

# 2012



Annual Report  
Summary 2012







**Annual Report  
Summary**

**2012**



**DEFENSOR  
DEL PUEBLO**

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# Presentation

The report presented to Spanish Parliament is a rendering of accounts regarding all of the actions taken by this institution throughout 2012. Efforts have been made for this report to be presented immediately following the year end so as to provide a near-at-hand view and account of all that has been done which is closely in touch with the problems and the issues dealt with and to avail of the truest picture possible of the past year.

In late July 2012, Spanish Parliament appointed Soledad Becerril as the new head of the Ombudsman Institution along with her two deputies, Francisco Fernández Marugán as the First Deputy Ombudsman and Concepció Ferrer as the Second Deputy Ombudsman. Those of us newly elected to these positions most highly value the work done by our predecessors and, in many cases, have continued what they had been doing. We have logically also made some changes we found to be advisable in regard to the internal reorganization and the information which is provided to citizens so as to furnish them with fuller, faster information. The advancements in the field of new technologies have enabled us to provide faster responses and a greater deal of information on all the activities.

The 2012 report is comprised of a first volume summarizing all of the major actions, initiatives, complaints, suggestions, recommendations, ex officio investigations, reports and requests for appeals for protection of constitutional guarantees, along with a reference to the supervisory and inspection measures carried out in our capacity as a National Preventive Mechanism against Torture. In an effort to set out the different requests received from citizens as clearly as possible, an account is provided of the main complaints lodged individually and all those which, once received, have been combined together for study as a whole, as well as all the requests for the filing appeals for protection of constitutional guarantees.

The **recommendations** and **suggestions** put forth to the public administrations comprise one of our major endeavors, as we believe the mediating effort carried out by this Institution to be highly valuable for preventing, correcting, modifying or conciliating measures we consider advisable after listening to what citizens have to say. The Ombudsman is an institution which, although not vested with legislative or executive capacities, can be said to have the necessary authority to successfully convey to the executive and legislative branches of government the need of taking certain measures or drafting rules of law which the circumstances make advisable.

The second volume of this report includes the lists of cases processed and all the determinations put forth and is at the disposal of Spanish Parliament and the citizenry on the Ombudsman's website.

The report begins by setting out the Institution Budget, which was lowered as of 2010 and then cut back once again, by 4.5%, in July 2012, amounting to a total of 14,492,900 euros for the 2012 year. This budget streamlining effort, which seemed necessary given the vast majority of citizens having found their incomes to be dwindling, and the public administrations also having cut their budgets, has been possible on doing away with expendable budget items: cars, expense allowances, travel expenses and all sorts of amenities not essential to fulfilling the Institution's purposes. We believe that the principles of austerity and transparency must be a top priority for all government bodies, and as a result of the latter of these two principles, all of the information of an economic nature which has to do with this Institution will be made available to the citizenry this year.

The year 2012 has been a year marked by the economic crisis, as a result of which citizens have suffered not only loss of income but also dwindling employment and career-related prospects, in addition to finding services with which they had previously been provided to now have diminished. Spain's Budget Stability Law of September 27, 2011, stemming from the amendment of Article 135 of the Constitution for the purpose of reducing the government spending

deficit, has resulted in the provision of certain services having been partially reduced or eliminated completely.

Also, as a result of the constant rise in unemployment, families have encountered greater difficulties concerning meeting payment commitments they had undertaken some time ago. Added to these circumstances is the fact that most of the banking institutions have found themselves affected by the plummeting real-estate market, this being a risk they had not calculated well enough, many of these

banking institutions having required restructuring and provision of funds resulting in the decline in the amount of credit provided for companies and families.

Additionally, some financial institutions, mainly savings and loan Banks, have behaved absolutely reprehensibly regarding their customers and savings account holders. They have sold high-risk financial products termed "preferred shares" to people without properly informing them as to the complexity and risk of these investments. There are tens of thousands of people who, on wishing to withdraw their deposits, have found it impossible to do so due to the conditions they signed having differed greatly from what they had been led to believe. The so-called "preferred shares" were given no preference whatsoever when it came to these investors recouping their money.

In view of this situation, this Institution has taken up this issue with the Bank of Spain and Spain's National Securities Market Commission to request the financial institutions to be completely clear with regard to informing customers as to the risk involved in the different financial products by means of clear warnings, and that the cases of those individuals who have justifiably asked to withdraw their investments in institutions taken into administration now be analyzed on a one-by-one basis.

The situation of the families who have been confronted with eviction as a result of defaulting on their mortgage payments has given rise to a tremendous commotion among the citizenry. In January 2012, the Ombudsman Institution published a report titled "Economic Crisis and Mortgage Debtors: Measures and Suggestions from the Ombudsman", putting forth the serious problem of those owing sums in good faith who were unable to meet their payment obligations and whose debts were rapidly snowballing due to the late payment penalty interest charged.

The recommendations made to the government as well as to the Bank of Spain and the well-founded requests made from widely-varying sectors of society have led to it now being possible to halt the evictions resulting from foreclosures on a person's permanent residence for a full two-year period for those eligible as set forth under the regulations in force. A bill is currently being transacted through the Congress of Deputies for the purpose of regulating these situations quite differently, without dismissing the possibility of maintaining the general principle of the obligation of paying debts assumed.

All of these circumstances have been reflected to a major degree in the complaints and the requests citizens have put forth to the Ombudsman, as will be patent in the data and graphs provided. The figures provided in this report clearly reveal the economic strife citizens has been experiencing. They have also spurred this Institution to having addressed the public administrations many times requesting that they take action, that they fulfill the commitments undertaken or that they assist individuals and groups in dire situations.

The statement which the ETA terrorist group made on October 20, 2011 as to abandoning "armed combat", a euphemism employed by ETA for describing perpetrating attacks and committing extortion, is not conducive to our forgetting the victims and their families. Spanish society will always be indebted to them. It is not possible to redress the injuries and losses sustained, but we must at least try to help them get on with their lives as painlessly as possible. One of the recommendations which this Institution has therefore put forth to the Ministry of Justice is for the Ministry to provide the means necessary in order for the victims to be able to know the imprisonment status of those having committed the attacks in question, as well as being informed sufficiently in advance as to court proceedings being held. And also that the process of clarifying the hundreds of attacks as yet to be adjudged and bringing those who committed them to justice not falter. The memory of the victims must be a lasting one over the course of time for our society.

The reports which the Ombudsman has made throughout 2012, presented before Spanish Parliament and made available to the public have been born out of having detected irregular actions in some area, problems not diagnosed by other institutions or problems put forth by citizens which, in our judgment, have not been dealt with sufficiently. These reports, in conjunction with recommendations to different public administrations, have been as follows: "Economic Crisis and Mortgage Debtors: Measures and Suggestions from the Ombudsman" (January 25, 2012). "The Actual Current Real-Estate Situation in Spain: The Ombudsman's Viewpoint" (March 12, 2012) and "Human Trafficking in Spain: Invisible Victims" (September 20th).

Following a long process of analyzing and comparing data, the report on "Human Trafficking in Spain" affords the possibility of setting out an explanation regarding the networks which are trafficking with humans, mainly women, to be sexually exploited. The situations these women must live through are hardly bearable, and it is not easy to combat the networks that have them in their grip. The report and the recommendations put forth therein may have a hand in prosecuting this type of crime threatening "invisible victims".

The report on "The Current Real-Estate Situation" addresses the difficulties the Government and the property registry offices face regarding keeping this registry duly updated in keeping with the current economic-regional situation and readied to be accessible to serve the citizenry. The report ends with a great number of recommendations for mitigating problems detected in the property registry procedures and in the functioning of the offices and management procedures. Recommendations are also made for improving relations when dealing with citizens.

Defending human rights is one of the Ombudsman's main missions. The United Nations High Commissioner for Human Rights renewed the accreditation of Spain's National Ombudsman on December 2012 as the national institution for the defense of these rights. This responsibility requires close collaboration with international organizations and specifically human rights-oriented organizations. Thus, the situation of individuals deprived of liberty, immigrants and individuals requesting asylum are an aspect of constant concern in our work.

Additionally, the National Preventive Mechanism against Torture mission falling to this Institution means maintaining continual supervision over all types of penitentiary facilities, facilities



for the confinement of both Spanish citizens and foreign nationals in order to assure full compliance with national and international standards assuring decent conditions for the deprivation of liberty.

The Ombudsman is something more than simply an institution taking and conveying citizen complaints. The Ombudsman takes a strong interest in the underlying problems behind these complaints and sometimes tries to encouragingly convey possible solutions to the government agencies and at other times investigating why events which may be against the law in fact occur and putting forth the reasons why they have occurred. All public administrations are under the obligation of reasonably responding to the Ombudsman's requests, those who fail to do so deserving to be reported for defaulting on their obligations. Whenever something is requested or required of an institution, it is always because there is someone behind the request or demand in question, lodging a complaint or putting forth a possible violation of their rights.

What some writers are currently terming "the culture of complaint" is nothing new. In the well-known Spanish play "Life is a Dream", after listening to the servant Clarín, the elderly guard Clotaldo says: "Your complaint is too well-founded. I shall get you satisfaction." But this culture is much more deeply rooted in modern society today than in times gone by, especially in the democracies where citizens know their rights and demand full compliance with the rules of law protecting them.

This "culture" cannot lead to overlooking the duties which we are under the obligation of performing. Problems are not always "other people's doing", but rather we being the ones

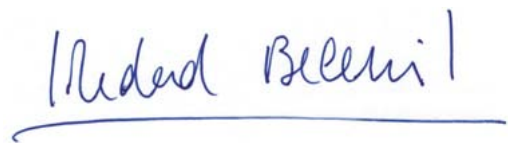
causing the problems ourselves. It is easier to resort to "I didn't do it" or "It's not my responsibility", above all, those of us who hold public office, of whom exemplary conduct is expected. We must have the willingness to do this, the willingness to do things well and to serve all of our citizens. That is what "civil service" really means.

Times as difficult as these due to the current economic circumstances, the high unemployment rates, the needs for welfare benefits, the efforts citizens are being asked to make to overcome the difficulties and get ourselves back to times of growth and well-being, require confidence in the public institutions, and these institutions must be capable of being worthy of that confidence.

Spain's transition and the efforts and sense of responsibility that we Spaniards were capable of demonstrating forty years ago to move from an authoritarian regime to a democracy cannot be allowed to fall by the wayside. The institutions of our democracy have to continue being the pillars of the Welfare State and the Constitutional State with which we gifted ourselves in the recent past and which has given rise to such great admiration.

The Ombudsman Institution, independent and not subject to pressures of any type, feels committed to its duty of being an exemplary institution serving all of Spain's citizens, regardless of their social standing, ethnic background, ideologies or creeds, thus contributing to the soundness of our democracy and watching over ensuring that this system functions properly.

Madrid - February 2013

A handwritten signature in blue ink, reading "Soledad Becerril", with a horizontal line underneath.

Soledad Becerril  
Ombudsman



## The Ombudsman is committed to mediating in a year marked by the crisis

- A total of 548 recommendations, suggestions and reminders of legal duties were put forth to the Administration.
- In a year marked by the crisis, the Ombudsman Institution focused a large part of its efforts on the economic and financial problems and budget cuts
- Numerous recommendations were made for mitigating the problem of evictions, and the actions taken regarding “preferred shares” gave rise to a study having been presented in March 2013.
- The Administration corrected over 70% of the measures questioned by the Ombudsman.

Madrid 2/27/2013. Last year, the Ombudsman's office processed 280,592 cases, among 33,478 complaints, 371 ex officio investigations and 246,743 requests for the filing of appeals for protection of constitutional rights.

In a year marked by the economic recession and budget cuts, this Institution received an extraordinary number of requests that appeals be filed for protection of constitutional rights against legal standards which the citizens believe to be violating their rights.

After thoroughly studying each one of these requests, this Institution found some of the rules of law questioned to sometimes be indicative not of problems of constitutionality but rather of ordinary legality. Thus, in order to improve the enforcement of some of these laws, the Ombudsman put forth numerous recommendations. This included cases such as that of the recommendation regarding the wage bonus for civil servants, the job seeker's allowance or the new healthcare legislation.

### 548 determinations put forth to the Administration

The number of determinations put forth to the Administration totaled one of the highest figures in the history of this Institution, having surpassed the 500 mark to total 548 in number, a figure slightly higher than that of 2011. A total of 193 of these 548 determinations were recommendations, 200 having been suggestions, 141 reminders of legal duties and 14 warnings.

These determinations and other actions taken by this Institution have served to correct more than 70% of the Administration's measures brought before the Ombudsman to be challenged.

### Uncooperative administrations

The government agencies are placed under the obligation by Article 19 of Organic Act 3/1981 of April 6<sup>th</sup> to furnish the Ombudsman with a reply regarding the information requested thereby for its investigations. However, this reply is not always immediately forthcoming and, in some cases is not even provided at all in the end, despite having been requested several times. In 2012, this was the case of some twenty government agencies.



*The 2012 Annual Report is presented to the President of the Congress of Deputies*

The municipal governments of Torredembarra, Langreo and Leganés, as well as the Complutense University and the Toledo Bar Association are worth of special mention, given that they have had an uncooperative attitude for years. These cases have been notified to the Attorney General's Office.

### Budget cuts

Over recent years (2009-2012), this Institution has seen its budget cut by 9.24% whilst it was simultaneously taking on yet further responsibilities, such as the National Preventive Mechanism against Torture or taking over the complaints of the no longer existing Ombudsmen Institution of the Autonomous Communities of Castile-La Mancha, Murcia and the Autonomous Community of Madrid's Ombudsman for Juvenile Protection.

In 2012, the budget dropped by 4.5% down to 14,492,900 euros and is anticipated to drop by yet another 3.2% this year, as resolved by Spanish Parliament.

## What are Spanish citizens complaining about?

The rise in the number of complaints and in the number of requests for appeals to be filed for protection of constitutional rights reflects the situation of a society feeling the brunt of an economic crisis which has led to cutbacks in all areas.

Thus, the complaints which citizens have lodged with this Institution in 2012 have continued to have to do mainly with the economic and financial problems once again this year. Mention must be made here also of the fact that citizens are becoming progressively more highly demanding of the government agencies and are also more highly aware of their rights.

In addition to the above, the different ways of contacting the Ombudsman's office are becoming progressively more readily accessible and are well-known. In 2012, a total of 70% of the complaints were sent in online (e-mail or web forms). This was the way also used the most for requesting that appeals be filed for the protection of constitutional rights. Citizens contacted us online in 99% of all cases.

## Economic administration

The citizens lodged a total of 4,974 complaints with the Ombudsman concerning economic matters (4,825 individual complaints and 149 combined complaints, in other words, different complaints signed individually but pursuing the same end purpose). A total of 41 ex officio investigations were also opened, and 42 requests for the filing of appeals were processed.

The main actions taken by this Institution concerning economic matters were **focused on bettering the protection of mortgage debtors and small-scale savers**.

Being concerned about the fact that many people are finding themselves in a situation of not being able to make their mortgage payments as a result of the economic crisis, the plummeting real-estate prices and unemployment, this Institution presented a monographic report at the first of the year titled **"Economic Crisis and Mortgage Debtors"**, including **20 recommendations for preventing evictions**.

Many of these measures were included by the Administration in several royal decrees. In this Institution's opinion, the actions taken have been a step in the right direction yet insufficient due to the limitations set forth for actually putting them into practice. Therefore, in November 2012, **further recommendations** were made. These recommendations included the advisability of setting out a legal definition of the term "good-faith debtor"; regulating the procedure for personal insolvency, insisting upon the broadening of situations in which the mortgage debt is cancelled by way of handing the mortgaged property back to the bank, establishing a prior act of reconciliation before initiating foreclosure, and reforming Royal Decree-Law 6/2012 of March 9<sup>th</sup> governing urgent measures for the protection of destitute debtors by broadening the scope of application thereof.

In 2012, the Ombudsman also investigated the **deficient degree of information furnished by the credit institutions** regarding mortgages or loans in foreign currency, or the fact that, after foreclosing on mortgages, some credit institutions to which part of the debt still continues to be owed seize of all of the money there is in their customers' accounts without respecting the unattachable basic amount of wages and pensions.

Citizen complaints concerning the insufficient degree of transparency on the part of the financial institutions were also a focal point of the work done by this Institution. Worthy of spe-

cial mention within this context are the numerous letters received regarding the retail sale of **preferred shares** and **subordinated debt** without duly informing small-scale savers. The Ombudsman's office opened an ex officio investigation before Spain's National Securities Market Commission and before the Office of Spain's Secretary State for Economic Affairs and Business Support, having put forth two recommendations for better enhancing the protection of the customers investing in financial products and for creating an effective mechanism for filing extrajudicial claims before government agencies.

This Institution is of the opinion that the Spanish National Securities Market Commission should have greater authority over protecting investors, and that measures should also be adopted with regard to compensating the damages sustained by investors. The Ombudsman has also conducted an ex officio investigation concerning setting up an arbitration for those affected by the preferred shares sold by Bankia. A report is soon to be made public concerning the actions taken regarding the preferred shares, in which yet further recommendations will be put forth.

## Healthcare, Social Policy and Housing

In 2012, a total of 6,743 complaints were processed (4,544 individual complaints and 2,199 combined complaints) on the subjects of healthcare and social policy. Thirty (30) ex officio investigations were also opened, a total of 530 requests (20 individual and 510 combined) for the filing of appeals for the protection of constitutional rights having been processed.

The **healthcare**-related complaints this Institution received in 2012 have to do with the reduced healthcare benefits, groups being excluded from public healthcare coverage, medicine payment, primary care emergency facilities being closed, insufficient healthcare personnel staffing, delays in payments to healthcare facility suppliers and pharmacy owners and the delays in approving entitlement in claims of an economic nature.

By fields of action, eight out of every ten complaints received have to do with specialized care, client and patient rights, primary care, pharmaceutical care and general public health issues.

Some citizens residing in Spain are still getting **free public health coverage** and have to pay for care when they access National Health System centers and services. This Institution is of the opinion that this situation is not congruent with the health funding system. Inasmuch as all citizens contribute to supporting public health spending according to their economic capacities by means of a tax system "inspired on the principles of equality and progressiveness", it seems obvious that everyone should have access to the services and benefits thus funded.

Numerous complaints were lodged throughout 2012 regarding the enforcement of Spain's Personal Autonomy and **Dependent Care** Law 39/2006 of December 14, 2006. Citizens brought up problems of delays in the degree of dependency being assessed and recognized, as well as with regard to the benefits or services through the respective personalized care program being determined and assigned.

Actions began being taken with several government agencies in late 2012 following complaints having been lodged in which citizens expressed their disagreement with the revision and reduction of the economic benefits for providing care for dependent individuals.

Especially distressing are the cases of **families in urgent need of housing**. Thus, complaints were lodged by families who, being in the situation of several of their members being

unemployed and after having been evicted, have found themselves forced to live in vehicles, if not out in the street, without any economic resources and with dependent children. This Institution accepted this type of complaints for processing and, in some cases, was successful in getting the government agencies to provide a solution for these families.

The government agencies usually allege the shortage of available public housing being too great to be able to meet the current growing demand. A major number of dwellings have been found to be in the hands of these agencies, which are being awarded.

Ex officio investigations were opened with the 17 Autonomous Communities and with the Autonomous Cities of Ceuta and Melilla, who have already provided replied to the requests made by this Institution. Information has also been requested from 10 Spanish municipalities with populations larger than 350,000 inhabitants.

A monographic report is being prepared based on the information collected and will soon be presented. This report is aimed at continuing to put forth suggestions which will help to mitigate the situation many people who have lost their homes as a result of the crisis are experiencing. In this Institution's opinion, many of the empty dwellings which are government-subsidized housing could be rented at low-cost rental rates.

Despite the **Basic Emancipation Income Support for young people** (RBE) having been eliminated for new applicants, although it still exists for those to whom it had already been granted, a number of complaints 73% higher than in 2011 were lodged. In their letters, citizens expressed their disagreement with this aid being eliminated and reported delays in the payment of this support. Independently of processing the individual complaints related to delayed payment, it was deemed fitting to open an ex officio investigation with the Directorate-General for Architecture, Housing and Land of the Ministry of Public Works to find out the causes which have been giving rise to delays in payment and the measures planned for correcting this situation.

## Security and Justice

In 2012, a total of 4,740 Security and Justice-related complaints were lodged, 3,423 of which were individual and 1,317 combined. A total of 81 ex officio investigations were additionally opened, 2,262 requests for the filing of appeals having been processed.

**Judicial delays** were the reason for 105 complaints. In the criminal jurisdiction, concern exists regarding the unjustified lengthiness of the investigative stage. In some cases, there is a risk of the precautionary measures actually meaning time in prison actually being served without having been sentenced for those who are found not guilty in the end. This Institution considers it necessary for changes to be made in the current criminal court case system with the utmost possible degree of consensus.

The problems of the **registries** being backlogged to a standstill continues to be a cause for complaint. Toward the end of 2012, this Institution received numerous letters from citizens stating how upset they were due to the fact that decisions were being made on the 2012 applications for citizenship before the decisions on those which had been filed prior to 2012. This Institution is investigating the current status of the applications for citizenship for the 2010-2012 period which are currently pending a decision.

In the case of the **"stolen babies"**, complaints are still being lodged by people who have filed a judicial or police complaint who want the Ombudsman to take an interest in the complaint processing procedure. All of these complaints are being processed.



*2012 Annual Report being submitted to the Senate Vice-President.*

In the **prison facility-related aspect**, visits were made to six prisons and to a hospital custodial unit. A total of 295 complaints from inmates are currently undergoing processing. Overcrowding continues to be a problem at Spain's prison facilities.

Concerning civic responsibility and public safety, this Institution has done its utmost to defend the rights of the **victims of terrorism**. The Ombudsman met with the main associations of the victims of terrorism and put forth recommendations to the Ministry of Justice in order for the victims of terrorism to be dealt with specifically in the Victims Statute.

In 2012, a total of 32 complaints were lodged for **alleged police abuse** and 58 complaints for improper treatment. On requesting information for the Directorate General of the Police concerning police actions, it has been found that, despite serious injuries having been found to have been sustained by demonstrators in some cases, and the use of force being patently excessive in others, very little effort has been devoted to determining the liabilities in which some police officers may have incurred.

## Employment, Education and Culture

Concerning employment, education and culture, a total of 12,932 complaints (3,172 individual complaints and 9,760 combined complaints) were lodged, 28 ex officio investigations being opened and 243,909 requests for the filing of appeals for the protection of constitutional rights (80 individual and 243,829 combined appeals) having been processed.

This is the area combining the largest number of requests for the filing of appeals for the protection of constitutional rights. Following the passage of Royal Decree-Law 20/2012 of July 13<sup>th</sup> governing measures for guaranteeing budget stability and promoting competitiveness, thousands of **civil servants and public employees** contacted this Institution to express their disagreement with the elimination of the **salary bonus**. This Institution decided against filing an appeal but recommended that the civil service personnel and public employees be paid that part of the salary bonus for the period worked prior to the publication of the Royal Decree-Law in question on considering this part to be due them for a period



of time already worked. This recommendation did not meet with acceptance.

In **education**, the budget cuts and restrictions as a result of the crisis affected the educational organizations and services. This Institution called for a revision of the criteria for the rationalization of public spending within the educational field. In the opinion of the Ombudsman, the future law regulating our educational system must involve both a wide-ranging consensus and the adequate funding provisions and measures so that the process of getting this agreement under way and subsequently carrying it out will be guaranteed.

## Environment and Urban Development

The complaints related to these matters totaled 2,336 cases (1,403 individual and 910 combined complaints). A total of 23 ex officio investigations were also opened.

Of special importance in 2012 is the **ex officio investigation concerning the Castellón Airport**, which has been officially opened but is however not being used. The Institution is carrying out this measure aimed at ascertaining aspects including by what date it could be operative, the difference between the cost budgeted and the actual cost of construction, the source of the funds (public and private) and the deviations between the airport master plan and the actual situation.

Another ex officio investigation worthy of special note is that of the **Metropol Parasol** investigation in Seville. Construction commenced in June 2005 with a budget of approximately 50 million euros. Having been officially opened to the public in March 2011, the costs were apparently much higher in the end. The Municipal Government has been requested to provide information on the final cost of building and commissioning the works and facilities, the ownership of the land, the difference between the initial budget and the actual cost at completion as well as the amount finally paid by way of public funds. To date, no reply has been provided.

Regarding **air pollution measurements**, suggestions were put forth for reducing road traffic so as to curtail episodes of high nitrogen dioxide (NO<sub>2</sub>) concentration which occur in Madrid under certain weather conditions. Some of these suggestions are being taken under consideration by Madrid's Municipal Government.

The largest number of environment-related investigations conducted had to do with **noise-related problems**. This Institution suggested a nationwide noise prevention campaign, this being a suggestion which met with the acceptance of the Ministry of Agriculture, Food and Environment and the Spanish Federation of Municipalities and Provinces (FEMP). This same organization also accepted some general recommendation on prevention and control of sources of noise pollution.

Concerning **urban development** issues, investigations were also opened as a result of complaints regarding the non-rational use of land, empty lots with vacant buildings and residential developments left uncompleted, empty apartments, insufficient street lighting, concrete structures, houses left half built and other situations of marked abandonment, as well as architectural barriers.

This Institution has carried out several interventions regarding **evictions and demolitions in marginal settlements**, some of which have been ex officio investigations ("Puerta de Hierro" and "El Gallinero" settlements in Madrid). In the Ombudsman's opinion, whilst urban development is at a standstill, the Muni-

cipal Government can temporarily postpone the demolitions without violating the law.

## Migrations and Equal Treatment

The problems regarding migrations and equal treatment gave rise to 1,814 cases (1,776 individual complaints and 38 ex officio investigations).

The number of **Spaniards having emigrated** rose in 2012. This gave rise to an increase in the complaints regarding consular assistance in European Union countries to which these Spaniards are moving.

Complaints were also lodged by **Spanish citizens who are inmates imprisoned in foreign prisons**. According to official data, at the end of the year, 2,460 Spanish citizens were inmates in prisons in other countries. Many of these complaints have to do with the request for these people to be transferred to Spanish prisons. It has been found that, once these transfers are approved, it takes a long time until the transfers are actually made. This is the reason why this Institution placed a request with the Interpol, through the Directorate-General of the Police, for information on the impediments preventing these transfers from being made expeditiously.

The Ombudsman and the First Deputy visited the **Temporary Immigrant Holding Center (CETI)** in Melilla. The First Deputy also visited the Temporary Immigrant Holding Center in Ceuta. They additionally inspected the "La Esperanza" **Juvenile Protection Facilities** in Ceuta, which was closed toward the end of 2012, the San José-Hadu Center, where the minors who were located at the "La Esperanza" Center were tentatively transferred, and the "Fuerte de la Purísima" Center in Melilla.

The recommendations made by the Ombudsman have entailed the modification of **Circular 1/2010** issued by the General Commissariat for Alien Affairs and Borders concerning **citizen identification**. This Institution is currently studying the possibility of requesting the competent agency to prepare a manual of good practices for the purpose of supervising police action in the processes of identifying citizens. The objective of this manual is to eradicate unnecessary, arbitrary and abusive practices.

The monographic report "**Human Trafficking in Spain: Invisible Victims**" was presented in 2012. This report includes the findings of 61 ex officio investigations and 32 complaint case procedures, as well as interviews with 59 victims.

## 52 visits as the National Preventive Mechanism against Torture

The Ombudsman conducted **52 visits** to places of deprivation of liberty in its capacity as the National Preventive Mechanism against Torture (NPM). A total of **12 of these visits were multi-disciplinary** (with teams comprised of people possessing legal training, with the assistance and cooperation of external technical experts specialized in medicine, psychiatry or psychology).

As an NPM, the Ombudsman put forth **118 recommendations, 79 suggestions and 8 reminders of legal duties**.

A detailed account of the work done by the NPM in 2012 will be set out in a specific report which will be submitted to Spanish Parliament and to the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (SPT)).



