable number of citizens who have found themselves involved in a long, drawn out procedure and even in penal proceedings for mistakes made by the Tax Agency staff after having taken recourse to the systems for helping citizens to prepare Personal Income Tax returns which is provided by said Agency. Outstanding is the case of one citizen who requested an appointment to have his Personal Income Tax Return prepared and who was subsequently notified of the suggested tentative assessment due to the incorrect application of the deduction for income earned by personal work for which provision is made under Article 20.3 of the Personal Income Tax Law, because although he had had a handicap recognized in 2008, he had been in a situation of temporary disability. The party in question filed an adminis-



trative appeal for review acting in good faith without any intent of violating the rule of law, given that the tax return in question had been prepared by qualified personnel employed by the Tax Agency proper, the appeal having been upheld and the fine charged having been voided.

The change in taxation which took place with Law 27/2009 of December 30<sup>th</sup> governing urgent measures for maintaining and developing employment and the protection of the unemployed, which sets forth an extension of the number of tax-exempt days for the workers affected by a Downsizing Plan gave rise to many citizens having voiced their rejection as a result of having considered the modification within one same business year to be discriminatory. However, the truth of the matter is that the Government has the capacity and authority to regulate the economic activity and to adopt whatever measures it deems fitting for the purpose of improving the situation of the workers affected by said Plans. Additionally the fact of more than one tax regime existing during one same business year is not an isolated event, there being numerous cases in the past in Spanish legislation.

The rigidity on the part of the Tax Agency when interpreting the requirements set forth under the tax regulations governing

deductions and exemptions regarding housing continues to be the source of a large number of complaints. The main problem lies in the criterion maintained by the Agency when considering a dwelling as a regular residence in the transfers made prior to January 1, 2007, the date on which the regulatory change resulting from the passage of Personal Income Tax Law 35/2007 of November 28<sup>th</sup> and the Regulations further expanding thereupon enacted by Royal Decree 439/2007 of March 30<sup>th</sup> entered into effect. One person in question proceeded to the sale of his home three years after having purchased the same, but the Administration considered it not to be his regular residence, despite his having furnished different documentation substantiating this fact, such as gas and electric bills or his certificate of being officially registered with the Municipal Government, based on the date on which he changed his tax domicile. The complaint has still not as yet been answered by the State Tax Administration Agency.

Administrative coordination and collaboration takes on particular importance when involving measures which have economic consequences for citizens. Complaints are not infrequent in which taxpayers cannot understand how at the point in time of collecting a subsidy, it is not specified as being subject to the Personal Income Tax. Citizens pointed out that when they entered the 'Plan 2000 E', they were not informed at the time of purchasing their vehicles as to the taxation of this subsidies and that neither the 'PADRE' Tax Preparation Assistance Program nor the Personal Income Tax forms for the 2009 business year made provision for the taxation thereof. Following the respective investigation, the State Secretary of Finance and Budget indicated that the aforementioned subsidies are fully subject to this tax, it not being possible for such a situation to be affected by the tax form or the tax preparation program not expressly including these subsidies.

## Local Taxes

### Real-Estate Tax

As in previous reports, the complaints revolved around issues such as disagreement with the amount of the tax after home values having dropped over the last three years, considering that the land registry values which entered into effect in 2007 and thereafter to be disproportionate; the problems involved in making notifications and the foreclosure proceedings, whether due to errors in the ownership, surface area or characteristics of the real-estate or, on the other hand, those which, after appealing some element of the assessment to the municipal government, almost always within the foreclosure period, no reply is provided. Complaints have additionally been receiving related to the issuing of assessment for business years already paid or which have expired, which had given rise to citizens voicing their opinion as to the Administration attempting to collect taxes under adverse circumstances without abiding by the procedure.



One example of the problems arising due to the shared management of this tax is that of a complaint in which the citizen in question did not receive the notification of the assessment of the for the business year in which he enrolled in the municipal registry of residents due to the fact that the City Hall of Aguilar de Campoo (Palencia) considered this notification to have already been sent out by the Land Registry Administration, which is a criterion shared by other city halls. However, independently of the fact that Article 65 of Royal Legislative Decree 2/2004 of March 5<sup>th</sup>, in approval of the Revised Text of the Law Governing Local Finances, sets forth that the tax base shall be determined, notified and shall be subject to protest in accordance with the rules of law regulating the Real-Estate Property Registry obviously does not justify the City Hall not fulfilling the obligation of notifying this first assessment, which is that which guarantees that taxpayers can defend themselves before the public Administration in the event that any mistake were to have been made in the same. In this case, despite the City Hall having notified the assessment past the deadline for doing so, it demanded a ten-percent surcharge on the time period allowed for voluntarily paying the same having lapsed. This was the first time that it was befitting to settle the tax for the property in question due to the fact that it was the result of a land consolidation. The party in question, who went in person to the City Hall, did not manage to obtain any proof as to his having been notified of the characteristics of the property and the tax base and tax payable for this tax, nor were they able to prove the same at the Regional Land Registry Management Office in Palencia. Additionally, the bill which included his details as the first owner did not divide the amount owed for the tax despite there being four owners of the property in question. The Regional Tax Management Office in Palencia confirmed that the land consolidation had not been fully completed and that neither this office nor the Land Registry had as yet carried out the process of notifying the land registry characteristics of the property. However, the city Hall of Aguilar de Campoo considered the assessment to be correct, due to the date of effects of the entries into the registry and maintained its right to do so by way of summary proceedings for collection, which gave rise to a suggestion being made

as to their voiding the bill issued with the associated surcharges and costs and that the sums unduly deposited for this reason be refunded to the interested party, as well as to proceeding to notify the land registry characteristics prior to issuing the tax bill. At the time of year-end closing of this business year, the City Hall of Aguilar de Campoo has not as yet replied.

One of the most customary complaints this year, as has also been the case for the last two years, had to do with the rise in the property registry land values and the resulting rises in the tax bases. Citizens argue that the use of deduction factors is not enough to minimize the repercussions of the new economic standards implemented after 2006 and due to the fact that the real-estate values are continuing to fall, they see there to be a drop in the value of their properties and an increased tax burden, without any attitude sensitive in this regard having been noted on the part of the municipal governments by adjusting the rates within the legal limits thereof. In some cases, the payment of this tax amounts to more than one month's wages on the part of the taxpayer, despite the fact that both the Directorate General of the Land Registry and the municipal governments are abiding by the rules, given that this problem is the result of a situation at the present.

### Land Registry

Over the past few years, particularly since the enactment of Royal Legislative Decree 1/2004 of Marcy 5<sup>th</sup>, in passage of the Revised Text of the Real-Estate Registry, numerous complaints have been being received putting forth some problems citizens are encountering when requiring the services of the Regional Land Registry Management Offices. This, in conjunction with this Institutions experience on the subject, has given rise to a general study being begun on the functioning of the Land Registry, for which a total of 51 ex officio inquiries were opened in 2011, the headquarters of 17 Regional Management Offices having been visited to date. The result of these visits as well as of the inquiries will be set out in a special report.

### State aid

Complaints have continued being lodged throughout 2010 regarding the benefit for birth or adoption commonly referred to as the 'baby check'. As in previous years, the main reason is the fact that Law 35/2007 of November 15<sup>th</sup>, by virtue of which the deduction for birth or adoption on the Personal Income Tax and the economic benefit by way of a single payment from the Social Security System for birth or adoption set forth under Article 2 thereof that the beneficiary is, generally speaking, the mother in the cases of birth and the female in the cases of adoption by individuals of a different sex, which means that the couples in which the father is Spanish and the mother is a foreigner but who has been residing legally in Spain for less than two years cannot collect said benefit according to the criterion of the State Tax Administration Agency.



For the purpose of providing a solution of this problem, the Congress of Deputies has approved a motion to which reference was made in the last edition of the Annual Report, in which the Government was requested to present a reform bill so that the holder of entitlement to the aid would identify the newborn and therefore the management thereof would fall to the natural or juridical persons holding the parental rights or, wherever applicable, the guardianship. However, the aforesaid motion was withdrawn by the Joint Parliamentary Group on May 12<sup>th</sup> 2010.

Afterward, following the passage of Royal Decree-Law 8/2010 of May 20<sup>th</sup>, by virtue of which extraordinary measures were adopted for reducing the public deficit, the aid to birth was eliminated as of January 1, 2011, which has meant numerous citizens having lodged their complaints with this Institution, mainly in those cases in which the birth was scheduled for the first few months of 2011 and this aid had been relied upon on the date on which this measure was adopted.

In the last edition of this Report, reference was made to an investigation which had begun with the Ministry of Industry, Tourism and Trade in relation to the granting of subsidies for the purchase of vehicles, known as 'Plan 2000 E', for the purpose of preventing those situations in which citizens who had closed the deal for the purchase of a vehicle at the dealership, counting on the respective aid, but who were pending the registration of the vehicle in question, lost out on this option, on having advance more funds that what the dealer would have had to be paid, due to the fact that the subsidies were advanced by the dealers and were settled every two weeks by the collaborating entity. This situation was remedied with the approval of Royal Decree 2031/2009 of December 30<sup>th</sup> on allowing the salesman to be able to enter a record into the management system even though it were not complete, thus allowing the system to manage the funds taking into account these transactions pending registration of the new vehicle.

ECONOMIC ACTIVITY

## Widespread discontent concerning the treatment dispensed by the financial institutions

Once again this year, the complaints lodged with this Institution reveal citizen discontent with the financial institutions for different reasons: insufficient guarantees for the defense of their rights, abusive practices in regard to mortgages or products known as SWAPS. This Institution still believes that citizens are not being suitably informed and are not seeing their rights safeguarded, despite the Bank of Spain being of the opposite opinion. On the subject of safeguarding minors on social networks, Spain's Data Protection Agency informed that those responsible for Tuenti and Facebook have taken measures to safeguard the personal details of those under 14 years of age.

### The financial institutions

Once again, it must be reiterated that, based on the complaints lodged with this Institution, citizen discontent with the financial institutions is patent, citizens being, after all, their customers, and that they believe there to be insufficient guarantees for the defense of their rights in the financial sector. The Bank of Spain Complaint Service rarely makes any statement concerning the background of the complaints lodged by citizens, generally considering all the problems which are not related to the solvency of the credit institutions to be outside of the bounds of its authorities, overlooking the fact that, according to the Order of December 12, 1989, it is in charge of taking and processing the complaints lodged by credit institution customers regarding the specific transactions affecting them concerning the breach of the rules of discipline or good banking practices and customs.

It is still not understood how Royal Decree 303/2004 of February 20<sup>th</sup> is can still be in force in the legal system, by virtue of which approval was rendered of the Regulations of the Commissioners for the defense of financial services customers, given that no political willingness to carry it out seems to exist. This Royal Decree created expectations regarding a better protection of the customers in this sector which have been dashed.

Numerous complaints have continued being lodged throughout 2010 by citizens who had taken out a mortgage with their banking institution which included what is referred to as 'mortgage floor' clauses, which, many times, was not included in the advertising of the agreements and regarding the consequences of which they were not properly informed.

Following Senate Plenary Session approval on September 23, 2009 of a motion requesting the Government to take

action to counter the abusive practices of the credit institutions of revising the mortgage rates and petitioning the Bank of Spain to prepare a report on this matter, this Institution opened an investigation with the Bank of Spain and with the Ministry of Economy and Finance.

Both of these Administrations come to the conclusion in their reports that these clauses are legal provided that they are combined with an adequate protection of consumer rights and that the obligations which the regulations governing transparency impose upon the credit institution which incorporate these clauses into their agreements, the standardization and particularly the notarial observation regarding the substance thereof can be considered adequate guarantee for customers to be able to know sufficiently well the scope of the financial cost they are undertaking.

This Institution deems there to be a clear lack of reciprocity in the enforcement of these clauses, regarding which citizens are not being adequately informed when signing the respective agreement, finding themselves to be unprotected in the exercise of their rights.

In addition to the above, it must be taken into account that court judgments have already been handed down concerning this issue, specifically Seville Mercantile Court No. 2 has ruled these clauses in the loan agreements made by one bank and two savings and loan banks to be void based on the lack of reciprocity thereof.

Therefore, both the Bank of Spain and the Ministry of Economy and Finance have been requested to adopt the fitting measures for the purpose of protecting the financial services customers, the respective report currently pending receipt.

Commissions being collected on the part of banking institutions has always been the subject of numerous complaints which cannot generally be admitted given the fact that they

have to do with private legal relations, but special mention must be made here of these commissions being demanded on the donations made by means of a bank transfer for humanitarian causes, as a result of which some citizens have requested that the banks and savings and loan banks systematically refund the money they had charged for this type of transactions or, in absence thereof, that they undertake to turn over the money charged as a commission to the non-governmental organization or association to whom the donation had been made.

An investigation was opened in due course with the Bank of Spain, which informed that the regulations governing commissions in Spain allows the freedom to collect the same on the part of the credit institutions for the services actually rendered to their customers under the terms for which provision is made under number five of the Ministry of Economy and Finance Order of December 12, 1989. They considered that said freedom to collect should be construed without dismissing the possibility that, in view of the humanitarian cause for which the transfers are being made, the financial institutions were to decide not to shift said expenses, this being a circumstance which does not have to be notified to the Bank of Spain on not having to do with the compliance with any regulation or instruction whatsoever on the part of this Agency. In view of the answer given, this Institution deemed it fitting to close the investigations opened with the Bank of Spain and approach the State Secretary of Economy, whose reply has not been received to date.

In relation to the products referred to as SWAPS, which afford the possibility of financially swapping interest rates charged on mortgage loans, an ex officio inquiry was opened for the purpose of ascertaining the number of complaints citizens had lodged with the Bank of Spain, in what sense and in what number they had been remedies, what criterion had been employed for considering whether or not the transaction in question had been carried out with the transparency which can be required of this type of transactions and, in those cases in which a change in criterion had taken place, on what grounds the same had been founded.

In addition to the above, considering that the legal protection for these complex products, which were initially not set up for this type of customers, does not provide sufficient guarantees, information was requested from both the Bank of Spain and the Ministry of Economy and Finance in order to ascertain whether it was anticipated for any order or instruction to be issued which would regulate the information that must be furnished to each type of customer in related to the products under investigation.

The Bank of Spain estimated that it is possible to demand compliance in the marketing thereof solely with those requirements which are set out under the banking regulations

stipulated in application of Law 26/1988 of July 29<sup>th</sup> governing Credit Institution Discipline and Intervention. On this basis, the Complaint Service has been issuing its judgments without going into assessing the verbal statements which are not admitted by both parties, given that this would entail taking that set out by one thereof as being more credible than the other, indicating that the courts are the only ones with authority over ordering the taking and analysis of the means of proof necessary for indubitably establishing the chain of events and subsequently deciding as to the consequences which must stem from the same.

### **Measures stemming from the current economic situation**

As for the last two years, a large number of complaints had to do with situations caused by the economic crisis which has had a bearing on different sectors and which has affected the way in which the Administration has proceeded. Some of these issues have reflected problems common to others which were investigated last year, although different issues have also arisen.

### **Personal and family insolvency**

Reference was made in the last report to the consequences of applying to natural persons who were not carrying out professional, artistic or business activities the same insolvency regulations as for bodies corporate and professionals and business owners. The treatment of insolvency has a clearly different aspect in one case and the other, due to the nature of the origins thereof and the means and ends which are intrinsically entailed in one and the other.

In the case of those persons who are not working at self-employed activities, insolvency usually results from circumstances involving the current situation, such as the collapse of the real-estate market and the subsequent rising unemployment, which has driven many families not to be able to make the payments on their mortgages on their regular residence. Reference was previously made in the 2009 report to the fact that these persons were finding themselves in a situation which could hardly be remedied by way of the aforementioned regulations, given that their debt could not be paid off, not even with turning over their home to pay off what they owe, but that the debt still existed following their home having been auctioned and could even give rise to worsening family situations, such as those cases in which parents endorsed their children's credit, in which case the homes of both families are placed in jeopardy. Also added to this is the difficulty of coming to an agreement with the creditors, a difficult which is conditioned by the principle of universal personal liability of natural persons. In the 2009 report, it was stated that different solutions exist in comparative law which could be incorporated into Spain's legal system and which are not incompatible with the principles governing the same.

Learning of this situation was what gave rise to opening an investigation with the Ministry of Justice and Presidency of the Government, who requested time to study a possible reform. On the date of the closing of this report, neither of these two bodies has as yet provided any information concerning the possible measures.

#### **The Official Credit Institute (ICO) Credits**

One of the lines of the Official Credit Institute (ICO) through which funds are loaned to the collaborating credit institutions for the purpose of financing Spain's companies and self-employed workers is the ICO-PYME Line (Official Credit Institute- Small and Medium-Sized Business), which allowed a moratorium during 2009 on the payments of the outstanding principal of whatever ICO-PYME 2006, 2007 and 2008 loans were to be in effect.

One savings and loan bank offered the 2009 ICO-Moratorium Small and Medium-Sized Business Line in its advertising. However, those who requested this product at the bank found it impossible to access the same because the bank did not have it developed but nevertheless permitted making application.

One citizen affected by this situation filed a complaint with the Official Credit Institute concerning the ICO Line, having met with the response that the Institute has no authority over forcing the credit institutions to sign transactions with the potential customers, and that the fact that the institutions are adhered to the line does not place them under the obligation of operating on the same. However, it was incomprehensible how the Official Credit Institute could formalize adhesion agreements with the banking institutions without any type of requirement concerning the obligation of putting the product in question into practice. This circumstance led to posing the need of the Official Credit Institute setting out conditions for the fulfillment of the agreements on the part of the adhered banking institutions and that the advertising of these institutions be in keeping with the truth of the matter.

After repeated attempts on the part of the Ombudsman, the Official Credit Institute informed that for the purpose of avoiding customers encountering problems such as those brought to fore, in the future agreements with credit institutions which are signed on the acceptance of a line, the obligation of the commercial development thereof will be imposed.

At the closing of the 2009 report, the State Secretary of Economy was pending stating his opinion regarding possible improvements in companies gaining access to the Official Credit Institute-Small and Medium-Sized Business financing line, who pointed out the creation of a new line of direct financing from the Official Credit Institute in application of certain measures agreed upon in the Zurbano Pact. Said line is assessed directly by the Official Credit

Institute, such that some business projects which were not approved by the financial institutions may fit into this line. Similarly, they stated that the actions would be intensified with close collaborations with some private entities, with Autonomous Community financial institute and mutual guarantee societies.

In view of the foregoing, and given that no assessment whatsoever was made concerning the sufficiency of the measures or whether they have made it to those for whom intended, and given that it notified the opening of a new measure which will be assessed and controlled directly on the part of the Official Credit Institute, it was decided to proceed to closing the investigations carried out with the State Secretary of Economy and once again request information from the Official Credit Institute concerning the implementation of the new measure and its effectiveness. At the closing of this report, this information has not as yet been furnished.

#### **Communications from the administrations and purchasing power**

Different complaints have been received from citizens voicing their disagreement because, despite the fact that the amount of their pension to be collected in 2010 was lower than what they were collecting in 2009, in the letter received from the Ministry of Labor and Immigration concerning the reassessment of pension for 2010, they were told that their maintaining their purchasing power was fully guaranteed and enhanced.

The aforementioned Ministry sought protection in the fact that the text of the reassessment notification refers to the pension increase in its gross amount, and that the effect which the Personal Income Tax has on pensions it is something else altogether, regarding which the Social Security System is acting merely as it is obligated to do on withholding and depositing the respective amounts on account, which has meant an alteration of the net amount of a number of pensions.

However, given that the final result in many cases has been a decrease in pensioners' purchasing power, it was requested that, in future communications, this matter be cleared up so as to prevent citizens from being misled, as citizens find the statement that 'your purchasing power being maintained is fully guaranteed and enhanced' to be offensive, when through the Ministry in question, they knew that with the application of the respective Personal Income Tax, their pension would be lower than what they had been collecting the previous year.

The Ministry argued that the annual pension reassessment process for the 2010 business year affected slightly over 8.6 million contributive pensions, as a result of which the highly numerous current casuistic makes it necessary to provide notice by means of a form letter in which the mes-

sage has to be objective and common to all and that, additionally, the group which was finding the Personal Income Tax withholdings to be noticeably higher was more significant as a result of the new regulation of the 400-euro tax deduction, a situation which must not be considered customary but rather for the time being.

This Institution deems the Administration to have sufficient means to prepare different form letters according to the different circumstances that progressively arise, whether they be of a regular nature or only for the time being, especially taking into account that the measures such as the aforementioned report transcribed in relation to the 400 euros have affected a large number of citizens, as a result of which it has been proceeded to recommend to the Ministry that they bear in mind when writing letters to citizens that this type of momentary situations which affect a large number of people and regarding which there may be a prior knowledge thereof be taken into account for the purpose of providing the same with the most accurate and complete information possible and thus avoid similar events from arising in the future.

## Services

### Electric power supply

Royal Decree Law 6/2009 of April 30<sup>th</sup>, by virtue of which certain measures are adopted in the energy sector created the rate subsidy on household bills as yet a further protective mechanism for vulnerable groups, being eligible for the same those electric power consumers who have signed up for the last resort rate who fulfill certain consumption and purchasing power-related social characteristics. Hence, those consumers who, being natural persons, have a power supply of less than 3 Kv under contract for their regular residence can have the benefit of the rate subsidy. Also, those consumers over 60 years of age who provide proof of being social security system pensioners due to retirement, disability or being widowed and who collect the minimum amounts in force at each given point in time for these types of pensions with respect to the holders of contracts with dependent spouses or the holders of contracts without a spouse who live in a one-person economic unit; as well as the beneficiaries of pensions from the now extinct compulsory old age and disability insurance and of non-contributive retirement and disability pensions who are over 60 years of age; and large families and the consumers who provide proof of comprising part of a household which has all its members unemployed.

In the immediately previous report, mention was made of the fact that complaints had been lodged by citizens who felt discriminated against for not being able to have the benefit of this aid on not being included among the beneficiaries set out under the rule of law having created the same, this exclusion being greater is one bears in mind that the groups excluded collect pensions lower than the groups included under transitory provision two of Royal Decree 6/2009 of April

30<sup>th</sup>, by virtue of which certain measures are adopted in the energy sector. This involves those consumers who collect a pension in favor of family members or an orphan's pension, state benefit pensions and those who collect a pension from the social security system and a state benefit pension as an orphan, civil family members which, when added together, do not exceed the limit stipulated for registering for the subsidized rate. The State Secretary of Energy under the Ministry of Public Works informed that a transitory regulation of the subsidized rate is currently being maintained, not requiring an threshold referenced to a per capital family income indicator to be applied, as is set forth under the aforesaid Royal Decree Law. In other words, the applicable groups have been set with certain social characteristics and, wherever applicable, consumption-related characteristics, but independently of the per capita income, which has led to an application in which the requirement is simply to belong to a group, independently of the economic level thereof. This has given rise to other different groups requesting the application of the subsidized rate to the members they represent as a result of considering that they must be eligible for the same due to their similarity to the groups which are already regulated. Hence, for the purpose of broadening this aid to the groups excluded, the further expansion for which provision is made under Article 2.1 of Royal Decree Law 6/2009 of April 30<sup>th</sup> is currently in the process of being analyzed. In view thereof, the investigation has ended.

Lastly, the publication of Royal Decree-Law 14/2010 of December 23<sup>rd</sup>, by virtue of which urgent measures are set forth for correcting the electric power industry's rate deficit, has given rise to numerous complaints from owners of photovoltaic facilities who consider the rule of law in question to be more damaging to their interests that the previous one, given that it limits the maximum annual production to be injected into the system on the part of all photovoltaic facilities, whether their economic regimen be that set forth under Royal Decree 661/2007 of May 25<sup>th</sup> or that set forth under Royal Decree 1578/2008 of September 26<sup>th</sup>, such that this limitation, which was unforeseeable at the point in time of the construction of the facility, makes the payment of the debt acquired for running the same unfeasible, irreversibly damaging the legitimate interests of all photovoltaic producers. For the foregoing reasons, numerous petitions for appeal of unconstitutionality have been filed against Royal Decree-Law 14/2010 of December 23<sup>rd</sup>.

### Internet social networks

In addition to commercial or legal relations, the Internet environment propitiates relations of a personal nature being established. In this regard, a progressively larger number of minors have incorporated the use of social networks into their life, as a result of which, both the public powers as well as those responsible for the social networks must be conscious of this being a vulnerable group worthy of utmost

protection. Similarly, the fact must not be overlooked that parents must take their responsibility for educating and informing their children so as to prevent certain situations of risk for minors. In this regard, encouraging fluid, open family communication would prevent delicate and even tragic situations to a great extent. One of the issues previously set out in the 2009 report was related to the advisability of a minimum age being set by those responsible for the social networks for joining these networks as users.

Hence, in the different reports issued through the Spanish Data Protection Agency in 2010, it has been stated that, according to the information furnished by those responsible for the TUENTI social network, the minimum age for accessing this network is stipulated as age 14, this being an age derived from Spanish legislation and which is in line with the European data protection legislation. So as to prevent sign-ups at younger ages, TUENTI has set out a number of proactive measures:

- Protocol for investigating and deleting users under 14 years of age consisting of verification by TUENTI of an average of 3,000 suspicious profiles a week, who are requested to send a copy of their official identification by fax or scanner in order to verify their age. If they do not provide proof of their age within 92 hours, those profiles are then removed from sign-up.
- If these deleted users try to sign up again using the same e-mail address, the TUENTI system preventing them from doing so.
- The profiles of those under 18 years of age have the maximum degree of default privacy, termed 'Only friends', being close for unknown users.
- The model for a user accessing TUENTI at the point in time of sign-up is by means of an invitation from another user.
- By way of this TUENTI model, sustainable growth has been achieved, in which the traceability of the users can be ascertained to see by whom they have been invited.

TUENTI is also planning to incorporate the Electronic I.D. Card as a measure for controlling users at the point in time of sign-up. The system for verifying and clearing those under 14 years of age has been enhanced with new measures and others which will be adopted on a short-term basis, by means of which the main objective of reviewing 300,000 profiles yearly will be achieved. These measures revolve mainly around an investment of human and technological capital.

Apart from the above, a technical procedure has been set out which has made it possible to increase the number of profiles which are reviewed each week, and an automatic deletion for those users who do not send in the scanned identification card within 92 hours. These measures make it

possible to set the objective of 300,000 profiles reviewed yearly and a very fast deleting rate.

The Facebook social network sets the minimum age to be able to sign up from Spain at 14 years of age. Notwithstanding the foregoing, no reply has been provided on the part of the Facebook social network to other questions posed, this information having therefore been requested again through the Agency.

On another order of matters, information was requested from the Data Protection Agency through this Institution concerning the possibility of holding chats or seminars at Elementary and Secondary Schools in coordination with the educational authorities regarding the actual situation and the dangers existing in the social networks so that the minor might take part and voice their doubts and concerns. However, there is no provision for conducting advertising campaigns on not availing of credits for this purpose. This circumstance is not a stumbling block for it to have incorporated as one of its priorities a major boost to the policy of informing on the risks of online social networks and, in particular, those which may affect minors. This has been promoted through publications and from its webpage showing information on the social networks, on their risks and alternatives for knowing and minimizing them. On the date of the writing of this report, this investigation is currently under way.

### **Rail transportation**

The Spanish rail service, RENFE, not having applied the transportation discounts set forth under Law 40/2003 of November 18<sup>th</sup> governing the Protection of Large Families has been remedied, once the Supreme Court Decision of February 19, 2008 ruled the voidance of Article 10.2 and Article 11.3 of Royal Decree 1621/2005 of December 30<sup>th</sup> rendered in approval of the Regulations of the aforesaid Law, in which it was set forth that these discounts could not be used in conjunction with any others which might be approved by the railway company. In the 2009 report, it was stated that RENFE Operator had already established the compatibility, but the modification of the computer systems of the different sales channels which was necessary would not be operative until May 2010. However, the aforesaid operativity did not actually come to be until July 2010.

### **Consumer Affairs**

Over the past few years, there had been a growing number of complaints from citizens in regard to consumer rights, as consumers are becoming progressively more well-informed concerning their rights. In 2010, there has been a slight drop in these complaints, although a large number have been requesting information concerning the proper channels for exercising the defense of their rights.

The Inter-ministerial Consumer Affairs Commission has been formed. This body has been created to encourage responsible consumerism, that is to say, healthy, safe, solidary and sustainable consumerism for properly carrying out Spain's Government's sustainable economy Plan.

As regards the Autonomous Community legislation, the new Catalanian Consumer Code (Law 22/2010 of July 20<sup>th</sup>) entered into effect, Article 128-1, Items 1 and 2 having been appealed to the Constitutional Court by the Ombudsman. And, on the other hand, the Governing Council Decree 1/2010 of January 14<sup>th</sup> was passed in approval of the Regulations of the Autonomous Community of Madrid's Consumer Protection Law 11/1998 of July 9<sup>th</sup>, under which a detailed regulation is set forth of the rights of consumers and their legal, administrative and technical protections.

Numerous citizens have asked the Ombudsman to intervene in consumer affairs-related matters: However, on the issues put forth being of a private legal nature, the Ombudsman cannot become involved in directly settling each matter due to being prevented from doing so by the law regulating this post. This Institution continues stressing the need of emphasizing the citizen information policies concerning the protection of their consumer rights.

Concerning the debt collection management agencies, an *ex-officio* investigation was conducted in regard to the violation of Article 18 of the Spanish Constitution, in which it is set forth that all citizens must have the right to their honor, their personal and family privacy and to their own image guaranteed. Spain is the only country in the European Union which has no specific regulations for governing these companies and their way of doing business. This investigation has been expanded by requesting the Ministry of Justice to inform on the existing provisions about the possibility of regulating a legal framework on this subject.

Another *ex-officio* complaint opened in 2009 had to do with non-regulated education at the national level, on the control and inspection of these schools, particularly with regard to information, advertising and contracting conditions.

Special mention may be made of a large number of complaints having been lodged concerning administrative silence. Although the Administration usually finally replies in the end, there is quite a widespread degree of discontent as a result of the long time administrative processing takes, as well as the delay in transmitting dossiers from one administration to another.

Another problem to be pointed out is the lack of a specific profile for the penalizing authority of the Government Agencies. One case which calls one attention greatly is that of a blind person who was not allowed to enter a res-

taurant in Madrid with his guide dog, even when he had all of the documentation in proper order in compliance with Law 23/1998 of December 21<sup>st</sup> governing access by blind or visually-impaired persons using a guide dog to the establishment. The claim followed a complicated itinerary through different government agencies which did not settle the issue on not considering themselves to have province thereover. The Ombudsman has been awaiting the reply from the Autonomous Community of Madrid since June 2009.

On another order of things, the Ombudsman continues focusing particular attention to eating disorders, a serious problem of socio-sanitary importance due to its social interest, complexity and difficulties entailed in diagnosis and treatment.

Several consumers lodged complaints in regard to the unification of clothing sizes, They explained that no homogenization had taken place since the Working Agreement (January 23, 2007) had been signed between the Ministry of Health and several fashion manufacturers' and retailers' associations. There is currently no regulation making it mandatory for clothing sizes to be unified, either in the European Union or in Spain, given that the aforesaid Agreement is based on this industry's self-regulation and on the willingness of the entities in question to adhere to the same. However, the European Standardization Committee CEN is working on a rule of law which will determine how the size is to be conveyed to consumers.

Over the past few years, due to the financial crisis and the types of mortgages, citizen disagreement with the mortgage interest rate risk coverage systems has become widespread, it being possible for these systems to be divided into two clearly distinct modalities: the limitations on the variation in the interest rate (floors and ceilings) and the independent financial capital and swap mortgage loan agreements (financial derivatives).

Lastly, mention may be made of the fact that a group addressed this Institution, the Association of Users Affected by Swaps and Financial Derivatives (ASUAPEDEFIN), expressing their disagreement with the resolution set out by the National Consumer Affairs Institute, by virtue of which the aforementioned Association is denied registration in the State Consumer and User Registry, alleging that its purpose was not the general defense of the legitimate rights and interests of consumers and users, but rather the exclusive defense of its members and which also makes reference in its articles of association to the information, training and education of these consumers and users. The Association filed an Administrative Appeal to a Higher Court regarding which the Ombudsman has not as yet received any information whatsoever.

URBAN PLANNING AND HOUSING

## This Institution sets forth a reminder as to urban planning and housing meeting basic needs not necessarily linked to the market or profitability

**The complaints processed by the Ombudsman's Office reflect that the planning of the uses of land or the constitutional right to the enjoyment of a decent dwelling are matters with which the administrations do not deal in the terms of need and the imperative of citizen life as is required under the Constitution, but rather as an object of legal and economic business.**

These two different yet so closely-related subjects require treatment by the Ombudsman's Office's based on general premises and of course on the law, but which are not always deduced directly from the law, but rather from sociological and economic categories. We have made reference to some of them in previous years, but given how serious the problems set out in the complaints received are, we have deemed it unavoidable to provide an explanation in this Report as to the 2010 management under all the premises employed and as yet not employed. These are not confined to the public powers precisely as derived from the Law. We have attempted to go further beyond and not lose sight of the social and economic background of the constitutional rights to a rational use of the land and the enjoyment of a decent dwelling (Article 47 of the Constitution). In 2010, this Institution has begun a study on what the true problems and their real causes actually are.

This Ombudsman's Office finds it impossible to identify the concepts 'demand for land' and 'need for land' with one another, and the same may be said for 'dwelling'. When the administrations refer to the 'demand', they cannot be referring to the market demand, as it is inferred from the Constitution that both the land and dwelling are properties not referred to therein as 'merchandise'. Under Article 47 reference is made to both as objects of use and enjoyment, whether or not they be on the market, whether or not they have a price. The Constitution additionally predicates the respective rights in favor of 'all' and not just in favor of whomever may be able to *acquire* such assets. For example, the Constitution recognizes the right to be able to enjoy and to be able to use a dwelling, therefore not in its consideration as a net worth asset but rather as an object of satisfying a basic need which people have.

From an economic point of view, it can be accepted that the concept 'demand for buildable land' refers to a *solvent* demand, that is to say, a demand with the ability to pay. But this concept nevertheless does not seem to this Ombudsman's

Office to be that which the Constitution accepted as valid for measuring the need for land or the need for a dwelling.

### Urban planning

The modern planning of land uses is inherently linked to the profitable conversion thereof, up to the point of our normally speaking of real-estate assets, land market, developed land price and other standard concepts of urban planning economics. This relationship between land and profitability has now become so intense that it may make us lose sight of other fundamental relationships which the land maintains along with such human aspirations as profitability: housing capacity, privacy, preserving the environment. These needs are hardly measured in terms of profitability on the investment in real-estate or the prospects of profits. Although the profitability of the investment in real-estate may not be the main quality of the planning and unrolling of urban planning plans, its supremacy is patent. The complaints received and the underlying actual situation are one clear example of the reign of profitability, such that the demand for land (residential or for other uses) may have dropped over the past few years, but not the need for land on which to dwell or simply to live.

The developments in developable areas, carrying out the urban planning approach, is currently fraught with difficulties which are therefore delaying or halting the planning action. This halt is not due to it no longer being necessary to plan land uses and convert land, but rather to the lack of investments. Naturally, there are not any investments because they would not currently be profitable and not because the need for well-planned land has simply vanished. The urban planning administrations are capable of going so far as to accept this current situation without further ado, as if everything were to depend upon investment in the abstract sense.

### Urban planning approach

One typical example of the lack of interest in re-planning urban areas (and therefore also the space surrounding the ur-

ban areas) is that of Cañada Real Galiana (Madrid). This Institution has been processing several complaints for years related to the situation experienced by a numerous group of people in the settlements located in this place (Madrid, Rivas-Vaciamadrid, Coslada and San Fernando de Henares, mainly the first two municipalities). Currently, as far as the territorial aspects (urban planning and environmental) are concerned, this Institution is keeping in touch with the City Halls of Madrid and Rivas-Vaciamadrid, with both of which it has held informative meetings. The next step is to hold a meeting similar in format with the Autonomous Community of Madrid, Department of the Environment, Housing and Regional Planning. Several reasons, mainly the complex nature of this issue – which is not only urban planning-related – and the need of providing for those affected, have made it advisable to declare the proceedings under way to date to be closed and to continue them on an ex officio basis, which will afford the possibility of better controlling the course of the inquiries. The contact maintained with the City Halls has given rise to some tentative conclusions with which to be able to continue. In the judgment of this Ombudsman's Office, the problems currently still exist and are far from having been channeled toward a more or less upcoming solution. As far as the territorial aspects (urban planning and environmental) are concerned, the Autonomous Community administration has shown itself willing to collaborate in whatever initiatives may be undertaken and has stated for the record that this is a problem which has a bearing on several municipalities, and which, to be solved, requires the coordination of the three Administrations (General State, Autonomous Community of Madrid and City Halls involved), these being viewpoints also shared by the Ombudsman. The regional President's Office sent a Bill concerning Cañada Real to the parliamentary Assembly, this being a bill which, in the words of the Department, is of a special nature and would deal with all aspects by recognizing a serious housing, sub-standard housing, social, educational and security-related problem (when this Report had been fully completed, news was received as to this Law having been passed).

#### **Raising citizen awareness regarding keeping up and preserving the environment**

Land planning makes sense if the Administrations act firmly on planning and carrying out large-scale urban planning operations, because a plan affects collective interests, the historical, cultural, architectural or landscape-related heritage. The decisions cannot be made from a distant stance regarding the actual, true, foreseeable problems that are derived from a plan. This is a matter of some complaints due to urban planning plans which, on being carried out, would mean an attack on assets with values worthy of protection. It is true that the Administration sometimes argues and substantiates this not being so. These are the cases of the building of a large-scale hotel on 'El Palmar' beach in Vejer de la Frontera (Cadiz) as part of the Colmenarejo Green Project and the project to build a 'Centro de Interpre-



tación de la Colmena' or of the residents' disagreement with the Arbo (Pontevedra) General Urban Planning Plan.

#### **Urban and regional planning plan processing**

Several cases of delays in plan processing and approval and the lack of coordination among urban planning Administrations are set out in this section.

One of the most striking cases is that of the delays in the approval of the Urban Planning Plan for Moraleja de Enmedio (Madrid), where a lack of coordination between the City Hall and Autonomous Community is additionally noted, which has led us to put forth a suggestion and a reminder of legal obligations, as the lack of coordination is the probable cause of this evident delay. These delays would have been lessened with a simple phone call between these two administrations to inform the City Hall that it should furnish certain documentation. The interested parties have once again recently addressed this Institution reiterating that the planning instrument had been rejected again by the Department (this w/o official confirmation), with the indication that it would be necessary to amend nothing less than the regional model.

Serious delays have also been found in the approval of the Castell de Ferro (Granada) Urban Planning Plan, with discrepancies between the local and Autonomous Community administrations and the impossibility of legalizing housing already built. The solution has apparently now been channeled in the right direction, we nevertheless having requested the City Hall to confirm the final approval of the Partial Adaptation once it has been given.

A paradigmatic complaint as to the lack of interest on the part of the municipal administration in processing plans is that related to the Caceres Urban Planning Plan. Our actions began in 1998, and we have reflected several times (the last time having been in the 2008 Annual Report) the delay in the approval and thus in the delays in the Special Plan for Protection of the 'Old Caceres' Archaeological Site', regarding which a suggestion was put forth in 2002. Now, eight

years later, the City Hall has not as yet carried it out, despite its having been approved. The Cáceres General Municipal Plan has now be approved by the Department of Development, as a result of which we have reiterated the suggestion to the City Hall that it proceed to drafting the Special Plan immediately without further ado and thus fulfill the obligation which the public powers have of ensuring the conservation, enrichment and dissemination of the Historic Heritage.

### **Planning implementation and permits**

The economic crisis has, in the urban planning realm, a clear crisis of profitability on investment, which has been the cause, over the past two years, of the cooling down of the developing activity, especially in carrying out the plans. The pace of building has slowed, and many urban planning projects have not been possible to carry out, as the lack of profitability and the devaluation (at times total) of the real-estate capital has led to a lack of bank financing, thus further worsening the difficulties citizens are having regarding gaining access to housing. The economic crisis and especially the construction crisis are bringing works to a halt, leading to the developments and structures in the process of being built being abandoned. The works cannot be taken over by the municipal government on having been done incorrectly, with the residents in a desperate, defenseless situation, without decent dwellings.

In principle, this Ombudsman's Office usually recommends to the municipal governments that they take action against the performance bonds and bank guarantees furnished in favor of the development works, after demanding fulfillment of their obligations of the development agents. But these bonds and guarantees total only a minor figure, so the agents prefer to lose them rather than continue building developments and structures which have no way of being sold on the market as it stands today. This is one patent example of the true end purpose of the urban development business, in no way whatsoever related to the formation of the city and the planning of the land and completely dependent upon the economic-financial profitability of the investment, which could have been devoted perfectly well to any other field of activity were it to have been more highly profitable and sound.

As a result of which it is not possible to process and grant first occupancy permits until the works have been fully completed and it has been verified that they are as per the permits and the development plans. The Administrations must prevent the builders or developers from being able to sell housing to third parties in good faith, who acquire them in the presence of a notary public believing that they can be immediately occupied and that they are supplied with all of the development utilities and services. This Ombudsman's Office is continually finding cases of dwellings which have a first occupancy permit and which do not have an adequate provision of basic services guaranteed, with development

works which have not been completed. This is unacceptable. Those acquiring the dwellings are not the ones under the obligation of completing the development and of fulfilling what the developer was placed under the obligation of doing. It is the developers but also the municipal passiveness that are determining these irregular situations. In view of breach on the part of the developer, the City Hall must take action by subsidiary foreclosure, as the cost can be shifted to the developer can be collected even by court order.

### **Incomplete work on long-standing developments**

Once again this year, some of the customary irregularities include (1) the excessive delay in administrative processing, in the steps taken by the Compensation Boards and in issuing decisions concerning appeals or answering the briefs presented (2) the lack of provision of the basic development services and (3) the deficient infrastructures.