# Statistics and Management Report







# The Ombudsman put forth 548 recommendations and suggestions to the Administration

*The recommendations and suggestions put forth to the public administrations are one example of the Ombudsman's mediating efforts, as they correct, modify or conciliate measures which this Institution deems advisable after listening to what citizens have to say. In 2012, a total of 280,592 letters were received: 33,478 complaints, 371 ex officio investigations and 246,743 requests for the filing of appeals against 29 legal standards.*

The Ombudsman's Annual Report for the 2012 year includes a change involving redefining terminology. Thus, a distinction is now made among the different types of cases processed by referring to them either as complaints, ex officio investigations or requests for the filing of appeals for the protection of constitutional rights before the Constitutional Court.

The complaints and requests for the filing of appeals which are filed with this Institution are divided into two different categories: individual cases and combined cases. For the purpose of

procedural and numerical evaluation, the cases giving rise to requests for appeals or complaints which are alike are combined into what had been termed "group complaints" or directly "collective complaints" in earlier reports.

This new terminological approach has also aided toward more clearly dealing with the data for 2012, which has been marked greatly by an extremely large number of requests having been received for filing appeals for protection of constitutional rights before the Constitutional Court.

## Cases of complaint, ex officio investigation and requests for the filing of appeals of unconstitutionality or for protection of constitutional rights

Last year, this Institution processed a total of 280,592 cases: 33,478 complaints, 371 ex officio investigations and 246,743 requests for the filing of appeals.

In turn, both the complaints and the requests for appeal before the Constitutional Court are divided into those processed individually and those processed combined with one another.

**TABLE 1**

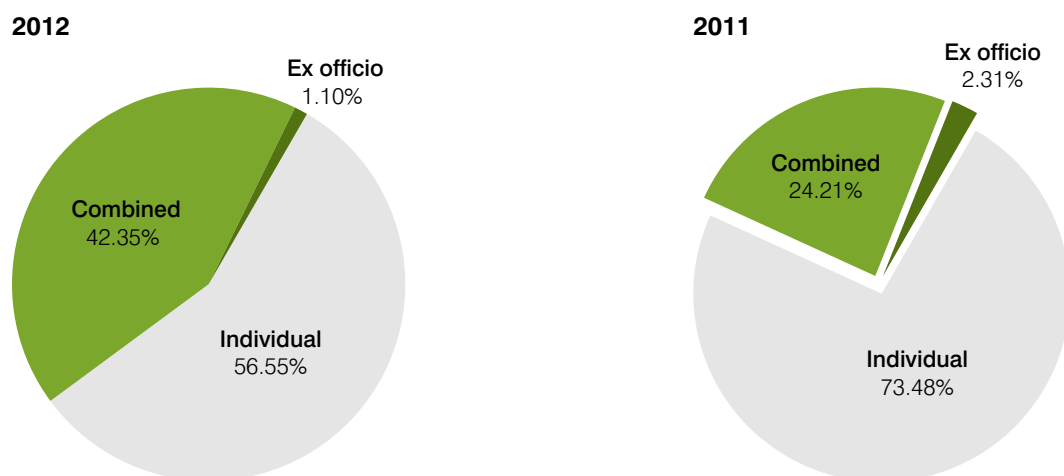
Number of cases of complaints, ex officio investigations and request for appeal opened in 2012 in comparison to 2011.

CASES		2012	2011
Complaints	Individual	19.143	16.112
	(*) Combined	14.335	5.308
	Total	33.478	21.420
Ex officio investigations		371	506
	Total	371	506
Requests for appeal	Individual	158	241
	(*) Combined	246.585	2.214
	Total	246.743	2.455
Overall Total		280.592	24.381

(\*) Complaints and requests for appeal concerning same subject or purpose combined together for processing

**FIG 1**

Breakdown of percentages of cases of complaints, ex officio investigations and requests for appeal opened during 2012 in comparison to 2011



## ■ Breakdown of cases of complaints and requests for appeal

### By channel through which lodged

Citizens sent their letters to the Ombudsman by using all means of communication. The following tables detail how these letters were received through the different channels (i.e. post, fax, e-mail, using the Ombudsman's web platform, or in

person. In 2012, for the purpose of providing all those having contacted this Institution with a due response, work has begun on designing a new individualized response protocol likewise based on the widest-ranging use of the electronic media.

**TABLE 2**

Number of complaints according to the way in which received in 2012 in comparison to 2011

CHANNEL THROUGH WHICH THE COMPLAINTS WERE RECEIVED	2012		2011	
	Number	%	Number	%
Post	8,006	23.91	5,973	27.89
Fax	554	1.65	542	2.53
E-mail	2,817	8.41	1,660	7.75
In person	1,601	4.78	1,177	5.49
Web Form	20,500	61.23	12,068	56.34
Total	33,478	100.00	21,420	100.00

**TABLE 3**

Number of requests for appeals to be filed before the Constitutional Court according to the way in which received in 2012 in comparison to 2011

CHANNEL THROUGH WHICH REQUEST FOR APPEAL WERE RECEIVED	2012		2011	
	Number	%	Number	%
Post	654	0.27	182	7.41
Fax	57	0.02	43	1.75
E-mail	1,474	0.60	96	3.91
In person	44	0.02	20	0.81
Web Form	244,514	99.10	2,114	86.11
Total	246,743	100.00	2,455	100.00

## By channel through which referred

The vast majority of complaints and requests are lodged with the Ombudsman directly. The following tables are indicative of this situation in addition to stating the number of

cases referred from the autonomous community parliament commissioners and from other public administrations or institutions.

**TABLE 4**

Source of the complaints according to the channels through which referred in 2012

COMPLAINT REFERRAL	Number	%
Lodged directly by citizens	30,906	92.32
By autonomous community parliament commissioners	2,525	7.54
By different public administrations and institutions	47	0.14
Total	33,478	100.00

**TABLE 5**

Source of the requests for filing of an appeal before the Constitutional Court according to the channels through which referred in 2012

REFERRAL OF REQUESTS FOR APPEAL	Number	%
Lodged directly by citizens	246,197	99.78
By autonomous community parliament commissioners	546	0.22
Total	246,743	100.00

The following tables detail the number of cases of complaints and requests for appeal referred by the different Autonomous Community ombudsmen, as well as those referred by other government institutions and agencies. With regard to the Autonomous Community commissioners, special mention must

be made of the fact that the cases from the office of the now inexistent Castile-La Mancha Ombudsman (389), the initial processing of which was undertaken by the Parliament of said Autonomous Community for subsequent referral to this Institution for processing, have also been included.

**TABLE 6**

Cases of complaints received from Autonomous Community Parliament commissioners in 2012 in comparison to 2011

SOURCE	Number		%	
	2012	2011	2012	2011
Ararteko (Ombudsman/Basque Country)	89	112	3.52	4.11
Síndic de Greuges de Catalunya (Ombudsman/Catalonia)	426	257	16.87	9.43
Valedor do Pobo (Ombudsman/Galicia)	105	147	4.16	5.39
Defensor del Pueblo Andaluz (Ombudsman/Andalusia)	468	389	18.53	14.27
Procuradora General del Principado de Asturias (Ombudsman/Asturias)	23	28	0.91	1.03
Síndic de Greuges de la Comunitat Valenciana (Ombudsman/Valencia)	241	825	9.54	30.26
Justicia de Aragón (Ombudsman/Aragon)	192	195	7.60	7.15
Defensor del Pueblo de Castilla-La Mancha (Ombudsman/Castile-La Mancha)	389	68	15.41	2.49
Defensora del Pueblo Riojano (Ombudsman/La Rioja)	41	56	1.62	2.05
Diputado del Común (Ombudsman/Canary Islands)	171	184	6.77	6.75
Defensor del Pueblo de Navarra (Ombudsman/Navarre)	108	71	4.28	2.60
Defensor del Pueblo de la Región de Murcia (Ombudsman/Murcia)	100	110	3.96	4.04
Procurador del Común de Castilla y León (Ombudsman/Castile and Leon)	172	284	6.81	10.42
Total	2,525	2,726	100.00	100.00

**TABLE 7**

Cases of request for filing of appeal before the Constitutional Court received from autonomous community parliament commissioners in 2012 compared to 2011

SOURCE	Number		%	
	2012	2011	2012	2011
Ararteko (Ombudsman/Basque Country)	12	8	2.20	7.92
Síndic de Greuges de Catalunya (Ombudsman/Catalonia)	42		7.69	0.00
Valedor do Pobo (Ombudsman/Galicia)	5	1	0.92	0.99
Defensor del Pueblo Andaluz (Ombudsman/Andalusia)	62	2	11.36	1.98
Procuradora General del Principado de Asturias (Ombudsman/Asturias)			0.00	0.00
Síndic de Greuges de la Comunitat Valenciana (Ombudsman/Valencia)	38	5	6.96	4.95
Justicia de Aragón (Ombudsman/Aragon)	4	16	0.73	15.84
Defensor del Pueblo de Castilla-La Mancha (Ombudsman/Castile-La Mancha)			0.00	0.00
Defensora del Pueblo Riojano (Ombudsman/La Rioja)		2	0.00	1.98
Diputado del Común (Ombudsman/Canary Islands)	1	3	0.18	2.97
Defensor del Pueblo de Navarra (Ombudsman/Navarre)	380	2	69.60	1.98
Defensor del Pueblo de la Región de Murcia (Ombudsman/Murcia)	2	56	0.37	55.45
Procurador del Común de Castilla y León (Ombudsman/Castile and Leon)		6	0.00	5.94
Total	546	101	100.00	100.00

**TABLE 8**

Cases of complaints from different government agencies and institutions in 2012 in comparison to 2011

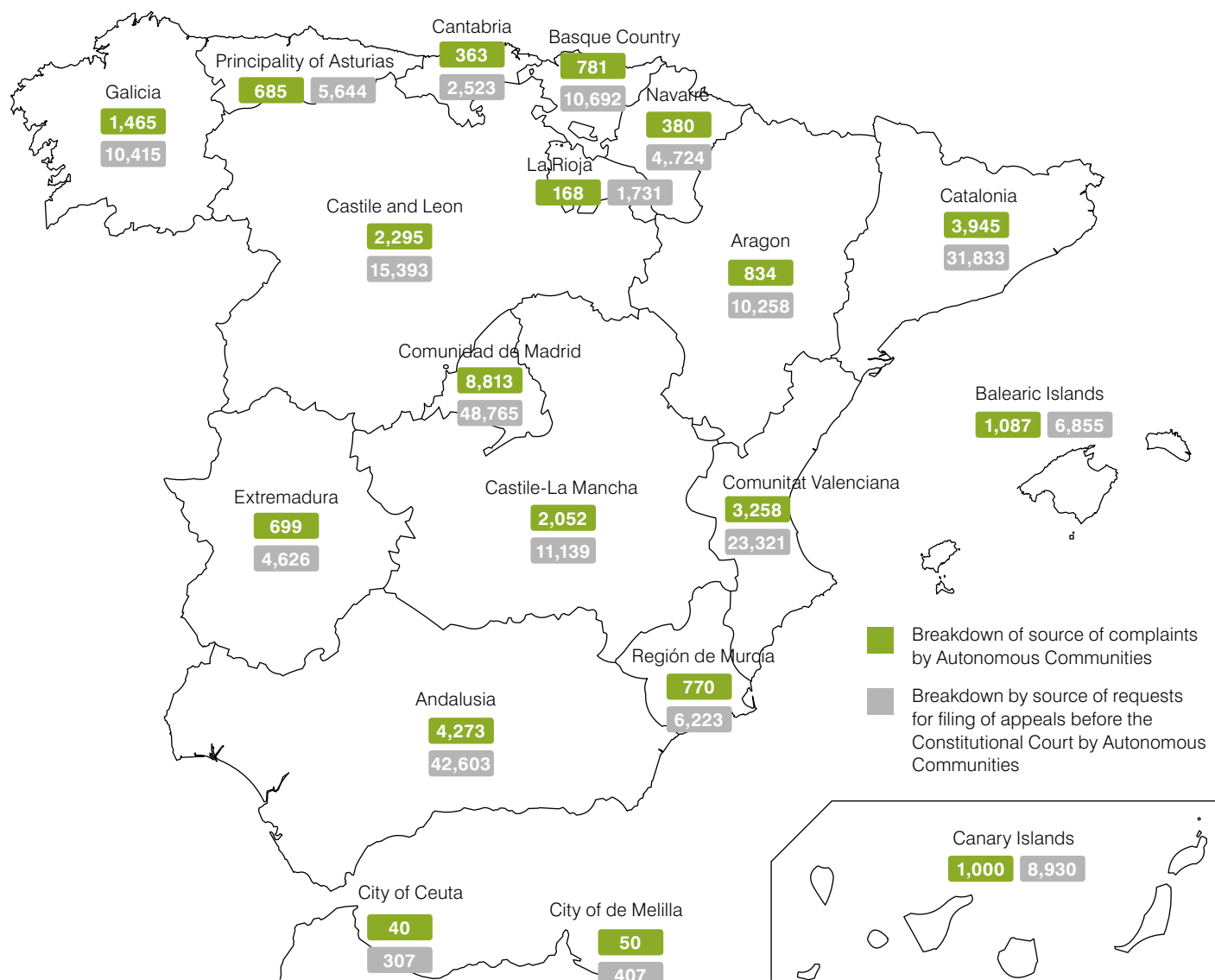
SOURCE	Number		%	
	2012	2011	2012	2011
Spanish Parliament	45	2	95.74	11.11
Autonomous Community Agencies		3		16.67
Municipal ombudsmen	1		2.13	
Foreign ombudsmen	1	13	2.13	72.22
Total	47	18	100.00	100.00

## By geographical location of source

The demographic factor has a major bearing on the numerical results in this geographical breakdown of the cases, the most highly-populated Autonomous Communities being those having sent more letters to the Ombudsman.

**FIG 2**

Breakdown of source of complaints and requests by Autonomous Communities. 2012.



## ■ Classification of cases by fields of government activity

The table below provides the classification by subject matter of the cases opened in 2012. A classification made in keeping with the general criteria for assigning subject matter among this Institution's services and divisions.

For purposes of data processing and comparing data to that of previous years, special mention must be made here as to the fact that the current Ombudsman has reorganized the complaint processing divisions which has also entailed newly assigning case issue subject matter among all of these divisions. In the current configuration, the six divisions processing cases are as follows: Security and Justice Division, Migration and Equal Treatment Division, Economy and Finance Division, Employment Division, Education and Culture Division, Health and Social Policy Division and Environment and Urban Development Division.

On the other hand, the activity data related to the National Preventive Mechanism against Torture Unit are, by nature, numerically different. This Unit does not directly process the complaints of citizens in keeping with its essential objectives of preventing irregularities. The actions this Unit takes are actions revolving around the supervision and in situ inspection of the centers and facilities where individuals detained or imprisoned reside and are quantified as ex officio investigations (130).

The largest part of the requests for the filing of appeals before the Constitutional Court have been processed by the Employment, Education and Culture Division (243,829 combined cases and 80 individual cases), regarding the requests for an appeal to be filed against Royal Decree-Law 201/2012, focused mainly on the elimination of the salary bonus of civil service personnel and public employees for the year 2012.

**TABLE 9**  
Cases. Breakdown by processing divisions and sectors. 2012.

DIVISIONS AND SECTORS	Complaints		Ex-officio	Requests for appeal		Total
	Individual	Combined		Individual	Combined	
SECURITY & JUSTICE						
Justice Administration	1,285	1,247	26	6	2,246	4,810
Public and highway safety	932	3	4			939
Prison administration	476		37			513
Interior	390	67	14			471
Under study (on Dec 31st.)	223			10		233
Crime victims	49					49
Right of association, electoral system and statistics	42					42
Notaries public	13					13
Defense	7					7
Central Register of Convicted Offenders and Fugitives	6					6
Total	3,423	1,317	81	16	2,246	7,083
MIGRATIONS & EQUAL TREATMENT						
Alien affairs and immigration	905		35			940
Civil and De Facto Relationships Registry	545					545
Foreign affairs	76					76
Racism and xenophobia	75		1			76
Under study (on Dec 31 <sup>st</sup> )	72					72
Spanish citizens imprisoned abroad	37		2			39
Equal treatment	24					24
Emigration	23					23

**TABLE 9 (CONT.)**

Cases. Breakdown by processing divisions and sectors. 2012.

DIVISIONS AND SECTORS	Complaints		Ex-officio	Requests for appeal		Total
	Individual	Combined		Individual	Combined	
Religious freedom	14					14
Juveniles and families	5					5
Total	1,776		38			1,814

**ECONOMY AND FINANCE**

Economic planning	2,137		9	5		2,151
Revenue and taxation	1,073		3	35		1,111
Telecommunications and postal services	676		24			700
Infrastructures and transport	492		4			496
Industry, energy and trade	365		1			366
Agriculture, stockbreeding and fishing	24	149				173
Under study (on Dec. 31st.)	53			2		55
Property registry	5					5
Total	4,825	149	41	42		5,057

**EMPLOYMENT, EDUCATION AND CULTURE**

Civil Service Personnel, Contract and Statutory Employees of the Central Government, Social Security System, Autonomous Communities and Municipal Governments	984	8,238	1	43	243,829	253,095
Education	879	133	23	14		1,049
Media	116	717				833
Employment and Social Security	250	464		19		733
Under study (on Dec 31st.)	417			1		418
Armed Forces and Law Enforcement Personnel	169	208	3			380
Other subjects	164			1		165
Data protection and intellectual property	82		1	2		85
Culture and sports	57					57
Judges, Magistrates, Public Prosecutors and personnel employed by the Justice Administration and Prison Institutions	47					47
Administrative procedure, pecuniary liability and official publications	7					7
Total	3,172	9,760	28	80	243,829	256,869

**HEALTH AND SOCIAL POLICY**

Housing	1,128	1,209	2	1		2,340
Healthcare	779	893	2	9	73	1,756
Social policy	880		25	3	402	1,310
Employment and Social Security	980	97		3		1,080

**TABLE 9 (CONT.)**

Cases. Breakdown by processing divisions and sectors. 2012.

DIVISIONS AND SECTORS	Complaints		Ex-officio	Requests for appeal		Total
	Individual	Combined		Individual	Combined	
Under study (on Dec 31 <sup>st</sup> )	610		1	4	35	650
Consumer affairs	167					167
<b>Total</b>	<b>4,544</b>	<b>2,199</b>	<b>30</b>	<b>20</b>	<b>510</b>	<b>7,303</b>
<b>ENVIRONMENT AND URBAN DEVELOPMENT</b>						
Environment	611	886	8			1,505
Urban development and housing	459	24	15			498
Locales Municipal Government organization and legal regime	238					238
Under study (on Dec 31 <sup>st</sup> )	87					87
Regional land use and planning	8					8
<b>Total</b>	<b>1,403</b>	<b>910</b>	<b>23</b>			<b>2,336</b>
<b>NPM UNIT</b>						
Municipal detainee facilities			58			58
National Police Force			25			25
Juvenile facilities			22			22
Prison Institutions			9			9
Autonomous Community Police Forces			8			8
Spanish Civil Guard			6			6
Armed Forces			1			1
Equal treatment			1			1
<b>Total</b>			<b>130</b>			<b>130</b>
<b>Overall Total Cases</b>	<b>19,143</b>	<b>14,335</b>	<b>371</b>	<b>158</b>	<b>246,585</b>	<b>280,592</b>



# CASE PROCESSING STATUS

The table provided in this section shows the processing undergone by the cases of complaints and ex officio investigations once received or filed by the Institution and their status at December 31, 2012.

A complaint not being accepted for processing in no way whatsoever means a lesser degree of attention being devoted to the issues in question or requests put forth by the citizens having lodged the same. All complaints are given the same degree of dedication and are answered in a timely fashion,

providing the person in question with the most suitable response to the question raised, as well as orientation as to the alternative way of seeking a solution to their problem.

There are also 19 ex officio investigations pending study on the last day of the year, which is something having to do with the steps involved in the study and initial processing of these cases which were taken up with the respective Administrations within the first few days of 2013.

**TABLE 10**

Status of cases of complaints and ex officio investigations in 2012.

STATUS			Individual		Combined		Ex Officio		Total	
			Nº	%	Nº	%	Nº	%	Nº	%
■ Accepted	■	In processing	3,636	18.99	285	1.99	257	69.27	4,178	12.34
	■	Concluded	2,705	14.13	2,327	16.23	94	25.34	5,126	15.14
	■	Suspended	2	0.01			1	0.27	3	0.01
	Total		6,343	33.13	2,612	18.22	352	94.88	9,307	27.50
■ Not accepted			9,996	52.22	10,168	70.93			20,164	59.57
	Total		9,996	52.22	10,168	70.93			20,164	59.57
■ Under study (on Dec, 31st,)		Opened	1,971	10.30	1,555	10.85	19	5.12	3,545	10.47
		Pending reply from the interestes party	833	4.35					833	2.46
	Total		2,804	14.65	1,555	10.85	19	5.12	4,378	12.93
Total general			19,143	100.00	14,335	100.00	371	100.00	33,849	100.00

In 2012, the Ombudsman did not file any appeal before the Constitutional Court, although the Ombudsman has put forth different recommendations to the administrations involved in several of these cases.

The following table details the figures for the cases of request for appeal before the Constitutional Court in 2012. A certain number of requests for appeals for the protection of constitutional rights (2,313) filed at the very last of the year have been left pending study, given that the three-month period for which provision is made for this type of appeals before the Constitutional Court had not lapsed. An account will be provided of the outcomes thereof in the next report.

**TABLE 11**

Status of the cases of requests for appeal before the Constitutional Court in 2012.

SITUACIÓN	Individual	Combined	Total
Not filed	141	244,289	244,430
Under study (on Dec, 31st,)	17	2,296	2,313
Total	158	246,585	246,743

The following table specifies those requests for appeals not filed regarding which recommendations have nevertheless been put forth.

**TABLE 12**

Details of the cases requesting appeals to be filed before the Constitutional Court which have given risen to recommendations by the Ombudsman.

CASES Law involved	Number of requests	Number of recommendations	Administrations to which made
<b>COMBINED</b>			
Royal Decree-Law 16/2012 of April 20 <sup>th</sup> governing urgent measures for guaranteeing the sustainability of the National Health System and improving the quality and safety of the care provided thereby.	73	5	Ministry of Health, Social Services and Equality
Royal Decree-Law 20/2012 of July 13 <sup>th</sup> governing measures for guaranteeing budget stability and promoting competitiveness with regard to the measures for curtailing personnel expenses regarding the pay of the personnel working in the public sector.	* 243,698	2	Ministry of the Treasury and Public Administrations
Amendment of the Dependent Care Law governing benefits, delays and protections of non-professional caregivers	402	2	Social Ministry of Health, Social Services and Equality Ministry of Employment and Social Security
<b>INDIVIDUAL</b>			
Those collecting the Job Seeker's Allowance, setting out their disagreement with the change made in the regulations governing this income which seems to prevent one from traveling outside the country (Art. 2.1.b) of Royal 1369/2006 in its wording as revised under Art. 21 of Royal Decree-Law 20/2012.	3	1	Ministry of Employment and Social Security
<b>Overall total</b>	<b>244,176</b>	<b>10</b>	

(\*) This figure indicates the number of requests received, mainly via Internet.

## Cases of individuals complaints

The following table provides an account of the reasons for complaints not having been accepted, all of which have to do with aspects of substance due to which it is not possible to further pursue what the interested parties are requesting or to open an investigation with the government agencies. As shown

in the table, the main cause for non-acceptance is related to the lack of sufficient evidence indicative of an irregular action on the part of the Administration (3,041). Other common reasons have to do with the complete absence of prior administrative action, conflicts among private individuals or the cases in which a judicial authority has already intervened.

**TABLE 13**

Individual complaint cases. Reasons for non-acceptance in 2012.

REASONS FOR NON-ACCEPTANCE	Number
No evidence of administrative irregularity	3,041
Several concurring reasons for non-acceptance	1,614
Lack of prior administrative action	1,418
Other reasons due to which the issue does not fall within the province of the Ombudsman	1,019
No reply to request for further details	760

**CUADRO 13 (CONT.)**

Individual complaint cases. Reasons for non-acceptance in 2012.

REASONS FOR NON-ACCEPTANCE	Number
Private conflict having nothing to do with the Administration	514
Final court decision not subject to appeal	410
Information only being requested	223
Remedied without Ombudsmen's involvement	173
Information only being sent	153
No grounds	132
Intervention of the autonomous community parliament Commissioner	122
No action on the part of the public powers	92
Abandonment	80
No legitimate interest	56
Against the legislation in force	46
Longer than a one-year period	45
Administrative authority in matters within the province thereof	32
No claim	18
Requirements for acceptance of appeal not met	15
Impossible to contact interested party	11
Damaging to third parties	11
No reply to defect possible to correct	5
Interference with the National Defense command	5
Interferencia en el mando Defensa Nacional	1
Total	9,996

Los dos siguientes cuadros reflejan la tramitación seguida por  
The following two tables show the processing of the individual  
complaint cases which were indeed possible to accept (6,343),

the Administrations involved in the different investigations and  
the types of conclusions of those cases which it has been  
possible to conclude in 2012 (2,705).

**TABLE 14**

Individual complaint cases accepted. Number of those processed with the Administration in 2012.

ADMINISTRATIONS	In Processing	Concluded	Suspended	Total
Central Government	1,932	1,612		3,544
Autonomous Community Government	652	426	1	1,079
Municipal Government	598	311	1	910
Attorney General	58	81		139
Other public entities	41	66		107
More than one administration	194	101		295
Investigations connected to other investigations	161	108		269
Total	3,636	2,705	2	6,343

## Combined complaint cases

As for the individual cases, the following tables detail, on one hand, the reasons for non-acceptance of the combined complaint cases and, on the other, the Administrations involved in

the complaints which were indeed accepted (2,612). Most of these investigations were carried out with the Central Government Administration.

**TABLE 15**  
Combined complaint cases. Reasons for non-acceptance in 2012

REASONS FOR NON-ACCEPTANCE	Number
Several concurring reasons for non-acceptance	6,374
Against the legislation in force	1,836
No evidence of administrative irregularity	1,594
No prior administrative action	246
Information only sent	78
Remedied without the intervention of the Ombudsman	40
Total	10,168

**TABLE 16**  
2012 Combined complaint cases. Number of cases processed with the Administration in 2012

ADMINISTRATIONS	In processing	Concluded	Total
Central Government	241	2,302	2,543
Autonomous Community Government	38		38
Municipal Government	6	25	31
Total	285	2,327	2,612

## Ex officio investigation cases

Most of the ex officio investigation cases open throughout 2012 (352) were still in processing at year end (257).

**TABLE 17**  
Ex officio investigation cases opened and processed with the Administration in 2012.

ADMINISTRATIONS	In processing	Concluded	Suspended	Total
Central Government	77	25		102
Autonomous Community Government	127	10		137
Municipal Government	18	50		68
Attorney General	1	1		2
Other public entities	4	2		6
More than one administration	30	6	1	37
Total	257	94	1	352

# Recommendations, suggestions, reminders of legal duties and warnings

**Recommendations and suggestions comprise one of the main tools in the work done by the Ombudsman.** A major part of the Ombudsman's investigations end in recommendations or suggestions resulting either from the complaints lodged by citizens or the investigations opened by the Institution proper. In any of these cases, once a certain problem has been diagnosed, after gathering information from the Administration involved, the Ombudsman then proceeds to putting forth a recommendation or suggestion to the Administration in question for the purpose of promoting a change actually being

made in a certain administrative practice or in a legal standard. The Administration may not accept the suggestion or recommendation, but the law places it under the obligation of setting out the reasons for its decision with regard thereto.

Among recommendations, suggestions, reminders of legal duties and warnings to the different government agencies, a total of **548 determinations were put forth in 2012** as a result of the processing of the cases of individual complaints, combined complaints and ex officio investigations.