Despite some provisions of law to remedy these situations on the part of the Autonomous Communities – some quite appropriate, such as Law 3/2009 of Marcy 10<sup>th</sup> for the regularization and improvement of developments with an urban development deficit in the Autonomous Community of Catalonia – the irregularities still as yet continue to exist. We shall underscore this year the cases of building the roadway works, as the complaints processed in 2010 regarding this issue are numerous and serious.

Administrative passiveness in view of these problems is a source of damages for the urban planning of the affected part of the city, and of course for the residents of these developments who have now been calling for years for the missing infrastructures to be built. There is no justification whatsoever for the passiveness of the Corporations who have been tolerating such situations for a long time. The City Halls cannot just wash their hands of these problems without responsibility.

### **Urban Planning Information**

Citizen participation in reaching public decisions has one of its main facets in the right to access to the urban planning information, in addition to that of contesting the administrative resolutions, this being a contesting process impossible to carry out if the interested parties and those affected do not know the circumstances under which they were issued. Thus, this Ombudsman's Office is watching to ensure that citizens can gain access to the information of which the Public Administrations avail on regional planning, urban planning and the environmental assessment thereof, as well as being able to obtain a copy or certification of the administrative acts or provisions. The urban planning Administrations, although becoming progressively more conscious of the importance of facilitating the best urban planning information possible, are still as yet taking a long time to answer and do not reply at all to the requests of the interested parties.

One cannot consider acceptable, as some City Halls argue, a merely verbal response to the requests for information on permits, works or projects which are being carried out within the municipality, otherwise depriving the private citizen with a means of proof with which to react through administrative or judicial channels. Let us not forget that directly applicable to this issue is Law 27/2006 on the rights of access to information, public participation and access to justice concerning environment-related matters (this subject including the information related to the land, in other words, urban planning), and it refers not to the mere access to this information but rather to 'furnishing it', which normally includes handing over copies of documents.

### Urban Planning Discipline

The main problem of the urban planning discipline undoubtedly lies in that the Administration does not react effectively to the transgressions. It may adopt a passive attitude for years, with consolidation of illegality due to the mere passage of time.

The large majority of investigations have to do with recurring topics. One further example of lack of coordination among administrations is that of the installation of cell phone antennas, where not all of the responsibility falls to the City Halls. It is not acceptable that the telecommunications administration state that a suggestion from the Ombudsman's Office was to recommend that 'penalties also be imposed for issues which are outside of the scope of the authority thereof, such as is the case of environmental protection, regional planning and urban planning'. What this Ombudsman's Office is seeking is that the violations due to failure to fulfill conditions imposed on the operator due to inobservance of environmental protection or urban planning be penalized.

On the other hand, the municipal administration cannot base itself, for justifying its passiveness, on the interest and importance a cell phone facility has for a locality as, to the contrary, precisely for this reason, it should intensify the care of its legality.

The passiveness of the administrations is not free, but rather has serious consequences. Within this context, some City Halls stand out negatively (Vall de Gallinera, Alicante; Morón de la Frontera, Seville) of which mention was made in the report related to 2009, because a suggestion was put forth to them that they adopt the corrective measures (file for proceedings for reinstating urban planning legality), where yet a further resolution has had to be put forth again this year because the urban planning violations detected had now consolidated.

### Housing

This year, this Institution is providing a different explanation also concerning the problems related to housing. Without losing sight thereof, to provide an account of our direct



processing of the complaints, some general thoughts have seems unavoidable in view of the economic crisis and the consequent – albeit not necessarily congruent – measures adopted by the administrations to alleviate the situation during the 2010 fiscal year.

The planning of residential land uses is quite closely linked to profitability and less to its precise end purpose, according to the Constitution, the capacity of housing or privacy, these being needs which are not measured in terms of profitability of the real-estate investment or the net worth increases. In the complaints, the reign of profitability is patently underlying, which is something this Ombudsman's Office cannot simply accept without further ado or remain impassive when the administration are satisfied with saying that 'the demand has dropped'. The need of dwelling or simply living has still not been met, and even less so at a reasonable cost.

Therefore, let us not lose sight of the social and economic background of the constitutional right to the enjoyment of a decent dwelling (Article 47 of the Constitution). This Ombudsman's Office finds it impossible to identify 'housing demand' with 'need of housing'. When the statistics and the administrations refer to the 'demand', they are referring to the market demand, but the Constitution does not refer to housing as 'merchandise', but as the object of use and enjoyment, whether or not it be on the market, whether or not it have a price. The Constitution predicates this right for 'all' and not just for whomever may have the buying power to acquire or rent a dwelling. The Constitution recognizes the right to be able to enjoy and to be able to *use* a dwelling, therefore not as a net worth asset but rather as an object of satisfying a basic need. From the economic standpoint, housing 'demand' is a 'solvent demand', but this is not, in our judgment, the pattern which the Constitution uses to measure the need for housing. As in urban planning, this Ombudsman's Office finds itself forced daily to reflect on the housing 'market' in favor of citizens and to persuade the administration of the advisable way of dealing with the problems of the shortage and high cost of housing, a basic asset.

### Measures adopted by the administrations to relieve the crisis

Article 47 of Spain's Constitution proclaims the right of all citizens of Spain to have the enjoyment of a decent, adequate dwelling, this being a right closely related to constitutional principles and values such as equality, physical and moral integrity, personal and family privacy, ownership, health, the environment or the integration of the physically, sensorially and mentally impaired. It also recognizes the Fundamental Norm that the right to housing is the driving principle of social and economic policy, such that the public powers have the obligation of acting when citizens are in a situation of need.

The means used include the rules of law which consider public intervention in housing to be a service of general interest, as a means of promoting the diversity and social cohesion in towns and cities, as a guarantee of desirable integration, urban solidarity and to combat residential exclusion. Some provisions passed in 2010, such as Law 1/2010 on the Right to Housing in Andalusia, move forward in the demandability of the right. However, the recognition of the actions for demanding fulfillment of the duties is confined to the interested parties filing a claim which falls short in practice on being dependent upon the setting out of complex procedures. This Constitution believes that headway must be made in this direction by approving rules of law which specifically imposes that the holder of the right to a decent, adequate dwelling not only has the possibility of demanding the Administration to provide him/her with one, but that also in the event of the failure to do so, the constitutional right can be demanded in court. Only then would housing be treated with the same guarantees and demands as other fundamental rights such as that of schooling and health protection. One way nearer to this sense is that promoted in the Basque Country, still in the process of being drafted at the writing of this report (Draft Bill in an initiative stemming from the Social Pact for Housing in Euskadi of June 2010, signed by 77 institutional, social and economic Basque stakeholders). This proposal is for *all people*, independently of whether or not they have a dwelling, whether owned or rented, free or protected. This is a matter of the right to enjoy a decent dwelling being a true subjective right or that it be demandable in the courts by those who encounter the greatest difficulties of access. The future Basque law would recognize satisfying the housing of persons with fewer economic resources with the provision of a rented dwelling or by means of an economic benefit as being an *obligation*. This Ombudsman's Office can but applaud such an initiative and trust in its success.

In order for citizens to be able to access a dwelling, the Public Administrations have tried to prevent the prices from rising, to increase the number of dwelling for rental, to improved ass to housing for broad strata of the population, to

increase the relative importance of social housing. At the same time, an attempt has been made to see to the protection of the rights of those who buy or enjoy a dwelling or favor the integration and social inclusion of the most disadvantaged sectors.

However, the offer of protected official housing has been scarce, as the force of the administrations in this regard has been minimal and variable, and the decisions of the business owners to intervene in this field have been few given the lesser profitability as compared to free housing. With the crisis and the contraction of the potential free housing demand, the drop in the end price has not served for the fragile family economies to change this trend, this being the reason for the halt in the demand for free housing. On the contrary, the potential demand for official protected housing has grown so much that it cannot be met, as this offer has always been scarce at any time anywhere.

### Main problems set out by citizens

As was to be expected, the impact of the economic crisis on housing has been reflected in the complaints received. Although it be an overall impact, those suffering the most to gain access to housing or to deal with the mortgage burden are the most highly disadvantaged: young people, women, senior citizens, immigrants and low-incomes families in general.

A majority of complaints have to do with Publically Protected Housing (PPH), or with more or less anguished needs of a place to live. The economic profile of those applying for or awarded PPH is common, as well as the psychological wear due to the delay in turning over the housing requested or the impending eviction of that where they had been living or because they find their enjoyment altered due to structural defects or due to bad neighbor relations with some of the building occupants. Mention must also be made of the complaints of those who need help with the rent or who are not awarded a dwelling in the PPH promotions in which they take part; or those who are awarded a dwelling who are finally not granted a loan and find themselves forced to give up the dwelling, with the resulting penalty; those who suffer delays in collecting the basic emancipation rent for young people; anguished, desperate citizens facing evictions and seizures due to default on the rent or mortgage payment; those who report damages due to the halt of the construction of protected housing (construction firms in meetings of creditors, etc.).

Young people are one of the most important social groups, in number and in quality, from among the groups affected by the difficulties regarding accessing housing. This Institution considers one alternative to owning one's own home to be that of renting protected housing at a price of no higher than 350 €, which would be compatible with their income.

However, this alternative is currently not highly feasible, because the market is not offering a sufficient number of dwellings for that specific demand. The reduction, if not the complete loss of income which is affecting so many young people due to the shrinking job market is delaying their emancipation and therefore their life plans and is overburdening their families with unsustainable living situations (overcrowding, household conflicts). The difficulties in managing the Basic Emancipation Rent are major. Of the 432,039 young people who have applied for this aid since it was first started in January 2008, a total of 267,000 have had the enjoyment thereof (it has been anticipated that 360,000 would be having the enjoyment thereof in 2008 alone). But this aid has favorable repercussions of the economic effort of those receiving it in order to pay their rent. According to the Ministry, this sacrifice drops by nearly 20 points thanks to the Basic Emancipation Rent, that is to say, 42.4% of the income of those young people who are not receiving this subsidy go into the hands of the lessors, whilst if they collect the 210 € per month, the percentage drops to 24.3%.

As unemployment among women is higher than among men, the wage difference condition and determine the economic capacity, the female group is another of particularly vulnerable group. The majority of the nearly 20,000 people applying for PPH in Barcelona during the first year that the single register was in operation are women: young women comprised 56.5% of the total number who applied for the Basic Emancipation Rent nationwide during the three years it has been in effect, they also having been the most benefitted in the same proportion. Access to housing on the part of this group is especially affected by family burdens and responsibilities, which continue to be assumed for the most part by women, with the combined difficulties of reconciling family and working life. The need of accessing adequate housing becomes even more pressing when situations of restraining orders due to gender violence are additionally involved.

There have been numerous complaints lodged due to the need of gaining access to a PPH on the part of low-income or very low-income families and even families in which none of their members were earning any income. Here, the risk of social exclusion is very high. The annual report includes some examples of the grave economic situation in which many of these households are finding themselves.

Reference is also made in the Annual Report to the subrogations of the mortgages and other credits as demanded by financial institutions for additional guarantees. Thousands of families have their finances blocked due to the deterioration of the economic situation, although the financial brokerage has prevented thousands of mortgages being enforced in Spain, but 30% of the cases could have been prevented



by means of refinancing. The year 2010 could make history, for the more than 118,000 court proceedings for foreclosure on real-estate under mortgage guarantees, apparently a record. This Ombudsman's Office has had the opportunity to learn of several dramatic situations of people having their homes put up for auction as a result of not being able to make their mortgage payments.

According to the rights recognized under law, the immigrant population has been taking part in the public offer of housing subsidies. The demand for protected housing has grown due to the rise in the immigrant population. However, the need for more social housing for Spanish nationals and aliens has not been going along with financial bolstering in the public services, as a result of which the deficit has grown more when the economic conditions (unemployment) have deteriorated. This has given rise to a rise in shared housing, with loss of privacy and quality of life, and potential conflicts due to overcrowding. The Report also deals with the subsidies for PPH for construction developers (*help for the bricks*) and those earmarked for persons acquiring the housing (*help for people*), with a disparity of stances concerning the legitimacy of the design thereof and the prevention of abusive behaviors by the Administrations (taxation, follow-up and inspection of the subsidies) as well as the enforcement of the penalizing authority.

The economic difficulties experienced in 2010 by most of the developers due to the lack of sales of the existing stock of housing (real-estate crisis, credit restrictions by the financial institutions) have given rise to the halt in the promotion of protected housing, with the loss of considerable subsidies from the 2010 Housing Plan program for buyers and for developers. This has led to criticism due to the exceeding rigidity and compartmenting of the Plan's lines of subsidies, these being matters also dealt with in the Annual Report. The possible frauds by way of the award of housing without meeting the requirements, without going through the procedure or due to undue gains of wealth by unlawfully selling the housing awarded must be reported for the HPPs. The irregularities most often repeated having to do



with empty dwellings or dwelling where persons other than those to whom the dwelling were awarded are living. Investigations with both municipal and Autonomous Community public Housing Institutes regarding these issues are discussed in the Report.

From the experience acquired in the study of the complaints and from the investigations conducted, the need is inferred of further strengthening the right to a dwelling which is recognized under the Constitution, placing specific attention on the most highly disadvantaged social groups and those in special need, with measure which will effectively guarantee that the land will meet its social function set out under the Constitution. In the processes of awarding protected housing, the Administrations must better guarantee the advertising, participation and transparency. The inspection services of the Administrations must be reinforced in order to guarantee that those purchasing or renting protected housing will meet their obligations and that unlawful situations will be avoided; and that violating behaviors will be penalized. The Public Administrations must prevent, at all costs, the processes of segregation linked to social exclusion and favor the use of the dwellings already built so that they will not be empty very long while they are being awarded. It is preferable in the urban planning and housing plans that the existing dwellings be used and that the interiors be reformed in the town centers to favor the conversion of free dwellings not absorbed by the market into protected housing and the resolute development of rentals.

#### **Main investigations conducted**

A summary is provided in this section of the most significant complaints processed in 2010. Mention must be made of the refusal of some corporations to collaborate with the

Ombudsman (Demarcation of the Official College of Architects of Castile-La Mancha in Guadalajara) and the highly deficient processing and erroneous interpretations of the legal categories (Official College of Master Builders, Technical Architects and Building Engineers of Badajoz).

An investigation was conducted of the assurance of compliance with the guarantees for collecting the sums which citizens turn over as a down payment of the price during the process of building the dwellings, where no penalties are imposed on the developers and builders who do not fulfill their obligation. As of 1968, there are rules of law in force aimed at preventing such abuse. The application of the sums advanced is solely and exclusively to the construction of the dwellings, must be deposited into a separate account distinguished from any other type of funds pertaining to the developer. The recovery of possession of public housing occupied without sufficient title have to be expedited for the greater efficacy and economy of the subsequent management of the public housing currently in existence. Under this section, information is provided on many other recommendations made to the administrations.

As far as the important issue concerning the basic emancipation rent for young people is concerned, due to the volume of cases and investigations processed (532 in 2010 with processing steps completed), solely highly summarized information is provided. The Ministry of Public Works has accepted the recommendation of setting of mechanisms which will remove red tape hindrances in the administrative processing of the Basic Emancipation Rent, as far as the time frames for issuing a decision and the regular collection of these subsidies is concerned. The Autonomous Communities has reported having included a warning on the informative media (telephone numbers, websites, application forms, pamphlets, etc.) as to the tax-related obligations and consequences resulting from collecting this subsidy. The Autonomous Community Government of Catalonia has not stated its criterion, and the Basque Government has not needed to add any further explanations as a result of the Basic Emancipation Rent being tax-free according to their Autonomous Community legislation. The Department of Environment, Territory and Infrastructures of the Autonomous Community Government of Galicia did not accept the Suggestion which proposed the recognition of the right of one interested party to collect the Basic Emancipation Rent, although she had had a regular source of income of duration of more than six months since she filed her application.

## ENVIRONMENT

## The Ombudsman's Office calls for more stringent environmental prevention by the public powers

**The administrations are wrong to consider environmental impact assessments as mere 'formalities' or 'hindrances', as they are a key factor in the decision-making process. Economic and environmental values are closely related and must be harmonized. Hence, the steps taken by the regional, urban planning and environmental administration requires greater stringency, publicity and transparency so as to prevent the arbitrary destruction of natural areas, justified by an 'economic development' supposedly based on the wishes of a majority of the citizenry.**

Some administrations and even some legislators go so far as to 'denature' the *'environment'* concept. If this section was opened last year by stressing the fact that general terms such as 'environment' or 'sustainable development' were becoming hackneyed, one might add this year the way in which some public powers are in our opinion mistakenly conducting themselves regarding these general categories. And they are doing so by means of measures and even legislative provisions which have nothing to do with their original end purpose, but with that of facilitating impacts being caused by putting forth vague reasons on economic development. With general arguments, such as the need for 'swiftness, readiness and expeditiousness', the public powers are being progressively less stringent in the institutional system for environmental protection.

It is once again necessary to put forth a warning concerning, for example, the use of the extremely improper and inadvisable phrase 'environmental formality'. The assessment of the effects of the projects, plans and programs of activities is not a one-step formality but rather a process, a procedure, an absolutely substantial stage of the decision-making process under current Law. Just as no project can go without a budget, neither can any project go without an environmental assessment. Hence, one cannot term the cost of drafting a technical project for carrying out any project of any certain size as being an 'extra cost', nor is it acceptable for the funds for alleviating or correcting the impacts which a project has to be considered an 'environmental cost' (Ministry of Public Works Order 3317/2010. Instruction on measurement for heightening efficiency in carrying out public works on railway infrastructures, roadways and airports. On the contrary, the environmental cost is the loss of woodlands, beaches, of the assets which are the flora and fauna, the sea bottoms, the landscape assets.

The Ombudsman cannot agree to environmental assessment being conceived as such in any form thereof (strategic plan and program assessment, project impact assessment,



municipal business license, environmental impact report). Weighing environmental effects is not a one-step 'formality' or a 'hindrance', but rather a substantial part of the decision-making process. The reason for the long, drawn out processes and delays, the slowness and the complexity cannot possibly be said to lie in these simple procedures which generally take no longer than three months. The complexity lies, on the contrary, in the technical projects, in architectural and engineering science and techniques and in jurisprudence. And the slowness is caused by the shortage of staff in charge of making these assessments, in the difficulty of the professionals, specialists and civil service personnel (developers, public administration) to set out their projects and rankings simply in a manner readily understandable by an average citizen, to summarize briefly what the real impacts of implementing an activity or service are going to be on the environment, to transparently put forth what there actually is behind a project in addition to the true objective thereof.

This is the obvious actual situation in the Ombudsman's experience. On one hand, essential procedures which could be no simpler are being termed a one-step 'formality' and are being attributed with almost all of the negative aspects inherent to inefficiency and, on the other, there is nothing

new in the laws enacted as to the need of projects and plans including being set out in simpler phrasing more readily for citizens, that they be more transparent or that they be unacceptable for processing if they do not meet certain minimums of clarity or if they unnecessarily complicate their environmental assessment with technical and legal documentation which is inappropriate due to the length or opaqueness thereof.

It is not true that a balance currently exists between environmental and economic values. The economic and environmental track record reveals how the two have been taken as opposites, how the newness of it all lies in preserving environmental assets and how 'economic' activity is inherently that of development entailing the destruction of the natural environment, the indubitable recognition in that which is real – besides in that which is legal- of the freedom of enterprise and of private property, none more legitimate than that the same being submitted to the public good ad to the social function thereof. Safeguarding environmental assets cannot be said to have comprised part of the economy, but has rather been by the force of ecology and environmental laws. Some minimums respectful of the assets of the natural environment have been achieved with not little effort, but still far from a different economic culture. Environmental assessment is not a result to which industry has come on its own. The Constitutional Court is quite right in saying that one and the other are assets which may be mistakenly considered as opposing one another, but which are really closely related and, in the Ombudsman's judgment, must be harmonized in a specific sense, which is that the output produced is not onefold but rather twofold: the raw material and the loss of a natural resource.

All of the issues put forth in the complaints often exceed the bounds of the Ombudsman's duties and possibilities for taking action, these being serious matters setting out claims which we deem legitimate, but which must be examined and supervised through other offices.

The Ombudsman cannot undertake, nor is it a function thereof to undertake a sort of audit on the public powers; nor to take actions for balancing public spending or eradicating the black economy. Still, severe warnings are set forth in cases of flagrant disagreement with the contents and end purpose of the public power. This is the case of a mayor reporting on his mediation with a polluting company, considering it to be a matter subject solely to his judgment and to that of the company and notifying that 'the relationship between the Local Corporation and the Company is highly favorable to the interests of this City Hall'. This Ombudsman's Office terms these attitudes as being hostile and hindering its functions, as the information requested is not furnished, alleging reasons based on the personal judgment

of the individual holding the position at the time. A mayor (for example) not only can but must offer the opinion of the Municipal Corporation he/she presides, as that is precisely the duty of the mayor's offices as representatives of the corporations (Article 21, Bases of Local Government Law of 1985). A mayor's personal opinion with regard to as the person holding the position of mayor is always important as far as municipal matters is concerned. The mayor's mediation with the Company is not a matter depending 'solely to his judgment and that of the Company' but rather also depends, above all, on the law and the good of the residents there. The relationship between the Local Corporation and the Company cannot and must not be favorable or unfavorable, per se, 'to the City Hall's interests', as a municipal government does not actually have its own interests nor can it have others than those of the residents as a whole, of the municipal interests, which are the basis of a municipality, of which the City Hall is solely and nothing less than its public administration organization serving its residents (Articles 1, 11 and 19 of the same Law).

#### **Environmental information**

A call must be made for a better knowledge of Law 38/1995 and Law 27/2006 and the dissemination thereof among the civil service employees.

Apart from the above, when dealing with penalty proceedings, the Administration improperly shields itself in this nature and in personal data protection for refusing access to information.

The administrations must also be reminded of the fact that the environmental information in their possession must be placed *partially* at the disposal of the requesting party when it is possible to separate protected information by simply crossing out the personal details. In accessing environmental information, the issue is not determining what is to be understood as a legitimate interest, as the legislation precisely does away with this quality of the person requesting information. In addition thereto, concerning subjects in which public action is recognized (ex. land, coasts, historic heritage) citizen interest is not a basic or inexcusable presumption in the recognition of their right to act nor to access the information, participate in procedures or access justice.

In the particular case of the problem of the right of ecologist associations to access the documentation on record in the penalty proceedings, there may be personal data involved in reason for refusing access, but it must not be deduced therefrom that the entire file is 'non-disclosable'.

#### **Right of public participation**

Regarding respect for the guarantees of the public's participation in relation to environmental issues, mention must

be made of two groups of matters. Firstly, the requests for filing an appeal of unconstitutionality, which are set out in the respective section of this annual Report and are only mentioned here with regard to the following provisions of law: Balearic Island Decree Law 5/2009 of November 27<sup>th</sup> on measures related to regular Balearic Island public overland passenger transportation and certain urban planning-related provisions of law: Castile and Leon Parliament Law 3/2010 of March 26<sup>th</sup> in amendment of Law 10/1998 of December 5<sup>th</sup> governing Autonomous Community of Castile and Leon Regional Planning; Castile and Leon Parliament Law 5/2010 of May 28<sup>th</sup> in amendment of Law 4/2000 of June 27<sup>th</sup> Declaring Fuentes Carrionas and Fuente Cobre-Montaña Palentina, Palencia a Nature Preserve, and Castile and Leon Parliament Law 6/2010 of May 28<sup>th</sup> declaring the 'Complejo de Ocio y Aventura Meseta-Ski' a Regional Project. One must add to this the follow-up which this Ombudsman's Office is carrying out of the new Canary Island Protected Species Catalogue.

Secondly, mention must be made of the public participation in the preparation of legislative bills, draft regulations and any other general provisions of law having to do with the subjects listed under Article 18.1 of Law 27/2006. The investigation took place with the Ministries of Justice, Public Works and Environment regarding public participation in the preparation of the General Sea Navigation Law Bill and the Draft Bill for the amendment of Law 48/2003 on the economic regimen of ports of general interest.

This Ombudsman's Office set forth the respective Recommendations to the three Ministries involved, which have been fully accepted by all three of these Departments.

### **Right of access to justice**

This Ombudsman's Office is seriously concerned about the type of solutions which have been being adopted by the legislative powers concerning regional planning, urban planning and environment-related issued over the past few years and due to the trend observed in the legislative function. With special provisions with the status of laws for specific cases in particular, the common or customary framework of regional planning-related decision-making is being altered, by placing them above not only general Law, but even going against the rulings of the courts. The measures taken by the regional, urban planning and environment administration requires, in this Institution's judgment and has so been stated several times before Spanish Parliament, a special strictness, a special publicity and the greatest transparency. Otherwise, it would be taking on the form of 'economic development' based on the wishes of the majority of the citizenry, which could be an arbitrary pursuit of destroying natural areas, of development out of normal control and of activity which is 'economic' only in part but unheeding the other, which is the ecological aspect.



### **Impact Assessments. Municipal Permits Strategic assessment of plans and programs**

With some advancements, the slow progress in some administrations is continuing to be made toward a true strategic assessment of plans and programs insofar as possible, with public involvement, taking into consideration different alternatives, including the ZERO alternative (not carrying out the plan or program), such that the planning and scheduling tools will not be merely for show and good only for covering decisions already made without any publicity or public debate. An example of plan assessment is provided in following in conjunction with a discussion of some general aspects.

### **Project environmental assessment**

One of the most striking cases of those deal with in 2010 is that of the A-24 highway alignment and its possible impact on the environment and landscape of the Jiloca plain in Aragon. This Ombudsman's Office upholds that given the fact that public works projects are usually in response to a certain problem in particular which has been decided to be remedied, these projects are thus rooted in the insufficiency of the different environmental assessments required of public works under the industry regulations.

Apart from the above, it must be underscored that compliance with the corrective measures imposed under the impact statement (EIS) is not conditioned to the profitability of the operation. Compliance with the provisions of an EIS is mandatory for the permit holder for the activity, independently of the profitability of the activity in question. The Administration which has authority over authorizing and verifying the activity, such as in the case dealt with in conjunction with the Castile-La Mancha Autonomous Communities Government's Department of Industry, Energy and Environment, must see to and demand such compliance, as well as penalizing non-compliance, wherever applicable, as business owner profitability may be diametrically opposed to environmental profitability, the environmental cost discussed first above.

### **Infrastructure impact: Airports, roads and railways**

This Institution can but share in the anxiety of so many of those who have lodged claims, continuously setting out complaints concerning the serious pollution (noise and other types) they are suffering as a result of air transport. The Ombudsman has been processing hundreds of almost always well-founded complaints for years now, given that the administration still as yet continues to consider its activity to be preeminent over others, when it is only just another activity, an extremely important one, but not the only one. It must be recognized that the annual and monographic reports addressed to Spanish Parliament by this Institution have not served to realign to some more finer-tuned standards the function of serving the public which this administration has regarding the citizenry. The reasoning put forth by the Ombudsman and by the judiciary power has not served to even raise the Ministry of Defense's degree of alarm with regard to military air fields.

As far as roads are concerned, numerous complaints have been lodged and numerous investigations undertaken, yet the problems continue to exist. The municipal governments do not have a brilliant role in this type of matters, their viewing these problems as being a matter falling exclusively to the owner of the road in question. But if there are homes located more or less near to or far from the road, then the matter concerns the municipal government, although the decision-making authority falls to another administration.

The complaints concerning railways are not few in number either and are usually related to noise, although also to other impacts, generally during the process of their being built. Under this heading, this Ombudsman's Office must highlight the fact that its actions are not for the end purpose proper of reducing the impacts, but rather for the purpose of supervising to ensure that the mechanisms for the prevention and repair thereof are implemented regularly and adhere to the respective standards.

### **Municipals permits on classified activities**

This section includes information on the complaints concerning the most localized scope of the environmental controls system, this being precisely why it is in the hands of the local administration, normally the municipal government. In 2010 alone, more than 150 complaints have been received, over half having been admitted, in other words, around 80 new investigations were opened, which, in conjunction with those which were being continued from previous years, means that more than 150 investigations are currently under way at the point in time of the writing of this Annual Report.

Habitual defects which have been being found in the municipal governments in the operation of their services concerning annoying, unhealthy, harmful or dangerous activities

continue to exist; undoubtedly in conjunction with improvements obviously made in dealing with problems in certain cases. Numerous activities have been operating without a permit and continue to do so, without the Administration proceeding to close them down immediately, despite the repeated citizen reports filed. Even although they are conducting inspections (often due to noise-related annoyances) on licenses holding no permit and they are fined, autonomous community administrations still continue to be reticent to intervene, alleging that this would violate local autonomy, when municipal passivity cannot be construed as an expression of local 'autonomy' whatsoever.

## **Natural resources**

### **Protection and conservation of nature reserves, flora and fauna**

All of our country's natural resources are protected at least by way of the protection set forth directly under Article 45 of Spain's Constitution. The general duty of protection is confused with the regimens of qualified protection (urban planning cataloging, protection as a natural area, qualified non-developable lands, natural sites declared of historic interest, among others). If only were only possible to protect a natural area which comes under a qualified protection regimen, then the unqualified zones would not have any protection at all. This way of viewing this matter seems, to this Ombudsman's Office, to be extremely wrong and without any legal grounds.

### **Inland waters**

This year (2010) has come within the framework of the monographic report on *Water and Regional Planning* having been presented to Parliament in February 2010, followed in July by a summer course having been held at the Complutense University, El Escorial (Madrid) on *Water in Urban Development and Regional Planning. The Public Administrations With a View to Planning and Pollution*. This Institution thus trusts having contributed to some headway having been made regarding such a fundamental issue in our investigations such as water and the complaints to which we devote a good part of the effort for protecting the fundamental rights regarding an appropriate environment, decent housing and the rational planning of land uses.

Deficiencies are still being found in the exercise of authorities over inspection on the part of the Hydrographic Confederations, especially of the right of way and policing areas, but also of the watercourses. One of the most highly illustrative cases is the case of the Utiel (Valencia) Sector S-3 development works, which are being carried out without the Jucar River Hydrographic Confederation having been granted a permit, although part of the lands thereof are located in the Magro River policing and right of way area and despite the development project in question entailing a major increase in

the risk of flooding within this Sector and also outside thereof. This Ombudsman's Office suggested to both the City Hall and the Hydrographic Confederation that they order the immediate halting of the development work in question and the modification of the project for the purpose of the legalization thereof, preventing a heightened risk of flooding.

### Sea and coastlines

Restoring beaches is one of the most serious aspects regarding which the functions of this Ombudsman's Office are exceeded due to the lack of means and technical competency. The importance and seriousness of the issues often put forth by citizens and civic platforms have made it advisable to plan actions, including ex officio actions, regarding which we trust to be able to provide an account next year.

Mention may be made here of the ex officio inquiries being made regarding the coastline in Almadraba Nord-Estanyó, Les Deveses (beaches north of Denia) and, more generally, on the condition and recovery of our country's beaches.

### Ports

For the time being, the current situation of the planning of port uses and therefore of port lands continues to be a source of disorderliness-related problems due to the lack of planning bearing in mind the environmental and undoubtedly strategic aspect of these ports, especially, as is logical, the largest ports. Worthy of special mention are two measures to which reference was already made last year, such as the investigation on the lack of planning of the Port of Vigo and the complaint due to the impact of the uses of the Port of Alicante.

### Pollution

#### Waste prevention and management

The measures are still continuing and complaints are still being lodged concerning the foul odors the residents are suffering from the Valdemingómez (Madrid) facilities. The City Hall of Madrid has accepted the Suggestion of taking an olfactometry reading, but not the Recommendation intending to achieve that on those lands where the bad odor cannot rationally be corrected (or any environmental affection preventing residents from decently enjoying a dwelling) not be devoted to residential use by means of the fitting restrictions. To this end, this Ombudsman's Office proposes that on planning the uses of the land, provision be made for an area surrounding the major polluting facilities in which the use of the land be limited.

There is a need for the administrations which have authority over planning to undertake the concept of the protection or skirting area bordering the polluting facilities as an environmental right of way limiting the property and therefore the uses of the land, where residential use were to be prohibited. It is also necessary for their bounds to be set based on



physical assessments and decision, in other words, on decisions which are based on measurements, estimates and forecasts of the actual specific impacts which the facility in question will generate. Lastly, it would be fitting to mark the affected areas on a map, take them to the urban planning device and enter the municipal duties (prohibited use) in the property registry so as to ensure that they will be linked with the utmost publicity and dissemination. The evident fault in planning land uses, with highly serious consequences on citizen rights, especially their right to decent housing, could be avoided in cases such as that of the Valdemingómez Technological Park by means of limiting the residential uses of the land located in the area surrounding such infrastructures in a sufficiently-dimensioned strip by means of urban planning.

This Ombudsman's Office applauds the City Hall of Madrid having decided to change the current flow of waste between the sorting and treatment plants and the Park's organic matter biomethanization plants such that the organic fraction now being composted at the Las Lomas plant is transported to the biomethanization plants, where the processes are carried out in closed areas with air exhausting and odor elimination in biofilters and to other treatment plants also incorporating similar systems.

Another case which had already been dealt with last year is the matter which had been being investigated since 2007 concerning the actions of the administrations concerning polluting activities along the Huelva River being carried out by a fertilizer-manufacturing plant. The Autonomous Government of Andalusia was found to have acted irregularly as a result of having granted the mercantile company owning the plant an integrated environmental authorization (IEA) for the activity of manufacturing phosphoric acid and phosphated fertilizers, despite being aware of the fact that the land-sea public domain concession had expired. The suggestion was therefore made of reviewing the IEA for reasons of avoidance, what is more, the suggestion having been rejected by the Department of Environmental Affairs, although the effluents were halted on December 31, 2010 by a National Criminal Court Ruling.

The granting of the license to occupy the public land-sea domain was not integrated into the procedure set forth under Law 16/2002, which, in the judgment of this Ombudsman, entails the violation of the Law and the frustration of the IEA's end purpose of 'integrating', in addition to directly violating Coastal Law 22/1988. As a result of all the foregoing, the IEA should have been refused or, alternatively, should have been granted stating clearly, categorically, expressly and staunchly that the efficacy thereof was delayed, in other words, that the IEA was not entering into effect until state public domain had been granted or another legal solution had been provided for its phosphorous gypsum effluents. Given that this was not so, the IEA granted to the mercantile company in question by the Department of Environmental Affairs' Provincial Delegation in Huelva is, in the judgment of this Ombudsman's Office, fully and void and should be reviewed.

Although one part of this issue is currently *sub judice*, we kept the proceedings with the Directorate General of Sustainability of the Coast and Sea (Ministry of Environment and Rural and Marine Affairs) open for following up on the work of restoring this area.

#### **Noise pollution**

Noise pollution is undoubtedly one of the prime areas in which the Ombudsman works. Once again this year, a growing number of complaints have been lodged. One of the main defects found in the actions taken by the public powers, from the overall standpoint, is their slowness and the referral to general instruments *sine die* which are actually effective to only a very minor degree, although they entail remarkable expenditures and investments.

The Autonomous Communities are continuing to play a role exceedingly distanced from the daily management of noise problems, as they mistakenly consider this to be a matter of prime importance yet exclusively municipal. But, according to the law, this is not true, they being, to the contrary, the first ones called to intervene by informing themselves, supporting and requiring.

Airport noise is most certainly one of the top issues on the list due to the number and seriousness of the complaints lodged. There have been proceedings with AENA and the State Air Safety Agency (See *Infrastructures* Section) and others and are currently under way. This has not been a year (2010) in which conclusive results have been achieved by this Ombudsman's Office and less so for the citizenry, but results have been achieved or headway made in the knowledge as to possible ways of remedying this problem.

The concern of so many people lodging complaints is persistent and justified, they continually filing complaints due to the serious pollution (noise and other types they are suffering as a result of air transport). The reasoning put forth by the Ombudsman and by the judiciary has served only to heighten the degree of alarm, but the overall situation continues to be, in the judgment of this Institution, of a certain distancing from what we consider to be healthy principles of the respect for the citizenry in general. The administration has found itself to be so barraged lately by complaints, claims, sentences and decisions from the Ombudsman that legislators have had to intervene and, turning those exact, classical principles of civil Law around, has decided to coin new terms, such as the 'duty of putting up with air navigation', as if it has been a heavy burden for decades. The administration seeks the protection of the law at times, but not to better its performance, but rather to keep itself in a sort of 'natural pre-rogatives', overlooking its duty of serving the citizenry.

The Ombudsman's Office is currently conducting a study regarding the new air navigation legislation and the procedure and proceedings on route non-compliances (above all but not only at the Madrid-Barajas Airport). In the Spring of 2010, a visit was made to the headquarters and facilities of the Office of the State Secretary of Transportation (April 30<sup>th</sup>), to Barajas (May 20<sup>th</sup>) and to the National Air Safety Agency (AESA) (June 2<sup>nd</sup>). It was then possible to gain a first-hand knowledge of the basic devices available for rectifying or alleviating the impacts, as well as the effort which the administration is making to do so. It will be in 2011 when, according to our plans, we shall be able to take up new suggestions for action with this administration.

## CIVIL SERVANTS

## The cutbacks for reasons of the economic crisis top civil service employee complaint list

**The extraordinary deficit-lowering measures and the legislation enacted by Spain's Autonomous Communities further expanding thereupon have given rise to the largest number of complaints lodged with the Ombudsman by government employees. Civil service employee complaints also included the problems involved in accessing civil service employment and the organization of human resources.**

### Access to Civil Service

Basic Statute for Civil Servants Law 7/2007 of April 12th sets forth as principles governing the selection processes for gaining access to civil service employment those of equality, merit, capability and transparency. However, those applying for government jobs are still bringing their problems with the Ombudsman related to the application of this statute having a bearing on the principle of legal certainty.

The different educational reforms, especially the regulation of vocational training degrees, have given rise to uncertainty both for candidates in selection processes and for the personnel already employed by the Government concerning the proper qualifications for each position. Thus, the Ombudsman began an *ex officio* inquiry by requesting a report from the Secretary for the Civil Service, who stated that the requirements set out under the Statute can only be required as of the entry into effect thereof, which have no bearing on the legal relations created under the protection of legislation prior to the date thereof, that the system for which provision is made by legislators automatically integrates the previously-existing classification groups into the classification groups and sub-groups created by the Statute, and also that the qualifications required for accessing the same are in accordance with the Bologna Declaration for the creation of the European Higher Education Area.

Complaints have also been lodged concerning access to civil service employment on the part of disabled individuals in relation to the selection bodies due to the lack of technical skills and knowledge necessary to ensure proper compliance both of the adaptations of necessary times and means, and of the tests proper so that they will be designed taking into account a disabled person's special aspects without this preventing guaranteeing compliance with the principles of equality, merit and capacity as well as advertisement.

In the healthcare field, the need for taking measures and planning the needs for healthcare professionals has been being stressed for years. Spain's Ministry of Health and



Social Policy has stated, as a result of an *ex officio* inquiry, that it has promoted the creation of the Healthcare Professional Registry, whilst also having been working, in turn, with the Ministry of Education to increase the number of medical school openings for admission. Those for specialized healthcare training (Medical Resident Intern openings) have also been increased, and a study has been started on the needs for nursing professionals. Another measure has consisted of creating an office for facilitating the return of Spanish healthcare professionals who are working abroad and would like to return. The Ombudsman has deemed it necessary to gather information on the advances being made, especially in relation to the presentation 'Study of the Needs for Human Resources in the National Health System' approved by the Senate in June 2010 concerning key aspects, mainly concerning a coordinated policy for these resources within a general planning framework and a system-wide human resources plan in keeping with the needs for healthcare professionals' and their qualifications, also concerning the degree and specialty homologation-related aspects.

The selection processes for gaining access to the non-university teaching bodies are continuing to give rise to complaints. In this context, some school teachers have filed complaints because, as a result of the regulations governing admission to teaching bodies not having been set out, the degrees or the cases which may lead to being accepted in

the primary specialty, some educational agencies were denying this acceptance to all those school teachers who gained access to an opening for this specialty.

In the field of university teaching, complaints have been received in relation to the evaluation of university faculty members through the National Quality and Accreditation Agency (ANECA). Similarly, as a result of the Ombudsman's intervention in regard to complaints concerning the system for selecting associate professors, the Universities Council has issued a recommendation for the universities to develop the associate professor concept in keeping with the definition thereof set out in the legislation.

As regards to access to the State Security Forces and Agencies, the limited public employment offer of the National Police Force for 2010 as compared to previous years has resulted in numerous applicants having come forth. The Ombudsman has informed them that within the self-organizing power of which it avails, the Agency has to power to determine the needs for human resources advisable to be covered each fiscal year, as well as to organize its bodies and assign duties so as to best provided the public services entrusted thereto regarding all that which is not subject to legal reservation.

Similarly, exception to the physical requirements for National Police Force Entry Level admission has been taken by a large number of citizens, specifically with regard to the age limits, standing position and other reasons for medical rejection such as gluten intolerance.

No mention being made in the civil service employment opening announcements as to how the bases on which the selection process is to be governed may be protested on the part of the interested parties gave rise to it being recommended to the Firemen's Consortium of the Province of Cadiz, as a guarantee in favor of the citizens taking part therein, based on the principles of good faith and legal security, that the bases include that regarding taking objection.

### **Provision of positions and mobility**

The offer of openings for newly-admitted civil servants without having previously announced competitive transfer examinations for the civil servants of the longest number of years of service gave rise to complaints. The Ombudsman has recommended that the Government revise this criterion and, in the event that it were to decide in favor of the opposite stance in the exercise of its self-organizing power, it must do so in keeping with the common good and setting out the reasons for said decision.

Voluntary mobility being inoperative among the government agencies both of civil service personnel and employed workers gave rise to an official inquiry having commenced.