**TABLE 18**  
Determinations put forth during 2012

DETERMINATIONS	Accepted	Rejected	Pending	Total
Recommendations	60	21	112	193
Suggestions	64	32	104	200
Reminders of legal duties				141
Warnings				14
Total	124	53	216	548

**TABLE 19**  
Recommendations by administrations to which made at December 31, 2012

ADMINISTRATIONS	Accepted	Rejected	Pending	Total
Central Government	30	13	62	105
Autonomous Community Government	19	5	32	56
Municipal Government	8	1	12	21
Attorney General			1	1
Other public entities	3	2	5	10
Total	60	21	112	193

**TABLE 20**  
Suggestions by administrations to which made at December 31, 2012

ADMINISTRATIONS	Accepted	Rejected	Pending	Total
Central Government	29	13	31	73
Autonomous Community Government	13	8	22	43
Municipal Government	21	10	48	79
Other public entities	1	1	3	5
Total	64	32	104	200

The recommendations and suggestions have been made based on ordinary processing of the cases, following the study of the requests for the filing of appeals for the protection of constitutional rights and as a result of the preparation of monographic reports.

# Requests for appeals before the Constitutional Court

In conjunction with the complaints which citizens lodge directly with this Institution, mention must also be made of the letters citizens send to this Institution for the purpose of requesting that appeals of unconstitutionality or for the protection of constitutional rights be filed before the Constitutional Court as vested with the authority to do so under Article 162.1.a) of the Constitution, Article 32 of Constitutional Court Organic Law 2/1979 of October 3<sup>rd</sup> and Article 29 of Ombudsman Organic Law 3/1981 of April 6<sup>th</sup>.

Just as for complaints, the requests for appeal before the Constitutional Court have been divided into cases for individual processing and for combined processing. **Special mention must be made of the extraordinary rise in the number of combined requested for the filing of appeal in 2012:** a total of 246,743 requests for the filing of appeals of unconstitutionality having been received, a total of 99% of which were received through the Ombudsman's website. A total of 29 provisions of law were questioned by citizens.

A large majority of the legal standards regarding which requests were made for appeals of unconstitutionality to be filed are laws passed by Parliament and Royal Decree-Laws passed by the Government. The large number of this type of legal standards passed in 2012, the nature of which requires a concurrent budget making provision for funding the pressing, special need in question, involves a greater number of petitions for challenging the same.

Several requests have also been lodged regarding Autonomous Community laws and decree-laws. Worthy of special mention with regard to decree-laws is that the substance thereof stems, in several of the cases, from that which was set forth under the respective state-level royal decree-law.

Apart from the above, one must bear in mind that this Institution goes by the rule well-established over the years of refraining from filing appeals before the Constitutional Court against legally binding provisions of law in those cases in which another instance vested with due authority (the President of the Government, fifty deputies or senators, or the Autonomous Community governments and parliaments) have proceeded to file the same. This rule has been followed in several of the decisions adopted in 2012.

One of the most outstanding of the Ombudsman's attributions is the power to put forth proposals and suggestions for amending legal standards, even to Parliament, whenever this Institution considers it possible to adapt a law so as to make it more closely in accordance with the constitutional principles and, quite especially, with the catalogue of fundamental rights and freedoms serving as the framework of the democratic system.

Thus, in 2012, the Ombudsman put forth recommendations for improving the enforcement of two decree-laws.

## Uncooperative or obstructive Administrations

**The administrations are placed under the obligation**, by Article 19 of Organic Law 3/1981 of April 6<sup>th</sup>, of **providing the Ombudsman with a response** concerning the information requested thereby for its investigations. But **this response is not always immediate and, in some cases, may not ever be provided at all** after having been requested to do so several times.

In these cases, Article 18.2 of Organic Law 3/1982 of April 6<sup>th</sup> vests the Ombudsman with the authority to declare the administrative division or body in question as being **"hostile or obstructive"** and to additionally inform Parliament thereof by means of the inclusion thereof in the annual report or, wherever applicable, in a special report.

These administrations have been classified into three groups:

- Administrations considered **obstructive** as a result of having systematically or notably hindered or obstructed the Ombudsman's work in an investigation.
- Administrations which have **failed to provide a response** to a request for information in one or more cases after having been requested three times to do so.
- Administrations providing a response to the Ombudsman only after **their collaboration had been requested three times**.

The characteristics of each one of the cases listed differ due either to the repercussion of the failure to meet their obligation,

repeated failure to do so, or the options available in the administrations proper.

One of the first staunch commitments made by the Ombudsman on taking office was to make certain that the administrations provide responses to the requests made by this Institution. To do so, in August 2012, **a greater number of steps were taken so that those requests for information which had been pending the longest would be answered.**

In her appearance before the Joint Commission for Relations with the Ombudsman Institution on November 6<sup>th</sup>, 2012, **the Ombudsman announced that the Attorney General would be informed as to those administrations which, despite the steps taken, had still as yet failed to provide a response**, so that the Attorney General could look into whether this attitude falls within the framework of the factual circumstances of Article 502.2 of the Penal Code. On the date of the aforementioned appearance, these administrations totaled 55 in number, among autonomous community, municipal and other organizations governed under public law. Upon this list coming forth in the media, a large majority thereof provided a response to the requests placed by this Institution. In her next appearance before Parliament for the presentation of the 2011 Annual Report on November 29 2012, the Ombudsman was able to inform the Plenary Meeting of the Congress of Deputies that only eight of the former 55 had not as yet provided a response. Following this appearance, one of these eight remaining administrations finally provided the information requested.

In the month of December, the Ombudsman made the decision with regard to the administrations on the aforesaid list which were still as yet maintaining an attitude of not answering the requests made by this Institution of providing the Public Prosecutor with advance knowledge of the events having taken place.

Of the eight aforementioned administrations, those which finally answered the Ombudsman were:

- **Town Council of San Fernando de Henares**, with different cases pending:
  - Procedure for pecuniary liability
  - Claim of pecuniary liability
  - Property condemned due to subway construction works
- **Town Council of Arona**:

Application for government-subsidized housing

- **Autonomous Community Government of Valencia Department of Infrastructure and Transportation**:

- Construction of pedestrian-bicycle access route in Valencia

The five administrations which have not provided the responses as they are under the obligation of doing, despite the efforts made, are:

- **Town Council of Torredembarra**. Still no response to several requests in two complaint cases:
  - Torredembarra train station being unsafe for public
  - Local police taking no action concerning noise from a bar
- **Town Council of Langreo**. Still no response to several requests in two complaint cases:
  - Classified activities (annoyances due to noise and dust in a factory)
  - No response in processing of urban development permits
- **Town Council of Leganés**. Still no response to several requests in a complaint case:
  - Delay in tax refund case
- **Complutense University of Madrid**. Still no response to several requests in two complaint cases:
  - Application for place in residence hall
  - Problems of access to a dwelling, professors' residence
- **Special mention must be made in regard to this list of obstructive administrations, the attitude shown by the Toledo Bar Association**, which was cited in the 2011 Report as an Administration Obstructing the work of the Ombudsman. After not having answered in 2012 either, the Bar Association sent a completely unacceptable letter to this Institution, as it is inferred therein that the Toledo Bar Association – or at least the governing body thereof – takes upon itself the authority of deciding how the Ombudsman institution is to exercise its duties.

This Annual Report for the year **2012** also provides an account of those administrations who have failed to fulfill their duty of collaborating with this Institution. The full lists are available in the respective annex to the Annual Report. There are no Central Government departments or bodies among the uncooperative administrations.

Mention must be made of the following administrations due to their special situation of failing to provide any response in one or more cases:

- At the Autonomous Community level, special mention is made of the following administrations: Canary Island Autonomous Community Directorate-General of Family and Juvenile Protection

Autonomous Community of Madrid Department of Transport and Infrastructures.

- At the Municipal Government level, mention is made of the following 18 municipal governments
  - Town Council of Alboraya (Valencia)
  - Town Council of Barruelo de Santullán (Palencia)
  - Town Council of Cabrerizos (Salamanca)
  - Town Council of Castalla (Alicante)
  - Town Council of Covalada (Soria)
  - Town Council of Espiegares (Guadalajara)
  - Town Council of La Oliva (Las Palmas)
  - Town Council of Lucillos (Toledo) (Complaint from the Castile-La Mancha Ombudsman)
  - Town Council of Manzanares el Real (Madrid)
  - Town Council of Pelahustán (Toledo)
  - Town Council of Pilar de la Horadada (Alicante)
  - Town Council of Pollença (Balearic Islands)
  - Town Council of Robledo de Chavela (Madrid)
  - Town Council of Salas (Asturias)
  - Town Council of Sonseca (Toledo) (Complaint from the Castile-La Mancha Ombudsman)
  - Town Council of Tegui (Las Palmas)
  - Town Council of Villarrubia de los Ojos (Ciudad Real)
  - Town Council of Xeraco (Valencia)

There are **other government agencies** whose actions are worthy of mention in this section of the 2012 Annual Report in addition to being included in the lists provided in the respective section of the annex to this report:

- **The Office of the Secretary of State for Infrastructures of the Ministry of Public Works** and various bodies operating under the same usually provide delayed replies, following several requests, although it is true that there is a **very large volume of investigations** and thus a large number of requests for information through this government agency.
- **The Directorate-General for Housing and Rehabilitation of the Autonomous Community of Madrid** has delayed providing responses to numerous requests for information from the Ombudsman throughout 2012, which **began being remedied toward the end of the year** following experts from the Ombudsman institution having met with those in charge of this administration.
- **Following the elimination of the Castile-La Mancha Ombudsman**, the complaints lodged with this Ombudsman were transferred to this Institution, which has taken up the investigations thereof where said Ombudsman had left them. Some administrations, as well as different municipalities of that Autonomous Community have delayed providing a response to the requests from the Ombudsman, which has meant a delay in processing the complaints in question.
- One unique case is the **Town Council of Robledo de Chavela**, a small town in the Autonomous Community of Madrid, which does not answer requests for information from this Institution concerning different investigations, in a clearly hostile attitude.

# The Ombudsman Institution's budget dropped by 4.5% in 2012

*Serving citizens, stringent economic and budget management, the commitment to new technologies and carrying out communication-related activities have continued to be given top priority in 2012.*

## 2012 Budget

### ■ 2012 Ombudsman Institution's Budget

Spain's Official State Gazette (BOE) No. 156 of June 30, 2012 published General State Budget Law 2/2012 of June 29<sup>th</sup>, in which the budgeting allocated to the Ombudsman Institution for the 2012 year totaled 14,492,900 €.

TABLE 1

Ombudsman Institution 2012 budget breakdown by chapters

2012 BUDGET	AMOUNT (€)
Chapter I	12,044,500.00
Chapter II	2,448,400.00
TOTAL BUDGET 2012	14,492,900.00

The following table provides the budget breakdown.

TABLE 2

Ombudsman Institution 2012 budget breakdown by Articles

2012 BUDGET	AMOUNT (€)
<b>CHAPTER I. PERSONNEL EXPENSES</b>	
Article 10. Senior Officials	444,000.00
Article 12. Civil Servants	8,817,800.00
Article 13. Contract Employees	6,590.00
Article 14. Other personnel (security and communications)	387,600.00
Article 15. Performance incentives	5,000.00
Article 16. Social Security, benefits and social expenses	2,383,510.00
Chapter I Total	12,044,500.00
<b>CHAPTER II. CURRENT GOODS AND SERVICES EXPENSES</b>	
Article 20. Rental/Leasing	34,000.00
Article 21. Repairs, maintenance and upkeep	377,500.00
Article 22. Office material, supplies, communications and miscellaneous expenses	1,656,900.00
Article 23. Service-related indemnifications	257,000.00
Article 24. Publications expenses	70,000.00
Article 27. Purchasing, supplies and miscellaneous expenses	53,000.00
Chapter II Total	2,448,400.00
TOTAL BUDGET 2012	14,492,900.00



## ■ Inter-annual Evolution 2009 – 2012

The inter-annual evolution of the budget throughout the last four years (2009-2012) has been as shown in following:

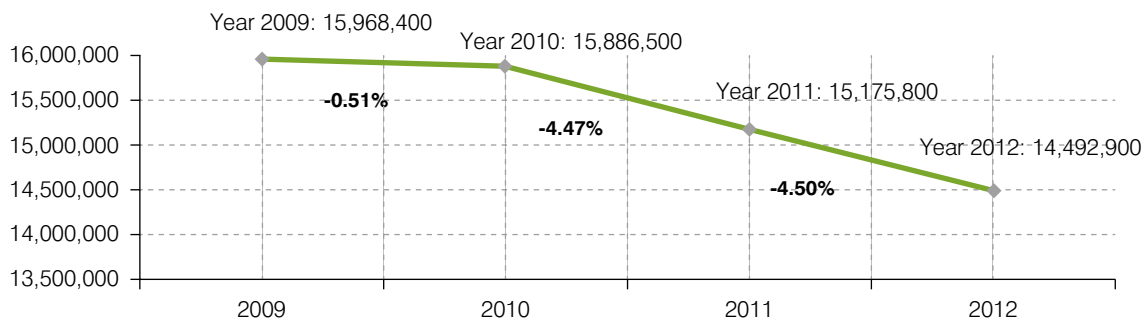
**TABLE 3**

Inter-annual evolution of the budget. 2009 – 2012 period.

Chapters I+II	15,968,400.00	-0.51	15,886,500.00	-4.47	15,175,800.00	-4.50	14,492,900.00

**FIG. 1**

Inter-annual evolution of the budget. 2009 – 2012 period.



The overall percentage evolution of the budget over the last four years (2009-2012) has showed a 9.24% drop, as shown in the table and graph.

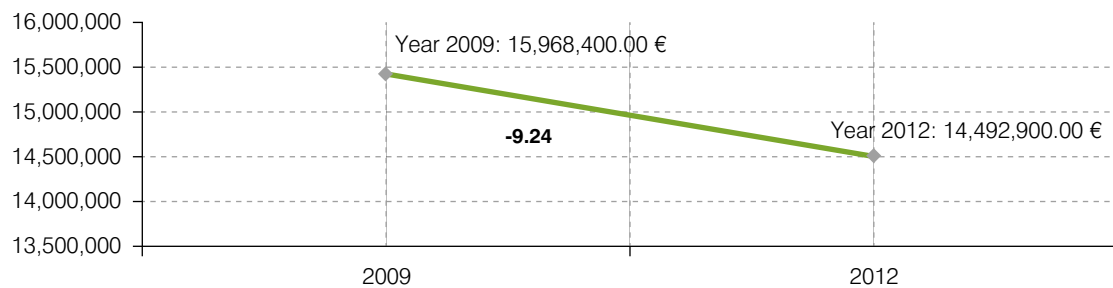
**TABLE 4**

Overall evolution of the budget. 2009 – 2012 period.

2009	2012	% RISE
15,968,400 €	14,492,900 €	-9.24%

**FIG. 2**

Overall evolution of the budget. 2009 – 2012 period.



## Information for citizens

A number of items of data are provided in following concerning the assistance provided for citizens throughout 2012, either directly in person or via different electronic media. The data for the assistance provided to citizens shows a slight increase in the assistance provided in person and a more pronounced increase in the telephone assistance.

**TABLE 5**

Number of calls taken and visits received in 2012 for the purpose of providing citizens with services compared to 2011

PHONE CALLS AND VISITS IN PERSON	2012	2011
Assistance in person	3,375	3,234
Telephone	9,161	7,916
Toll-free 900 number	5,435	5,275
Total	17,971	16,425

**TABLE 6**

Ombudsman Institution website visits ([www.defensordelpueblo.es](http://www.defensordelpueblo.es)). Year 2012

OMBUDSMAN INSTITUTION WEBSITE VISITS	2012	2011
Visits	531,406	241,114
Pages visited	8,758,409	2,588,931

## Communications

The main objective of the Communications Department is to make the concept as to what the Ombudsman Institution actually is and what it does better known to the citizenry. This Department's work is aimed at showcasing the usefulness of this Institution by way of practical examples. To accomplish this objective, it is fundamental to maintain constant, fluid relations with the media.

This department is also in charge of preparing the "Ombudsman Institution" newsletter which includes the Institution's main investigations and actions from month to month. The Communications Department also manages the website, [www.defensordelpueblo.es](http://www.defensordelpueblo.es), providing an overview of the work done by this Institution and serving as a way for citizens to submit their letters to the Institution. This year, 70% of the complaints were lodged through the webpage.

The social networks are being implemented, little by little, in this Institution's communications strategy. In mid-2011, a Twitter profile was started up, which has totaled more than 3,000 followers in 2012. This profile makes yet another communications channel available to citizens for knowing the activities of the Ombudsman Institution. Complaints cannot be lodged through this channel, given that the short length required for Twitter messages makes it impossible to use this medium for submitting the additional information which citizens in many cases need to add to their letters.

### Media impacts

By way of the press releases, press meetings and conferences, the Ombudsman's Communications Department has continued its efforts aimed at making the work done by this Institution more widely known. The relations with the media are an

outstanding part of the everyday endeavors carried out by this department of the Ombudsman Institution, this Institution having achieved a strong presence regularly in newspapers, radio and television broadcasts and in the digital media as a result of these relations.

In 2012, more than 7,000 impacts have been tallied on the internet, in newspapers and magazines and on radio and television. This Institution has been in the news as a result of the publication of its annual report, the presentation of its monographic studies *"Economic Crisis and Mortgage Debtors"*, *"The Actual Current Real-Estate Situation in Spain"*, and *"Human Trafficking in Spain: Invisible Victims"* and also for its daily work as reflected in myriad press releases and communiqués published by different media.

### Newsletter

The Communications Department is also in charge of preparing the *"El Defensor del Pueblo al Día"* ["Ombudsman Update"] newsletter.

The number of people having signed up to receive this newsletter has risen in 2012. More than 3,000 individuals and groups are currently receiving this newsletter (Autonomous Community Commissioners, Central Administration and Government, State Institutions, Autonomous Community Parliaments, Central Government delegates and sub-delegates, Joint Commission for Relations with the Ombudsman Institution, Iberoamerican Federation of Ombudsmen, non-governmental organizations and associations, mass media and private citizens interested in receiving this publication). Many people also contact this Institution daily to sign up to receive this newsletter..



# Supervision of Public Administration







# The Ombudsman is committed to defending the rights of the victims of terrorism

*The Ombudsman has put forth recommendations as to the victims of terrorism being dealt with specifically under the Victims Statute. On the subject of Justice, complaints have continued regarding the delays in all jurisdictions and register office gridlock. In the prison-related aspect, this Institution has visited six prisons and a hospital custodial unit. Concerning security-related issues, actions by the State Law Enforcement Bodies have given rise to citizen complaints.*

## ■ Administration of Justice

### Undue delays

Delays continue to be a major problem in the Justice Administration. In 2012, a total of 105 complaints were lodged concerning judicial delays in the civil jurisdiction, 60 delays in the criminal jurisdiction, 18 delays in the administrative law courts, 13 delays in the labor courts and 6 delays in the commercial courts. Recent Law 5/2012 of July 6<sup>th</sup> on Mediation in Civil and Commercial Matters is expected to aid toward alleviating the delays within the respective scopes.

Within the scope of the **civil jurisdiction**, the Ombudsman has shown a special interest in the undue delays which have occurred in family proceedings. The Ombudsman considers it unacceptable that unnecessary suffering being added to the already painful situation which comes to bear following a family breaking apart and the effects such a situation has (especially on young children) as a result of the delay in processing the judicial proceedings. It is indispensable for these judicial bodies to be provided with the material and human means to prevent the situation of conflict within a family unit from continuing to worsen even further.

In the cases related to the **criminal jurisdiction**, one problem frequently detected is the unjustified lengthiness of the investigation of the criminal causes. If the investigative aspect of the proceedings lingers on indefinitely over the course of time, the risk is run of whatever precautionary measures were to have been adopted in due course perhaps then meaning those finally found not guilty in the end having served time beforehand without having ever been sentenced at all.

Not wishing to enter into the doctrine-related debate as to the advisability of determining a maximum **length of time for the investigative stage** or whether it is necessary for the summary investigation activity to be limited to the truly indispensable investigative formalities, it seems clear that the time has come to resolutely yet cautiously address the issue of a modification in the depth of the current criminal proceedings system.

As far as the **contentious-administrative jurisdiction** is concerned, jurisdictional control of the actions of the public administrations can be said to be an essential guarantee of the rights and legal situations of citizens in their relations with the public administrations.



Law 37/2011 on measures for expediting proceedings employed the questionable phrase of “abusive use of judicial instances”. The reason for the very high degree of delay occurring within this jurisdiction is cannot be attributed exclusively to an overly high degree of litigation on the part of the citizenry, but rather is also a result of the malfunctions involved in bad administrative practices.

The delay caused in scheduling the hearings in the contentious-administrative jurisdiction is a result of the large number of fast-track procedures, which require that an initial hearing be held. This Institution has found hearings being scheduled for 2012 and years thereafter in many case proceedings.

The **labor and commercial jurisdictions** have also undergone a considerable rise in the volume of their workload as a result of the economic crisis, which has resulted in a rise in the number of labor disputes and creditors' meetings.

The number of cases of business insolvency has risen incessantly over the course of 2012, the Commercial Courts therefore having undergone a disconcerting increase in their workload. The effects thereof have meant a significant increase in complaints regarding undue delays in the institutions within this jurisdiction.

Encouraging the settlement of commercial disputes outside of court or the implementation of intra-judicial mediation, promoted by the judicial body proper with the collaboration of the Chambers of Commerce, could aid toward disputes being settled practically,

rapidly, economically and satisfactorily for all parties involved and thus lighten the burden involved in the gridlock of pending cases which the commercial jurisdiction is experiencing.

## Gender violence

An ex officio investigation was opened in 2012 as a result of the death of a woman in Malaga at the hands of her ex-partner. Her attacker had been sentenced to fourteen months in prison, his sentence having been suspended on the condition that he take a course on the subject of equality, the restraining order remaining in effect. The victim was denied the teleassistance service on having been rated as being at low risk as calculated by the Police in accordance with Instruction 5/2008 from the Office of the Secretary of State for Security.

This Institution opened parallel investigations with the Directorate-General of the Police and the Attorney General's Office, having learned that the Provincial Police Headquarters of Malaga had proceeded to open a confidential investigation period which culminated in the regard of criminal proceedings not being filed against the officer responsible for monitoring the deceased. The aforesaid led to the action brought by the Disciplinary Regime Unit of the National Police Corp Personnel Division being closed. This specific case also involved a number of unfortunate coincidences: the victim did not notify her change of address, and the monitoring report which should have been completed at six months was not made.

In view of all the foregoing, this Institution found that no further assessment was made subsequent to a low degree of risk having initially been assessed, nor was the deceased provided with the mobile teleassistance service she had requested, nor was any follow-up carried out on the part of those in charge of

her protection, no investigative steps having been taken concerning other events previously reported by the deceased.

Since this incident, the computer system has been modified for the purpose the users being notified even in low-risk cases in the form of a warning and alarm in the event that the risk assessment is past due.

This Institution recommended to the Directorate-General of the Police that measures be adopted for more accurately assessing the degree of risk of each case and that a follow-up be conducted as to these measures in place, revising the same to adapt the preventive measures to the individual circumstances and thus prevent situations such as that which lead to this woman's death. This recommendation met with acceptance.

## Legislative reforms

A recommendation was put forth to the Ministry of Justice as to its beginning the work leading to the reform of the Penal Code for the purpose of enhancing the response of the penal code in view of the irresponsible use of public money on the part of authorities and civil servants, including the disqualification from holding public positions on the part of those responsible.

In an initial response, the Ministry considered the forms of criminal activity of misappropriation or deliberate neglect of legal duty or obligation for which provision is made under the Penal Code as being possible to be include what is referred to as squandering public money, it therefore not having been considered necessary to undertake any legislative modification with regard thereto. Later, following the new Government taking office, the Ministry of Justice set as one of its objectives that of amending the Penal Code to classify the most serious violations in the management of public resources as offenses.

The reform bill in question included, in part, the recommendation made by the Ombudsman Institution in the regard of excluding financial gain as a determining aspect for this type of offense and including disqualification for holding public office as a legal consequence of this offense.

This Institution similarly put forth a further recommendation as to the Ministry adopting the measures necessary for expanding the classification regarding public accounts for which provision is made under the planned reform of the Penal Code to include other types of malicious conduct related to the decisions made regarding public spending, such as starting up projects for which the necessary budget allocations have not been made, entailing an evaluation of the benefits thereof for society.

On December 28<sup>th</sup> last, Organic Law 7/2012 was published in amendment of Penal Code Organic Law 10/1995 regarding the matter of transparency and combatting tax and Social Security fraud. This revised text includes a newly-added Article 433 bis, which includes certain types of conduct related to falsification of documents and accounting records and conveying mendacious information, the punishment for which will undoubtedly prevent the squandering of public money.

## Underage offenders

In 2012, the investigative work previously undertaken in relation to the enforcement of Law 5/2000 regulating the criminal liability of minors, amended by Law 8/2006, observant of complying with the legal standard for the purpose of the recognized rights of underage offenders being guaranteed and safeguarded and their social reintegration being achieved.



Following the visit experts from this Institution made to the “Pi Gross” Juvenile Facilities, a recommendation was made to the Castellón Bar Association in relation to the legal aid with which these minors were being provided. According to the information recorded in the visitors’ register, only four juveniles had been visited by their public defender within the January 1, 2011 – November 30, 2011 period, despite there being no restriction whatsoever on the attorneys visiting or contacting these minors.

A recommendation was made to the aforesaid body that the attorneys assigned to serve as court-appointed attorneys within the juvenile jurisdiction fulfill their obligation of performing their duties of actually aiding and defending up to the full completion of the process of the judicial instance set forth for under Law 1/1996.

## Civil Registry

Despite the measures adopted in implementation of the Justice Modernization Plan passed in November 2009, the gridlock situation experienced by the Central Civil Registry and numerous specific civil registries has continued to exist. In particular, those of the populations located in the belt surrounding Madrid and the entire Mediterranean Arc, in addition to the consular registries most affected by the numerous applications for citizenship processed in application of Additional Provision No. 7 of Law 52/2007.

## Central Civil Register

Almost all of the complaints lodged had to do with the extremely long delay in registering marriages and in processing for citizenship papers.

The Office of the Secretary of State for Justice has acknowledged that this situation has as yet to be corrected. On June 25, 2012, the Secretary signed an agreement arranging a management order with the Association of Land, Business and Personal Property Registrars so that the pending citizenship papers would be processed by these Registrars for the purpose of putting an end to the backlog which was affecting more than 400,000 cases, this being an objective which has not as yet been achieved to date.

Within the last two months of 2012, complaints have been lodged by citizens requesting this Institution’s intervention due to final decisions to cases being processed through this new processing channel being issued before decisions regarding the cases initiated prior thereto under the former procedure.

## Specific civil registers

Since 2008, the need has been reiterated for better coordination between the Ministry of Justice and the different Autonomous Communities having authority over staffing and equipping the civil registers with material means.

The complaints due to there being no appointment-making system, the poor functioning of these registers and the extremely long delay in scheduling an appointment are continuing to be filed regarding specific civil registers. Thus, the recommendation has been made in the Autonomous Community of Madrid for an appointment-scheduling system to be implemented so as to prevent long lines from forming even as early as in pre-dawn hours.

At those registers where the appointment-scheduling system has been implemented, the complaints lodged have to do with the length of time one must wait for the appointment to be

scheduled following request having been made. Several years may sometimes go by between the time at which the appointment is requested and the time at which the appointment is actually held. In response to the requests for information, the departments involved have alleged budget restrictions and an overwhelming rise in the number of applications for citizenship, despite some specific yet insufficient organizational measures having been gotten under way.

## Consular Registries

Complaints are still being received concerning the malfunctioning or nonexistence of a phone or online appointment-scheduling system. The Office of the Secretary of Justice and the Directorate-General of Spaniards Abroad and Consular and Migration Affairs alleged overload, limited means and budget cuts as reasons for this disorganization.

The same reasons were alleged for justifying delays in processing marriage records and applications for citizenship for children of Spanish citizens and the registration of births, which are taking several years.

## Attorneys

The investigations for the delays occurring in paying lawyers for the services rendered for free legal aid in the Autonomous Community of Madrid were discussed in earlier reports. In keeping with the fact that, in the latest letter sent by the former Ministry of the Presidency and Justice of the Autonomous Community of Madrid detailing the different measures which were being taken to make the payment of the outstanding amounts certified but not paid under these headings, this investigation was then closed. However, after learning that nearly 600 lawyers assigned to serve as court-appointed attorneys had served notice refusing to be on call during the months of October and November 2012 in protest for the free legal aid-related cutbacks, a report was requested from that Administration due to being of the understanding that this could be damaging to citizen entitlement to legal aid set forth under Article 25 of our Constitution. The report in question is currently pending receipt.