The Government states in its reply that the future Central Government Civil Service Law will be regulating inter-agency mobility, it falling to the Government sectorial conference to approve the general criteria for carrying out the homologations necessary for making this mobility possible. It also reports that work is being done on the analysis and study of the human resources of the government agencies for reaching conclusions to serve as a basis for drafting a plan for the reorganization thereof.

The job provision-related complaints are related, as was the case with regard to gaining access to civil service, to the different fields of Government. In the healthcare field, as an authority attributed to the Autonomous Community of Madrid, the hiring of family physicians at the primary level by means of casual appointments, which would entail a higher degree of job-related precariousness, in detriment of provisional appointments was made known through the media. The Government replied to the official inquiry by saying that this situation was in passing and exceptional until the new organization of the human resources which will make it possible to reduce the degree of temporality and improve the working conditions of the permanent employees by means of competitive transfer examinations and consolidate employment as permanent personnel is implemented. It was indicated that once the staffs were suited to the actual needs, the family physician temporality rates will be minimal and for the time being, and that they will be covered by means of temporary replacements.

Other complaints which have a bearing on civil service employee mobility and the impossibility of facilitating the same have to do with the lack of homologation of the degrees regarding Catalan language skills among Autonomous Communities having this other co-official language.

As regards the working conditions, mention may be made of the research conducted after learning that the enforcement of the Equality Law was causing problems for a group of female prison guards, given that they were finding themselves to be forced to also tend to the male inmate population, which was not included when they passed the competitive examinations for being admitted to the prison institution assistant corps. From the report furnished by the Office of the Secretary General of Prison Institutions, it is inferred that a transitory period was agreed, giving the female civil servants the option of choosing a job position and that some female civil service employees are currently serving as department heads or as female civil service employee guards for the male inmate module population under all normalcy. It is indicated that the unification of scales and the configuration of one single corps of prison institution guards heightens the female civil servants' possibilities of promotion, bettering their job position and their mobility, given that they can apply and take examinations under

equal opportunities. Special mention may be made of the fact that in the Ombudsman's report for 2009, the Government's commitment was set out of drawn up an account of the implementation of the Equality Law in the process of the unification of scales of the aforesaid corps, reporting on whatever possible distortions were to have arisen and the corrective measures adopted.

The regulation regarding the subject of promotions and reserve status set forth under the Military Career Law 39/2007 of November 19th has given rise to military personnel coming forth who are finding their professional expectations to be restricted, an issue regarding which this Institution cannot issue an opinion, as this can only be dealt with through the pluralism for which Spanish Parliament stands.

Regarding further regulatory expansion upon the aforesaid law, measures have been taken regarding access to the information on the lists of military posts, as the Ministry of Defense considers them to be 'subjects coming under internal reservation', the dissemination thereof therefore being limited up to the unit, center or agency commander. The Ombudsman has suggested to the military Authority that, so as to prevent any situations of inequality from being created with regard to those which are at a higher level, that channels be sought making it possible to seek a balance so that the interested military personnel may clearly know the lists of positions to which they may make application, safeguarding the security in the access to the information of this ministerial department.

Throughout 2010, members of the Spanish Civil Guard have come forward stating their concern regarding the Congress of Deputies not as yet having sent up a bill updating their personnel regimen, a draft for which provision was made under the Military Career Law passed in 2007. The Directorate-General of the Police and Civil Guard pointed out that no progress had been made in writing the draft of the aforementioned bill, on which work was being done, on the National Court having posed issues of unconstitutionality against the aforementioned Law.

### Civil servant remunerations

The publication of Royal Decree-law 8/2010 of May 20th by virtue of which extraordinary measures are adopted for reducing the government deficit and of the rules of law passed by the Autonomous Communities further expanding thereupon has given rise this year to trade unions and numerous groups of civil service employees coming forth requesting an appeal of unconstitutionality be filed against the aforementioned royal decree-law.

The rules of law included under these provisions which have a bearing on the civil service employees' conditions have been reviewed in depth by this Institution. However, the



Ombudsman having analyzed all of the allegations received and the legal reasoning on which the requests for appeal are based, and the Internal Regimen and Coordination Board having been heard, it was agreed not to exercise the legitimation it has conferred as a result of not finding reasons for unconstitutionality.

Other complaints concerning remunerations are related to productivity bonuses, criteria for assigning the same, lack of express response to requests for collecting bonuses, breach on the part of the Authority of its obligation of economically compensating the clerks of small claims courts of less than 7,000 inhabitants or, in another case, an *ex officio* inquiry undertaken with the different Health Services. This was a matter, in this case, of treating the recognition of the services rendered in the administrative situation of temporary internal replacement for purposes of three-year periods homogeneously once one gains access to the upper category as statutory personnel. This inquiry is currently in progress.

### Civil servant working conditions

As regards to the specific working conditions of the statutory personnel of the health services, complaints have been processed regarding job position changes for reasons of occupational health, due to limited functional capacity, due to job precariousness, due to work overload or due to the need of reconciling work and family life.

The Ombudsman also took action in the case in which a Postal and Telegraph Service worker stated that, due to a new shift organization, he was not able to take part in the religious observance of Reading the *parashah*, which is done on Saturdays mornings. The worker in question stated having been denied, without warranting, the suggestion he made to make up for the time. In its response to this Institution, the Postal and Telegraph Service stated possible alternatives of job positions and schedules which would provide a solution to the problem.

The work overload of the professionals working for the Justice Department and, therefore, the difficulties entailed

in providing quality public service is the reason put forth in the complaints filed by coroners due to the situation they are suffering as a result of the increase in the number of on-call shifts worked on-site or off-site. The Ministry of Justice stated its disagreement, indicating that the work volume is variable and the on-call shifts do not entail being obligated to remain on the job throughout the 24-hour period, but solely to be available if the need for intervention arises. Studies are nevertheless being conducted to correct deficiencies in certain cases.

In regard to sick leave for psychological reasons and suicides of Spanish Civil Guard personnel, on these behaviors having been found to have decreased considerably in 2010, the official inquiry has then been concluded, without dismissing the possibility of these proceedings being reopened at some time in the future to continue analyzing their evolution.

Concerning the conditions under which the Spanish Civil Guard personnel are doing their jobs and the means they have available to them, the major complaints put forth regarded uniforming and equipping, as well as those regarding the conditions of safety and healthiness of some certain quartering which, due to the ages of the structures and lack of maintenance, entail risks for the Civil Guard personnel, third persons and those under arrest themselves.

On another order of matters, the proceedings commenced in 2009 concerning the delays in processing cases for determining psycho-physical conditions concerning members of the Spanish Civil Guard and Armed Forces have continued, as this Institution is taking a special interest in the measures to be adopted in this regard, such as increasing the number of physicians or moving specialists to wherever they are necessary.

Regarding the protecting of the rights of civil service police employees who are under temporary disability status, the Ombudsman put forth a recommendation that the measures adopted to locate the policemen who are in this situation be proportional to the nature and pressing need of the circumstances, especially whenever the same may have a bearing on their personal and family privacy.

An *ex officio* inquiry has also been made concerning different municipal governments with regard to the conditions under which local civil service police employees are carrying out their work, specifically in cases of lack of vehicles for patrolling or of alarming deterioration of those which are in running condition.

Apart from the above, the Ministry of Defense has been reminded, in general terms, of the obligation of issuing decisions, in due time and form, to whatever claims and requests / applications have been made thereto, as well as the obligation of being governed in its proceedings by the criteria of efficiency and serving the citizenry, as a delay has been found to exist by way of the complaints as regards the issuance of decisions concerning administrative appeals to a higher court, which has amply extended beyond the time periods stipulated under law, as well as a lack of coordination among agencies operating under the aforesaid ministerial department.

### **Pensions and benefits**

In 2010, the *ex officio* inquiry concerning the process of equating the Special Pensioners Regimen and the General Social Security Regimen as far as the funding of medicines prescribed to civil service pensioners is concerned. No change has taken place in the regulations in this regard. The Ombudsman deems it befitting to equate the two, at least gradually, when the economic circumstances so allow. The Ministry of Finance pointed out in its report on the assumable percentage of co-pay reduction that authority over the management of the medical-pharmaceutical benefits of civil service employees is attributed to the different mutual funds, which are operating, in turn, under the Ministries of the Presidency, Justice and Defense, it being necessary, following the fitting reports, for the Ministry of the Presidency to put forth a motion in this regard.

Apart from the above, the Armed Forces Social Institute (ISFAS) has taken a recommendation from the Ombudsman for the duplicate health card to be issued for the minor children still living at home under the parental authority of both of their parents, so that the parent who were not to hold legal custody thereover might have the healthcare aspect of their children covered during the periods of time that said minors were to be staying with the same.

## NATIONAL TORTURE PREVENTION MECHANISM

## The NPM has visited 231 places where people are deprived of their liberty during its first year in operation

**The National Prevention Mechanism's top priority during its first year of operation has been to make a significant number of visits for the purpose of plotting a preliminary outline of the imprisonment situation throughout Spain as a whole. Thus, a total of 231 places where people are deprived of their liberty located throughout the country were visited in 2010.**

The prohibition of torture and other forms of abuse are universally recognized and included under the main international and regional human rights instruments, which recognize the absolute, irrevocable nature thereof, given that it is imposed everywhere at all times, both in times of peace and in times of war. To heighten the effectiveness of this prohibition, the United Nations General Assembly adopted the Convention Against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments on December 10, 1984, which entered into effect on June 26, 1987 and was ratified by Spain that same year.

This Convention defines 'torture' as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

As a complement to the Convention, the United Nations General Assembly adopted the Optional Protocol to the Convention Against Torture (hereinafter 'OPCAT') on December 18, 2002 aimed at preventing torture and other forms of abuse by means of a system of periodic visits to the places where people are deprived of their liberty of any type. The new aspect added by the OPCAT is the creation of a new organization for taking action, based on two cornerstones: an international body, the United Nations Subcommittee for the Prevention of Torture (SPT) and a national body, the National Torture Prevention Mechanism (NPM). Spain ratified the Optional Protocol on March 3, 2006, and said Protocol entered into effect on June 22, 2006.

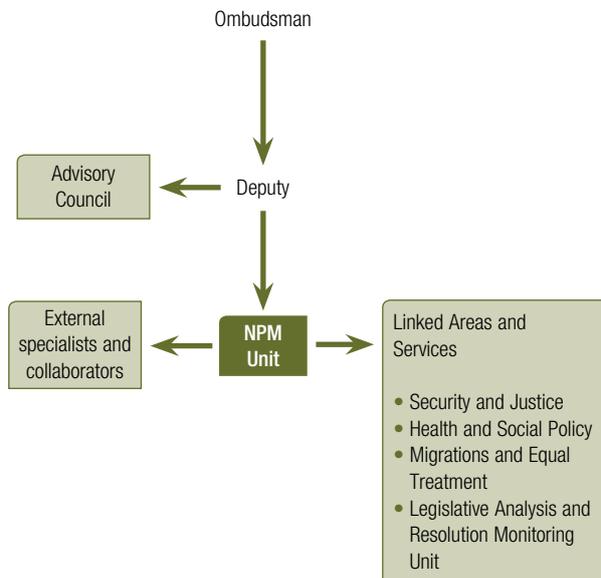


Lawmakers have opted for designating as the NPM an already consolidated institution, with a clear constitutional mission covering all of the public Administrations, their authorities and officials as a whole. This Institution may also gain access to places under private ownership where persons deprived of their liberty are found, such as, for example, the case of geriatric facilities where some measure for depriving people of their liberty resolved in favor of by a public authority is being employed. On February 5, 2010, Spain's Standing Commission to the United Nations and Other International Organizations Office headquartered in Geneva informed the High Commissioner for Human Rights of the Ombudsman having been designated as Spain's NPM.

Once the amendment of the Organic Law governing this Institution enters into effect, granting the Ombudsman NPM status, such status was fully undertaken. This Institution was faced with a fundamental decision; to delay the start of a schedule of visit to the point in time at which a full-scale organization had been set up in keeping with the most stringent standards; or, alternatively, to set up a deployment by stages which would make it possible to commence, as soon as possible, the task of making preventive visits to a significant number of places where people are deprived of their liberty. In the end, the choice was made of carrying out a

deployment in stages and immediately setting up an operating unit.

On January 19, 2010, in accordance with the report from the Internal Regimen and Coordination Council, the Ombudsman entrusted the First Deputy with the management of the work related to the NPM. A unit referred to as the 'National Torture Prevention Unit' (NTPU) was also created. In addition to the personnel assigned exclusively to this task, it was decided for the personnel from the different areas specializing in processing investigations regarding the different types of places where people are deprived of their liberty (Security and Justice, Health and Social Policy and Migrations and Equal Treatment) would reinforce the Unit's staff in carrying out the scheduled visits. The complete design of the NPTM entails the creation of an Advisory Council, the linking of professionals from different scientific disciplines making it possible to delve deeper into certain aspects of the treatment of people deprived of their liberty, as well as the reinforcement of the capacity for regulatory analysis, these being questions on which work has been done in 2010.



For the purpose of substantially increasing the operating capacities of the NPM, on the occasion of the XXC Ombudsman Coordination Meetings held in La Rioja, the acting Ombudsman set forth to her fellow Autonomous Community Ombudsmen a draft working agreement for integrating these institutions into carrying out the tasks inherent to the NPM, this being a matters with many different implications of all types on which work is being done as these lines are being written. Thus, it was aimed to comply with mission entrusted thereto by the lawmakers which sets forth one single NPM with general authorities of both a nationwide

nature as well as that which has to do with the typology of places where people are deprived of liberty, whilst also setting out a model for advanced cooperation by multiplying the potential number of visits.

Plans have similarly been made for working agreements to be signed with professional associations and other entities of major importance to organizing the assistance and co-operation of external specialists in the pursuits of the NPM. In this regard, one priority is to set out a stable working framework which will make it possible to link specialists in legal and forensic medicine, in psychiatry and in psychology.

The prime end purpose of the NPM is to 'establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment' (Art. 1 OPCAT). The tasks which the OPCAT proper sets out for the national prevention mechanisms are as follows:

- To conduct regular, unannounced inspections at places where people are or may be deprived of their freedom [Arts 1 and 19.a OPCAT].
- To prepare and disseminate an annual report in accordance with the substance of Article 23 of the OPCAT, by virtue of which 'the States Parties to the present protocol undertake to publish and disseminate the annual reports of the national prevention mechanisms'.
- To make recommendations to the relevant authorities taking particularly into consideration the pertinent United Nations norms with the aim of improving the treatment and conditions of the people deprived of their liberty and of preventing torture and other cruel, inhuman or degrading treatments or punishments [Art. 19.b OPCAT].
- To submit proposals or observations concerning existing or draft legislation [Art 19 c) OPCAT].
- Maintain direct, and if necessary confidential, contact with the NPM [Art. 11.B OPCAT].
- Promote activities of dissemination, disclosure and raising awareness in matters related to the activities of the SPT.

The inspections of the NPM are for the overall purpose of examining the general conditions in which the people deprived of their liberty are living, as well as the way in which their fundamental rights are guaranteed. This inspection is conducted with an essentially preventive focus, affording the possibility of striking up a constructive dialogue with the authorities and all of the other stakeholders in the deprivation of liberty with views to improving the situation and remedying whatever deficiencies may be found. In this regard, Spain's NPM takes upon itself that which is indicated by the SPT in its third annual

report (2010, paragraph 18) when it states: 'Whether or not torture or other cruel, inhuman or degrading treatment or punishment occurs in practice in a given State, there is always a need for States to be vigilant in order to guard against the risk of it occurring and to put in place and maintain effective and comprehensive safeguards to protect persons deprived of their liberty. It is the role of preventive mechanisms to ensure that such safeguards are actually in place and operating effectively and to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of persons deprived of their liberty.'

The overall objective having been undertaken, one must base oneself on the premise that people deprived of their liberty retain a wide range of rights which must not be damaged other than in that which is intrinsically linked to the specific situation proper under analysis. In this context, the visits made deal with a number of specific objectives, such as the examination of the location and organization of the facilities, the living regimen of the people deprived of their liberty, the legal statute of each modality of deprivation of liberty, with special attention placed on the practical efficacy of the guarantees set forth, as well as access to medical, psychological and, wherever applicable, social assistance. Thus, when the material scope of each visit is set out, the main questions to be examined are specified in terms of each type of place inspected, taking into account the possible risk areas and situations and the specific characteristics of the places in question. Therefore, on the order of a greater efficiency in the inspecting activity, the scope of some inspections is subject to being limited or focused on certain aspects which are understood to be priorities.

The NPM acts solely on an ex officio basis, each visit being documented, in fact, in a certificate which is incorporated into a file of this nature in accordance with that which is set forth under Article 9.1 of the Organic Law governing the Ombudsman. When complaints are lodged concerning alleged abuse, they are examined, and if they meet the requirements for being admitted, are processed by the different operating areas of this Institution. The references thereto are stated under the respective headings of the annual report.

During this first year of operation, the priority has been undertaken of making a significant number of visits which would afford the possibility of plotting a preliminary outline of the situation of the deprivation of liberty throughout Spain as a whole. To this end, visits have been made in the 17 Autonomous Communities. As well as to the Autonomous Cities of Ceuta and Melilla, totaling 231 places visited where people are deprived of liberty, distributed as follows by typologies and territories:

<b>Types of places visited where people are deprived of liberty</b>	
Police stations and other places of short-term custody:	
National Police Force	54
Civil Guard Headquarters and other places of short-term custody:	
Spanish Civil Guard	54
Autonomous Community Police (Police of the Autonomous Communities of Navarre, Catalonia and the Basque Provinces)	
Municipal police stations	10
Jails in court buildings	28
Police facilities at border checkpoint centers	08
Military disciplinary establishments	05
Alien internment centres	07
Penitentiaries	22
Juvenile offender centres	08
Hospital custody units	13
Vehicles for driving inmates and detainees	02
Alien repatriation operatives	01
<b>Total</b>	<b>231</b>

<b>Places visited by autonomous communities and cities</b>	
Andalusia	31
Aragon	09
Balearic Islands	12
Basque Country	22
Principality of Asturias	13
Canary Islands	07
Cantabria	11
Castile-La Mancha	09
Castile and León	20
Catalonia	12
Extremadura	06
Galicia	10
Madrid	21
Murcia	05
Navarre	13
Rioja	08
Valencia	13
Autonomous City of Ceuta	04
Autonomous City of Melilla	05
<b>Total</b>	<b>231</b>

The actions of the NPM have been in keeping with the unannounced visit criterion with the exception of the two cases in which this was impossible for practical reasons. The Madrid-Jerez de la Frontera-Algeciras-Ceuta-Morocco Border repatriation operative verified on November 25, 2010, which included a flight and the on-site exercise which entailed accessing the Madrid V, Soto del Real Penitentiary Facility on the part of some twenty people, some of whom

were foreign experts serving on the SPT or on the Council of Europe which were heading this activity of an also educational nature. In the course of the procedure, the NTP personnel did not find any problem whatsoever for freely accessing the facilities, the people and the documentation.

A full account of all of this work will be provided in the first specific NPM report and will soon be made public.

The Ombudsman is undertaking a tremendous responsibility following the designation thereof as the NPM made by Spanish Parliament due to the magnitude of the work in-

involved of keeping a stringent system of frequent visits to places where people are deprived of liberty currently in existence in our company, totaling several thousands in number. During this first year of operation, what is worthy of being termed as being a major effort has been made, as revealed by the figures stated herein. Nevertheless, this Institution is aware of the amount of work as yet to be done and is taking up the future challenges, especially the full organizational deployment of the NPM proper, delving deeper into the scope of the visit and adopting measures to intensify the discussions with the different stakeholders in people being deprived of liberty.

## OTHER AFFAIRS

**Co-official languages**

The complaints lodged question the use both of the co-official languages on the part of the respective Autonomous Community or local administrations and the use of Castilian Spanish on the part of the agencies of the State Administration. The latter is the case of offices operating under the Spanish Tax Authorities not having a tax form available in Galician, or the slow pace, according to one complaint lodged, at which tax forms are also being translated in Catalan; receiving a notice solely in Galician or that webpages under public ownership having contents solely in one of the co-official languages.

Administrations located in Catalonia have been those having given rise to the largest number of complaints being lodged in relation to linguistic aspects of webpages under public ownership. The processing of these complaints has been possible only in the case of those lodged following the Constitutional Court having rendered its decision 31/2010 of June 28<sup>th</sup> on the appeal filed by the Congress's Popular Parliamentary Group against different precepts of Organic Law 6/2006 of July 19<sup>th</sup> on the reform of the Statute of Autonomy of Catalonia. This ruling has reinstated the exercise of the authorities attributed to the Ombudsman within the Autonomous Community of Catalonia under the Constitution by ruling the precept which the text of the new statute entrusted exclusively to the Catalan Ombudsman the mission of supervising the activity of the Administration of the Autonomous Community Government of Catalonia and of the local administrations of Catalonia to be unconstitutional. This circumstance has meant that the processing of most of the complaints lodged and processes during the last part of the 2010 business year has not as yet reached an end.