## Notaries public

An investigation is currently being conducted with the Office of the Secretary of State for Justice following a citizen having manifested the lacunas currently existing in the regulation of the extrajudicial auction sales held in the presence of a notary public. The Code of Civil Procedure stipulates it being impossible to award a property when, in the third auction held before the Court, at least sixty percent of the assessed value of the dwelling is not reached, but does not set any limit whatsoever regarding extrajudicial auction sales.

The General Council of the Notariat approved Circular 1/2012 for the purpose of guaranteeing citizens the same rights as for in-court judicial mortgage foreclosures of the permanent residence by adopting in practice that established legal minimum. Later, although dealing with the extrajudicial auction sale procedure, Royal Decree-Law 6/2012 left any further expansion upon that for which provision is made thereunder for a subsequent regulation.

The Ombudsman is currently awaiting knowledge of the provisions for the passage of said regulation.



## Stolen babies

The investigation which commenced in 2011 and the continuing receipt of complaints throughout 2012 regarding the matter known as the "stolen babies" case has lead the Ombudsman to have conducted a follow-up of the different measures undertaken by both the Ministry of Justice and the Attorney General's Office.

This Institution is receiving numerous complaints regarding this matter from people who have filed a court suit or police report who are asking the Ombudsman to take an interest in their proceedings. These complaints are being processed either through the State Prosecutor's Office or through the Police.

## ■ Prison facilities

According to data from the Office of the Secretary General of Prison Institutions, at the end of 2012, there were a total of 68,685 individuals imprisoned in our country at 97 prison facilities, of which a total of 63,450 were males and 5,235 females. With regard to status as being under preventive detention or convicted prisoners, 10,887 individuals were under prevention detention and 57,798 convicted prisoners. By Autonomous Communities, Andalusia stands out with 15,810 prisoners, followed by Catalonia (10,095) and Madrid (9,137), these three Autonomous Communities comprising more than half of the total inmate population. The highest figure for the year (70,889 inmates) was reached on June 8<sup>th</sup>, the lowest number (68,685) having been reached at the end of the year.

Sentencing alternatives to prison are a possibility which must be taken into account in the penal reforms currently under way. The Ombudsman is currently preparing a monographic report on this subject.

Under certain circumstances, for some types of offenses and offender profiles, community service work and other sentences are suitable for achieving the end purpose of social reintegration set forth under the Constitution.

In 2012, a total of 580 complaints were received from prison inmates, 269 (46.37%) of which were accepted for processing.

Similarly, 295 cases from both 2012 and years previous are currently in processing at the writing of this report.

Within the framework of the Ombudsman Institution's activity as a National Preventive Mechanism against Torture, visits have been conducted to the following prison facilities: Alcalá de Guadaira Women's Prison (Seville), Ocaña II (Toledo), Barcelona Women's Prison, A Lama (Pontevedra), Murcia II and Araba/Alava, in addition to the Hospital Custodial unit at the Gregorio Marañón Hospital in Madrid.

## Deaths

Any information concerning the death of an inmate entails proceedings being opened for the purpose of ascertaining the facts involved in the incident in question, the circumstances under which the death occurred and the resulting measures taken by the prison Administration.

According to the latest official data published, the number of inmate deaths dropped from 185 in 2010 to 149 in 2011. The average age of the deceased inmates was 45.6 years of age, the main cause of death being of natural causes other than HIV.

With regard to the prison facilities managed by the Autonomous Community Government of Catalonia (the only Autonomous Community which has authority over this matter), a total of 25 deaths had occurred within the January-September 2012 period.

## Abuse

In all of the cases in which complaints regarding actions of the prison Administration are received setting out accounts of abuse which are lodged either by the inmates proper, their fellow inmates or citizen associations, information is requested from the Administration concerning the allegedly irregular incidents stated.

The end purpose of the Ombudsman's intervention is to ensure that the administrative complaint tools which prison inmates have available to them as well as the internal control mechanisms with which the Administration has provided itself for verifying the proper functioning thereof and respect for the rights of the inmates are functioning normally in accordance with standardized protocols for taking action.

In this regard, it is of prime importance that, in view of complaints of a certain significance regarding alleged abuses, the personnel in charge of investigating these complaints have both specialized training in this type of inquiries and also be external to the staff of the establishment where such a complaint is being investigated. Similarly, the use of photographic records of whatever injuries the inmates may have at any time or under any circumstance is important for the investigation.

Within this context of investigating complaints concerning cases of abuse, it is also of far-reaching importance to avail of recordings from the video surveillance systems installed at the prison facilities in question.

The importance which the Ombudsman places on this matter resulted in a recommendation having been put forth to the Administration in 2012 as to a detailed study being made of the situation of each one of the prison facilities and a protocol being set out for making, removing and keeping the recordings from the security cameras installed at the prison facilities.





## Situation of the Prison Psychiatric Hospitals

The individuals confined in prison psychiatric hospitals are in a particularly vulnerable situation in comparison to other individuals deprived of their liberty. Therefore, the Administration must be required to maintain a particularly vigilant attitude, providing the specialized protective and therapeutic environment which this group of inmates requires for the best evolution of their illnesses and their social reintegration. Best use must be made of all of the possibilities for which provision is made under law so that the length of time spent in these facilities will be no longer than what is therapeutically necessary.

In the 2011 report, it was reported that two criminal proceedings were underway at the time against an orderly from the Alicante prison psychiatric hospital for injuries to an inmate from this facility and sexual abuse of a female prisoner. In 2012, the Ombudsman has learned that the jurisdictional body having province thereover issued a judgment of acquittal in the misconduct proceedings, whilst the proceedings for an alleged offense of sexual abuse is currently under appeal for reversal. The worker in question was fired by the Administration by virtue of the decision concerning punishment adopted in the disciplinary proceedings prosecuted against him for the injuries caused to a psychiatric patient who had been committed by the court.

## Inmate rights

A recommendation has been put forth to the Office of the Secretary General of Prison Institutions as to internal standards being set out governing the procedures for collecting, managing and processing identifying data (fingerprints, photograph, descriptive details for identification and identification document) regarding relatives and other individuals who visit the inmates at prison facilities.

To better guarantee the right to be previously informed recognized under Spain's Personal Data Protection Act 15/1999, it has also been recommended that the prison officials in charge of collecting this information be instructed as to the need of the visitors knowing the end purpose of such data being collected and an explanatory pamphlet be published to be handed out as an obligation every time this data is going to be collected.

The Office of the Secretary General of Prison Institutions has deemed it pertinent to further expand upon the information which is given concerning the process of collecting personal data and visitor rights.

The last time the aforementioned Office of the Secretary General of Prison Institutions contacted this Institution, it reported that a leaflet is now being handed out to visitors providing the information as to how the new communications and visitation (prior visitation scheduling) program and the protection of their personal data works.

## Other prison-related issues

Regarding women with children in prison, the Ombudsman has had an ongoing investigation open since 1999, and on each one of the visits made to prison facilities in which there is a Mother and Baby Unit, special interest is taken in visiting these mothers.



Toward the end of 2011, a request was placed with the prison Administration asking them to provide the data on the number of children under three years of age housed in facilities operated under the authority of said Administration. The Administration replied that there were 136 children, compared to the 215 the year before. A total of 67 of these children were under 1 year of age; 43 being one year old and 26 two years old.

**Overcrowding** still continues to be a problem in Spain's prison facilities, although it is recognized that the Administration is making efforts to manage the correct housing of the prison population.

## ■ Civic Responsibility and Public Safety

### Victims of terrorism

One of the main measures carried out by the Ombudsman Institution in 2012 was that of holding meetings with the leading associations of victims of terrorism in a round of contacts reflecting this Institution's clear, staunch position in defense of their rights.

These contacts have served to listen to the feelings, concerns and claims of many victims and thus be able to convey a number of proposals to the Ministry of Justice which have been included among the recommendations put forth on October 11, 2012.

These recommendations were classified into four groups: general recommendations (seven), procedure-related recom-



material in the police action having been investigated, it therefore having been necessary to request another report from the Directorate-General of Police.

In processing another complaint concerning the actions of the Mossos d'Esquadra (Autonomous Community of Catalonia Police Force) on March 29, 2012 in Barcelona, the Autonomous Community of Catalonia Government sent the Department of the Interior the internet addresses where the different videos of the police actions could be viewed. In its reply, said Department stated that it could not report anything with regard thereto because at the point in time at which the letters were received, it had not been possible to access the videos, despite said videos still being accessible, as this Institution has verified time and again.

The Ombudsman's Office has requested further information from the Department of the Interior, in which, in addition to assessing the police actions on said videos, a copy of the instructions regarding the use of riot-control material is attached.

Despite how useful the photos and video uploaded online are for evaluating these police actions, the images recorded may not suffice for identifying those responsible for these actions. This became evident in the investigation of the police actions which occurred on August 17-18, 2011 in downtown Madrid, especially in the case of the assault of a young woman on Atocha Street and the subsequent assaults of another two citizens. In the case, the difficulty of identifying those responsible for these assaults was due to the small size of their individual badges.

The ineffectiveness of the police badges due to their small size becomes even more obvious when it is found that neither the police officers who were there where the incidents took place nor those who later analyzed the images were able to identify those responsible for the assaults on several citizens.

When it is not possible to identify the officers who have taken part in committing a criminal or administrative offense, despite the existence of images depicting the police actions and numerous witnesses to the incidents sufficiently clearly, cases of irregular or unacceptable conduct go unpunished, which is damaging to the image and prestige of the police forces. This institution has therefore recently reiterated and broadened the recommendation of the Office of the Secretary of State for Security as to the identification badges being made larger, and that they be worn placed on the uniform so as to be legible from different angles.

## Situations of disorder

The tragic consequences of the multitudinous party held in November at the "Madrid Arena" grounds which resulted in the death of five young people led the Ombudsman to put forth a recommendation to the Spanish Federation of Municipalities and Provinces (FEMP) as to said Federation requesting the city and town councils pertaining to the FEMP to publish the list of



the authorized New Year's Eve parties which were going to be held in their municipalities. This recommendation was aimed at ensuring that citizens would have information concerning whether the required permit had been granted for the party they were thinking of attending. This recommendation met with immediate acceptance by the Federation, which sent out a circular to all of the city and town councils for the aforesaid purposes.

## Traffic

In 2012, a total of 470 complaints were lodged regarding the traffic ticketing procedure in force. One of the most frequent complaints is that stating that what the traffic control officer reported is not the actual truth of the matter. There are also protests regarding one or more means of proof proposed by the citizen not having been accepted. Sometimes the Ombudsman is even asked to request the Administration to take evidence. A total of 127 of these complaints in which no indication of defenselessness was found to exist were accepted for processing.

Numerous complaints were also lodged related to the exceedingly high amounts charged for traffic fines. This Institution agrees with the citizenry's thoughts as to the fines being particularly expensive for regular family economies, but it cannot be overlooked that one of the major objectives of fining is the effect entailed of preventing or deterring behavior against the law. Nevertheless, citizens perceive this as being an example of the disproportionately voracious money-grabbing penchant on the part of the Administration charging these fines.

This Institution is therefore of the opinion that this perception could be overcome if the administrations were to step up their efforts to turn the administrative traffic fining procedure into a more just and naturalistic procedure.



# The Ombudsman Institution presented a monographic report on human trafficking in Spain

*In 2012, the Migrations and Equal Treatment Division has presented a monographic report on human trafficking. Many of the recommendations on age-determining procedures put forth in the report presented in 2011 have also been found to have met with acceptance. Visits have also continued being made to juvenile protection facilities, temporary immigrant holding centers and alien detention facilities.*



## Emigration

In 2012, the quality of the services provided to Spanish citizens by consulates abroad continue to be the main reason for complaint under this heading once again this year. Thus, a larger number of complaints have been lodged regarding the consular assistance provided to Spanish citizens having recently arrived in European Union countries as a result of the rise in Spanish emigration and tourism.

## Spanish citizens imprisoned abroad

At December 28, 2012, a total of 2,460 Spanish citizens were inmates in prisons in other countries, four out of every five of whom were sentenced for drug-related matters. By number, special mention must be made of Peru, with 296 Spanish prisoners, Columbia (236), Italy (209), France (194), Brazil (171) and Morocco (171).

Complaints have been lodged by Spanish citizens convicted abroad requesting to be transferred to Spain to serve out their sentence by virtue of the agreements signed for this purpose. Thus, they contact this Institution requesting information on their transfer proceedings, which normally take up to eighteen months. The Ombudsman has repeatedly found that once these transfers have been approved, it takes a long time until these transfers are actually made. Therefore, a request has been placed with Interpol, through the Directorate-General of Police, for information on the stumbling blocks preventing more expeditious transfer of convicts to Spain, as well as the average length of time required for these transfers to actually be made.

The European Union published a framework decision toward the end of 2011 on the transfer of prisoners who are EU nationals to their homelands or to the countries of residence. The member states should have already adopted measures to expedite the steps for proceeding to the transfer of Spanish prisoners who have been serving sentences in other European prisons for sometimes longer than ten years. However, no headway seems to have been made in this process, information therefore having been requested from the Office of the Secretary of State for Justice.

## Entry into Spain

The General Commissariat for Alien Affairs and Borders has taken a recommendation as to allowing those foreign nationals who are in the process of renewing their residence and work permits to be granted entry into Spain until record exists of due notice having been served rejecting their application for renewal and the mandatory time period for which provision is made under regulations has lapsed.

Apart from the above, the arrival of ascendants or descendants over 21 years of age of European Union citizens, including Spanish citizens, to whom entry into Spain was being denied as a result of not providing proof of living at the expense of the citizen who was residing in Spain gave rise to the intervention of the Ombudsman.

In response, the General Commissariat for Alien Affairs and Borders has reported that, in keeping with the criteria of this Institution, instructions have been given to the border patrol stations such that, before denying entry of family members of European citizens, including Spanish citizens, the utmost facilities will be granted to both these family members proper and to their family member residing in Spain so that they may furnish proof by any means valid under Law as to meeting the requirement of "being supported" by their family member.

## Illegal entry of aliens

A group of 83 individuals arriving to "Isla de Tierra" in the Alhucemas Islands gave rise to the intervention of this Institution in view of the complaints from several NGOs. The Ombudsman's Office was informed in a timely fashion as to the actions taken and was aware of the repeated diplomatic negotiations carried out with Morocco as well as the efforts of the Office of the Secretary of State for Security in order for the respect of these people's rights to be guaranteed while they remained in Spain.

However, despite this Institution being aware of the difficulties entailed in controlling migratory influx, it is not possible to share in the opinion that the actions carried out were in keeping with the code of law in force. In this regard, the Office of the Secretary of State for Security was reminded of the fact that when an alien aiming at illegally entering Spain is detained, he/she must be placed at the disposal of the National Police Force so that it may initiate the fitting return procedures in compliance with that which is set forth under Organic Law 4/2000. Similarly, the need was reiterated of the actual safeguards being set forth in the Agreement which the European Commission has been negotiating since 2005 for Morocco to readmit its citizens and immigrants from third countries so that the human rights of the individuals subject to alien affairs procedures in any of the countries signing said Agreement will be respected.

Lastly, as the European Commission pointed out in its message to European Parliament and the EU Council for the purpose of the evaluation of the Agreements for readmission of the EU, it is additionally necessary "to require compliance with human rights in those TCNs who have been readmitted to a transit country may find themselves in a particularly precarious situation in particular in countries with a weak human rights' system, including international protection".

## Temporary Immigrant Holding Centers

A visit was made to the Temporary Immigrant Holding Centers (CETI) in Ceuta and Melilla toward the end of 2012. The Ombudsman and the First Deputy took part in these inspections. At both centers, the modules outfitted as dormitories did not meet the necessary requirements to serve as residential accommodations. Additionally, despite the average length of stay of the residents having been shortened, residents are still remaining there for long lengths of time. Nor are the buildings outfitted for the families remaining at this facility for long lengths of time deemed adequate. This Institution recognizes that efforts have been made to refer individuals pertaining to groups at risk of vulnerability to more suitable residential or care resources, but considers them to be insufficient.

The overcrowding at the Temporary Immigrant Holding Center (CETI) in Melilla cannot be considered as being simply a momentary occurrence. This Center has a holding capacity accommodating 480 people, but at the point in time this visit was made in December 2012, there were 905 people living there, as a result of which this Institution reiterated its concern for the cramped living situation. Given the high degree of occupancy and the need of fitting out all of the buildings possible to house the residents, the day nursery, educational and training services which had been gotten under way and which were showing highly positive results are no longer being provided. The work being done for enlarging the facilities has not helped matters either.

Apart from the above, it was noted on the visit made to the Temporary Immigrant Holding Center in Ceuta that some of the residents might be in situation of being at risk of being victims of trafficking. Therefore, it is deemed particularly necessary for a specific plan to be prepared for preventing and detecting victims of human trafficking and for the personnel of these centers to be suitably trained concerning this matter.

## Unaccompanied underage aliens

Many of the 41 recommendations put forth in the "*Children or adults? Age assessment practices*" report presented in 2011 have met with acceptance. However, the time lapsed to date is as yet too short to be able to determine the impact these recommendations are having on administrative practice.

One of the main questions posed in this report remains still as yet unsolved, given that the Framework Protocol for Unaccompanied Alien Minors for which provision is made under the Alien Affairs Regulations has not been published despite this regulation now having been in effect for more than a full year. This instrument not existing gives rise to some major deficiencies and lack of coordination among the Administration's different agencies which have authority over this matter.

This Institution finds the fact of alien minors who are identified by way of a passport or other documents standing as proof of their status as minors being subjected to age assessment procedures to be cause for particular concern. Article 35.3 of Organic Law 4/2000 refers exclusively to undocumented aliens whose status of being under age cannot be determined in all certainty, this Institution thus insisting that it is incorrect to apply the procedure for which provision is made under this rule of law to those underage foreign nationals who are in possession of a passport issued by the country where they hold citizenship standing as proof of their identity.

In regard to the situation of those minors who have reached adulthood after having been under the guardianship of the Administration, some Government delegations were found to still be terminating the residence permits granted to the minors on their reaching legal age, on being of the understanding that the circumstances which had served as a basis for granting these permits had now ceased to exist. This Institution had repeatedly stated this practice as being in error, given that the Alien Affairs Regulations stipulates the renewal of these permits upon expiration upon meeting the stipulated requirements.

## Visits to Juvenile Centers

In 2012, the "El Fondillo" Juvenile Center in Las Palmas (Grand Canary Island) was closed. This closing had been being requested by the Ombudsman's office since 2008.

The investigations regarding the "Nuestra Señora del Cobre" Juvenile Center in Algeciras have continued. The Autonomous Community Government of Andalusia's Health and Welfare Department reported on the works scheduled for equipping the multi-functional building and adapting it to the current needs. The conclusions reached following the visit were conveyed to the Office of the Attorney General, who has furnished information on the minors residing there and the deficiencies detected in their documentation. Similarly, the Attorney General's Office has informed this Institution as to an upcoming visit to the juvenile center for the purpose of verifying its condition and functioning.

In 2010, the Ombudsman requested the City of Ceuta's Department of Welfare to urgently build a new center in view of the serious structural defects in the "La Esperanza" juvenile center in Ceuta. In November 2011, the Attorney General's Office ordered this center to be closed following the reports from the Ombudsman. In November 2012, experts from this Institution visited the Center once again to verify its condition, given that it continued functioning despite it having been ordered to be closed. The City of Ceuta authorities notified its imminent closing and the transfer of the minors tentatively to the "San José-Hadu" Center, a facility used for social services-related purposes which was conditioned to house the minors. A visit was also made to this new Center, the facilities of which mark a major improvement in the living conditions of these minors.

In December 2012, the "Fuerte de la Purísima" juvenile center in Melilla was visited for the purpose of verifying the degree of acceptance concerning the findings set out following the prior visit in 2010. The orderliness and cleanliness of this Center are continuing to improve. Nevertheless, the facilities are not considered to meet the necessary requirements for taking in residents for lengthy periods of time.

At these centers, the practice consisting of ceasing the custodial care of the minors for causes outside of those for which provision is made under Article 276 of the Civil Code has as yet to be eradicated. More specifically, the custodial care of an unaccompanied underage alien who fails to return to the Center within 24 hours is automatically ceased. This absence is recorded as a "voluntary abandonment", without there being any record of actual steps being taken to ascertain the minor's whereabouts.

In this regard, an investigation was begun in November 2012 after having received complaints from several NGOs stating that two sub-Saharan minors residing at the "La Purísima" Center under the custodial care of the autonomous juvenile protection agency were in Nador (Morocco). According to the story told by the children, a person who identified himself as an "inspector" urged them to get into a vehicle and drove to the security fence dividing Melilla from Morocco, where, according to their statements, they were handed over to Spanish Civil Guard officers, who, after opening one of the gates in the fence, forced them to go over to the Moroccan side. These events occurred on November 14<sup>th</sup>.

Different steps were immediately taken through this Institution with the City of Melilla's Department of Health and Welfare as well as with the Police Headquarters for the purpose of verifying the truthfulness of the story told by the minors. Thus, it was possible to confirm that two minors whose details matched those of the complaint lodged had been stricken from the list on November 14<sup>th</sup> on not having returned to spend the night at the Center in keeping with the aforementioned practice of recording a voluntary abandonment and ceasing their custodial care. Apart from this, after conducting several checks, this Institution gathered reasonable evidence as to the two minors who were in Nador being the two minors who had not returned to the Center. In view of the fact that, if the information furnished by the minors were to be true, the account previously provided might constitute a legal offence, the Attorney General's Office was notified.

Back in December, one of the minors, who was 14 years of age, was intercepted trying to enter Spain illegally in a small boat along with other individuals. At first, he was transferred to the Temporary Immigrant Holding Center, given that the officers in charge of his identification had apparently not detected his

being under age. The Ombudsman's office carried out several steps, and the minor was readmitted to the "La Purísima" Juvenile Protection Center. The Attorney General's Office has reported that, following the declaration from the minor in which his story is confirmed, orders had been given to the National Police to conduct the necessary investigations for the purpose of determining the facts concerning what has been reported.

## Alien Detention Centers

In 2012, visits have been made to the Alien Detention Centers (CIE) in Barcelona, Madrid, Valencia and Algeciras. An account will be provided of these visits and the respective findings in the report to be presented by the Ombudsman Institution in its capacity as a National Preventive Mechanism against Torture. Apart from the above, the Alien Detention Center in Malaga has been closed. This Institution had repeatedly requested that this Center be closed.

The investigation opened after having found no effective protocol to have existed for coordinating between the medical services of the Ceuta and Melilla Temporary Immigrant Holding Centers (CETI), operating under the Ministry of Labor and Social Security and the Alien Detention Centers (CIE) operating under the Ministry of the Interior is still currently ongoing. There being no protocol of this type prevents the medical services of the Alien Detention Centers (CIE) from knowing the medical situation of the individuals who are transferred for deportation from the Temporary Immigrant Holding Centers (CETI), which sometimes means tests being repeated or a follow-up or immediate treatment being carried out for disorders which had already been detected by the Temporary Immigrant Holding Center (CETI) physicians.

## Expulsions and returns

Urgent interventions have been carried out for the purpose of preventing the expulsion of foreign citizens in situations of not having their papers in proper legal order who, when taking steps to have a record of marriage to a Spanish citizen or legal resident processed, had gone to police facilities in person. The Secretary of State for Justice reported that police cooperation was to be required solely for tasks of document verification both of the passport and as to the future bride and groom's living situation, the interview at police facilities for which they are scheduled for an appointment not having to do with any specific instruction from the Civil Register.

After reviewing the complaints received, this Institution put forth a recommendation to the Office of the Secretary of State for Justice to which no reply has as yet been received. In this recommendation, information was conveyed concerning several cases in which proof had been furnished as to it having been the Civil Registry proper which had served the police citation and that, once at the police facilities, the interested party had been arrested and deported for being illegally in the country.

Other situations which have required the Ombudsman's intervention concerning this matter have to do with deportations or returns of aliens who are alleged human trafficking victims. The suggestions put forth by this Institution regarding these incidents specifically take the form of requesting the competent authority to delay carrying out the deportation or return. The aforesaid circumstances and the risk these victims of trafficking who return to their countries of origin have of falling prey once again have meant acceptance having been taken of the suggestions nearly in their entirety.



## Victims of human trafficking

The monographic report *“Human Trafficking in Spain: Invisible Victims”* was published in 2012. This report includes the results of 61 ex officio investigations and 32 cases of complaints as well as interviews with 59 victims. Several actual cases which have come to this Institution's knowledge are additionally detailed. Different administrations, international organizations, trade unions and institutions comprising part of the Spanish Network to Combat Human Trafficking have had a hand in producing this report.

Some of the most noteworthy recommendations made to the Ministry of Labor and Social Security include, in particular, the request for amendment of Article 140 of the Alien Affairs Regulations so as to expand upon the conditions of collaboration with the NGOs working to shelter and protect the victims of human trafficking. A further recommendation has also been made as to the work for publishing the Plan to combat human trafficking for purposes of labor exploitation being expedited.

Regarding the recommendations put forth to the Ministry of the Interior, special mention must be made of the recommendation as to revising the criteria of the Asylum and Refugee Office in the application for international protection in which the interested party alleges being a victim of human trafficking. It is also recommended that a database be set up for registering all of the undocumented minors who are intercepted on attempting to illegally enter the country. It is also recommended that the necessary measures be set out for checking the family relationship of the minors to the adults with whom they are travelling.

Regarding the recovery and reflection period which must be provided to the alleged victims, it is deemed advisable to revise the procedure for providing this period and to evaluate what specialized organizations are to take part in the procedure of identifying the victims. It is also recommended that this procedure be divided into two distinct phases: an initial phase for the victim to recover and, once this stage has been successfully completed, a second phase in which the victim decides whether they wish to cooperate with the authorities. Apart from this, it is requested that the training modules for officers be increased in number and that the coordination among Police, Civil Guard and Autonomous Community Police be enhanced. Another recommendation put forth was that of a national protocol being prepared for the detection and care of minors who are victims of trafficking.

## Consular offices

Complaints are still being received regarding the decisions denying visas for reuniting family for spouses of foreigners residing in Spain on their being considered sham marriages. This Institution has intervened numerous times by putting forth the reminder that the decisions of consular organizations must include a statement as to the reasons for the decision in question, by virtue of which, the competent authority determines whether or not a marriage is one of convenience, avoiding the use of forms and personal opinions on the part of the consuls. Many of the interventions have been due to the fact that, without doubting the legal validity of the marriage certificate furnished by the person being reunited, the consular organization had denied the visa for which application had been made on noting evidence of a sham marriage for reasons including that of there being too great a difference in age between the spouses or because not enough photographs of the public wedding celebration had been submitted. In these cases,



suggestions were made, most of which have met with acceptance, the decisions denying the visas having been revoked.

## Alien Affairs Offices

The Ombudsman's office has carried out a follow-up on the impact the creation of new facilities as well as their being adequately staffed and outfitted with material means has had.

In the case of the Alien Affairs Office in Madrid, the Office of the Secretary of State for Immigration and Emigration has reported eight offices having been set up for foreign citizens may go to depending on the formality they wish to complete. Similarly, the work force has been enhanced by way of the addition of thirty civil service employees. Toward the end of 2012, the improvements made were reported to have made it possible to shorten the length of time for issuing decisions on appeals from the nine months it was formerly taking in the month of May to the seven months it now currently takes for this formality to be completed.

In 2012, the investigation previously opened concerning the office in Barcelona was closed following the recommendations having been taken and the Government Sub-delegation having been informed of the latest improvements made. The human and material resources were increased, online access was made widely available for filing and processing complaints and suggestions. The storage capacity for storing case files was expanded, and further advancements have been made in electronically processing requests for renewal.

## Residence permit procedures and related issues

The Ombudsman has put forth numerous suggestions to the Directorate-General of Spanish Citizens Board and Consular and Migratory Affairs, some of which have been accepted, on the order of facilitating residence visas to foreign citizens who are parents of Spanish minors who are in a stable relationship with a Spanish citizen who is a parent of a Spanish minor of which proof is provided by means of a foreign marriage certificate.

Apart from the above, information has been requested on possible actions aimed at implementing a register of de facto partners or de facto partnerships at the nationwide level. This register would be for the purpose of ameliorating the problem of it being impossible to obtain a residence permit under de facto partner status in all those municipalities in which the municipal civil partnership registers have been eliminated.

## Asylum

Despite Law 12/2009 governing the right to asylum and subsidiary protection having granted the Government a six-month period for further expanding upon the regulations of this legal standard, no regulations have been published to date, this Institution therefore having insisted upon the need for the publication thereof forthwith.

A recommendation has been put forth for the purpose of preventing the violation of the principle of confidentiality in the asylum procedure for guaranteeing the safety of the applicants. Thus, the Administration has been urged to give out instructions for the purpose of not authorizing interviews of those applying for international protection with civil service employees from their consular mission in Spain, unless the interested parties provide their written consent. Even in this case, it has been recommended that the interview be held with a lawyer and translator so as to guarantee the protection of those seeking international protection. The General Commissariat for Alien Affairs and Borders has accepted this recommendation.

Apart from the above, the Ombudsman has found no age assessment procedures to have been conducted on African males who, on reaching Spanish border patrol checkpoints, have alleged being minors and have stated that their identity and nationality is that stated on the documentation they are carrying. In the judgment of this Institution, it is indispensable to use all of the tools available for determining the age and

identify of those travelers who state not being the people to whom the documents they are exhibiting were actually issued. The reports from the attorneys aiding those applying for international protection based on their apparently being under age should lead to the person in question being taken before the Attorney General so that said prosecutor may order age assessment procedures to be conducted on the same, especially if the date of birth stated on the passport and the physical appearance of the person to whom the passport in question was issued allow one to reasonably doubt the truthfulness of the details stated on the document.

Being in agreement with the position taken by the United Nations High Commissioner for Refugees (UNHCR), the Ombudsman is of the opinion that whenever, in the processing of applications for international protection, evidence comes forward of human trafficking or a question exists as to the applicant's age, the cases must be accepted for processing so as to delve deeper into their study. In numerous cases, the UNHCR has favorably reports on cases having been accepted for processing if evidence of human trafficking has been found to exist. However, the Office of Asylum and Refugees (of the Ministry of the Interior) deems that human trafficking cannot be considered as falling within the institution of asylum, even when the person officially interpreting the 1951 Convention is of the opposite opinion and therefore, evidence even existing, decides to reject the application and the re-examination.

## Equal treatment

As a continuation of the investigation with the Directorate-General of Police concerning the identification checks conducted on citizens from foreign countries throughout the country, a reminder of legal duty has been put forth with regard to not proceeding to the detention and subsequent transfer to police facilities of duly identified aliens if the conditions of the legal grounds for a criminal arrest or for detention for purposes of identification as set forth under the Organic Law on Public Safety or a precautionary detention to which reference is made under the Alien Affairs Law are not met.

Two recommendations have also been made to this same Directorate-General on the order of Circular 1/200 of January 25<sup>th</sup> being modified so that the cases of "precautionary detention" and transfer to the police station of identified foreign nationals will be interpreted correctly. The other recommendation suggests that the fitting instructions be given to eradicate the police practice detected of conducting identification checks based on ethnic and racial profiling, and for inspection check mechanisms to be set forth afterward to make it possible to verify the number of detentions and the reason for the identifications made in public places by the National Police Force officers.

The Directorate-General of Police has heeded the reminder and has accepted the recommendation regarding it not being befitting under law to arrest duly identified aliens and transfer them to police facilities, but it has not accepted the recommendation for the fitting instructions to be given for eradicating the police practice of conducting identification checks and for mechanisms of control after the fact to be set out.

The Ombudsman Institution has concluded the initial measures although is currently studying the possibility of requesting the competent organization to prepare a best practices manual in accordance with the international human rights standards for the purpose of supervising police action in the process of conducting citizen identification checks for the end purpose of eradicating unnecessary, arbitrary and abusive practices.





# The Ombudsman calls for a law governing the education system to be passed by consensus with guaranteed funding

*The budget restrictions and cuts resulting from the crisis have had a bearing on the educational organizations and services, the Ombudsman has therefore called for a review of the criteria for the rationalization of public spending. The Ombudsman has also pointed out that the future law governing our educational system must be passed by consensus. The budget cuts and adjustments applied to public employees, not only in economic aspects but also in rights, have given rise to a greater number of complaints.*

## Education

### Non-university education

Royal Decree-Law 14/2012 on urgent measures for rationalizing public spending in the field of education modified the minimum requirements regarding facilities, faculty and number of students per classroom, which gave rise to protests from some sectors.

The complaints lodged for the most part by the professionals from the field of education and parents of students questioned the use of precarious school facilities and the delay in providing substitutes for teachers who are on leave. In some cases, the budget-related conditioning factors resulting from the economic crisis are added on top of other factors, such as the complexity of teacher hiring procedures in the case of the Autonomous Community of Castile-La Mancha.

### Student enrolment and admissions

The shortage of places available for students has often been a reason for complaints due to delays in building new schools or enlarging those already built. The solution usually adopted, of installing prefabricated classrooms for temporary use is often prolonged over the course of time, giving rise, in turn, to complaints due to the inadequacy of these facilities. Complaints have also been received due to the closing of small-sized schools, small rural schools or classrooms operated under combined rural schools, whose students have been enrolled in school in nearby municipalities. These complaints came mainly from the Autonomous Communities of Castile-La Mancha, Andalusia and Galicia.

Other complaints questioned aspects of the regulation of the admission processes regarding the criteria for assessing the assignment of places in schools. As this Institution has pointed out, in the Autonomous Community of Madrid, unequal treatment arises due to economic causes, on awarding points for siblings enrolled in places which are neither in a state-funded private school nor in a free public school. In Andalusia, to have access to the professional instruction provided by the Andalusian Distance Learning Institute, it was required to provide proof of being a native of Andalusia; and in Castile-La Mancha, one town council in Toledo required furnishing proof of having been registered as a legal resident of the town in question for at least one year.



### Academic organization

At the Compulsory Secondary Education Level, the Ombudsman has put forth a recommendation as to the diagnostic assessments for each educational stage (Essential Knowledge and Skills tests) not being used as individual student evaluations. This Institution has also processed a complaint from a student from Aragón suffering from agoraphobia who had been given tests which had to be taken in person and, although no administrative irregularity was found to exist, the Ombudsman was of the opinion that they could have offered this student ways of taking these tests which would have been compatible with her disorder.

Regarding Higher Secondary Education courses, complaints have been lodge due to the course offerings with regard to some higher secondary education modality having been eliminated or some elective subject not being taught.

A larger number of complaints were received concerning Vocational training, due above all to the slow pace at which the processes for recognizing occupational skills acquired through work experience or in ways outside of formal education are actually being implemented, because no official announcement has been made for this process for certain specialties.

The education administrations of the Autonomous Communities involved – Madrid and Balearic Islands – have argued that they initiated the qualifications processes for those specialties to which State funds had been allocated, but that budget-related reasons had prevented undertaking others, and that the needs of the job market will be determining the announcements of others for the coming years. This Institution considered an effort for implementing the largest possible number of specialties to be something to be required.

Regarding the entrance tests for Vocational Training cycles and the announcement of official qualification examinations open to independent candidates, complaints have been lodged due to the participation of applicants from other Autonomous Communities being restricted or prevented. The suggestions and recommendations from the Ombudsman on this subject are being studied with the scope of the Sectorial Conference on Education.

### *Special Education*

These complaints question administrative decisions concerning how adequate and sufficient the means provided may be, especially with regard to facilities and staffing of the schools. The request for explanations regarding the reduction in the number of specially-qualified teachers or other staff at the schools, as well as the shorter length of time devoted, as a whole, to those students who have special educational needs has been answered by the education administrations by confining themselves to saying that the ratio of the number of teachers per number of students complies the regulations in force.

The Ombudsman maintains that prime importance should not be placed on numerical criteria, but rather on the specific needs of each student and of the school as a whole. The Ombudsman also put forth the reminder that Spain signed the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereof, which advocates inclusive education and that the current interpretation and implementation of the regulations in force concerning the subject of special education on the part of the administrations is not complying as closely as could be desired with the provisions of the aforesaid Convention.

### *Aid, free services and public prices*

The crisis situation has conditioned these three aspects to quite a major degree. In one annual report after another, the Ombudsman Institution has demanded that a greater effort be made toward seeing to it that textbooks will be completely free at the compulsory schooling level. The crisis has conditioned the volume of funds allocated this year to purchasing textbooks, and the payments have undergone delays. As a result of all of the foregoing, an ex officio measure has been taken up with all of the education administrations regarding setting up programs for purchasing, loaning and reusing books either by the education Administration, the schools proper or the parents' associations. For the time being, the Ombudsman is awaiting receipt of information.

School transportation has undergone some changes in its regulations aimed at restricting the scope of students benefitting from this service. Changes have been made in bus lines, routes having been done away with in cases in which this service is not mandatory by law or where there are now fewer places, as has been the case of the "Cañada Real Galiana" settlement in Madrid.

Even though the rising price of certain fees and new fees being created for studies which had heretofore been free-of-charge are in compliance with the legal framework, they have deeply

upset those using these services, who are finding their family economies already greatly affected by the crisis to be burdened to an even greater degree.

### *University studies*

As of 2010, this Institution has been mentioning in its reports the lack of coordination between the examination dates in the special announcement of entrance examination and those of the start of the academic year. In 2011, a Working Commission was even set up for harmonizing these dates in keeping with the Ombudsman's findings. In March 2012, this Institution once again put forth a recommendation in this regard, and the Administration replied that, on an organic act currently being in the process of undergoing consideration for improving the quality of the education provided, the measures to be taken would be in keeping with this new regulatory framework.

The processing of complaints regarding the system by which students coming from Vocational Training are to be admitted to university studies has been left on hold awaiting the ruling to be handed down by the Supreme Court, before whom appeals have been filed concerning two court decisions.

Regarding the entrance examinations for dyslexic students in the Autonomous Community of Madrid, the Ombudsman has recommended implementing specific adaptation-oriented measures so that these students may take these examinations under conditions comparable to those of the rest of the students.

### *Student rights*

For more than twenty years, the Ombudsman has been receiving complaints, off and on, regarding the processing of the proceedings of the disciplinary procedures the universities initiate against their students, this being a matter which is still currently governed by the Decree of 1954 by virtue of which the academic discipline Regulations were passed. This set of Regulations includes rules which must be construed as having been repealed and others which must be continually reinterpreted in order to accommodate them to the constitutional and legal framework currently in force.

In 1990, a recommendation from this Institution regarding the needs of setting out new regulatory standards was expressly accepted. Despite this, the Decree remained in effect, and the complaints continued, as a result of which, in 2008, the Ombudsman opened an investigations of a general nature revealing all of the universities being in agreement as to the need for a new regulation. A second recommendation for the steps to be gotten under way for the preparation of this regulation was expressly accepted in 2009. However, the 2010 Student Statute includes solely one provision regarding the future drafting of a bill.

Toward the end of 2011, work began in this regard, and the Ombudsman took up the investigation once again in June 2012. The response from the education Administration indicates that the reform of the Organic Law on Universities will have to be made first.

The Complutense University of Madrid accepted a recommendation as to the students affected by any type of disability being well-informed as to the steps to take and time frames for requesting adaptations in their course curriculums as well as the criteria involved.

The General Secretariat of Universities accepted another recommendation concerning the need of setting our criteria of a general nature applicable nationwide throughout Spain for calculating the grade point average on university student transcripts. It also ac-

cepted unifying the information which academic certifications must include for the purpose of guaranteeing equal opportunity in the mobility-related processes and in the announcements of competition-based procedures in which the students take part.

### Academic fees

A university education is neither compulsory nor free-of-charge, the implementation of measures of a structural nature and others of an exceptional nature therefore being justified under Royal Decree-Law 14/2012 according to which the current economic situation is not in violation of the legal system, although it has given rise to an extremely large number of complaints.

The political powers must ensure access to studies at these levels under conditions of equality and non-discrimination for economic, social or other reasons. The rise in college registration fees must necessarily go hand in hand with a system of scholarships and aid, including exemption in full or in part from public fees depending on a student's economic capabilities. This Institution has also conducted an investigation on the cases of the fees charged to university students outside of the European Community, having come to the conclusion that the amounts involved depend on the agreements set out with each country.

### University degrees

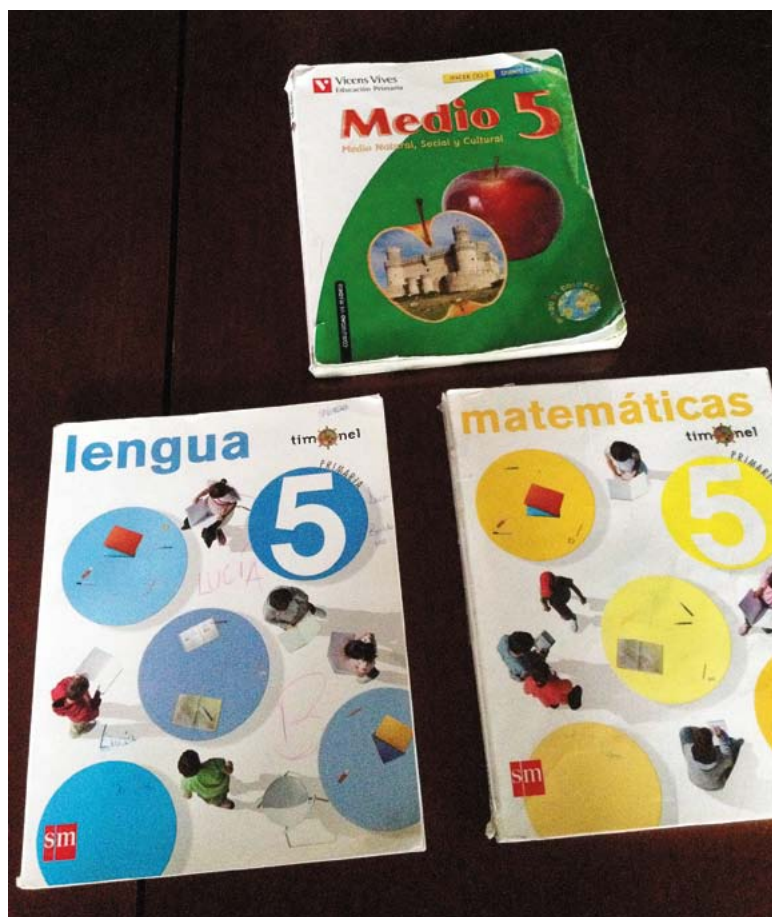
Numerous complaints have been received concerning delays in processing transcripts for the recognition of foreign degrees in Health Science degrees granted in non-EU countries. The health Administration, being in charge of this procedure, has stated that measures have already been taken to expedite these formalities, but that the delays involved are due to the large number of requests coming from more than 50 countries having widely-differing regulations and cultures, which thus complicates the process of evaluating the studies and training completed. There are also delays and failures to meet deadlines in the homologation of other degrees, such as is the case of those holding degrees in Business Administration and Management degrees, justified by the Administration as being due to the restructuring of the former Ministry of Education.

### Scholarships and aid

An error in the process of filing applications for scholarships and aid online has led to numerous candidates having been left out of the scholarship application process for the third consecutive year. The Directorate-General of University Policy has maintained that the computer application clearly stated the steps to be taken repeatedly, as a result of which it considered the error made to be attributable to the people themselves who were filing the applications. The Ombudsman requested said Directorate-General to reconsider its position and to employ a greater degree of flexibility in its interpretation. Although the suggestions made by this Institution were considered unfeasible, the thoughts put forth have been taken into account for the purpose of improving the online filing system for future scholarship application-filing processes.

Numerous complaints have also arisen as a result of the process of evaluating the applications for the scholarships and contracts under the National University Faculty Training Program and the exceedingly lengthy period of time the administration is allowed for notifying whether the aid for the National Program for Training Human Resources in investigation have been granted or denied.

Similarly, complaints have also been received due to delays in the payment of the amount of the aid, there also having been



numerous queries regarding the possible future cutback in the budget allocated to the Erasmus program, a program which is being continued for 2012.

The cutbacks in aid and scholarships as a result of the economic crisis have given rise to complaints from numerous citizens who have found their academic education-related prospects to have been cut short. The Ombudsman has said to the education Administration that it will continue insisting upon the need of the expense-curtailling measures not cutting into and halting the measures already under way. The Ombudsman Institution will also continue reiterating the need for maintaining a system of government aid for studies and education at the different university levels making graduate-level studies possible and facilitating equal opportunities.

## Civil service and public employment

The number of complaints lodged by the public employees has risen exponentially in 2012.

The personnel working in the public sector- just as in private employment – have felt the brunt of the consequences of the economic crisis and the budget cutbacks and adjustments made to deal with the crisis. Many public employees have lost their jobs, especially those who were hired under a temporary agreement, and all of them have found their employee rights to have been curtailed.



The net pay cuts, the total wages bill having been frozen for several years running, the elimination of the bonus pay for December 2012, the fewer personal days allowed, the added days of vacation for seniority having been eliminated, the longer working hours or being forced to work shorter days for proportionally smaller wages and the elimination of the public contribution to pension plans are some of the measures imposed upon public employees.

Many of the complaints received express disagreement with these and other restrictions which the Ombudsman sees as a source of concern, not only from the standpoint of the diminished entitlements but also from the standpoint of the quality of the services which public employees render, many of which are essential for the community.

For example, an employee replacement rate of 10% in fields such as teaching, healthcare, security or that of combating tax and labor fraud cannot go on for long without these essential services feeling the negative effects thereof in the way they function, the same being true for all other realms of public employment where the employee replacement rate is nil.

## Access to public employment

The measures which both the Central Government Administration as well as the Autonomous Community and Municipal government administrations have adopted with regard to planning human resources in the public sector have given rise to an extremely large number of complaints.

Royal Decree-Law 20/2011 on urgent budget, tax and finance-related measures for correcting the public deficit, sets forth regarding the offering of public employment that no new personnel will be hired throughout the 2012 year with the exception of that resulting from selection processes related to public employment offers from previous years or of army and navy personnel necessary for achieving the number of military personnel stipulated for the previous year.

Similarly, the possibility was eliminated of hiring temporary workers and of appointing temporary or substitute statutory personnel save in exceptional cases for covering urgent, pressing needs in the sectors, services and occupational categories which are considered high priority or which have a bearing on the functioning of the essential public services. These limitations are modulated for the education, healthcare, law enforcement and Armed Forces and combating tax and labor fraud in which the employee replacement rate is set at 10%.

Numerous citizens seeking a job in the public sector have expressed their concern regarding no processes for filling job vacancies being announced, others because they are finding a stop to have been put to their aspirations of accessing openings in which they are already working in the contents of which they possess experience.

This Institution has put forth a reminder as to general human resources planning coming under the authority of the Public Administration. The current economic situation is making it necessary to apply criteria of austerity and restriction also to the matter of public administration personnel expenditures and to heighten the quality and productivity of public employment.

The offering of public employment is certainly the legal tool established for making it possible to supply the Administration's needs for personnel, human resources planning being a fundamental requirement for best performing civil service duties.

This Institution trusts that once the most critical stage of this crisis has been overcome, the administrations will evaluate their needs for personnel and will make the planning public.

Another reason for complaint has been the practice of scheduling examinations of a similar type at the very same times on the very same days so as to prevent aspiring candidates from being able to take more than one of these examinations. This relative justification crumbles in free, open selection processes due to being against the principle of free access to civil service employment. Nor is this practice justified due to the complexity involved in managing examinations being taken by a large number of candidates.

Announcements of selection processes have also been found which set limitations or restrictions on access for citizens, such as residing or being officially registered as a resident in a certain municipality. This Institution is of the opinion that these limitations may be in violation of the principle of equal access to public employment unless reasonable, objective justification thereof exists.

In regard to the requirements set for access to the State Law Enforcement Agencies, a group of candidates for Spanish Civil Guard positions have expressed their disagreement with the maximum age limit of 30 years of age being maintained, given that this same age limit has been eliminated for being admitted into the National Police Force. The Ombudsman is currently evaluating without opening an investigation as to the possible modification of the age limit for entrance into the Spanish Civil Guard.

Regarding the selection processes announced in 2012 being carried out in view of the massive citizen participation, this Institution has kept watch to ensure that the principles of equality, merit and capability as well as the principle of transparency in administrative actions were guaranteed both when announcing the holding of the selection processes as well as during the process of their being held and the final decisions issued.

Within this context, complaints have been received due to the selection board refusing, without providing any explanation as to their reasons, to furnish a copy of the exercise the candidates were required to complete.

In response to the numerous actions taken by this Institution, the Ministry of Public Administrations has instructed the selection boards to achieve an adequate degree of transparency by respecting the right to be heard and to obtain copies. The Ombudsman is of the opinion that access on the part of the candidates to the examinations taken should become a common practice.

Nonetheless, it must be remembered that this right to access does not entail any possibility of any further review of the examination or the grading thereof, but rather solely to obtain a copy thereof.

Complaints have also been received questioning that some selection boards set a cut-off grade for passing the exercises after the exercises have been held and corrected. The Ombudsman suggests that the selection boards cannot introduce measures regarding correcting or criteria for grading and passing the examinations for which provision is not expressly made in the instructions set out in the announcement of the examinations. This determination is currently pending a response.

Regarding the process of hiring statutory healthcare personnel, the Ombudsman has set forth a reminder that, in this

process, the principles of equality, merit, capability and public notice must govern the selection, promotion and mobility of this personnel.

In this regard, it has been found that the selection bodies do not always provide a response within the time period stipulated for this purpose to the claims and appeals filed by citizens in the selection processes.

The large number of candidates taking the health Administration examinations implies quite a large number of appeals being filed, which delays decisions being issued to these objections. The Ombudsman is of the understanding that the aforesaid circumstances entail a delay in decisions being rendered, it however not being possible for the work overload to serve as a justification of the violation of the Law on Legal Regime of the Public Administrations and Common Administrative Procedure.

The public administrations sometimes fail to issue any decision whatsoever, leaving the way open for contentious-administrative legal action. According to case law, administrative silence is established for the sole benefit of citizens, the Administration not being able to opt for expressly issuing or refraining from issuing a decision.

## Job provision and mobility

Inter-agency staff mobility, which was established to achieve a more efficient use of human resources, to facilitate the reconciliation of work and family life and to achieve greater professional motivation, has still not actually been implemented in all reality.

At the beginning of 2012, job mobility was still an issue pending a solution, and this Institution once again contacted the Office of the Secretary of State for Public Administrations to request information on the possible headway made concerning this matter.

The Administration has replied that the start of a new term of Parliament and the current economic situation make it necessary to rationalize the administrative structures in order to optimize the work forces already working in the Public Administration. The Administration has also justified the restrictions on mobility as necessary for the purpose of containing public spending.

Despite the fact of voluntary inter-agency staff mobility being guaranteed under law, the Ombudsman has detected certain irregularities in the announced openings, as well as in the announcements of the competition-based procedures for internal transfers.

In response to the complaints received, this Institution has reopened the investigation initiated in due course and has requested the Office of the Undersecretary of the Ministry of Health, Social Services and Equality to furnish a new report on the current status of this matter and on the planned provisions for making the entitlement to mobility an actual right in all reality.

As far as the general merit-based job competitions in the National Police Force are concerned, the law places the Directorate-General of Police under the obligation of announcing these competitions in accordance with that for which provision is made under the catalogue of job positions on said force. Despite the legal provisions, the announcements of these competitions mention solely a force from a certain city or unit and the number of vacancies, but not the titles of the specific job positions. This prevents the police officers from applying for as many job positions as may be announced.



This Institution indicated to the Directorate-General of Police that, for the officers taking part in a general merit-based competition, it is not solely the pay-related aspect which is of prime importance, but also other interests of a personal or private nature. Therefore, announcing a list of forces and not naming the specific job positions from the catalogue prevents free exercise of the right to apply for as many job positions as may be announced.

Obviously, not all of the job positions are the same, even though they be covered by one certain category of officers. Not being able to choose the specific job position from the catalog may also give rise to a downgrading of rank for the police officers.

This Institution has therefore recommended that, in all of the announcements of job position vacancies, full compliance be rendered with the provisions of Royal Decree 997/1989 by precisely and clearly stating the job positions being in question as they are defined in the Spanish National Police Force job position catalog. The announcements should state all of the pertinent details and the requirements for performing the duties of each one of the positions in order to guarantee objectivity and impartiality in the procedure. This recommendation has met with acceptance.

## Remuneration

Tens of thousands of letters were received requesting that an appeal of unconstitutionality be filed against Royal Decree Law 20/2012 on measures for guaranteeing budget stability and promoting competitiveness, a detailed account of which is provided in the respective section of this report. Practically all of these letters express their disagreement with the elimination of the salary bonus as well as of the specific wage bonus or equivalent bonuses for December 2012. The complaints are based on unequal treatment between public employees and the employees in the private sector and the expropriating nature of this measure given that at the point in time of the publication of the Royal Decree-Law in question, part of this pay will already have been earned.

The vagueness of this rule of law and the doubts entertained as to the purpose for which the amount saved will be used has

led this Institution to recommend the amendment thereof to the Office of the Secretary of State for Public Administrations in order for the provisions of the Royal Decree-Law to be interpreted with regard to all that which is related to the elimination of the bonus or equivalent pay for the month of December 2012 in accordance with constitutional doctrine. It was requested that the application of this rule be confined to that amount of the bonus not as yet earned and thus owed at the point in time at which the measure was published and that the end purpose for which the sums in question are to be allocated be specifically stated.

The Secretary of State replied that, the bonus and extra pay having been eliminated effective as of July 15<sup>th</sup> for 2012, the rules of law related to the system by which the same are counted as earned were thus revoked. Thus, it neither provided a reply to the grounds of the first of the recommendations put forth nor dealt with the second recommendation.

The future budget laws will be the ones which will be determining the end purposes and specific budget items to which the sums resulting from the elimination of the bonus pay will be allocated. That will be the time for the recommendation put forth by this Institution to be put into practice by incorporating the suitable provisions for assuring the equitable distribution of these sums into the budgeting regulations.

## Working conditions

Royal Decree-Law 20/2011 and Royal Decree-Law 20/2012 include yet other measures in addition to the pay cuts which have a bearing of the working conditions of public employees. Thus, the Basic Statute of Public Employees is amended with regard to collective bargaining, representation and employee participation and on the covenants and agreements which may be suspended exceptionally for a serious reason of public interest resulting from a substantial change in the economic situation.

Equal treatment in that which is possible of the legal regime of the different groups of public employees and the progressive equal treatment of their rights and obligations inasmuch as it be in keeping with the general interest and duly justified is unquestionable. But the fact of this approach being used in the

aspects restricting the rights of some groups and not in those which are to their benefit raises many doubts.

To date, those who entered public employment by means of indefinite-term employment contract schemes following selection processes governed by the principles of equality, merit, capability and public announcement could presume predictable job stability similar to that of those holding civil service jobs by way of a civil service examination.

However, as of the enactment of Law 3/2012, objective dismissal due to economic causes has come into play in the public administrations sector, such causes being considered to exist when "a situation of unanticipated, persistent budget shortfalls for financing the respective public services occur", a shortfall occurring "for three consecutive quarters" being considered to be persistent, as a result of which it is left in the hands of whomever allocates the budgets to put the contract employees of the public administrations in the situation of being dismissed.

A large number of complaints and also numerous requests for appeals of unconstitutionality to be filed against these rules of law have been received, the respective final decisions and the reasons for the filing of these appeal being set out in the complete report available on the Ombudsman Institution webpage. It will be necessary to keep close watch on whatever budget decisions may be adopted from now on due to the serious repercussions they can have on public employment.

Another aspect which has given rise to a large number of complaints from public sector employees has to do with the provision included under aforementioned Royal Decree-Law 20/2012 regarding the time off from work allowed for personal matters, vacations and additional days added on to the number days off for personal matters or leave of a similar nature, which have been reduced.