**Personal data protection**

The complaints concerning this matter have to do with the same aspects as in previous years, although those aimed at questioning actions of the public or private owners of personal data files have been fewer in number, and the complaints questioning the action of the Spanish Data Protection Agency have increased, disagreements having been set forth concerning the legal grounds of the decisions issued thereby concerning its requests, reports or complaints or the delay in its decisions.

**Electoral system**

Very few complaints have been lodged regarding electoral matters. The majority voice their disagreement with different aspects, in some cases anecdotal and in others more substantial, of the current configuration of the electoral process or system, in aspects having to do with provisions included under the electoral law and which cannot be understood to

be violating the constitutional right of citizens to take part in public matters.

Closed lists, errors in the census, universal accessibility of persons with disabilities, management inside prison facilities of the requests made by the inmates of sending the documentation necessary for voting by mail or the adoption of means so that persons affected by a handicap can take part normally in the electoral processes are some of the reasons for complaint.

**Protection of minors against the television and Internet**

The protection of youths and children is one of the express bounds which the Constitution imposes on the exercise of all other fundamental rights, particularly the freedoms of expression, information and communication. The Ombudsman has been expressing his concern for some time concerning the effectiveness of the guarantee which our legislators having penned the Constitution wished to set forth for minors, and not only in their ordinary task of processing and remedying the matters submitted to decision which might affect them and the subsequent reflecting thereof in the annual reports, but also particularly intensely, through the preparation and publication of a dozen monographic reports on specific areas in which the protection of the rights of minors was particularly necessary so as to offset their vulnerability, with which it has been intended, out of neutrality and independence, to make known the existing situation of each one of these areas and propose the measures necessary for remedying the deficiencies detected.

For this same purpose, a monographic study was presented in 2010, the conclusions of which have now been published and presented before Spanish Parliament. This report was aimed at knowing the direct opinion of the minors and youths concerning the respect and guarantee of their rights in the programming and contents which the television channels and Internet are offering them. Knowing how they perceive the presence of these media in their lives, whether or not they are conscious of their risks and whether they feel safeguarded are questions which this institution has considered to be highly useful so as to be in a position to propose solutions to the problems set forth by way of the complaints lodged by parents, educators and other professionals who have been warning for some time about the risks to which minors may be subjected, not only due to abuse but due to the use of these two means of communication so very much a part of our lives.

This work has made it possible to set out a number of recommendations aimed mainly at providing a response to the

complete lacks and deficits in protection found to exist by a good part of those surveyed and to foresee and correct certain risky behaviors from use.

One of this Institution's long-standing aspirations, which it has been calling for since 1995 in practically all of its annual reports, is the creation of an Audiovisual Authority independent of the Executive Authority to be entrusted with duties including the task of guaranteeing the effectiveness of the measures for protecting youths and children in the audiovisual media. These recommendations must be understood as without detriment to the right which the law recognizes for those providing the audiovisual communication service to approve 'self-regulation codes' or to adhere to those already approved, in which principles or criteria common to all and undertaken by all participants for determining the contents subject to being broadcast during the hours for protecting minors. A large part of the minors were of the opinion that these codes were not respected, which gave rise to it being recommended that the audiovisual authorities and all other authorities having authority over this matter pay special attention to the strict compliance at all times with the criteria and limits set forth under the Self-Regulation Code of Children Television Contents and Children.

One of the results achieved is the evidence as to a large percentage of minors watching television regularly after 10 p.m., when the time schedule for protecting minors has ended. This makes it necessary to appeal to the responsibility of families and educators with regard to supervising what is being watched during this time frame and, at the same time, to recommend to the authorities who have province over this subject that they be particularly diligent in the supervision and control of compliance with the obligation of including the respective sound and visual warnings in the contents which so require and in the existence of a homologated digital coding for the age-based classification of the contents facilitating parental control.

It was also recommended to these authorities that they be extremely vigilant regarding systematic compliance with the duty of previous warnings on news programs when the news and information to be aired will include images or scenes which are improper or disturbing for small children and juveniles.

It was recommended to encourage the education of minors in audiovisual language by including subject matter in the course curriculum for the correct use of these media and to develop a critical sense regarding the contents; to bolster cooperation with the educational system, to encourage the acquisition of knowledge related to what is taught in schools and to convey values in keeping with the suitable education and development of minors and, among other recommendations, that the audiovisual authorities focus

special attention on the supervision and control of those specific aspects and areas in which the minors are detecting deficits in protection of their rights in the terms in which the monographic study reflected.

As regards Internet, even when the results obtained concerning the use which minors are making of this tool are to a certain degree reassuring, especially with regard to the access to contents clearly damaging to their learning and development which solely small percentages admit to accessing, the truth of the matter is that the open nature of this tool, the obvious difficulties of controlling its use, the variety of services to which one can gain access, the ongoing innovation of the approaches designed for providing the same and the relative anonymity with which one can use the same makes it necessary to consider any action aimed at preventing and avoiding the frequent risks to which underage users may find themselves subjected to be indispensable.

It was also recommended that actions of an educational and practical nature be fostered on the part of the competent authorities with the aim of eliminating the existing digital gap between adults and minors in addition to measures aimed at identifying the specific risks associated with the different services Internet offers by means of lists, catalogs, descriptions or any other which is considered best for this purpose, making them available to users by means of different, readily accessible ways, including guides, instructional materials, specific webpages or portals devoted to this purpose with continually updated information.

It is also necessary for simple, effective warning procedures to be set out in conjunction with others for lodging complaints with the competent authorities in regard to the unlawful activities or conduct which are detected on the Net and, in due course, once the aforementioned codes of conduct have been subscribed, that mechanisms be set up for lodging complaints and providing solutions thereto regarding failures to render full compliance with said codes. It was recommended that the study of safe Internet navigation practices and use of tools be promoted in the course curriculums at the different educational levels within the framework of the most wide-ranging instruction as how to use the information and communications technologies and the fostering of their use as support for schoolwork.

Lastly, generally speaking, it was recommended that the industry support the development of appropriate tools and technologies for preventing and managing the risks existing on the Internet services for minors and, in particular, by means of the design of techniques for verifying the age of the users for accessing certain services, such as parental control and filtering tools and mechanisms before and after the accesses made.

All of the above is necessary, in this Institution's judgment, on the order of properly safeguarding children and youths. But this does not suffice in itself. The public authorities and the providers of television and Internet services must face up to their responsibility and act accordingly. They have a highly important corporate responsibility to society which they cannot relinquish, especially the providers of audiovisual services who decide what is offered, when it is offered and how their product is offered to a public which they know includes several million minors. In this regard, it is illustrative to see in the findings of the monographic study conducted, that the stations and programs preferred by minors are also those which, in the judgment thereof, often fail to fulfill their safeguarding duties. Trying to capture a larger viewing audience is legitimate, but not at just any price.

It must also be said that the first line of protection must be established by mothers and fathers, by families and by educators who know that television and Internet are not designed either especially or solely for minors and that their access to these media cannot therefore be unconditional or unlimited. Thus, even being a realm outside of that falling to his Institution, the results of the study conducted have spurred the Ombudsman to take advantage of the opportunity of publishing the same to put forth some recommendations to mothers, fathers and families.

### **Pecuniary liability**

As every year, the exercise of the right of the administered 'to be compensated for any damage to any of the assets and rights thereof, save in the cases of *force majeure*, provided that the damage be a result of the functioning of the public services' has given rise to numerous complaints, mainly regarding the long length of time involved for cases of this type to be remedied, in the processing of which, the time periods stipulated for this purpose are at times not abided by to an extremely exceeding degree.

Special mention may be made, regarding this year, of the complaints lodged by numerous military personnel from the Air Force Specialists Corps promoted to the position of lieutenant in application of Law 17/1999 of May 18th due to the damages caused to their assets and rights by way of the enforcement of the provisions set forth under the Military Career Law regarding the process of determining the ranking order in reserve status.

Apart from the above, as in previous years, numerous complaints have been processed mainly with the Ministry of Public Works, the different Autonomous Community health Administrations and the municipal governments. Regarding the municipal governments, the main objections taken in order to try to explain the long, drawn out delays when rendering decisions regarding the pecuniary liability cases which they are under the obligation of hearing are the con-

siderable increase over the past few years in this type of complaints and the complexity of the procedure.

## **Local Administration**

### **Rights of the members of the Local Corporations**

The right to participate in the local corporations is being obstructed at times when the government teams adopt decisions restricting the possibilities of the exercise of these rights on the part of minority groups, which can result in making true, actual participation of the groups comprising the opposition unviable in practice. It is not the disagreement with the contents of the decisions or with the outcome thereof, nor even the mere existence of irregularities in the procedure for the adopting or external expression thereof which may give rise to the intervention of the Ombudsman. It is the actual hindrance of the control, the impossibility of the exercise thereof once attempted by way of the legal mechanism that authorizes this Institution to intervene to safeguard the full effectiveness of the fundamental right to participate in public affairs which is recognized under Article 23.1 of the Constitution.

Some of the most outstanding actions which obstruct or at times even go so far as to prevent the functioning of the governing bodies of the local corporations are mainly the absence of any meetings of these bodies proper being called, the failure to comply with the session regime set forth under law or the failure to comply with rules for holding the plenary sessions, which seriously hinders the participation of the elected members, mainly of those of the groups pertaining to the opposition.

Complaints have similarly been lodged regarding the violation of the rules of law protecting the right to access documentation and to obtain copies, the failure to reply to the requests for information and the party-oriented use of the municipal webpages.

### **Citizen participation and information**

The Bases of Local Government Law recognizes and governs the right of citizens to obtain the most ample of information possible concerning the activity of the local corporations, and referring more specifically to the residents, on recognizing their right to be informed following a request stating the reasons thereof and to attend the municipal plenary sessions which are, in principle, public and to obtain copies and certifications of the local resolutions, as well as to consult the local records and files within certain limits, all of which shall be in accordance with the postulates of participation and information set forth under Spain's Constitution.

This participation is especially privileged in the case of the neighborhood associations, regarding which the obligation of the local corporations is set forth of favoring the development thereof and to furnish them with 'the most ample in-

formation regarding its activities' as well as of promoting the participation thereof in the management of the corporation.

#### **Local Entity assets**

The Local Entities are under the obligation of carrying out the actions necessary to defend their assets and rights, having granted by law with regard thereto the authorities of investigation, the setting of boundaries, ex officio recovery and administrative eviction, being entitled to also establish and impose penalties to insure the defense of their estate and the proper use thereof. A complaint precisely for the appropriation of a byway on the part of a resident revealed that the procedural channels and the municipal authorities for the recovery of assets as not being agile enough to prevent anomalous situations from being prolonged over time and, on the other hand, as being too highly complex to be carried out by municipalities with very little infrastructure and administrative and legal support.

#### **Local corporation activities and services**

The complaints lodged reflecting the broad spectrum of the fields covered by the public action of these administrations have been widely varied and have included: the management of the municipal resident registry, the exercise of the authorities on the order of maintaining and recovering the municipal assets; the condition and upkeep of both the urban roads as well as the byways; the conditions for the use and enjoyment of the common assets; the water supply; the healthy living conditions; the management of the interment services; the conditions for the use of the sports facilities and the maintenance and safety thereof; and those regarding the conditions of the keeping and use of animals.

#### **Municipal Resident Register management**

As of the 2007 annual report, attention has been being called to 'the difficulties stemming from the fact that an administrative register such as the Municipal Resident Register is serving several other purposes of such diverse consequences as fixing the population of a municipality, accrediting residence and address of Spanish nationals and aliens, determining the priority and even the right to access certain benefits and aid or serving as a basis for the preparation of the electoral census.

Worthy of special mention is the ex officio complaint opened as a result of the fact that the City Hall of Torrejón de Ardoz (Madrid) was applying certain restrictive

criteria for inclusion in the municipal resident register. The aforementioned municipal government was taking into consideration the prior fulfillment of requirements in no way related to those for which provision is made under the regulations governing this tool such as compliance with the building standards and use of dwellings or of rules of law governing aliens entering and remaining in Spain. Regarding this aspect, the Institution was informed that a review had been made of the regulations governing registration in the municipal resident register in accordance with the criteria of the Population Regulations.

In this same regard, a complaint was lodged by the president of the Association of Moroccan Workers and Immigrants in Spain (ATIME) against the City Hall of Robledo de Chavela (Madrid), in which he explained that the aforementioned corporation has set requirements for inclusion in the municipal resident registry (such as, for example, the provision of an employment contract) outside of those legally required, this being a requirement being demanded solely of Moroccan immigrants and not when the applicants are Spanish nationals. This complaint has still as yet to be remedied on no reply whatsoever having been received from the City Hall of Robledo de Chavela, despite three requests having been placed with the same.

That the exercise of certain rights or the access to certain services and benefits depending on being registered in the municipal resident registry gives rise to situations in which the difficulties for obtaining or maintaining this registration have undesirable consequences in areas having nothing to do with the accreditation merely of actually residing in a certain municipality. Such is the case, for example, in the complaint also lodged with the City Hall of Torre-on de Ardoz (Madrid) due to the difficulties of obtaining registration in the municipal resident register on the part of a foreign citizen and her two children, which was giving rise to problems in relation to enrolling the minors in question in school (which had been done tentatively) and in accessing certain aid for school supplies and transportation, as well as difficulties with the school insurance and healthcare. This complaint is currently being processed on the City Hall in question having argued not having any knowledge of such a request for registration and the affected parties having provided proof of having requested this registration repeatedly throughout 2010.

# Institutional relations



## Institutional Relations

### Parliamentary activities

On March 9<sup>th</sup>, the Ombudsman appeared before the Joint Commission for Relations with the Ombudsman for the presentation of the monographic study on '*Water and Regional Planning*'.

Subsequently, on June 22<sup>nd</sup>, accompanied by the Deputies and the General Secretary, the Ombudsman presented the report related to the transactions during 2009 to the Presidents of the Congress of Deputies and of the Senate.



The acting Ombudsman at the presentation of the 2009 Report to the Plenary Session of Congress

On September 13<sup>th</sup>, the acting Ombudsman was received in audience by the Presidents of the Congress and Senate to deal with matters regarding the organization of this Institution. Days later, on September 30<sup>th</sup>, the Ombudsman appeared before the Joint Commission to present the *2009 Annual Report*. Lastly, she made a formal presentation of this annual report before the Plenary Sessions of the Congress of Deputies and the Senate on October 13<sup>th</sup> and November 3<sup>rd</sup>, respectively.

Lastly, the acting Ombudsman appeared before the Joint Commission on November 30<sup>th</sup> to present the monographic report '*Internet and Television Programming and Contents: Minors' Opinions Concerning Safeguarding Their Rights*'



Presentation of the report '*Internet and Television Programming and Contents: Minors' Opinions Concerning Safeguarding Their Rights*'

The Opinion of Minors on the Safeguarding of Their Rights, prepared in collaboration with the UNICEF Office in Spain.

### Relations with parliamentary commissioners

Throughout more than 25 years, within the framework of Law 36/1985 of November 6<sup>th</sup> governing the relations between the institution of the Ombudsman and the similar figures in the different Autonomous Communities and within the specific agreements, the cooperation among the Ombudsmen institutions have resulted in highly favorable outcomes.

As far as the acts and meetings of an official, institutional nature are concerned, special mention must be made, as customary, of the holding of the Annual Coordination Conference, preceded by preparatory workshops.

- Meeting with a delegation from the Basque Ombudsman's Office, headed by Ombudsman, Iñigo Lamarca, to discuss matters regarding immigration, with a special focus on the problems of unaccompanied foreign minors. Ombudsman Headquarters, January 2<sup>th</sup>.
- Spain's Ombudsman and the First Deputy attend the induction into office of the Ombudsman of Catalonia, Rafael Ribó I Massó. Barcelona, March 1<sup>st</sup>.
- Spain's Ombudsman attends the act commemorating the XXV Anniversary of the creation of the Canary Island Ombudsman. Spain's Ombudsman gave the presentation '*The Ombudsman in Spain Today*'. Santa Cruz de Tenerife, May 7<sup>th</sup>.
- Meeting of the Secretary General with those responsible for the general secretariats of the Autonomous Community Ombudsmen for sharing experiences regarding institutional organization. Albacete, June 22<sup>nd</sup>.
- Work session with the Basque Ombudsman. Ombudsman Headquarters, September 13<sup>th</sup>.
- Joint open meeting with representatives from the different Autonomous Community Commissions for the presentation of the general lines of suggested collaboration with the Ombudsman as the National Torture Prevention Mechanism. Ombudsman Headquarters, September 14<sup>th</sup>.
- Work session of Spain's acting Ombudsman with the Catalan Ombudsman. Ombudsman Headquarters, September 14<sup>th</sup>.

### 25<sup>th</sup> Ombudsmen Coordination Conference

The 25<sup>th</sup> Ombudsman Coordination Conference was held in Rioja on September 27-29, organized by the Rioja Ombudsman. The object thereof was focused on '*The Impact of the Economic Crisis on the Exercise of the People's Rights*'.

The framework lecture dealt with the topic of '*Economic and Values Ethics: A Road to Overcoming the Crisis*', and the



XXV Ombudsmen Coordination Conference

conclusions of the different preparatory workshops were presented. These workshops were devoted to the following issued: 'Evaluating the Measures of An Economic and Social Nature' (Pamplona, April 19-20), 'Evaluating the Measures for Supporting Families, Especially Regarding Housing' (Murcia, April 26-27) and 'Evaluating the Impact of the Crisis on the Activity of the Ombudsman Offices' (Zaragoza, May 3-4).

#### Open meetings organized by this institution

- Open meeting for the presentation of Spain's National Prevention Mechanism Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, organized by the Ombudsman. Opening address by the President of the Senate. Senate Building. Madrid, May 10<sup>th</sup>.
- 4<sup>th</sup> Meeting of the Association of Mediterranean Ombudsmen (AMO) organized by Spain's Ombudsman in collaboration with the French Ombudsman and the Moroccan Ombudsman. Twenty-seven countries and different human rights-related institutions took part. The opening ceremony was presided by the President of Congress. The topic for discussion at the Assembly was 'The Challenges Posed to Ombudsmen by Immigration and Human Rights'. The sessions were held at Casa Árabe, Madrid, June 14-15.



4th AMO Meeting

- First Working Session within the framework of the general investigation opened by this Institution to deal with the problems detected in the procedures for determining the age of unaccompanied foreign minors who arrive in Spain. Experts in forensic medicine took part, and all of



Work Session on medical examiner methods of determining the age of unaccompanied foreign minors

the directors of Forensic Medicine Institutes in Spain were invited, as well a medical examiners assigned to courts in those Autonomous Communities which do not have an institute of their own. Ombudsman Headquarters, October 7<sup>th</sup>.

- International training workshop on torture prevention organized by the Council of Europe. Visit with a team of international experts pertaining to the Council of Europe and to the United Nations Subcommittee for Torture Prevention, as well as from the Torture Prevention Association for evaluating and aiding in the training of Spain's National Prevention Mechanism within the Council of Europe project known as European NPM Project jointly funded by the Human Rights Trust Fund. Ombudsman Headquarters, November 2-5.
- Second Working Session on the procedures for determining the age of unaccompanied foreign minors in Spain. Participating were different agencies of the public administrations having authority over this matter, representatives from the Autonomous Community ombudsmen, as well as social organizations. The scientific findings of the first session were dealt with, introducing new contributions with a view to the preparation of a monographic report by Spain's Ombudsman. Ombudsman Headquarters, November 10<sup>th</sup>.
- Meeting of the Panel of Judges for the Ombudsman's Art Contest to render their decision on the awards subsequently given at the Congress of Deputies on the occasion of Human Rights Day. Ombudsman Headquarters, November 15<sup>th</sup>.
- The acting Ombudsman opens the sessions scheduled for the Workshop on the role of the national human rights organizations in the protection and promotion of the rights of people with mental disorders, co-organized by the Ombudsman Institution and the Council of Europe. The Second Deputy also participated in the findings session, under the title of 'National Experiences Carried Out by the National Human Rights Organizations'. Bilbao, November 17-18.
- IX Reading of the Universal Declaration of Human Rights and VIII Edition of the Ombudsman Drawing Contest Award Ceremony. The awards were given to the winners by the First Vice-President of the Congress of Deputies,

by the acting Ombudsman and by the Director General and Citizenship and Integration of the Autonomous Community of Valencia's Department of Solidarity and Citizenship. Actor Miguel Ángel Muñoz also took part in this event. Congress of Deputies. Madrid, November 29<sup>th</sup>.

### Official meetings with authorities, citizens and social organizations

Throughout 2010, the representatives of this Institution have been meeting with different stakeholders involved in processing complaints and other measures carried out by this Institution. In addition to meetings with citizens and social organizations of different types, this Institution has also held meetings with representatives from the public administrations or from the dependent public agencies to deal with the way of expediting the investigations or remedying differences of opinion hindering the effective management of complaints lodged by citizens.