The agreements, covenants and collective bargaining agreements for the civil service personnel and public employees under contract which are not in keeping with that which is set forth under Article 8 of the aforesaid rule of law have also been suspended. Those having contacted the Ombudsman argue that the Administration is not hiring any further personnel to substitute for the civil servants who are taking their days off for personal matters or those days they had coming to them for seniority and that these days were offered to the public employees on not being able to raise their wages at certain points in time.

This Institution has not found sufficient reasons for filing the appeal of unconstitutionality requested, but this must not mean losing sight, with a view to the future, of the diminished rights with which public employees are currently dealing and for which they must be redressed whenever the situation so allows.

Mention must also be made of the criterion of the Directorate-General of Civil Service for granting leave to care of a seriously-ill underage child. If the serious illness involved is cancer, the leave is granted for the length of time spent in the hospital and the continued home treatment, whilst if the serious illness is not cancer, the leave is granted solely for the long-term hospital stay provided that the minor requires the direct, continual, constant care of his/her parent. A difference also exists between the paid leave of civil servants and the economic aid in the case of those workers who are governed by Royal Decree 1148/2011.

This situation has given rise to proceedings being opened firstly to re-examine the criterion of the Directorate-General of Civil Service to adjust it to principles of equality, justice and equity which prevent differences in treatment scarcely justifiable and, secondly, in order to specifically determine the cases





in which homecare must be considered as a continuation of long-term hospitalization in the case of serious illness.

As far as the conditions under which the members of the Law Enforcement Bodies render their service are concerned, the Ombudsman took ex officio action before this armed institution due to the lack of personal means at the Spanish Civil Guard headquarters in Cartagena.

This Institution has also contacted the military Administration so that the notifications of the appointments for undergoing medical check-ups will be scheduled with guarantees making it possible to have a record of the personnel in question actually having undergone the check-ups.

The consequence of medical appointments not being made with acknowledgement of receipt involves the body of experts considering the military personnel in question as not having gone to the appointment, preventing the Medical Board from issuing an opinion and it being possible to begin the proceedings for determining psychological and physical fitness. As a result of these measures, the Office of the Undersecretary for Defense sent an official document to the Inspectorate-General of Health so that the appointments for medical check-ups will be scheduled with acknowledgement of receipt.

## Pensions and benefits

The economic benefit in a situation of temporary disability for the personnel employed by the public administrations, agencies and entities operating thereunder and constitutional bodies have also undergone changes due to the provisions set out under Royal Decree-Law 20/2012.

The pay system for the personnel included under the General Social Security Regime is modified during a situation of temporary disability, and the public administrations are instructed to adopt measures to reduce absenteeism.

A public employee who is unable to come to work for justified reasons (illness, accident or others) is penalized by way of his/her wages being docked considerably, this equally affecting both these cases and those cases which are unjustified for missing work. Obviously, the situation is not the same, it being necessary for stringent, severe control measures to be carried out on the latter of these two cases; and in the former of these two cases, the provision included under the aforesaid Royal Decree-Law

authorizing the administrations to determine the cases in which a supplement can be determined totaling up to one hundred per cent of the pay must be used with all due flexibility.

A good number of complaints have to do with the refusal on the part of the General Mutual Society of State Civil Servants (MUFACE) to pay the bill for certain treatments or the amount for the expenses incurred in cases in which the person belonging to this mutual society considers them to be life-or-death emergencies. The investigations opened reflect the mutual society's restrictive criterion when refunding the expenses incurred in public or non-publicly funded centers, even in cases of emergencies in which the interested party is unable to say or does not know what center he/she must go to in order to be provided with care. On contacting the emergency services, they often refer the patient to a public health center instead of calling the special Mutual Society's (MUFACE) emergency phone number.

Long-term treatments are sometimes interrupted due to changes in the arrangement between the collaborating institutions and then have to be continued at other hospitals, which gives rise in certain cases to situations upsetting to patients which could be prevented.

The fact of the notifications of enrollment, disenrollment or other changes with regard to the coverage granted to beneficiaries under the special Social Security regime for the Armed Forces being made exclusively to the entitlement holder can give rise to situations in which insufficient communications between the entitlement holders and beneficiaries prevents the latter from knowing whatever different changing problems may be arising.

This Institution therefore recommended to the Armed Forces Social Institute (ISFAS) that the fitting measures be adopted for the beneficiaries to also be notified directly of the changes granted in the coverage through this special regime. This recommendation has met with acceptance, except when the beneficiary is a minor.

The Ombudsman similarly put forth a reminder to said agency as to the bodies and services operated under its authority adopting coordinating measures avoiding deficient information sharing among them from preventing its entitlement holders and beneficiaries from exactly knowing and obtaining the benefits to which they are entitled.

# The impact of the crisis on health care and welfare benefits was the main subject of citizen complaints

*The cutback in services, the funding of medicines and the exclusion of groups from public Healthcare have given rise to the largest number of healthcare-related complaints. Regarding social policy, the delays in assessing and recognizing dependence has given rise to numerous complaints. On the other hand, the problems for gaining access to housing continues to be a cause of complaint. This Institution has prepared a monographic study on vacant public housing.*

## Healthcare administration

The healthcare-related complaints lodged with this Institution in 2012 have to do with the cutback in healthcare services, groups being excluded from public healthcare coverage, the problem of funding medicines, the elimination of primary care emergency centers, understaffing of healthcare personnel, delays in payments to suppliers of healthcare centers and pharmacies and the delays in the acknowledgement of claims of an economic nature.

By action areas, 8 of every 10 complaints received in 2012 have to do with specialized care, client and patient rights, primary care, pharmaceutical care and general public health questions.

## Entitlement to free universal health care

Within the framework of the twofold “universal” and “free” perspective, the Ombudsman has set forth different recommendations to the public administrations in recent years to extend the right of public health care to the entire population residing in Spain. These measures have repeatedly focused on the need of promoting a legal reform to determine the nature of the en-

titlement to health care as a non-contributory, subjective, personal public right.

However, Royal Decree-Law 16/2012 on urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of its services has introduced the “entitlement holder” concept, linking to a great extent the right to free public health care to the contributory Social Security system.

Even when remarkable advances have been made in free public health care coverage, some citizens residing in our country are still not entitled to this healthcare, being forced to pay for the care when they access National Health System centers and services. This situation is not congruent with the healthcare funding system. Insomuch as all citizens contribute to supporting public health spending in accordance with their economic capabilities by means of a tax system “inspired” on the principles of equality and progressiveness”, all citizens should obviously have access to the services and benefits funded in such a manner.

Apart from the above, the aforesaid Royal Decree-Law has amended Article 12 of Organic Law 4/2000 on rights and freedoms of foreigners in Spain and their social integration. The amendment means that the foreigners who are in Spain without a permit to reside in our country do not have the right to the public health system's free health care with the exception of minors, cases of emergency and childbirth care.

In view of this legal change, this Institution has put forth a number of recommendations to the Ministry of Health for the purpose of mitigating the effects which this new rule of law has on vulnerable groups such as the seriously-ill foreigners in irregular situations who require treatment. Thus, it has been recommended that “the necessary additional measures be adopted to make it possible to assure actual access to health protection for groups in vulnerable situations who have been excluded from the entitlement holder or beneficiary concept for the purpose of guaranteeing compliance on the part of the administrations with the obligation falling thereof on the matter of public health protection”.

The recommendation has also been put forth that “within the framework of the National Health System's Inter-territorial Council, the precise instructions be handed down for proper care to be provided to those individuals who have serious illnesses in accordance with that which is set forth in instruments such as the European Convention on Human Rights”.





The Ombudsman's office has additionally stressed to the aforesaid Ministry that recognizing healthcare for these groups would have relevant practical consequences in terms of public health, given that greater guarantees of protection for the rest of the society would be achieved. The fact that, in organizational terms, this will prevent the possible saturation of the emergency services has also been stressed.

In its reply, the Administration has pointed out that "it is not coherent with the international agreements to promote maintaining situations of illegality or illegal residence of citizens of other nationalities in Spain" and has reported a special convention being set out for providing this group with health coverage. The Administration additionally states that "in all, health care will be provided for citizens of other nationalities who are not legally residing in our country depending on their health situation". This response is currently undergoing evaluation.

## Health information and documentation

One of the main challenges facing the National Health System repeatedly expounded upon by the Ombudsman is that of the implementation, for once and for all, of information systems shared by all of the health care services, such as the common health card and the e-prescription. By late 2012, several Autonomous Communities (including Andalusia, Galicia and Extremadura) had implemented the e-prescription.

Some Autonomous Communities have set up systems (by way of e-prescribing in those territories in which it is already implemented or alternatively by means of the configuration of an "ad hoc" card) so that pensioners pay for medicines only up to the stipulated maximum monthly contribution limit (8 or 18 euros, depending on one's level of income). However, these Autonomous Communities must pay in advance, in any case, ten percent of all the medicines administered. In view of the large number of complaints concerning this matter, the Ombudsman's office has requested the Ministry of Health to adopt measures enabling patients who are pensioners and who are undergoing long-term treatments to be exempted from this copay once the stipulated maximum monthly limit has been paid.

Shortcomings have continued to be detected concerning the subject of information and clinical documentation. This Institution had to intervene after receiving a complaint concerning a medical record having been misplaced at the San Carlos Hospital-Clinic in Madrid thus having entailed a surgical procedure being cancelled. Following the action taken by the Ombudsman, the missing documentation was located, and the surgical procedure could then be performed.

## Benefit planning

The complaints received often reflect citizens finding there to be differences in healthcare quality depending on the part of the country where it is provided.

In the course of different investigations conducted in recent years, it has been found that the differences in the portfolio of services provided from one Autonomous Community to another are remarkable in aspects such as entitlement to health care and the pharmaceutical benefit, pre-implant genetic testing, the use of assisted human reproduction techniques, especially in individuals with HIV, the catalogs of orthopedic prosthesis benefits, oral and dental care, sex change surgery, podiatry care for diabetic patients, smoking habit cessation therapies, economic aid for patients with celiac disease, spe-



cific mental health-related resources, rare or infrequent diseases, fibromyalgia and chronic fatigue syndrome treatment or palliative care and pain treatment.

In the 2011 report, an account was provided as to the investigation opened with the Ministry of Health for the purpose of determining the actual degree to which the entitlement of citizens to be provided, on the part of the health service of the Autonomous Community in which they are temporarily located, with whatever health care they were to require under the same conditions and identical guarantees as the permanent residents of that same Autonomous Community was actually being observed. The Ministry has reported that in order to provide a solution to the problem set out, the Health Care Guarantee Fund has been set up in collaboration with the Ministry of Finance and Public Administrations, being governed under Royal Decree-Law 16/2012.

Regarding the subject of emergency health transportation, also on the occasion of the study of Royal Decree-Law 16/2012, the Ombudsman has put forth a recommendation to the Ministry of Health for this transportation to be publicly funded in those cases in which patients who have limited economic resources are undergoing regular treatments on a long-term basis. The Administration has reported that a ministerial order is soon to be drafted for regulating this transportation in which the special needs of different groups will be taken into account, this being a matter regarding which the fitting follow-up will be conducted.

## Waiting lists

The processing of complaints concerning delays in healthcare is indicative of there being a large number of patients having to wait for months or even years to be diagnosed or undergo

specialized treatment. For example, these are some of the delays found to exist in scheduled surgical procedures: two years (orthognatic surgery) in the maxillofacial department at the “Virgen de la Salud” hospital in Toledo; twenty months (hip prosthesis) in the traumatology department at the “Virgen de la Victoria” hospital in Malaga; eighteen months (pain improvement) at the Vall d’Hebron hospital in Barcelona; longer than fifteen months (cataracts) at the “Joan XXIII” hospital in Tarragona; ten months in the Urology Department at the Ciudad Real Hospital Complex; ten months at the trauma department of the Avila Hospital Complex; longer than seven months (hip prosthesis) in the trauma department at the “San Rafael” hospital in Barcelona.

Lengthy waiting times are also involved regarding external consultations or diagnostic testing and techniques. For example: longer than seven months (priority bone mineral density) at the Almansa hospital in Albacete; five months (priority consultation in pain unit) at the “Nuestra Señora de Candelaria” hospital in Santa Cruz de Tenerife; longer than one year (electromyography) at the “Doce de Octubre” hospital in Madrid; eight months (magnetic resonance) at the “Mancha-Centro” hospital in Ciudad Real; longer than seven months (pain unit) at the “Ramón y Cajal” hospital in Madrid.

Concerning the aforementioned delays, in some cases, the administrations responsible have reported measures being adopted to shorten these waiting times and change the dates initially scheduled. Regarding other delays, the Ombudsman has had to put forth recommendations that plans be implemented for shortening waiting times in addition to making suggestions as to the interested parties being informed regarding when the service they require will foreseeably be provided in fact. In other cases, these delays have given rise to the Autonomous Community involved having had to suspend the specialized health care guarantees law by virtue of which maximum response times for providing care are stipulated.

## Measures at the primary care level

Most of the complaints processed or currently in processing in the at the primary care level have to do with what are referred to as “Continuous Care Points” (CCP, extra-hospital emergencies) being eliminated completely or closed during nighttime hours in the municipalities of Castile-La Mancha, Castile and Leon and Extremadura.

In some complaints, it has been stressed that the degree to which the population is widely spread and the population profile, entailing a major percentage of elderly people, as well as the mountainous terrain and weather or communications-related conditions in the areas where these municipalities are located require, as an exceptional measure, keeping these centers open throughout their scheduled hours. In other complaints, it is pointed out that the center eliminated is located more than 30 minutes away from the basic district health center.

In these cases, information has been requested from the health services regarding the health care planning criteria which gave rise to the CCPs originally having been set up and those on which their elimination is now being based: provisions regarding the increase in staff and material means at the basic district health center, as well as for health transport for offsetting the possible effects resulting from closing the centers, and the distance, stated in minutes, when using regular means of transportation, between the health center and the municipality of the basic health district located furthest away.

## Measures at the specialized care level

The structure, organization and operation of the specialized health care centers have given rise to a large number of complaints and investigations.

Patients residing in Navarre in the areas bordering on the Basque country and Rioja region have lodged complaints explaining that they have found themselves in the position of being forced to travel to hospital facilities located in Pamplona or, when necessary, to Estella, which are much further away from the area where they live, instead of being able to go to centers located respectively in the Basque Country or Rioja regions. The Ombudsman’s office put forth to the Ministry of Health that this issue is not posing a problem which is revolving around solely one certain area or one specific Autonomous Community, but is rather an issue affecting Spain’s National Health System proper in terms of coordination, cohesion and equity.

The Ministry has reported a Care Guarantee Fund being set up, a provision which was put into effect by virtue of Royal Decree-Law 16/2012 for the purpose of guaranteeing care both to these patients and to those temporarily residing to Autonomous Communities outside of those where their permanent residence is located.

Within the framework of the necessary harmonization of the exercise of the fundamental right to strike and the right to health protection to which citizens are entitled, experts from the Ombudsman Institution visited four hospitals in the Autonomous Community of Madrid to see the repercussions on the care-providing activity (consultations, diagnostic testing and surgical procedures) throughout the days on which strikes were called within the November 26<sup>th</sup> – December 27<sup>th</sup> period. The representatives from the Ombudsman Institution also check to see what measures were adopted for rescheduling the activity suspended or cancelled due to this conflict. Some of the most noteworthy conclusions reached included that of compliance having been rendered with the minimum services and those services of a critical nature having been covered in full during the strike.

## Mental health

In March 2012, within the framework of the 27<sup>th</sup> Ombudsmen Coordination Conference, a “Workshop on mental health and special groups of both young and elderly people” was held at this Institution. The conclusions of this workshop included it having come to fore that the care being provided to these groups is still showing some major deficits, despite the progress achieved over recent decades, and that territorial inequalities still exist in the assignment of the insufficient resources available.

The need was also underlined of rolling out a portfolio of National Health System services in this regard and improving the coordination within and among institutions. The economic crisis was also noted as being an added risk for mental health care service access and quality. Lastly, reiterated mention was made as to the need of top priority being placed on prevention and promotion, as well as of it being necessary for best practices guides to be promoted concerning ethical and legal aspects which are essential to be taken into account and for promoting training, investigation and information.

Complaints have continued being lodged questioning whether the fundamental rights of the patients committed to institutions are actually rights in all reality. The Ombudsman has reiterated

the need of promoting a legal reform which, by way of an organic law, will regulate all aspects having to do with involuntary commitment of the mentally ill, their rights and the restrictions thereon which may eventually have to be adopted to protect their lives, health or physical integrity, or those of third persons, as well as a specific regime of guarantees.

## Pharmaceutical benefit, medicine control and pharmacies

Royal Decree-Law 16/2012 has introduced changes in the way in which the beneficiaries contribute to the outpatient pharmaceutical benefit by stipulating that this contribution shall be proportional to the level of income, which will be updated yearly at the most. The groups exempted from this contribution include persons with disabilities in the cases for which provision is made under the specific regulations, and those individuals collecting non-contributory pensions.

A large number of complaints were lodged following the publication of the aforementioned royal decree-law. A first group of complaints had to do with this contribution not being proportional to the level of income, insomuch as the level of income is calculated in terms of the personal income tax return for the year 2010, the economic situation for that year now having undergone some major changes due to circumstances such as unemployment, disability, illness, retirement, etc. Information has therefore been requested from the Ministry of Health concerning the feasibility of updating the level of income more frequently so as to avoid tax information and the actual economic situation of the interested parties being out of keeping with one another at each given point in time.



A second group of complaints makes mentions of the fact that, given the changes in the regulations in the area of coverage of the National Health System health benefit, it is not easy to determine the cases in which persons with a disability are exempt from paying this contribution when purchasing medicines. The Ombudsman's office has requested the Ministry of Health to present a motion for a legal reform so that persons with 33% or higher disability, regardless of the point in time at which they acquired disability status, will be exempt from this contribution.

The third group of complaints refers to pensioner contributions to the Compulsory Ageing and Disability Insurance (SOVI) in the National Health System's outpatient pharmaceutical benefit. These complaints underline the fact that the pensioners paying Compulsory Ageing and Disability Insurance must pay ten percent of the cost of their medicines, whilst other groups, such as those individuals collecting non-contributory pensions are exempt from this contribution, even when the economic amounts of the Compulsory Ageing and Disability pensions are similar to those of the non-contributory pensions. The Ministry of Health has also been requested in this case to include these pensioners among the groups exempt from paying the contribution in the pharmaceutical benefit.

## ■ Social policy and housing

The area of social policy has conventionally generated a very large number of complaints and has given rise to numerous ex officio actions. This trend became even more marked in 2012.

The large number of complaints received reveals the concern for the precarious situation of economic and social rights. These complaints are indicative of citizen dissatisfaction on considering that the financial recovery of the public administrations cannot be carried out at the expense of completely failing to provide or providing less care for those most vulnerable. Additionally, these complaints also bring to fore the cash flow problems of certain administrations which delay the payment of services rendered which are vital for many citizens and put off paying off obligations they undertook several years ago. This latter issue has given rise to several ex officio investigations being opened, given that some of the centers to which major amounts of money were owed have to do with especially vulnerable groups of people, and their going out of business would mean a dire social problem in many cases.

Two areas on which most of the complaints received were focused and regarding which more complaints were also accepted : the Basic Emancipation Income Support for young people and the situation of dependence. A major number of complaints referring to situations of need and social exclusions, juveniles, the protection of families and persons with disabilities were also lodged.

In somewhat more than half of the investigations, the administrations corrected their actions in the direction indicated by this Institution. Apart from this, a rise was found to exist in the number of measures in which the Administration recognizes having proceeded incorrectly, however saying being unable to remedy the problem put forth. In most cases, this impossibility has also been related to the lack of budget credits or cash flow to be able to meet economic obligations undertaken in the past.



The determinations issued by this Institution revolved around issues of dependence, related to both delays in the recognition of a situation of dependence or in issuing the personalized care schedule, as well as the Social Security coverage regime for non-professional caregivers within the family, which was substantially modified under Royal Decree-Law 20/2012. Different recommendations and suggestions of special interest with regard to housing were also put forth, some of which were those aimed at improving the regulations so that the public administrations will put an end to the problems of peaceful coexistence which can arise in the buildings under their ownership, or the need of preventing the illegal occupancy of public housing from being damaging to the individuals who are waiting to be assigned one of these dwellings in accordance with the scales and general regulations.

## Minors

In 2010, the Committee on the Rights of the Child evaluated the reports submitted by Spain and having recognized, in its closing remarks, the advancements made through the passage of the National Strategic Plan for Childhood and Adolescence (2006-2009). Three years following the end of the first plan, this Institution must insist that there be no delay in a new plan being prepared and put into practice.

Mention must likewise be made as to Law 3/2012 eliminating the Juvenile Rights Ombudsman in the Autonomous Community of Madrid having entered into effect on July 1<sup>st</sup> 2012. The sole transitory provision of this law stipulates that the complaints in processing in that institution on the date on which the law in question enters into effect are to be referred to the National Ombudsman. At the closing of this report, this referral had not as yet been made.

The actions taken by the Ombudsman with regard to the complaints concerning procedures for declaring an at-risk situation or a defenseless situation of minors were: supervising the criteria employed for the purpose of evaluating the existence of an at-risk situation, checking the suitability of the procedure followed by the public protection institution and examining the coordination existing among the different agencies.

The issues related to juvenile protection facilities worthy of special note included the complaints due to alleged cases of abuse, improper administering of medicines and failing to take action in case of juveniles escaping, which has been reported by the family members of the runaways themselves in some cases. The investigations conducted by the Administration did not make it possible to ensure the veracity of the incidents reported, nor have elements been offered to this Institution which would make it possible to question these official investigations. Nevertheless, in some cases, this Institution has deemed it necessary to highlight some aspects of the living regime at the facilities concerning questions such as the internal rules of order or the protocols for admissions and intervention with minors at risk of suicide or of self-inflicted injury.

Different problems have been detected for the proper care of the teenage mothers taken into shelter facilities when they reach legal age. Two investigations, with the Autonomous Communities of Madrid and Castile-La Mancha social services departments reviewed the provision regarding specific resources for this group. In the reply from the Madrid department, it was reported that, in view of the absence of facilities assuring care continuity, an agreement had been reached with an entity from this sector to cover certain emergency situations.

Several complaints processed with the Autonomous Communities of Castile-La Mancha and Murcia had to do with problems regarding actually making payment of the economic aid stipulated for the support of juvenile care, adoption or foster care and similar institutions. This situation has progressively become more complicated and although in the case of Castile-La Mancha, the Department of Health and Welfare indicated that they were placing top priority on tending to those situations of families who had taken in children with special needs, the truth of the matter being that in most cases, it has been assumed that the payments are subject to the availability of funds and directly depending on receiving funding through the Autonomous Community Cash Flow Fund. These investigations are currently ongoing.

## Persons with disabilities

In September 2011, in the closing remarks of the United Nations Committee on the Rights of Persons with Disabilities put forth several recommendations, although recognizing the progress made by Spain. Some of the recommendations worthy of special mention are that aimed at improving the knowledge of the arbitration system on the part of persons with disabilities, the improvement of the free legal aid provided, as well as the review of the effectiveness in certain aspects of Law 49/2007. This law, which sets forth the regime of violations and penalties on the subject of equal opportunities, non-discrimination and universal accessibility of persons with disabilities requires changes being made in the Autonomous Community regulations and the pertinent case processing procedures.

To date, the exact regulation has as yet to be fully completed in all of the Autonomous Communities, as a result of which this Institution will continue insisting on this matter until a fully effective penalty system applicable to both public and private institutions is achieved.

For the purpose of eliminating barriers for aiding toward the employment of persons with disabilities, this Institution initiated proceedings before the Secretary of State for Employment for the purpose of the different hiring promotion-related measures for which provision is made both in the employment strategy and the programs provided for workers pertaining to groups with some subjectively unique characteristic being applied to workers with disabilities being hired as domestic workers. Initially, the Administration considered such a possibility inadmissible as a result of this being a matter of a special employer-employee relationship, but the Office of the Secretary of State has finally accepted the idea of the employment promotion program also being applicable to this type of hiring.

The delay in the procedures for the assessment, evaluation and recognition of the degree of disability continued to be one of the most frequent reasons for which citizens who have some disability contact the Ombudsman Institution. From the investigations conducted, it is inferred that some basic centers have had passing problems covering job positions as well as budget limitations for incorporating the personnel appropriate for the actual work load. In other cases, the administrations attributed the delay to the large number of applications for recognition, both first-time applications as well as those for revision due to worsened conditions.

In this situation, the responses to this problem from the public administrations have essentially been interim measures: attempts to shorten the evaluation time frames by means of adopting special measures, temporary staffing increases in some cases, placing higher priority on applications having a bearing directly on being eligible or ineligible for benefits, such as non-

contributory pensions or the benefit for a dependent child. Notwithstanding the foregoing, one must bear in mind that this procedure is of major importance for those involved, in both the personal assets-related aspect as well as in that of accessing services necessary for their proper care. Therefore, the detected delays of longer than 12 months for interviewing the applicants cannot be considered acceptable, given that they violate the principle of efficacy of the administrative measure.

Default on payment to the associations, residences and social entities working in the field of providing integral care and assistance to persons with disabilities or dependent individuals is giving rise to situations in which the clients and work-related problems are going unattended. Most of these investigations are still ongoing, although a growing difficulty of getting payments to where they should be and even making any conjectures as to when and in what amount they may be paid can be said to exist. The once again interim solutions seem to lie in the Autonomous Community Cash Flow Fund, although this brings up a quandary for the future for many resources whose existence is of vital importance to the lives of many and to the lives of their families. That problem has arisen, for example, in the Autonomous Community of Valencia with four centers where care was being provided for 85 minors with mental disabilities, the aid for which has now been cut off.

## Situation of dependence

Throughout 2012, numerous complaints have been received related to the enforcement of Law 39/2006 on promotion of personal autonomy and the provision of dependent care. Until the reform made in Royal Decree-Law 20/2012 governing measures for guaranteeing budget stability and promoting competitiveness, a total of 118 individual complaints had been received and were being processed with yet another 121 complaints for previous years.

These complaints set out mainly problems of delays in the assessment and recognition of the degree of dependence, as well as the determination and assignment of the benefits or services through the respective Personal Care Program (PCP). This Institution has put forth different reminders of the legal duty of providing a response to the applications filed expressly and within the time frames stipulated under law. Thus, eight reminders have been put forth to the Autonomous Community of Valencia Department of Justice and Social Policy, six reminders to the Autonomous Community of Madrid Department of Social Policy and one reminder to the Autonomous Community of the Canary Islands Department of Culture, Sports, Social Policies and Housing, on having found delays several years in length to exist as of this procedure having first begun and even following the situation of dependence having been recognized for issuing a decision on the PCP.

Problems have also been detected regarding the interested parties not having been notified of actions involving the process being put on hold. In this regard, this Institution has put forth two recommendations to the Autonomous Community of Madrid Social Policy Department as to the appropriate protocols being set out making it possible for the means used for expediting the process of assessing dependence to be stated in writing on the record. In practice, on it not having been possible to get in touch with the interested party by phone to schedule the respective appointment or for the acceptance of the resources assigned in the PCP, the case is left on hold awaiting further steps, which, in some case, has taken up to six months, without the interested party having any knowledge as to the reasons for a delay which can be attributed to their failure to



take action. Therefore, it would be more appropriate that, upon the lapse of a reasonable length of time, written notice be provided in accordance with that for which provision is made under the rules of administrative procedure.

The reform of dependent care made by way of Royal Decree-law 20/2012 has marked a new trend in the complaints after July 13, 2012. Citizen discontent concerning the cutbacks made was revealed by way of the requests for appeals of unconstitutionality lodged by 402 citizens.

One of the most outstanding aspects of this reform is related to the Social Security contribution of the non-professional caregivers of dependent persons. Up until July 012, these caregivers were included under the General Social Security Regime by way of a special agreement being signed, their contributions having been undertaken in full by the General State Administration. The Territorial Council of the System for the Autonomy and Care of Dependent Persons (SAAD) put forth a motion on July 10, 2012 for purpose of making changes to set out a regulation which was to take into account the special circumstances of these caregivers within the Social Security System. However, this reform goes much farther beyond the aforesaid to stipulate signing the special agreement to be voluntary, the person signing the same having to be the person exclusively responsible for paying the contributions.