- Meeting with representatives of agricultural and social organizations to deal with aspects related to food products and agriculture free of genetically-engineered organisms. Ombudsman Headquarters, January 20<sup>th</sup>.
- Meeting with the President of the Association of Patients with Paroxysmal Nocturnal Hemoglobinuria and representatives of the Association of Mucopolysaccharidosis and related syndromes to deal with rare diseases. Ombudsman Headquarters, January 20<sup>th</sup>.
- Visit with representatives of the Motorcycle Mutual Association. Ombudsman Headquarters, January 21<sup>st</sup>.
- Visit with the Mayor of Denia (Alicante) accompanied by her Finance Department Head. Ombudsman Headquarters, January 21<sup>st</sup>.
- Meeting with representatives from the ad hoc Commission of Those Affected by Air Comet. Ombudsman Headquarters, January 26<sup>th</sup>.
- Visit with several members of the National Union Federation of Consumers and Homemakers of Spain (UNAE). Ombudsman Headquarters, January 26<sup>th</sup>.
- Visit with some Mayors from the Autonomous Community of Madrid to present their Strategic Plan for Southern Madrid to the Ombudsman and explain the difficulties



Meeting with the Mayors of the southern area of the Autonomous Community of Madrid

they are encountering for unrolling this strategy. Ombudsman Headquarters, January 29<sup>th</sup>.

- Meeting with the director of the Spanish Section of Amnesty International, Esteban Beltrán, the investigator Elena Estrada and the person in charge of institutional relations and internal policy, Virginia Álvarez, concerning the reports 'Salt in the Wound (the actual impunity of police officers in cases of torture and other abuse)' and 'If I go back, I'll kill myself (minors at therapeutic protection centers)'. Ombudsman Headquarters, February 3<sup>rd</sup>.
- Meeting with the Spanish Committee of Representatives of Persons with Disabilities (CERMI) for the follow-up of the United Nations Convention for the Rights of Persons with Disabilities. Madrid, February 8<sup>th</sup>.
- Meeting with the 'Grupo Popular' parliamentary group spokesperson and councilpersons from the City Hall of Fuenlabrada (Madrid). Ombudsman Headquarters, February 9<sup>th</sup>.
- Meeting with the chairman and several representatives from the Auto-Taxi Union Association. Ombudsman Headquarters, February 16<sup>th</sup>.
- Visit with the chairman and other representatives from the National Federation of Transport Associations of Spain. Ombudsman Headquarters, February 17<sup>th</sup>.
- Meeting with the Director General of Immigration, Agustín Torres Herrero. Ombudsman Headquarters, February 18<sup>th</sup>.
- Meeting with residents of Cañada Real Galiana Sector IV in Madrid. Ombudsman Institution, March 2<sup>nd</sup>.
- Meeting with the Director General of the Land Registry, Ángel Manuel Álvarez Capón. Ombudsman Headquarters, March 3<sup>rd</sup>.
- Meeting with representatives of the Commission for the Promotion of the Segregation of the Town of Fornells (Menorca). Ombudsman Headquarters, March 3<sup>rd</sup>.
- Meeting with the Secretary General of the Spanish National Organization of the Blind. Ombudsman Headquarters, March 4<sup>th</sup>.
- Meeting with representatives from the Dianova Network, a non-profit organization and an advisory member of special status before the United Nations Economic and Social Council. Ombudsman Headquarters, March 12<sup>th</sup>.
- Meeting with the Secretary of the Victims and Justice Association, Fernando Suárez de Arcos. Ombudsman Headquarters, March 23<sup>rd</sup>.
- Visit with the President of the Principality of Asturias, Ramón Álvarez Areces, accompanied by the head of the Department of Health, José Ramón Quirós, and the Technical Secretary General of said Office, José María González Gancedo. Ombudsman Headquarters, April 6<sup>th</sup>.
- Meeting with family members of a Spanish national incarcerated in a United States prison. Ombudsman Headquarters, April 8<sup>th</sup>.
- Meeting with the State Secretary for International Cooperation, Soraya Rodríguez Ramos, Ombudsman Headquarters, April 19<sup>th</sup>.

- Meeting with representatives from the National Association for the Protection of the Family of Zaragoza (AM-PRODEFA). Ombudsman Headquarters, April 21<sup>st</sup>.
- Meeting with the Spanish Committee of Representatives of Persons with Disabilities for the follow-up of the United Nations Convention for the rights of persons with disabilities. Madrid, April 26<sup>th</sup>.
- Meeting with the Director General of Regional Coordination and Environment of the Secretariat General of Prison Institutions, Virgilio Valero. Ombudsman Headquarters, April 27<sup>th</sup>.
- Meeting with the attorney of Oaxaca, Alba Cruz, the coordinator of the General Council of Spanish Attorneys, Francisco Segovia, The secretary general of the Association for Investigation and Specialization in Ibero-American Affairs (AIETI), Mercedes Ruiz-Giménez Aguilar, and the Representative of Peace Brigades International, Marie Becher. Ombudsman Headquarters, April 28<sup>th</sup>.
- Meeting with the State Secretary for Transportation. Ombudsman Headquarters, April 30<sup>th</sup>.
- Meeting with the representatives of the Official College of Architects of Almería. Ombudsman Headquarters, May 6<sup>th</sup>.
- Meeting with Deputy from the Parliament of Catalonia, José Domingo, in relation to the Catalan Law governing refuge given to immigrants in Catalonia. Ombudsman Headquarters, May 17<sup>th</sup>.
- Meeting with a delegation from the Business Federation of Spanish Pharmacists (FEFE), headed by its Chairman, Fernando Redondo Montoro. Ombudsman Headquarters, May 17<sup>th</sup>.
- Meeting with persons responsible for the Guadiana River Hydrographic Confederation. Ombudsman Headquarters, May 18<sup>th</sup>.
- Visit with the President of the Smokers for Tolerance Club, Álvaro Garrido. Ombudsman Headquarters, May 20<sup>th</sup>.
- Meeting with the Chairman of Euskal Arido-Basque Federation of Quarries, Joaquín Zugazagoitia, and other representatives from this organization.
- Visit with a group of pensioners from the Navy Social Services Institute. Ombudsman Headquarters, May 27<sup>th</sup>.
- Meeting with the Association of Families of Prisoners of Madrid (ACEPREMA). Ombudsman Headquarters, June 1<sup>st</sup>.
- Meeting with representatives from the Association of Victims of Occupational Accidents and Diseases (AVAEL) to detail several aspects of their complaint lodged with this Institution, June 1<sup>st</sup>.
- Meeting with the chairwomen of the Federation of Progressive Women, the Federation of Separated and Divorced Women, the Themis Attorney's Association and the Women's Foundation. Ombudsman Headquarters, June 7<sup>th</sup>.
- Visit with the chairman of the consumer association FACUA-Madrid Consumers and Users in Action. Ombudsman Headquarters, June 16<sup>th</sup>.
- Visit with a delegation of representatives from several federations of the 'Union General de Trabajadores' (UGT) trade union. Ombudsman Headquarters, June 21<sup>st</sup>.



Cava de Llano meeting with a delegation of women's association representatives

- Meeting with the chairwoman of the Association of Those Affected by Spanair Flight JK5022 and the association members. Ombudsman Headquarters, June 23<sup>rd</sup>.
- Meeting with the Autonomous Community of Madrid Minister of Family and Social Affairs, accompanied by their General Technical Secretary, the Managing Directors of the Madrid Institute for Family and Minors and the Director General of Dependency Coordination. Ombudsman Headquarters, July 12<sup>th</sup>.
- Meeting with the federations of the 'Comisiones Obreras' trade union, of the Confederation of Consumers and Users (CECU), of AAVV and 'Unión General de Trabajadores' (UGT) trade union of the Autonomous Community of Madrid, in which they set out the reasons having led them to having created the Autonomous Community of Madrid Social Monitoring System for Dependency. Ombudsman Headquarters, July 13<sup>th</sup>.
- Interview with the chairman of the Association of Mixed Families of Spain (ASFAMIX), Óscar Martínez Crespo. Ombudsman Headquarters, July 13<sup>th</sup>.
- Meeting with the chairman of the Spanish Confederation of Lesbians, Gays, Bisexuals and Transsexuals. Ombudsman Headquarters, July 13<sup>th</sup>.
- Meeting with several persons responsible for the Public Area of the 'Comisiones Obreras' trade union. Ombudsman Headquarters, July 14<sup>th</sup>.
- Meeting with the State Secretary for Climate Change. Ombudsman Headquarters, July 15<sup>th</sup>.
- Meeting with a delegation of representatives from the Themis Women's Association for women in the legal profession, from the Federation of Progressive Women, from the Federation of Separated and Divorced Women and from the Women's Foundation. Ombudsman Headquarters, July 21<sup>st</sup>.
- Visit with the Catalan Deputy to Parliament and President of 'Ciudadanos' (C's), Albert Rivera, and a representative from that organization in Madrid, to present their petition for an appeal of unconstitutionality against the Consumer Code of Catalonia. Ombudsman Headquarters, August 27<sup>th</sup>.
- Meeting with the president of the 'Bullfighting Union of Bullfight Season-Ticket Holders and Fans of Spain', José

Luis Moreno-Manzanaro, who requested the Ombudsman to file an appeal of unconstitutionality against the Law of the Autonomous Community of Catalonia banning bullfighting. Ombudsman Headquarters, September 7<sup>th</sup>.

- Meeting with the chairman of the Association 'Citizen Boost' and Catalanian Parliament Deputy, José Domingo, who presented his petition for filing an appeal of unconstitutionality against several provisions of the Consumer Code of Catalonia. The meeting was also attended by two employers affected by linguistic fines. Ombudsman Headquarters, September 7<sup>th</sup>.
- Meeting with the President of the Cinema Guild of Catalonia, Camilo Tarrazón Rodón, and other members of the association, who petitioned the filing of an appeal of unconstitutionality against the Catalanian Cinema Law. Ombudsman Headquarters, September 10<sup>th</sup>.
- Meeting with those responsible for the Spanish Civil Guard Online Crime Unit. Ombudsman Headquarters, September 14<sup>th</sup>.
- Meeting with representatives from the Spanish Police Confederation. Ombudsman Headquarters, September 16<sup>th</sup>.
- Meeting with attorney José Pedro Pérez-Llorca, accompanied by another two partners from the Pérez-Llorca Law Firm, for the purpose of the analysis of the Catalanian Cinema Law. Ombudsman Headquarters, September 16<sup>th</sup>.
- Interview with Enrique de Castro, priest of the Church of San Carlos Borromeo in Madrid. Ombudsman Headquarters, September 16<sup>th</sup>.
- Meeting with representatives from the Consumer and Users Association (OCU). Ombudsman Headquarters, September 20<sup>th</sup>.
- Meeting with representatives from the 'Mesa del Toro' bullfighting board entity. Ombudsman Headquarters, October 1<sup>st</sup>.
- Meeting with the Director General of Social Policy of Families and Minors of the Ministry of Health and Social Policy. Ombudsman Headquarters, October 5<sup>th</sup>.
- Working meeting with *Save the Children* to analyze the situation of minors in our country, especially trafficking with young boys and girls for sexual exploitation. Ombudsman Headquarters, October 8<sup>th</sup>.
- Meeting with members of the Platform 'Against Spanish Citizens Abroad Being Deprived of the Right to Vote' with regard to their having taken exception to the draft reform of the General Electoral Regimen Act. Ombudsman Headquarters, December 15<sup>th</sup>.
- Meeting with the Director General of Administrative Organization and Procedures of the Ministry of Regional Policy and Public Administration. Madrid, December 20<sup>th</sup>.

### Visits, tributes and official events

Throughout this year, those serving on this Institution's Coordinating and Interior Regimen Council had the opportunity to attend different official acts in conjunction with authorities or representatives from civil society, including ceremonies

for paying tribute and ceremonies for presenting awards and recognitions.

- First Deputy attended the official opening ceremony of the 'El Lavadero' Judicial Measures Center operating under the Ministry of the Presidency, Justice and Interior of the Autonomous Community of Madrid. Madrid, January 12<sup>th</sup>.
- Second Deputy attended the Sixth Edition of the 'Atocha Attorneys' Award Ceremony, to the President of Spain's Consumers' and Users' Council and of the Movement for Peace, Francisca Sauquillo. Madrid, January 19<sup>th</sup>.
- Ombudsman participated in the Official State Act Commemorating Holocaust Remembrance Day for the Prevention of Crimes against Humanity. Complutense University Auditorium. Madrid, January 21<sup>st</sup>.
- Ombudsman attended the act organized by the Assembly of Madrid and the Jewish Community of Madrid in remembrance of the Holocaust. Assembly of Madrid, January 27<sup>th</sup>.
- Ombudsman attended the official opening ceremony of the VI International Congress of Terrorism Victims. Salamanca, February 11<sup>th</sup>.
- Ombudsman awarded the gold medal from the University of Zaragoza Law School. Zaragoza, February 19<sup>th</sup>.
- Ombudsman attended the act paying posthumous tribute to Joaquín Ruiz-Giménez Cortés, organized by the Bar Association of Madrid in collaboration with the General Council of the Spanish Bar. Madrid Bar Association. April 29<sup>th</sup>.
- Act paying tribute to the memory of Joaquín Ruiz-Giménez, with the presence and participation of his widow, Mercedes Aguilar, the Presidents of the Congress of Deputies and Senate and the Ombudsman. Constitutional Hall of the Congress of Deputies. May 17<sup>th</sup>.



Tribute to Joaquín Ruiz-Giménez in Congress

- Ombudsman attended the act commemorating the XXC Anniversary of the Signing Spain's Treaty of Accession to the European Communities. Royal Palace. Madrid. June 12<sup>th</sup>.
- Ombudsman attended the ceremony of the 'Golden Scale' Awards given by the General Council of Attorneys of Spain. Casa de Mónico. Madrid, June 17<sup>th</sup>.
- Ombudsman awarded the Municipal Police Gold Medal for his constant, seamless cooperation with the City Hall and with the Municipal Police in the defense of the inter-

ests of the citizenry. Awarded by the Mayor of Madrid at the Festival of the Patron Saint of the Municipal Police Force. Madrid, June 24<sup>th</sup>.

- Ombudsman attended the institutional ceremony commemorating Victims of Terrorism Day. Congress of Deputies. Madrid, June 27<sup>th</sup>.
- Acting Ombudsman attended the Official Ceremony Opening the Judicial Year. Main Court Building. Madrid, September 21<sup>st</sup>.
- Acting Ombudsman took part in the ceremony for the presentation of the Consumers' and Users' Organization Award to Fernando Álvarez de Miranda y Torres. Madrid, November 29<sup>th</sup>.
- Second Deputy attended the investiture of Gustavo Suárez Pertierra as the new numerary member of the Spain's Royal Academy of Doctors. Madrid, December 1<sup>st</sup>.
- Acting Ombudsman attended the official Tribute to the National Flag and Military Parade commemorating the National Festival of Spain. Madrid, December 12<sup>th</sup>.
- Second Deputy attended the '2009 Awards for Quality and Innovation in Public Management' organized by the National Institute of Public Administration. Madrid, December 15<sup>th</sup>.

#### Activities for institutional collaboration, dissemination and outreach

The Ombudsman assumes, as a task inherent to his mission of guaranteeing the fundamental rights, the work of disseminating and promoting the knowledge of the basic rights and liberties of all citizens.

Also a top-priority objective: offering all possible ways making it possible for citizens to gain access to the Ombudsman as a non-jurisdictional resource for guaranteeing and protecting the constitutional rights.

#### Collaboration

- Visit with the Vice-Chair of the 'Instituto de Cultura del Sur' Foundation, José Manuel Gómez Bravo, to present the Foundation's nine lines of action and consolidate the working relations between these two institutions. Ombudsman Headquarters, February 4<sup>th</sup>.
- Attended the debut of the documentary film 'Capacitados' [Able] organized by the Office of the President of the National Organization of Spanish Blind People (ONCE) and its Foundation. Madrid, April 15<sup>th</sup>.
- Attended the official opening ceremony of the Constitutional Hall of the Congress of Deputies. Madrid, April 21<sup>st</sup>.
- Meeting with the new Chancellor of the University of Alcalá, Fernando Galván, to put forth the intention of continuing the collaborating process these two institutions have been maintaining for several years now (online courses, collection of books specializing in human rights, King of Spain Human Rights Award). Ombudsman Headquarters, April 27<sup>th</sup>.

- Meetings with the Executive Committee of the Chair of Democracy and Human Rights, according to working agreement between the Ombudsman and the University of Alcalá. Ombudsman Headquarters, May 26<sup>th</sup> and June 24<sup>th</sup>.
- Presentation of the report on the Movement Against Intolerance 'Special 2010 Raxen Report'. Ombudsman Headquarters, June 22<sup>nd</sup>.
- Press Conference by the Acting Ombudsman, accompanied by the President of UNICEF Spain, Consuelo Crespo, for the presentation of the monographic report 'Internet and Television Programming and Contents, The Opinion of Minors on the Safeguarding of Their Rights'. Ombudsman Headquarters, November 5<sup>th</sup>.
- Second Deputy attended the plenary session and meeting of the executive committee of the National Commission for the Rationalization of Spanish Work Timetables. Ombudsman Headquarters, November 30<sup>th</sup>.

#### Dissemination and Outreach

- Visit with a delegation from the Madrid Professional Taxi Federation, headed by its President, Mariano Sánchez López, to present the Ombudsman with the book *Un Servicio Centenario (A Hundred Years of Service)*. Ombudsman Headquarters, January 12<sup>th</sup>.
- Visit with a group of students from the XII Master's Degree Program in Applied Political Studies, coordinated by the FILAPP. Ombudsman Headquarters, January 20<sup>th</sup>.
- Ombudsman and Second Deputy participated in the sessions of the seminar 'Fundamental Rights in the European Union from the Standpoint of the EU Signing the Rome Convention', organized by the Spanish Presidency of the EU Council and the European Agency for Fundamental Rights (FRA). Madrid, February 2-3.
- Visit with students taking part in the 8<sup>th</sup> Course for Parliamentary Advisors organized by the Congress of Deputies. Ombudsman Headquarters, February 3<sup>rd</sup>.
- Visit with several members of the Association of Iberia Veterans and Air Industry Professionals. Ombudsman Headquarters. February 3<sup>rd</sup>.
- Conference and colloquium on 'The Ombudsman in Spain Today', organized by the Athenaeum Society of Malaga. Malaga, February 12<sup>th</sup>.
- Conference on 'Immigration from the Ombudsman's Viewpoint', organized by the Moroccan 'El Mediterráneo' Association. Club Diario de Ibiza, Eivissa (Balearic Islands), February 25<sup>th</sup>.
- Meeting of the Ombudsman with the Generation of 78 Forum. Casino de Madrid, March 3<sup>rd</sup>.
- Visit with the graduating class of the personnel of the parliamentary groups who were doing their practice work at the Congress of Deputies. Ombudsman Headquarters. March 4<sup>th</sup>.
- Visit with students from the Law Practice School of the Biscay Bar Association. Ombudsman Headquarters, March 4<sup>th</sup>.

- Visit with students from the Political and Constitutional Studies Center. Ombudsman Headquarters, March 10<sup>th</sup>.
- Ombudsman Conference 'The Defense and Social Safeguarding of the Excluded Sectors of Immigrants in Spain' in the Master's Degree Program on Immigration and Social Exclusion organized by Sociology Department III (Social Trends), of the School of Political Science and Sociology of the National Distance Education University (UNED). Madrid, March 12<sup>th</sup>.
- Conference by the Second Deputy at the V University Conference on Juvenile Violence organized by the Federation of Catholic Scouts of Castile-La Mancha. Albacete, March 15<sup>th</sup>.
- Opening Address of the Conference for the Study of Support for Municipalities organized by the Public Defender of Castile and Leon under the title of 'Collaboration and Support by the Provincial Governments with the Municipal Governments in Urban Planning and Environment'. Leon, March 16<sup>th</sup>.
- Visit with a group from the 'Ciudad Pegaso' Cultural Center in Madrid. Ombudsman Headquarters, March 16<sup>th</sup> and December 1<sup>st</sup>.
- Speech-colloquium by the Ombudsman at the XXI Forum on 'Human Rights in the 21<sup>st</sup> Century'. Hotel Iruña. Pamplona, March 22<sup>nd</sup>.
- Speech by the Ombudsman at the International Club of Corporate Attorneys, titled 'The Ombudsman. Past and Present'. José Ortega y Gasset Foundation. Madrid, March 23<sup>rd</sup>.
- Visit with a group of students from the Master's Degree Program in Administration and Management from the National Institute of Public Administration. Ombudsman Headquarters, April 13<sup>th</sup>.
- Visit with a group from the Cultural Activities Division of the District of Arganzuela, Madrid. Ombudsman Headquarters, April 20<sup>th</sup>.
- Lecture by Ombudsman. 'Human Rights in the 21<sup>st</sup> Century', as part of the lecture series within the framework of the Law practicum, organized by the University School of Financial Studies (CUNEF). Madrid, April 20<sup>th</sup>.
- Participation of the Ombudsman in the presentation of the book 'La dignidad de los macrovíctimas transforma la justicia y la convivencia' by Antonio Beristain Ipiña. Royal Academy of Jurisprudence and Legislation. Madrid, April 21<sup>st</sup>.
- Visit with several groups from the Atenea Cultural Association of Madrid. Ombudsman Headquarters, April 21<sup>st</sup> and 29<sup>th</sup> and May 4<sup>th</sup> and 13<sup>th</sup>.
- Visit with a group from the Julio Cortázar Cultural Center of Madrid. Ombudsman Headquarters, April 22<sup>nd</sup>.
- Lecture by First Deputy 'Ombudsman and Immigration' at the IX Conference on Human Rights and Immigration organized by the National Distance Learning University and the Judges for Democracy Association. Motril (Granada), April 23<sup>rd</sup>.
- Visit with a group of people from the 'Martes al Sol' Cultural Association. Ombudsman Headquarters, May 4<sup>th</sup>.
- Participation of the Ombudsman in the open meeting organized by the National Pharmaceutical Center as one of the events commemorating their 100<sup>th</sup> anniversary, with the lecture 'The Ombudsman and Pharmaceutical Care'. National Royal Academy of Pharmacy. Madrid, May 5<sup>th</sup>.
- Participation of the Second Deputy in the state students' meeting 'Connecting Worlds', in its 'Swallow's Dreams' edition organized by Intermón Oxfam at the Autonomous University of Madrid. Tres Cantos (Madrid), May 12<sup>th</sup>.
- Visit with a group from the Concharte Association. Ombudsman Headquarters, May 19<sup>th</sup>.
- Visit with students of the Master's Degree in Parliamentary Law, Elections and Legislative Studies Program of the Complutense University of Madrid. Ombudsman Headquarters, May 20<sup>th</sup>.
- Visit with a group of pensioners from the Navy Social Services Institute. Ombudsman Headquarters, May 27<sup>th</sup>.
- Participation of the Secretary General of the II DINTEL Meeting of the Public Sector with the lecture 'ICT Sustainability in e-Administration'. Santander, June 7<sup>th</sup>-8<sup>th</sup>.
- Visit with a group of students from the Comillas Pontifical University of Madrid- ICADE. Ombudsman Headquarters, June 8<sup>th</sup>.
- Participation of the Second Deputy in the Master's Degree Program in Needs and Rights of Early Childhood and Adolescence. 2009-2010 Academic year, with the lecture 'Independent Institutions for Safeguarding and Defending Children's Rights. The Ombudsman and the Juvenile Defender'. Organized by the Autonomous University of Madrid. Tres Cantos (Madrid), June 11<sup>th</sup>.
- Visit with students from the Law School of DePaul University in Chicago organized by the Comillas Pontifical University of Madrid-ICADE. Ombudsman Headquarters, June 28<sup>th</sup>.
- Participation and closing address on the part of the acting Ombudsman of the Seminar on '25 Years of Alien Affairs Laws (1985-2010). Learning for the Future', organized by the International Menéndez Pelayo University. Santander, August 16<sup>th</sup> and 20<sup>th</sup>.
- Participation of the Second Deputy in the Conference on following up on the implementation of the Convention on Children's Rights in Spain: the findings of the 2010 Children's Rights Committee in Spain, with the lecture 'The



IV Free Legal Aid Conference

Role of Ombudsman's Offices as Guarantors'. Madrid, October 14<sup>th</sup>.

- Visit of persons from the Chamartin District Senior Citizen's Center. Ombudsman Headquarters, October 19<sup>th</sup>.
- Participation in the Conference 'E-Administration and Citizens', organized by the Castile-La Mancha Ombudsman and the Ministry of the Presidency and Public Administrations of Castile-La Mancha. Toledo, October 20<sup>th</sup>.
- Visit with a group of young civil service employees from the High Council of State of the Netherlands. Ombudsman Headquarters, October 21<sup>st</sup>.
- Visit with a group of students from the Leadership School, supported by the Ibero-American Program for Institutional Strengthening of the Botín Foundation. Ombudsman Headquarters, October 22<sup>nd</sup>.
- IV Free Legal Aid Conference organized by Spain's General Council of Attorneys. The acting Ombudsman took part as a presenter on the round table discussion held under the title of 'Court-Appointed Attorneys and Free Justice: Social Dimension'. Pamplona, November 17<sup>th</sup>.
- IV Trans-Pyrenean Foreign Borders organized by the Bar Association of Tarragona. Participation by the acting Ombudsman in the round table discussion 'The Agreements for Community Readmission and the Legal Aid of Persons to be Readmitted. Analysis of Supplementary Provision 6 of the new Alien Affairs Act 2/2009 and measures taken by Spain's Office of the Ombudsman'. Tarragona, November 19<sup>th</sup>.
- Second Deputy attended the opening ceremony of the Conference 'HIV and Stigma in Europe' organized by the Triangle Foundation and the European Parliament Office in Spain. Madrid, November 26<sup>th</sup>.
- Visit with students of the Master's Degree in Political and Corporate Communications Program of the University of Navarre. Ombudsman Headquarters, November 30<sup>th</sup>.
- Participation by the Second Deputy in a colloquium on juvenile centers at the Official Association of Political Experts and Sociologists of Madrid. Madrid, December 2<sup>nd</sup>.
- Participation by the acting Secretary General in the Round Table opening the first Forum 'Racism, Living Together in Peace and Xenophobia' organized by the Movement Against Intolerance. Madrid, December 9<sup>th</sup>.
- Participation by the acting Ombudsman in the Reading of the Universal Declaration of Human Rights organized by the Federation of Associations for the Defense and Promotion of Human Rights. 'Casa de America', Madrid, December 10<sup>th</sup>.
- Lecture by the acting Secretary General at the Center for the Promotion of the Division of Training and Enhancement of the National Police Force, titled 'Police Activity Assessed from the Ombudsman'. Madrid, December 10<sup>th</sup>.

### Educational Advancement

- Seminar 'Democratic Values in the Educational Process' organized by the Ombudsman in collaboration with the Valsain Foundation with the participation of the Fermán



The acting Ombudsman, the Deputy Ombudsman and the Chancellor of the University of Alcalá with the students of the VII Master's Degree Course on International Human Rights Protection offered at the University of Alcalá

Sánchez Ruipérez Foundation. Ombudsman Headquarters. May 5-6.

- 2010 Summer Courses of the General Foundation of the Complutense University of Madrid. Course headed by the Ombudsman on 'Water in Urban and Regional Planning'. The Public Administrations Regarding Planning and Pollution'. The acting Ombudsman presided the opening session of the Course. San Lorenzo de El Escorial (Madrid, July 5-9.
- Official Inauguration of the VII Master's Degree Program in International Protection of Human Rights: Participation of the acting Ombudsman with the lecture 'The Ombudsman, a Spanish Institution for the Safeguarding of Fundamental Rights'. University of Alcalá Law School (Madrid), November 11<sup>th</sup>. This Institution also took responsibility for a module for this Master's Program.

### International activity

The Ombudsman's international activity has been remarkably increased within the overall context of expansion and globalization of the relations among the different countries and institutions. Thus, some fields of activity have progressively consolidated, such as that referred to the plans for collaboration sponsored by the European Union for twinning with institutions working on the defense of the rights in some candidate States or within our neighboring countries. In 2010, the twinning project has continued being carried out with the Human Rights Ombudsman of Armenia, and steps have been taken to begin a new twinning project with the Ombudsman Institution of the Former Yugoslavian Republic of Macedonia during the first quarter of 2011.

Also within the realm of collaboration with the United Nations and with the Council of Europe, the activities have been intensifying quantitatively and qualitatively. The Ombudsman having taken on the role of National Prevention Mechanism Against Torture and Other Cruel and Degrading Treatment in 2009, in compliance with that which is set forth under the Supplementary Protocol to the respective United Nations Convention, has undoubtedly been the reason for a good part of this increase in activities of interacting with the international bodies. Specifically, this Institution

has taken part in different meetings with specialists from National Prevention Mechanisms organized by the Council of Europe with the funding of the European Union within the framework of the European NPM Project Peer to Peer.

Special mention must also be made of this Institution's growing participation, as an independent party, in the acts of Spain appearing before the different United Nations bodies which are working on human rights. In 2010, Spain completed the Universal Periodic Review process before the U.N. Human Rights Council, the Council having included in its findings several references to the comments provided by the Ombudsman in its capacity as the Spanish institution for the protection and promotion of human rights.

The interaction with our fellow institutions in other countries, coordinated thanks to the collaboration of the Office of the United Nations High Commissioner for Human Rights (OHCHR), also facilitates the work and sharing of views with the different United Nations and Council of Europe bodies for the purpose of taking part in the projects for preparing international initiatives within the specific scope of human rights.

Apart from the above, it is continuing collaborating in sharing experiences and the timely notification of complaints and problems with the Ombudsmen of the European region within the framework of the European Network of Ombudsmen.

In 2010, the respective congress and assemblies of the Ibero-American Federation of Ombudsmen and of the Association of Mediterranean Ombudsmen. The AMO assembly was organized by Spain's Ombudsman at the headquarters of Casa Árabe in Madrid and was attended by representatives from 27 countries from throughout the Mediterranean Basin.

### International Events

- Attended the international colloquium 'The Rights of Mankind Today: Universal Principles and Regional Guarantees', organized by the Ombudsman of the Republic of France in collaboration with the Pantheon-Assas University and John Hopkins University in Washington. Paris (France), February 1<sup>st</sup>.
- First Deputy participated in the 54<sup>th</sup> Session of the United Nations Commission on the Current Status of Women. New York (USA), March 8-12.
- Attended the 23<sup>rd</sup> meeting of the International Coordinating Committee for the National Institutions for the Promotion and Protection of Human Rights (ICC). Palace of Nations, Geneva (Switzerland), March 23-25.
- Appearance before Parliament of the national Ombudsmen of Spain, France, Austria and Denmark in the Palace of Monaco for the purpose of setting out an independent national human rights organization in this Principality. Montecarlo (Monaco), April 23<sup>rd</sup>.

- Attended the 'Legal Colloquium on the International Human Rights Treaties and the Promotion and Protection of the Human Rights of the Migrant Domestic Workers in the European Union' organized by the Regional European Office of the HCHR. Brussels (Belgium), May 25-26.
- 2010 VII Seminar of Liaison Officials organized by the European Ombudsman (European Network of Ombudsmen). Strasbourg (France), June 7-8.
- First Deputy participated in the workshop 'The Role of NPM's for Preventing Police Action Abuse' organized by the Council of Europe Tirana (Albania), June 9-10.



Members of the SPT and Council of Europe visited this Institution following its having begun its NPM work in order to conduct an *in situ* training exercise

- Ombudsman attended, representing the Spanish State, the investiture of the President of the Philippines, Benigno Aquino. The Ombudsman also took part in the ceremonies scheduled commemorating Spain-Philippine Friendship Day held on July 2<sup>nd</sup>. Manila (Philippines), June 30<sup>th</sup>.
- Participation in the seminar 'Current Situation and Challenges of the National Human Rights Institutions' with the panel discussion 'How Far We've Come: Good Practices and Pending Issues', financed by the Spanish Agency for International Development Cooperation as part of the Regional Program for Supporting Ombudsman Offices in Ibero-America of the University of Alcalá (PRADPI). Montevideo (Uruguay), September 13-15.
- Universal Periodic Review of Spain before the United Nations Human Rights Council. Final session. Second Deputy, Manuel Ángel Aguilar took part, explaining some of the contributions made by the Ombudsman to Spain's Universal Periodic Review process and to the enhancement of the programs for implementing and developing the fundamental rights and liberties in Spain. United Nations Building, Geneva (Switzerland), September 21<sup>st</sup>.
- International Conference on 'The Role and Impact of the Ombudsman in Increasing the Protection of Human Rights' organized by the Public Defender of Georgia. The acting Ombudsman took part with the lecture 'The New Ombudsman: The Challenges for the Future'. Tbilisi (Georgia), September 23-24.

- The acting Ombudsman appeared before the Constitutional Law, Legislation and General Administration Commission of the National Assembly of the French Republic to report on the role and authorities of Spain's Ombudsman Institution in view of the impending approval in France of a new Ombudsman institution. National Assembly. Paris (France), October 5<sup>th</sup>.
- Second Deputy attended the 10<sup>th</sup> International National Human Rights Institutions Conference organized by the International Coordinating Committee for National Institutions for the promotion and protection of Human Rights (ICC). Edinburg (Scotland), October 8-10.
- The acting Ombudsman attended the Forum on the Universality of Human Rights organized by the Council of Europe. Oslo (Norway), October 20-22.
- XV Congress and General Assembly of the Ibero-American Federation of Ombudsmen (IFO) organized by the Ombudsman of Colombia and presided by the Ombudsman of Peru and the President of the IFO. Cartagena de Indias (Colombia), October 27-28. Attended by the acting Ombudsman and the Second Deputy. The Ombudsman moderated one of the round tables at the Congress, 'Citizen Security'. Matters dealt with included the rights of migrant workers, the protection of the victims of forced movement and the security-related aspects, and citizen protection and security for trafficking victims. Following the Assembly, the annual meeting of the Network of Women Public Defenders Offices of the IFO was held, the topics discussed having included citizen security and women's rights. Cities safe for women.
- Participation of the acting Secretary General in the official opening of the International Conference for sharing experiences in legislative development organized by the National Human Rights Council of Egypt, with the collaboration of the Spanish Agency for International Development Cooperation. Cairo (Egypt), November 4<sup>th</sup>.
- Lecture given by the acting Ombudsman at the Spanish School in Paris in conjunction with the Ombudsman of the Republic of France under the titled 'The Ombudsman in Spain: the Public Defender'. Paris (France), December 9<sup>th</sup>.
- Visit with the Belgian Ambassador, Johans Winnen, accompanied by his Advisory Minister, François Dumont, to discuss impressions with the Ombudsman and Deputies regarding the Spanish Government's report for the universal periodic review of Spain before the United Nations Human Rights Council during its 8<sup>th</sup> period of meetings in Geneva. Ombudsman Headquarters, April 12<sup>th</sup>.
- The Children's Defenders of the Republic of France, Dominique Versini, accompanied by her general delegate, Hugues Feltesse, visited this Institution to learn of the Ombudsman's activity regarding the protection of minors, minors at reform centers, unaccompanied minors, social integration, etc. Ombudsman Headquarters, April 15<sup>th</sup>.
- Visit with the Human Rights Advisory Ministry of the Government of Honduras, Ana Alejandra Pineda, to explain the situation of human rights in Honduras and establish ties for collaboration. Ombudsman Headquarters, May 19<sup>th</sup>.
- Interview with Marco Enríquez-Ominami, the former candidate to the Chilean presidential elections and the former Socialist deputy for the Valparaiso Region, to learn of the organization and operation of this Institution. Ombudsman Headquarters, June 9<sup>th</sup>.
- Visit with the Ombudsman Bureau of Jordan, Abdelilah Al-JKurdi to deal with matters of mutual collaboration between these two offices. Ombudsman Headquarters, June 16<sup>th</sup>.
- Visit with a group of parliamentary ladies from Vietnam for the purpose of studying getting the gender violence law and the equality law in Spain under way. This visit was held within the framework of a study trip organized by the Joint Program on Gender Equality of UNIFEM Vietnam of the Multilateral MDGF Spanish Fund funded by Spain. Ombudsman Headquarters, June 28<sup>th</sup>.
- Meeting with the Chairman of the Commission of Constitutional Affairs, Justice and Parliamentary Regulation from Hungary, István Balsai, and a delegation from this Commission, accompanied by the Hungarian Ambassador in Spain, Edit Bucsi Szabo. There were informed concerning the operation and activities of this Institution, highlighting the aspects parallel to our fellow Hungarian institution. Ombudsman Headquarters, September 23<sup>rd</sup>.
- Visit of Miguel Ángel Borja Tovar, the Director General of the National Prevention Mechanism Against Torture of the Third General Visiting Office of the National Human Rights Commission of Mexico for the purpose of analyzing future collaboration with Spain's NPM. Ombudsman Headquarters, October 7<sup>th</sup>.
- Working visit of the Human Rights Defender of Guatemala. Ombudsman Headquarters, December 1<sup>st</sup>.
- Meeting with an official delegation from Vietnam on a travel trip to Spain within the December 13-17 time frame within the framework of the United Nations Program Government Joint Programme on Gender Equality for the purpose of learning of the experience in collaboration and

#### Visits and Official Acts

- Visit with the Ombudsman from the Island of Curaçao. Dutch Antilles. Alba María Teresa Martin. Ombudsman Headquarters, January 7<sup>th</sup>.
- Visit with a group of representatives from different Philippine entities promoting human rights and liberties promoted by the Carolina Foundation to familiarize themselves with this Institution and promote exchange measures. Ombudsman Headquarters, February 3<sup>rd</sup>.
- Visit with a delegation from the European Commission Against Racism and Intolerance (ECRI), accompanied by a representative from the Ministry of Foreign Affairs and Cooperation. Ombudsman Headquarters, March 25<sup>th</sup>.

developing of the gender equality policies in Spain. Ombudsman Headquarters, December 13<sup>th</sup>.

- Presentation of the Ambassador of the Arab Republic of Egypt, Ayman Zaineldine, accompanied by his adviser Noha Khedr. Ombudsman Headquarters, December 15<sup>th</sup>.
- Meeting with the Deputy and Chairman of the Defense Commission of the National Congress of the Republic of Argentina, Julio César Martínez, accompanied by the second secretary of the Argentine Embassy in Spain, Belén Bogado. Ombudsman Headquarters, December 16<sup>th</sup>.

### Cooperation

- First Meeting of Contact Persons of the European Mechanisms for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, organized by the Council of Europe. Padua (Italy), January 27-28.
- Visit with civil service officials, organized by the Congress of Deputies pertaining to the Parliaments from the Ibero-American countries, countries recently incorporated into the European Union and other houses of parliament with which the Congress maintains a close relationship. Ombudsman Headquarters, February 3<sup>rd</sup>.
- Study visit with a delegation of members of the Office of the Ombudsman of Georgia, headed by the Ombudsman, George Tugushi, which included a visit to the Madrid VI Prison Facility in Aranjuez. February 17-19.
- First Training Seminar of the Association of Mediterranean Ombudsmen (AMO) for civil service employees from the different institutions comprising the same, organized by the Diwan Al-Madhalim, which revolved around 'The Complaint Procedure: Study and Follow-up'. The Secretary General of the Ombudsman served as the coordinator of the Seminar and made the presentation of the 6<sup>th</sup> Session on 'New Technologies and New Ways of Communicating of the Ombudsman Institutions'. Rabat (Morocco), March 25-26.
- Working meeting with the Public Defender of Portugal regarding matters of interest to both institutions and mutual cooperation with a view to the intervention before international bodies of which they comprise part. Audience with the President of the Assembly. Palhava Palace. Lisbon (Portugal), April 8-9.
- First Deputy participated with the lecture *Mineurs Étrangers non accompagnés* (Unaccompanied Foreign Minors) at the working conference organized by the Association Al Khaima, National Institute of Social Action (INAS) and UNICER on measures carried out by the Ombudsman in relation to the situation of foreign minors in Spain. Tangiers (Morocco), April 13<sup>th</sup>.
- Meeting of the experts and advisors of this Institution who are collaborating on the cooperation-technical assistance

project of the Legislative Development Division of the National Human Rights Council of Egypt with those comprising said Division. Project supported and funded by the Spanish Agency for International Development Cooperation. Cairo (Egypt), April 14-15.

- Official visit of the Ombudsman to Morocco to hold technical exchange meetings. The Ombudsman met with different authorities responsible for the administration of Morocco and gave a presentation on 'The Role of the Ombudsman in establishing the grounds of Rule of Law'. Rabat-Casablanca (Morocco) – May 2.4.
- Assistance for the Meeting on 'The Role of the Complaint Divisions in Civil Service' organized jointly by the Egyptian Ministry of State for administrative development and the Government Center of the National Management Institute Cairo (Egypt), May 4.5.
- Visit with Armenian Human Rights Defender and a delegation for this Institution as part of the activities scheduled in the European Commission's twinning project for collaboration, fellowship and assistance signed by the Ombudsman of the Republic of France and Spain's Ombudsman on one hand and the and the human Rights Defender of the Republic of Armenia on the other. The meetings were held at the Ombudsman Headquarters, different advisers from this Institution taking part. The delegation was also accompanied to be received by other high State institutions. A working visit was included to the Alcalá Meco (Madrid I) prison facility, September 6-11, 2010.
- Visit with a group from the Prisoners Association of the Department of Antioquia (Colombia). Ombudsman Headquarters, September 28<sup>th</sup>.
- The acting Ombudsman attended the meeting of Heads and Contact Persons of the national torture prevention mechanisms with the Council of Europe. Strasbourg (France), December 1<sup>st</sup>.

### Agreements

The following agreements were signed in 2010:

- Working agreement between the Ombudsman and the General Foundation of the Complutense University of Madrid for the organization of the Course 'Water in Urban and Regional Planning: The Public Administrations Regarding Planning and Pollution'. Signed in Madrid, April 28<sup>th</sup>.
- Working agreement between Spain's Ombudsman and the Ombudsman of the Republic of France for determining the way of paying the expenses generated by organizing and holding the Annual Assembly of the Association of Mediterranean Ombudsmen. Signed in Madrid, June 14<sup>th</sup>.



EL DEFENSOR DEL PUEBLO