This Institution was of the opinion that the terms of this amendment did not make it possible to take the specific circumstances of citizens into account nor to prevent, in some cases, the exclusion from the Social Security System of those caregivers in a more delicate economic situation. A recommendation was therefore put forth to the Offices of the Secretaries of State for Social Services and Equality, as to, taking into account the situations of strife resulting from circumstances such as ageing, dependent family responsibilities or a past history of prior contributions, measures be considered for supporting the inclusion of non-professional caregivers in the Social Security System and that said inclusion be guaranteed in the cases of individuals and families with lesser economic resources.

A considerable rise in the number of complaints was found to be taking place throughout the final months of the year in which the citizens were expressing their disagreement with the revision and lowering of the sums they were collecting under the heading of economic benefits for care in the family environment or in the service-linked benefits. On no reference stan-



dard existing on the subject of citizen participation in the cost of the benefits, each Autonomous Community had adopted their own rules based on criteria not equal across the board. To prevent these inequalities, the Territorial Council proposed some common criteria which have apparently not been undertaken fully by all of the Autonomous Communities.

Procedures have been opened with several administrations for the purpose of delving deeper into this situation on complaints having been received reporting the monthly cost of the resource assigned having multiplied fourfold or the economic benefit for home care having been lowered from 400 euros/month to 34 euros/month.

Apart from the above, Autonomous Community of Madrid Order 625/2010 of April 21<sup>st</sup> sets forth that the economic capacity of the beneficiary will always be referenced to the last fiscal year immediately prior to the application for recognition of dependent status.

The exceeding inflexibility of this precept gives rise to unwanted situations. In this regard, it must be taken into account that the dependent care benefits are for the purpose of tending to the living conditions of citizens in need of special aid which may be drawn out over the course of many years. It does not therefore seem reasonable to freeze the assessment of the economic capacities of those citizens by relating it solely to the assets they had at the point in time of filing the application, given that there are numerous contingencies which may arise regarding this capacity either increasing or diminishing. However, the Administration's criterion has remained inflexible to date, the actions being taken by this Institution therefore currently being ongoing. The most that has been achieved is the Department of Social Policy correcting them on finding that initial errors had been made in the calculation of the economic capacity of the interested party.

Failure to pay the benefits already recognized within the time frames stipulated under the respective decision has given rise to actions still being under way with the Autonomous Community Government of Andalusia and those under consideration with regard to the Autonomous Community of Valencia still currently under study.

## Housing

### Evictions

This Institution is especially concerned about the dramatic situation through which many people are living, who, as a result of the economic crisis, the plummeting real-estate prices and unemployment, cannot make the payments on their mortgages or the rental payments on their homes. Numerous actions have therefore been taken for the purpose of suggesting solutions regarding a problem the ultimate consequences of which are poverty and social exclusion. This is the subject the monographic report *“Economic Crisis and Mortgage Debtors: Measures and Suggestions from the Ombudsman”*.

In 2012, numerous complaints were received from citizens who were going to be imminently evicted from the homes where they were living. Regarding the evictions due to default on mortgage payments for privately-owned homes, it is not possible for this Institution to intervene, its action being confined to suggesting to those involved that they file application to be assigned public housing suited to their family's circumstances by directing them to the agencies having authority over housing or social matters.

Concerning the evictions from Public Subsidized Housing, default on paying the rent, illegal occupancy and problems

among neighbors are the main causes of eviction proceedings being opened on the part of the Administration. In these cases, even when court-ordered foreclosure cannot be halted, the actions taken by the administration in the proceedings is supervised to assure that it is according to Law, as well as the eviction measure having been taken in view of the impossibility of adopting other less forceful measures.

Unless some administrative irregularity is found to exist in these proceedings, this Institution has found itself in the need, in some cases, of pointing out the especially damaging effects of the eviction scheduled, suggesting to the competent agency that, in view thereof, it weigh the legal assets in dispute and no condemn the interested parties to marginality or to the illegality of becoming occupants of vacant homes.

Along general lines, this Institution has found that, in most cases, the administrations do not make extensive use of the eviction measure and that before going as far as eviction, they try to find alternative solutions or negotiate a new commitment with the parties involved for making payment according to their economic capacity.

### Waiting lists to be awarded housing

The public institutions are confronting a demand for housing which far surpasses the housing available, as a result of which the process of managing waiting lists is becoming progressively more complicated and is requiring greater efficacy.

Of special concern are the cases of families who are in urgent need of housing. Thus, a considerable number of complaints have been received from families formerly in a regular situation who are now affected by the joblessness of several of its members, who, after having been evicted, are finding themselves condemned to living in vehicles, if not out in the street, without any economic resources and with dependent children. This Institution urgently processes this type of complaints, and the administrations usually wind up offering some solution for these families in the end.

In the opinion of the Ombudsman Institution, the public entities cannot justify the shortage of resources and means as reasons for not tending to the needs for decent, adequate housing for so many citizens whilst the management of their stock of housing is not considerably improved.

### Occupancy of publicly-owned housing

According to the complaints investigated by this Institution, a change has been found to exist in the profile of the individuals who are illegally occupying housing, as structure families who have been evicted due to default on mortgage or rental payments are starting to be seen. A large number of vacant homes belonging to financial institutions and to the public administrations makes it difficult to justify the fact to the citizens who are many times living in extreme situations, that they cannot gain access to housing with the urgency in keeping with their needs.

However, even fully understanding the situation these families are going through, it is not possible to assume that illegal occupancy has to be the way for providing an answer to their entitlement to decent housing. This Institution therefore issued several determinations addressing the Directorate-General of Housing and Rehabilitation of the Autonomous Community of Madrid in order for the reasons for exclusion from application for publicly-subsidized housing to include that of having occupied or currently occupying housing without holding sufficient title for this purpose, save voluntary abandonment of the same. A recommendation was simi-

larly put forth that in the law governing the penalization of subsidized housing in Madrid, the occupancy of vacant homes under the ownership of Madrid's Housing Institute (IVIMA) without sufficient title for this purpose be classified as a specific violation. The response from the Administration states acceptance of the first of these suggestions and argues problems of legality related to the difficulty of identifying all of the illegal occupants of a home as reason for not accepting the second recommendation made.

### *Vacant Publicly-Subsidized Housing*

The public administrations usually allege a shortage of available public housing to meet the current growing demand, but the Ombudsman has found a major number of homes to be in the hands of these administrations which have not been awarded. For the purpose of delving deeper into this current situation, ex officio investigations were opened with the 17 Autonomous Communities and with the cities of Ceuta and Melilla, who have already responded to the requests from this Institution, as well as the ten municipalities, provincial capitals with over 350,000 inhabitants.

All of the information gathered is being used for preparing a monographic report which will foreseeably be presented to Spanish Parliament within the first few months of 2012 and which is aimed at continuing to contribute proposals which will aid toward mitigating the situation through which many people are living, who, as a result of the crisis, have lost their homes. In the opinion of this Institution, many of the vacant publicly-owned homes could be used by families who are currently homeless, although in order to achieve greater efficiency, it would be necessary to diversity the approaches to letting homes which are currently used by the administrations.

The Ombudsman also aims to determine the causes for which these homes are vacant longer than absolutely necessary to put them to use for the first time if they are new or to review their conditions and, wherever applicable, refurbish them if they have been previously occupied. Similarly, the report will make recommendations for promoting the rental market for public housing and for encouraging both the Autonomous Communities and the Municipal Governments which hold ownership over vacant subsidized housing to make the requirements for access to this housing more flexible so that a larger number of beneficiaries can be reached.

### *Impact of the economic crisis on the housing plans*

Although the administrations are attempting different options to get financing, the truth of the matter is that there are still numerous cases in which payment is not being made of already recognized housing aid, especially in Autonomous Communities such as Andalusia, Canary Islands, Castile-La Mancha and the Autonomous Community of Valencia. This Institution put forth a recommendation to the Autonomous Community of Valencia Department of Infrastructures, Territory and Environment as to conducting a prior check of each case of aid granted so that expenses would not be approved, commitments undertaken or obligations recognized in amounts any greater than the amount of the credits allocated. Another recommendation was put forth as to the point in time at which the credit expires or the stipulated objectives are met being made public. The Department in question has shown itself to be favorable to accepting this recommendation.

Apart from the above, an ex officio investigation was opened with the Autonomous Community of Madrid Directorate-General of Housing and Rehabilitation on a complaint having been



lodged by more than 60 interested parties stating that if this directorate general would have processed and issued a decision regarding their respective cases with the six-month period stipulated for this purpose, their entitlement to the housing check requested would have been recognized before said check was eliminated. This is a currently ongoing investigation, awaiting receipt of the information requested.

### *Basic Emancipation Income Support for young people*

Since Royal Decree 1472/2007 of November 2<sup>nd</sup> entered into effect governing the Basic Emancipation Income Support for young people (RBE), this Institution has received more than 3,500 complaints concerning specific problems found to exist by the beneficiaries of the aid governed under this aforesaid provision of law. The aforesaid law was repealed effective January 1, 2012, but this has not meant an end to receiving complaints, but rather the opposite. In 2012, more than 1,800 complaints have been received, 73% more than the year before, due to disagreement as to this aid having been eliminated and, above all, due to the delays in payment thereof being made.

Independently of the processing of individual complaints due to delays, an ex officio investigation was opened with the Directorate-General of Architecture, Housing and Land for the purpose of ascertain aspects including the reasons for the delays in the payments and the anticipated solutions to correcting this situation.

According to the explanation provided, the main cause of the delayed payments is the shortage of available credit making it possible to approve the necessary spending for the new cases. Although the budget provision had sufficed for the approval of the spending and payment of the amounts granted since the law governing Emancipation Income Support for young people entered into effect in 2008, stresses have occasionally arise in the payment ordering time frames beginning as of 2011 regarding the new cases, it having been necessary to resort to transactions for recovery of available credit or even expanding credit charged to other budget items or the Contingency Fund. It is also reported that, toward the end of 2012, there was no credit shortage giving rise to delay in the approval of spending and the payment of the aid granted, only those which do not meet the legal requirements for collecting this aid still left pending. The forecast is for no problems to be arising in 2013 like those previously suffered in the time frames for the processing cases of massive-scale payment.

It is also mentioned that part of the problem lies in the delay in the time frames for issuing decisions on the part of all of the Autonomous Communities and Autonomous Cities, which, although have been being progressively shortened, are still averaging 105 days, which is somewhat longer than the time period stipulated under law.

These aids were cut off for new applications with the approval of Royal Decree-law 20/2012. At that time, some Autonomous Community or Autonomous City had already favorably provided a solution for the Emancipation Income Support for young people but had not as yet notified the Ministry of Public Works thereof. The complaints lodged lead to this Institution taking an interest in this matter.

This Institution also asked about the future plans for running checks on undue collections, given that a considerable num-

ber of complaints had been received express their disagreement with the claim for undue collections. As stated, the Autonomous Communities are the ones who must collaborate with the Ministry, given that the refund procedure comes exclusively under the authority of the Autonomous Community agency which initially recognizes the entitlement, although the amounts to be refunded must finally be stated in the Central Government account in the end. The Administration deems that, within a context of economic crisis such as this current crisis, stringency in recovering unduly collected income is inexcusable.

Lastly, information was gathered on the status of applications and positive decisions by Autonomous Communities and Autonomous Cities at November 30, 2012.

Current status of processing of applications for Basic Emancipation Income Support according to data furnished by the Ministry of Public Works at November 30, 2012.

Autonomous Communities & Cities	Total no. applications	Definitive decisions	Positive decisions	Decisions sent to Ministry
Madrid	107,173	105,594	83,621	83,399
Catalonia	95,587	94,443	87,982	86,851
Andalusia	68,602	68,602	58,905	58,905
A.C. Valencia	43,034	41,630	33,681	31,235
Castile and Leon	40,820	40,512	34,731	33,230
Galicia	39,842	39,842	28,193	28,193
Castile-La Mancha	27,856	27,462	20,833	20,785
Asturias	27,622	15,630	12,715	12,715
Canary Islands	24,932	21,509	18,897	18,856
Aragon	20,549	20,303	16,715	16,694
Basque Country	19,843	19,745	16,339	16,295
Balearic Islands	12,958	12,750	11,873	11,830
Navarre	10,133	10,114	9,025	8,988
Extremadura	9,905	9,831	9,000	8,982
Murcia	8,211	8,080	6,770	6,759
Cantabria	4,589	4,575	4,050	4,047
La Rioja	3,246	3,180	2,964	2,960
Melilla	1,206	1,198	904	900
Ceuta	678	678	593	590
Total	566,786	545,678	457,791	452,214

## Persons in situation of poverty and social exclusion

There has been a rise in the number of complaints concerning welfare benefits, especially those having a bearing on the minimum incomes regulated by the Autonomous Communities. This Institution is studying the possible delays and errors made

by the administrations in the assessment, granting and payment thereof. Thus, some of those filing application for the Principality of Asturias' Basic Welfare Wage contacted this Institution putting forth errors in the assessment of their incomes, which were corrected following the fitting review having been urged by this Institution, making access to this benefit possible in the amounts to which entitled.

There are several Autonomous Communities which are encountering difficulties with regard to issuing decisions concerning the applications for minimum welfare incomes. Such is the case of the Autonomous Community of Madrid with regard to the Minimum Integration Income; the Autonomous Community of Valencia with regard to the Guaranteed Citizen Income; or Andalusia regarding the Minimum Solidarity Income. Several investigations are currently under way in this regard.

In the case of the Basque Country, since Law 4/2011 entered into effect in amendment of Law 18/2008 of December 23<sup>rd</sup> for the Guarantee of Income and Social Inclusion, authority over the processing and issuing of decisions regarding the Guaranteed Income has been transferred from the provincial governments to the Basque Employment Service. This Institution has requested information on the incidents which may be arising with this change in management.

A considerable number of complaints were also received stating that the Order regulating the social emergency aid in Castile-La Mancha had not been announced. The Department of Health and Social Policy reported that the announcement was in the final stages of preparation and that the amount allocated to this aid would be 18% higher than in 2011.

This Institution also intervened in the case of a minor diagnosed with a brain tumor who was undergoing medical treatment. This child's family was living in a van in a low-class settlement in Madrid as a result of having been evicted from the home they had in that same town and were pending rehousing. Following the intervention on the part of this Institution, the Madrid Institute for Minors and Families and the Municipal Government of Madrid reported this family having now been rehoused and a close follow-up of this case being conducted.

## ■ Social security and employment

Up to 80% of the social security complaints have been due to problems with benefits. Citizens have contacted this Institution concerned about the frequent, successive legal and regulatory changes, deeming it inappropriate or illegitimate for it to be possible for previously recognized rights to be limited or periods of coverage shortened. In many cases, these complaints have not been accepted for processing due to no administrative irregularity having been found to exist, these complaints having put forth issues already investigated, lacking details or setting out a problem prematurely when no administrative action had as yet been taken.

Those complaints accepted for processing were focused on the Central Government Administration: the State Public Employment Service, the National Social Security Institute and the National Social Security System Treasury having totaled nearly 90% of these complaints. As far as the outcomes of the actions taken are concerned, there has been a balance between those which ended in finding the Administration to have acted correctly and those in which some irregular action was found to exist and was correct in the majority of cases.

Both the National Social Security Institute and the state Public Employment Service have shown themselves to be willing to make the errors and malfunctions known to the organization as a whole in order to prevent detriment to citizens. Motions for amending regulations usually involve more highly complex processing, sometimes being accepted partially and in some cases requiring lengthy measures drawn out over the course of time.

Relevant matters worthy of mention are those related to the Special Regime for Domestic Workers, the Job Seeker's Allowance (RAI), and discrepancies on the part of citizens with enforced recovery procedures or problems with international Social Security agreements.

Spain's current situation is reflected in the volume of complaints lodged in 2012. Numerous citizens and trade unions have requested appeals of unconstitutionality to be filed against Royal Decree-Law 3/2012 and Law 3/2012 on urgent measures for the labor market reform. The decision against filing this appeal and the reasons comprising the grounds for not having done so are available for reading in the annual report provided on the webpage.

Many citizens have put forth problems in employer-employee relations in the private sector, these being cases in which this Institution can solely inform citizens as to the best channels for filing a complaint and, wherever applicable, supervise to ensure that the labor inspection is carried out diligently and effectively.

## Field of application, affiliation, enrolment and disenrollment

As of the first annual report, in 1983, the Ombudsman has been demanding that the Special Regime for Domestic Workers be integrated into the General Social Security Regime. On this integration having finally taken place, complaints have now been received due to management-related problems as a result of the fact that these workers do not work a set number of hours, due to amounts paid into the system having been incorrectly recorded and because the reduction in amounts to be paid is not being applied to those who were already enrolled in the special regime. Actions have also been taken up with the Ministry of Finance concerning the possibility of the employer contributions being deducted on the Personal Income Tax Return.

The university students who are doing external internships have also complained on not being included under the General Regime and due to the two-year limit for calculating the amount of the contribution to be paid into the system.

## Contribution and collection

Transitional provision six of Royal Decree-Law 20/2012 on measures for guaranteeing budget stability and promoting competitiveness gave rise to a request that an appeal for unconstitutionality be filed. The reasons set out as to the grounds for not having made use of the legitimate authority for appealing before the Constitutional Court are available for reading in the annual report provided on the webpage.

Apart from the above, a general investigation was conducted for the purpose of ascertaining the adaptation of the General Social Security Treasury to the regulations governing electronic access on the part of citizens and the requirements of the General Collection Regulations. The reply received includes a detailed analysis of advancements and projects in the process of being implemented.

Numerous complaints have been lodged concerning possible irregularities in the processing of collection procedures, the Administration however having been found to have functioned properly in most of these cases. If not, the return of sums contributed or attached or the cancellation of the claim procedure was achieved.



## Disability benefits

A major number of complaints have been lodged concerning medical releases following a situation of temporary disability or being denied recognition of permanent disability. The work done by this Institution concerning this subject is complicated by the fact that disorders have to be related to the occupation at which working, based on the medical report.

Two currently ongoing investigations have been opened with the National Health Institute. One is related to the information which physicians provide for medical check-ups, the advisability of the interested parties being furnished with a copy of the report, as well as the reasons on which the decisions for release are based. Another, by way of which a further recommendation was put forth concerning notifications of release being notified, given that there is sometimes a lapse between the release and the date on which the release is received by the interested party, which is detrimental thereto in economic terms.

## Retirement pensions

Complaints have continued being received regarding refusals to recognize a retirement pension due to not totaling the minimum length of time contributing into the system required under law and, at times, due to be unaware of the fact that the employer had not paid a contribution into the system for the employee in question. Also citizens who are going through a difficult economic situation alleging the impossibility of being able to pay contributions into the system, they therefore being informed of the possibility of applying for a deferral.

Numerous citizens have also stated their disagreement with pensions not having undergone revaluation, requests for appeals for unconstitutionality to be filed, which are currently under study at the closing of this report, given that the deadline for filing appeals is March 1<sup>st</sup>.

## Unemployment

In the 2011 report, it was pointed out that the Ombudsman would verify the correct functioning of the measures adopted for improving the scheduling system for making appointments for the purpose of requesting unemployment benefits. The findings of the investigations have recorded incidents in the State Public Employment Service telephone assistance service, webpage incidents and incidents also involving appointments scheduled for dates after which the time period stipulated under law for making application for benefits ends.

The managing entity alleges work overloads overwhelming this service at certain times. This managing entity says that when this happens, it provides a receipt serving as proof of the time and date on which the interested party tried to make the appointment, which will be determining for the recognition of the benefits. Nevertheless, the Institution will continue the measures concerning the functioning of this system.

## Benefits and compensation

Measures initiated in 2010 regarding the criterion employed in accrediting heads of household for recognizing or denying unemployment compensation in the case of de facto partners. The Secretary of State for Social Security deemed it impossible for de facto partners to be included.

However, in 2012, on learning of the refusal of unemployment compensation due to taking into account the income of the de facto partner, information was requested regarding the change in criteria. The managing entity maintained the prior criterion, but explained that when the household includes children under 26 years of age, elderly persons with disabilities or minors taken in by both, the income is to be calculated taking in the income of all of the members. According to the Administration, the decisive aspect is not the fact of living together under the same roof, but rather the economic dependence involved, and proof must be furnished of the fact of financially supporting the child.

The Ombudsman being aware of the situation affecting the unemployed who have exhausted all of the benefits and compensations, will be carrying out a follow-up of whatever measures are adopted when the current extension lapses, as was done thereby back in August 2012. Actions are also being taken to keep a check on the Labor Force Reduction Plans (EREs), particularly the temporary Plans (EREs), due to the delay which are taking place in recognizing the benefits and, in some cases, in making payment.

## Job Seeker's Allowance

The reform of the Job Seeker's Allowance (RAI) program for the unemployed with special economic needs who having difficulties finding a job which was made under Article 21 of Royal Decree-Law 20/2012 gave rise to requests for appeals of unconstitutionality.

These requests specifically had to do with two issues: obligation of remaining in Spain in order to be able to have access to the Job Seeker's Allowance and that of persons with disabilities not being any exception and, just as most of the citizens, being under the obligation of having exhausted the unemployment benefit or compensation in order to be eligible for the Job Seeker's Allowance.

The Ombudsman decided not to file an appeal (extensive details are available in the annual report on the webpage), but put forth a recommendation of the Office of the Secretary of State for Employment as to details being provided concerning in what cases leaving the country does not imply registration as job seekers being terminated. Another recommendation was also put forth in the regard of persons with disabilities not being required to have exhausted the benefit or an exception being made for those persons who have serious difficulties accessing the market.

The Secretary's Office has clarified the requirements for leaving the country in keeping with the recommendation made. Concerning persons with disabilities, the administration has stated its rejection on deeming that a welfare protection system adapted to their needs is already in place and that a bill is currently being drafted for the promotion of labor market inclusion. The Ombudsman is currently in the process of analyzing whether it may be befitting to pursue this measure and will be reviewing the bill in question.

## International Social Security

The delays found to have existed in previous years in processing and issuing decisions concerning applications for benefits by Spanish workers who were working aboard and want their entitlements recognized have continued. There were also cases in which pensions already recognized were not paid. The continuous measures and the requests for information placed with the National Social Security Institute (INSS) concerning its management processes have achieved some positive re-



sults. One special case has been that of Spanish sailors who had worked on ships registered in Norway and who, despite paying taxes in Norway, were not collecting retirement pensions as a result of not being residents. Information has been requested from the National Social Security Institute concerning the steps take in order to provide a solution to this matter.

## Employment

The current employment situation in Spain has given rise to large-scale complaints. One of the most noteworthy overall is that of citizens and trade unions being in disagreement with the employment-related measures adopted by way of Royal Decree-Law 3/2012 and subsequent Law 3/2012 on urgent measures for the labor market reform. As previously mentioned in other cases, the decision as to not filing the requested appeal of unconstitutionality and the reasons serving as the basis for this decision are set out in the Annual Report available on the Ombudsman Institution webpage.

Other many complaints received have to do with labor relations in the private sectors, in which case the Ombudsman Institution confines itself to informing the interested parties as to the best way to channel their complaints and, wherever applicable to supervising the action taken by the Labor Inspectorate.

## Employment Offices

The lack of coordination among the competent administrations creates confusion among the clients of the Employment Offices, which should implement measures for providing readily accessible, clear, sufficient information so that citizens can take the steps to complete the formalities to apply for benefits or to register as a job seeker. Additionally, not updating the occupational categories for registering as a job seeker in new occupations has given rise to complaints. Their updating is currently pending completion.

## Placement and employment

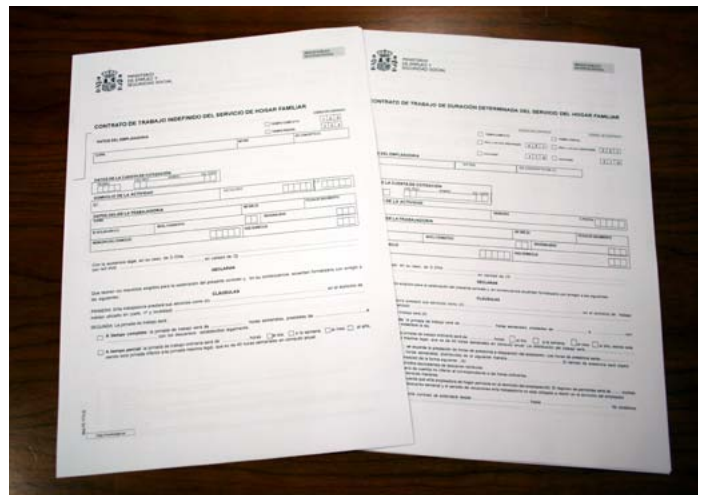
The 2011 report included the complaints of many workers due to the fact that the maritime-fishing industry occupations of all of the coastal provinces, besides Lleida and Madrid, had been included in the Catalogue of Hard to Fill Jobs, despite there having been many unemployed Spaniards who could have been candidates for these positions. The Ombudsman then requested that the aforementioned catalogue be updated.

The Administration proceeded to update the Catalogue in 2012, not without first having put forth the caveat that this change may mean that, on the facilities for hiring personnel from countries with less stringent employment and migratory legislation being extinguished, ships flying the Spanish flag and 5,000 qualified positions may be lost.

Apart from the above, complaints have been received stating that the effectiveness of many of the employment promotion actions, especially those including incentives and economic compensations, dwindles due to delays in their implementation or recognition due to the shortage of means for managing and making these actions effective.

## Vocational Training

In the 2011 report, an account was provided as to the measures which had been gotten under way through this Insti-



tution with regard to Article 21 of Royal Decree-law 122472009 according to which the education and labor administrations are to jointly set out the way in which the evaluation and accreditation of occupational skills acquired by way of working experience is to be organized not having subsequently been fully expanded upon. At the closing of this report, the Autonomous Community Government of Andalusia has still not complied with the aforesaid further expansion, this Institution therefore having reiterated the need of doing so.

## Wage guarantee fund

In 2012, numerous complaints have reported delays in decisions being issued concerning Wage Guarantee Fund processes. This agency has replied to the request for information arguing that there has been a rise in the number of applications as a result of the current economic situation, and it has not been possible to increase the staff, thus meaning that it is taking eight or nine months for a decision to be issued in some provinces. Authorization has been given for hiring substitutes, and other measures are being studied for reducing the number of queries placed in person, and a merit competition will be.

## Other aspects

An ex officio investigation was opened in 2011 concerning actual equality between men and women in the working world. The Labor Inspectorate reported that once the **"2008/2010 Plan for Action of the Labor and Social Security Inspectorate for surveillance at the workplace of actual equality between men and women"** ended, new criteria, plans and campaigns were going to be set out, an area of continuing actions being set up in all of the Autonomous Communities. Along with the requested activity, a scheduled inspection activity will be maintained, focusing on plans of equality, control of discriminatory situations, occupational risk prevention, harassment prevention, monitoring to prevent discriminatory clauses, discrimination in access to employment and rights for reconciliation of work and family life.

This Institution will continue to be vigilant with regard to ensuring the elimination of cases of discrimination for reasons of gender in the working world and the reduction of the major vertical and horizontal segregations at the workplace.

# This Institution's 2012 priorities: Protecting mortgage debtors and those affected by the sale of preferred shares

*In a year marked by the crisis, this Institution's main actions concerning economy-related issues were aimed at enhancing the protection of mortgage debtors and small-scale savers. This is the line of action which has served as a framework for the numerous recommendations put forth to the Bank of Spain, the Spanish Securities Market Commission and the Government. The Ombudsman Institution is of the opinion that it is necessary for the public powers to intervene by taking fast, effective action setting out a regulatory framework suited to the current social situation.*

## ■ Economic planning

### Actions born out of the current economic situation

As a result of the economic crisis, the plummeting real-estate prices and unemployment, many citizens are unable to make the payments on their mortgages. Thus, this Institution presented a study to Spanish Parliament at the first of this year titled *"Economic Crisis and Mortgage Debtors: Measures and Suggestions from the Ombudsman"*, in which twenty recommendations were put forth to the Ministry of the Presidency, the Ministry of Economy and Competitiveness and the Ministry of Justice as well as to the Bank of Spain and the Directorate-General of Insurance and Pension Funds.

The measures adopted to date by the Administration in relation to the recommendations put forth in the monographic report have been included under Royal Decree-Law 8/2011 of July 1<sup>st</sup>, in the Code of Good Banking Practices of Royal Decree-Law 6/2012 of March 9<sup>th</sup>, and in Royal Decree Law 27/2012 of November 15<sup>th</sup>. In the Ombudsman's judgment, all of these measures are positive yet insufficient due to the limitations also set forth for the actual implementation thereof.

In November, the recommendations included in the monographic report were reiterated in addition to other new recommendations also being made, such as the advisability of setting out a legal concept of the "debtor in good faith"; addressing the amendment of Article 1911 of the Civil Code for the purpose of setting out the finer points concerning the universal asset liability of natural persons by means of a system respectful of the constitutional principles and in keeping with the "debtor in good faith" concept; regulating the personal insolvency procedure – mandatory for the creditors to prosecute – which will establish time periods and extensions of payment, reductions in the amount of debt and extension of time for payment and make it possible to continue in the use of the dwelling or the business premises constituting the main activity with welfare income. The recommendation has also been put forth of expanding the situations in which the mortgage debt is cancelled by means of a borrower legally handing back the keys of the mortgaged asset and, in exchange, a lender fully discharging the borrower of the debt; reform Article 693.3 of the Code of Civil Procedure



by expanding upon the possibility of reinstating loans also for the business premises where the business or professional activity comprising the livelihood of the individual in question; independently assessing the properties fairly when a mortgage is being taken, raising the value of the property for the award at auction to the creditor and raising the minimum of the highest bidder. The suggestion was also put forth of establishing, as a requirement for proceeding to foreclosure, the need of a prior act of reconciliation in which the judge is vested with the power to impose a reasonable agreement; reform Royal Decree-Law 6/2012 of March 9<sup>th</sup> on urgent measures for protection of destitute mortgage debtors by broadening the scope of application thereof by setting fewer requirements to make it possible to include debtors for mortgages encumbering the business premises where the activity comprising the livelihood of the debtor in question, or to include other debtors who, fitting the description of the "threshold of exclusion" defined thereunder, are condemned to ruin as a result of not paying their debts on their incomes having diminished considerably.

No reply has as yet been received from the different ministerial departments regarding these recommendations.

Another group of important complaints had to do with the deficient information furnished by the credit institutions regarding mortgages or loans in foreign currency. This type of products was usually marketed when the Euribor was showing an upward trend and the Euro was also on the rise on the international

markets, this being a point in time at which the marketing of loans in Swiss francs, Japanese yens or in various foreign currencies of similar characteristics and behaviors provided the possibility of having a mortgage at a lower cost. However, the customers were not adequately informed that the market conditions could impose the opposite trend, as is now occurring. An investigation was conducted with the Bank of Spain in regard to this circumstance, the new bank customer protection regulation having been found to have placed the institutions under some specific obligations of informing their customers for this type of products, such that, prior to undertaking an obligation, they can have a knowledge of the possible scenarios which would be having a bearing on a product the life of which extends many years beyond the time at which it is engaged.

Apart from the above, the Ombudsman's office currently has an ongoing investigation open after having received numerous complaints from people who had purchased government-subsidized housing, generally prior to 2010, by means of credits referenced for the most part to the Mortgage Loan Reference Index (IRPH). This official and more stable rate than the Euribor had normally been used in the Public Administration's social housing plans, due to the system for calculating this rate takes in the changes in the overall evolution of the market more slowly. However, this has meant that the evolution thereof has been much greater throughout the fiscal year than the Euribor, which is the rate normally used most in free agreements.

Another issue having given rise to numerous complaints is the fact that, following foreclosures, some credit institutions to which part of the debt still continues to be owed, seize all of the money there is in their customers' account without respecting the unattachable minimum of wages and pensions.

The Bank of Spain has indicated that, in a foreclosure, when the total amount of the sale of the property does not suffice to pay off the outstanding debt and nothing is otherwise stipulated under the mortgage loan agreement, the borrower shall continue to be liable to the credit institution with all of his/her present and future assets for the outstanding amount to be settled. In this case, a credit institution cannot proceed on its own account to seize the accounts of its indebted customers, which can only be decided upon by the competent judicial body.

It is true that the possible future violations can be claimed in court, but that is not sufficient, because the persons affected by these practices carried out by the financial institutions feel completely defenseless, without possessing the economic capacity to be able to hire any attorney whatsoever. Given that the annual reports issued by the Bank of Spain consider seizing current account balances to be a bad banking practice, without respecting that which is set forth under Civil Procedure Law 1/2000, stating that this would be punishable conduct if repeated violation were to be detected on the part of the different banking institutions, a new report has been requested concerning the existence of claims denouncing this bad practice, and actions have been taken to prevent citizens from having to go to court to see their rights reinstated. At this point in time, a response is currently pending.

## Financial institutions

Experience goes to show that the citizens feel defenseless regarding the actions of financial institutions, and the Bank of Spain has not served to provide a solution to the problems denounced by customers. There is no knowledge of procedures penalizing the financial institutions which have deviated from good banking practices and financial usages. When the customers go to the Bank of Spain Complaint Service, they hardly

obtain a favorable report, which, although not binding, would serve them for taking recourse to the Courts in greater certainty.

At a meeting held with the Bank of Spain toward the end of the year, the Bank stated its wish to improve the shortcomings detected concerning the issue of transparency. The Bank of Spain has taken into consideration the recommendation concerning setting up a warning system for the process of engaging financial products so that customers will easily understand the risk they are taking upon themselves. Similarly, the Bank has announced the possibility of penalizing credit institutions if they exceed a certain limit in the number of unfavorable claims against the institution.

## Securities Market

The legal actions brought against the Securities Market in 2012 have been confined exclusively to the credit institutions having marketed preferred shares and subordinated debt without duly informing small-scale savers, which has been denounced en masse by citizens. The Ombudsman's office opened an ex officio investigation concerning this matter before the Spanish National Securities Market Commission (CNMV) and before the Office of the State Secretary for Economy and Business Support.

The banking institution had been contacting customers without looking into information about the investor in question and without furnishing those making these investments with the information on the characteristics and risks of the product in question. These actions are in violation of the rules of conduct set forth under the Spanish Securities Market Law 24/1988 amended by Law 7/2007, which places the credit institutions under information and risk assessment-related obligations.

Two recommendations were initially put forth to enhance the protection of customers investing in financial products and to create an effective extrajudicial claims mechanism through the government agencies.

The Spanish Securities Market Commission (CNMV) argued that, in general, the marketing of this type of complex products on the part of the issuing institutions had fully complied with the applicable regulations. Nevertheless, it stated having detected situations which were in violation thereof regarding which several disciplinary proceedings had been opened.





The large number of complaints received, the claims filed before the Spanish National Securities Market Commission (CNMV) proper and some of the court rulings which have now been made public stand as evidence of the preventive control carried out by the Spanish National Securities Market Commission (CNMV) having been ineffective. In the opinion of this Institution, the Spanish National Securities Market Commission (CNMV) should avail, to this end, of more ample authorities for protecting investors.

In the opinion of the Office of the Secretary of State for Economic Affairs and Business Support, preferred shares, subordinated debt and other instruments of a hybrid type are highly complex financial instruments advised against for retail customers. The aforesaid Office believes that the protection of consumers and securities-related legislation must be enhanced, in addition to full compliance on the part of the authorities being supervised for the purpose of confining the sale of subordinated debt instruments to unqualified retail customers. It is also of the opinion that the process of selling unqualified retail customers instruments not covered by the Deposit Guarantee Fund must be substantially improved. This will require a greater degree of transparency as far as the characteristics and resulting risks of such instruments are concerned.

For the time being, the Administration has taken several measures to limit the sales to retail investors and to further enhance the supervisory authorities of the Spanish National Securities Market Commission (CNMV). The Ombudsman Institution considers the actions taken for the purpose of achieving a more transparent, fairer investment market to be positive however continues to disagree as far as the absence of legal capacity on the part of the Spanish National Securities Market Commission (CNMV) to prohibit the sale to retail investors as a preventive measure or this agency's lack of capacity to impose the compensation of damages sustained by the investors on the institutions in question is concerned.

In the opinion of this Institution, sufficient instruments exist in the legal system for measures to be adopted concerning the compensation of the damages sustained by these investors. Additionally, no objections are found to exist to agreements being promoted through the Spanish National Securities Market Commission (CNMV) to aid toward redressing the damage caused, most especially taking into account that such compensation is valued thereby in the enforcement of the disciplinary policy and in the calculation of the amount of the penalties.

It is an undeniable fact that the system for the control and supervision of this unlawful activity has not functioned as it should have, most especially at a point in time at which the institutions are in a position of not possessing the degree of responsiveness that the investors trusted they were able to provide. Therefore, the recommendation has once again been put forth to the Spanish National Securities Market Commission (CNMV) concerning the need of agreements being promoted between the investors and the credit institutions in order to limit the damages sustained by investors and recommend the use of the instruments the legal system has to offer to restore the legal order violated.

Apart from the above, a recommendation has been put forth to the Office of the Secretary of State for Economic Affairs and Business Support as to the Spanish National Securities Market Commission (CNMV) being granted greater authorities over protecting investors and, subsidiarily, the creation of some effective extrajudicial claims mechanism before government agencies, the end purpose of which would be that of settling disputes for the purpose of avoiding court proceedings. Pro-

pitiate a transparent market without any obscure clauses which will make it possible to achieve the necessary balance between the parties and with effective solutions.

The Ministry of Economic Affairs and Competitiveness made an announcement at the Congress of Deputies Economic Affairs Commission meeting held on December 18, 2012, as to an arbitration being set up for those affected by Bankia's preferred shares, which gave rise to an ex officio investigation for the purpose of obtaining information on this matter. More specifically, the Ombudsman has looked into: 1) procedure for the appointment of the person in charge of the preliminary screening process and whether the possibility of this being done by a public institution has been considered 2) procedure for selecting cases and how the bad banking practices in the sale of the preferred shares on the part of Bankia are considered 3) whether it has been planned to set requirements for being eligible for the arbitration and elements of proof concerning Bankia's bad banking practices. All of the foregoing, taking into account that the majority of the depositors who invested in preferred shares are retirees and people without any knowledge of financial matters who trusted their credit institution's staff, as well as the institution having advertised these preferred shares being as a sound investment.

The Ombudsman is of the opinion that, in addition to the information with which the customers investing in financial products must be provided, it would be necessary to stipulate some warning as to the degree of risk entailed in these products stated objectively. One effective system might be, for example, a simple, intuitive color code like the colors used on traffic lights, where green means low risk, yellow means average risk and red means high risk. This suggestion was put forth to the Spanish National Securities Market Commission and to the Bank of Spain.

The Spanish National Securities Commission (CNMV) deemed it improbable for a classification system confined to three degrees of risk to be adopted, on finding such a system to be too simple. The Bank of Spain however accepted the Recommendations, having reported that it is preparing to study the specific details of a system such as the one suggested.

## Insurance policies

A new problem which arose in 2012 in regard to the pension plans lies in redemption being refused if the policy was engaged while one was unemployed. The current regulations do not include this exception, but it would be advisable for the regulations to be amended to allow pension plans to be redeemed in these cases. This would be a matter of mitigating an emergency situation seriously affecting the economic capacity of the plan participants. For people who are in a situation of dire need, it is incomprehensible for one not to be able to avail of their savings. The Directorate-General of Insurance and Pension Funds is of the opinion that engaging pension plans when being unemployed could be used on the part of the participants as a mere tax-planning tool, this Institution however considering there to be precautions which can be taken to avoid tax-related use in these cases. A reply has not as yet been provided.

The ex officio investigation which was opened in 2011 concerning the banking institutions requiring their customers to take out life and unemployment insurance with the institutions' own insurance companies in order to take out a mortgage loan to then later refuse coverage due to the numerous limitations included under the agreements is still ongoing. A recommendation was put forth to the Directorate-General of Insurance and Pension Funds and to the Bank of Spain as to this practice



being restricted and worded more clearly so as to avoid the existing discrepancies in the substance thereof. The Bank of Spain was of the opinion that there are no limits for the institutions offering a loan to be taken out under certain conditions if the borrower meets one or more additional requirements, such as, taking out an insurance policy of certain characteristics. But the institutions are required to meet some obligations themselves, including that of informing the customer whom, within the specific scope of linked agreements, Ministry of Economy and Finance Order EHA/2899/2011 aims to enhance.

In the opinion of the Ombudsman Institution, the public institutions have not taken decisive action regarding the breach of good practices and has remained indifferent to the abuse the banking institutions have committed against their customers who did not render their voluntary consent to taking of the insurance policies, which additionally were not in keeping with the borrower's circumstances and characteristics.

Part of these recommendations have been accepted by the Directorate-General of Insurance and Pension Funds, which will take advantage of the reform of the Insurance Contract Law to provide the agreements with greater transparency in order to make the substance of the policy more readily understandable, to clear up certain contradictions and conform an equitable agreement process to enhance the protection of the policyholders. The recommendation as to the need of setting restrictions on the banking institution practice of requiring loan protection insurance to be taken out has however been put forth to the Office of the Secretary of State of the Treasury and Financial Policy, no reply having as yet been received.

## Gas

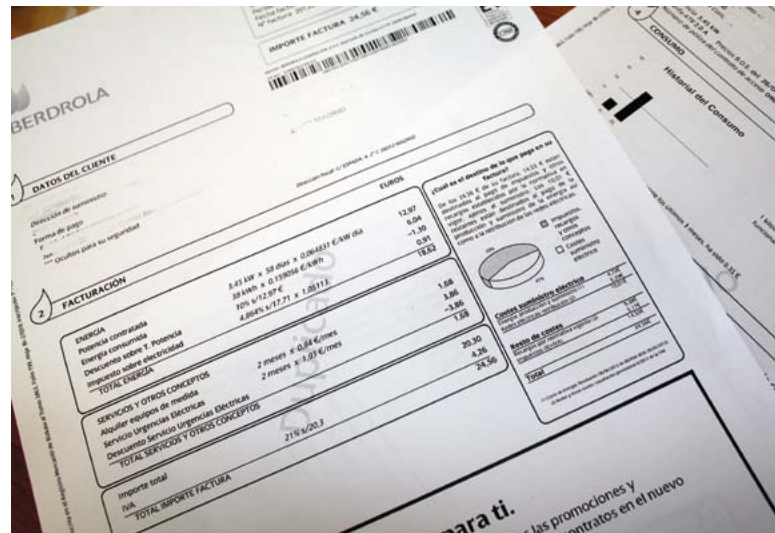
Most of the complaints lodged during this year with regard to the gas service provided have to do with practices which are misleading or for which customer consent for engaging the service in question is not provided, as well as revisions of the facility being conducted without the lawfully-established time period having expired.

Based on the procedural acts, it becomes patent that the Administration takes action against the companies involved and opens investigative proceedings prior to deciding whether to open disciplinary proceedings. Decisions being issued regarding the complaints are delayed due to the companies being slow to furnish the information requested or, in some cases, even not ever furnishing the information at all.

The gas supply being cut off without the conditions required for this purpose having been met is another of the reasons having given rise to a major number of complaints. The alleged failure to pay bills or a fault committed on the part of the company in changing the supply contract over to another company are usually the apparent underlying reasons for this irregular practice. At the point in time of the conclusion of this report, several investigations are currently under way with the Autonomous Community of Madrid Department of Economy and Finance and another before the Autonomous Community of Cantabria Department of Innovation, Industry, Tourism and Commerce.

## Electric power supply

Hard to decipher bills being issued by the electric power companies has been a constant in the complaints received. The different companies marketing electric power have been shown to be issuing their bills with information which is not



homogeneous. Some provide details such as the source of the electric power, the environmental impact and detail what the payment will be used for, specifically stating the taxes and other surcharges for which provision is made under the regulations outside of energy production and supply. Other companies confine themselves to bill the amount for the electricity used.

On learning that the Ministry of Industry, Energy and Tourism had ordered the regulatory bodies, the National Competition Commission (CNC) and the National Energy Commission (CNE), to furnish reports in this regard, an ex officio investigation was opened in which it was pointed out that it would be advisable for the electric power company billing to be rounded out with elements regarding the energy sources, the impact thereof and an itemized listing of all the items to be paid, so as to provide consumers with adequate information regarding what the service being provided is costing them. The information requested in currently pending receipt.

Toward the end of 2012, complaints began being lodged in view of yet another electric power rate hike having been announced for the month of January 2013. This rate hike, along with the latest electricity rate hikes, plus the VAT rate hike and the added rebilling of the last quarter of 2011 and the first quarter of 2012 under the heading of access tolls entail an exceeding high charge for many citizens, affecting mainly those customers who have signed up for the "last resort tariff", which takes in some twenty million households and small and medium-sized businesses. This matter is going to be taken up with the Ministry of Industry, Energy and Tourism in 2013.

Taking into account the constant electricity price hikes and the new surcharges on electric bills, which affect mainly the consumers possessing a lesser degree of buying power, it would be necessary to consider the idea of moving toward developing consumer protection measures, especially for vulnerable consumers, so that the burdens of dealing with the electric power system imbalance will be shared out more equitably.

These remarks have been put forth to the Ministry of Industry, Energy and Tourism, requesting to be informed more precisely as to when a regulation including the definition of the term "vulnerable consumer" is going to become available or whether the decision has been made against such a reform.

## Water

Throughout the course of 2012, this Institution has been contacted by citizens lodging complaints regarding the subject of water, the most numerous of these complaints being those concerning the price of water and the water meter malfunctions.

As far as the specific problems put forth by citizens is concerned, special mention must be made of those regarding the exceedingly high costs charged on water bills, entailing a huge expense for many families given the difficult economic situation affecting the country. After the water company having checked the proper working order of the water meters questioned and finding the meters to be recording figures higher than what was actually being used, the respective billing was corrected in some cases.

## Public Funds

### State taxes

Citizens are not generally sufficiently knowledgeable regarding taxes, the process of meeting their obligations therefore being an arduous task, they feeling defenseless and in a clear position of inferiority in their relations with Spain's National Tax Agency (AEAT). The legal complexity of this subject comprises yet a further problem.

The main issue of many of the complaints received in 2012 was the discontent caused by some regulatory decisions, such as the direct as well as the indirect taxes being raised, and what is referred to as the "tax amnesty".

### *Personal Income Tax (IRPF)*

Citizens continued expressing the difficulties they were finding with regard to preparing the Personal Income Tax return correctly, most especially with regard to taking different exemptions and deductions.

Most of the complaints related to the Personal Income Tax had to do with the National Tax Agency (AEAT) having started data verification or limited verification procedures, usually resulting in estimated tax assessments. The questions raised revolve around three main problems: the language the Agency uses in its notices, the procedure for providing notification thereof and the inflexibility of the criterion the Agency employs in its decisions.

National Tax Agency notices are written in less than readily understandable language, thus not guaranteeing the legal security of taxpayers, who are unable to understand the contents thereof in many cases. A request has been placed with the Administration through this Institution requesting that the Agency clarify the wording of the letters it sends to citizens stating the reasons for the decisions it makes. In some cases, the response has been favorable. Thus, the Special Tax Administration Agency of Navarre has decided to incorporate a fuller explanation as to the grounds for the rulings on the administrative appeals for review against the court orders on which it rules, including at least the full text of the articles of the legal standard mentioned in said rulings and a more detailed reference to the administrative act appealed.

Regarding the notification procedure, the National Tax Agency (AEAT) notifies its decisions to the interested party's tax domi-

cile, but whenever the attempts for notification are unsuccessful, the notice in question is then published in the Spanish State Gazette (BOE), meaning that the taxpayers have no knowledge of the contents of these notifications in most cases and are therefore unable to file an appeal in due time, finding themselves unprotected in the defense of their rights. This problem has worsened due to the fact that, when citizens change their details on the Official Municipal Resident Register (padrón), many of them erroneously think that this data is updated throughout the entire Administration. Therefore, a recommendation was put forth to the Secretary of State for Finance for the purpose of improving the information with which citizens are furnished regarding this matter, the suggestion having been made that the Official Municipal Resident Registry staff inform citizens that the fact of their changing their municipal registration details does not mean any changes are made in the tax domicile.

Apart from the above, the inflexible way in which the National Tax Agency interprets the effects of registering with the Official Municipal Resident Register has meant, in many cases, that the Agency does not allow the exemptions and deductions for which provision is made regarding the subject of housing to be taken. This inflexibility on the part of the Agency on interpreting the regulations in force is highly detrimental to citizens and has already been dealt with in previous reports.

The National Tax Agency's inflexibility regarding this subject has gone so far as to refuse to approve the exemption for reinvestment in permanent housing in cases in which it has been sufficiently demonstrated that the property fulfilled the requirements to be considered a permanent residence. It had to be in economic-administrative proceedings that this exemption being taken was recognized as befitting under law.

Also worthy of special mention in conjunction with the exemption for reinvestment in a permanent residence is the Autonomous Community deduction for sums invested in renting one's permanent residence. In order for it to be possible for this deduction to be taken, it is an indispensable requirement that the landlord deposit the respective deposit payment into the official depository, tenants possibly finding this to be seriously to their detriment in the event that this payment not be deposited, being an event beyond their control thereof. This problem has been brought up by citizens from Galicia and Andalusia, recommendations having been put forth to each of these two Autonomous Communities, but whilst this standard has been amended to protect tenants in Galicia, the recommendation was rejected in Andalusia.

The accustomed inflexibility of the National Tax Agency (AEAT) also comes to bear in the process of granting deferrals and the installment payment of outstanding tax balances, especially as far as the total amount of the taxes due and payable are concerned, which often times totals more than the debtor's entire income. Numerous requests were lodged by citizens stating their every intention of paying off their debts to the Revenue service, but whose circumstances did not currently enable them to make the payment thereof, finding themselves to be doomed to foreclosure. An ex officio investigation has been opened and is currently ongoing concerning the possibility of the National Tax Agency (AEAT) being more flexible in its way of thinking when issuing a decision regarding request for deferral or installment payment and when determining the amount which must be paid monthly, taking into account that flexibility in payment prevents debtors, and that the citizens' shortage of resources in the current economic situation is evident.

## Value Added Tax (VAT)

The passage of Royal Decree-Law 20/2012 of July 13<sup>th</sup> on measures for guaranteeing budget stability and promoting competitiveness gave rise to a great number of complaints due to the general and reduced Value Added Tax (VAT) rate hikes, and because certain products and services have now changed over to being levied at a different rate.

Regarding the tax rate for some goods, a recommendation was put forth to the Office of the Secretary of State of the Treasury as to making the VAT on gluten-free foods suitable for people who have celiac disease comparable to the rate charged on regular bread and other bread-making flours. This recommendation was rejected as a result of considering that this tax rate should be continue to be limited to goods and services which are generally-consumed basic necessities, but the announcement during the third quarter of the year as to this being under consideration for implementation on the part of the Ministry of Health, Social Services and Equality spurred a request for further information on the subject, which met with the same response as before. The rise in this tax on these products has not taken into account the fact of this being a disease for which the only medication is the food eaten. This investigation is currently ongoing.

A particularly significant number of complaints have been lodged due to the new tax rates being charged on the consumptions during the months prior to the law in question having entered into effect. Such is the case of the water, electric power, gas and telephone bills for the months of July and August on which the new rates had been charged by virtue of that which was set forth under Article 75 of Value Added Tax Law 37/1992 of December 28<sup>th</sup>, according to which this Tax becomes due at the point in time at which that part of the price comprising each collection is exactable. With this measure, the VAT ceases to be neutral, which has a bearing on the principle of equality, given that not all of the companies bill with the same regularity, but rather there being water, electric power, gas and telephone companies which issue bills every two months and even every three months. An investigation has been opened with the Office of the Secretary of State for the Economy and is currently ongoing.

## Local Taxes

The problems regarding local taxes were marked by the economic circumstances of the citizens and by the municipal government treasuries. In need of cash flow, the municipal governments have raised taxes, which has raised concern among the citizenry, as is reflected in the complaints.

The municipal governments have made an effort to collect taxes on record as unpaid which were nearing the point in time of becoming non-exactable. The processing of enforced collection procedures has been found to have been hasty at times, the extant data not being adequately checked. This has led to numerous errors in the claims of taxes and rates, the proceeding for which is usually carried through completely despite the citizens' complaints, making it necessary for another procedure to be carried out afterward for refunding sums unduly collected with the lengthy delay and the added cost for properly carrying out the municipal tax-collection duties.

In addition to the above, the services are provided less often and are poorer quality, thus leading some citizens to feel they are paying more for less.

## Real-Estate Tax (IBI)

The correction that has taken place in the real-estate market has affected the municipal assessment of many real-estate assets, which is noticeable in the amount paid for the Real-Estate Tax, given that those for which the values were assessed at the time when the industry was expanding take in values higher than what can be achieved today. The depreciation which has taken place has not been figured into this tax base, nor has provision been made for measures aimed at taking this circumstance into consideration, just as the assessed value was raised by means of the respective budget laws, as a system for keeping the value updated annually, a depreciation coefficient which would recognize the real-estate crisis could be determined.

On the contrary, the Government passed Royal Decree-Law 20/2011 of December 30<sup>th</sup> in adoption of urgent budget, tax and funding-related measures for the correction of the public deficit, which sets forth under Article 8 thereof a rise in the Real-Estate Tax (IBI) rate of 4%-10%, depending on the year in which the real-estate value assessment was approved.

This circumstance has given rise to many complaints regarding which, although their not having been accepted for processing due to this practice being backed by a legal standard, the citizens have expressed their discontent with what they consider insensitivity on the part of the legislators, due to the fact of this rise having been for taxes levied on the property which has caused, firstly, the rise in prices and the cost of living expenses and then the crisis being felt by all. Many citizens consider this even greater real-estate tax pressure to be excessive, especially when it affects permanent homes of people who have no other assets to their name.

The situation detailed hereinabove has affected especially those individuals whose economic capacities are more limited, in addition to the obvious cases of unemployed taxpayers and those who are in situations of insolvency. Complaints have continued to be lodged by citizens over 65 years of age whose only real-estate they have to their name is their permanent residence, their income being confined to whatever pension they collect. Just as the people with disabilities who collect public benefits or those who, having exhausted the unemployment benefit have said, they are finding their income reduced to a government handout. This is why an investigation has been re-opened with the Office of the Secretary of State of the Treasury in regard to the possibility of including some type of tax benefit to relieve the tax pressure on these taxpayers in the new local financing model as a result of this being a sector being more highly vulnerable to the possibility of finding themselves socially excluded in violation the provisions of the Constitution.

## Capital Gains Tax

This concept has been questioned on the part of many citizens due to the fact that this tax is being levied on the transfer of urban lands within a real-estate crisis scenario. The common complaint is that it is incomprehensible that a tax be intended to be levied for making a "gain", this being the term by which this term is known when, in fact, the property has been sold at a price lower than the price at which it was purchased.

Numerous complaints have also been lodged concerning particularly serious situations such as those of people who have lost their regular residence in a mortgage foreclosure proceeding or in cases of the borrower legally handing back the keys



and, in exchange, a lender discharging the borrower of a portion of the debt. The problem of the interested parties has been taken up with the local Administrations for the purpose of helping them to set up a communications channel between the Administration and the citizens affected by a socially deplorable circumstance. Although the Municipal Governments have offered payment facilities and have sometimes negotiated the payment of the tax with the banking institution, the rule of law requiring the payment thereof by the transferring party has been enforced.

This situation has continued even following the enactment of Royal Decree-Law 6/2012 of March 9<sup>th</sup> on urgent measures for protecting destitute mortgage debtors, which sets forth that the entity acquiring the property shall be liable for the tax in lieu of the taxpayer and does not permit the acquiring entity to be able to demand the amount of the tax obligations paid from the taxpayer. However, the Ombudsman considers this rule to be highly restrictive, given that it is not applicable to foreclosures by judicial sale in which the property is sold at auction or to those cases which are outside of the scope of application thereof.

## ■ Administrative action and proceedings

Once again this year, the one aspect common to the complaints regarding administrative procedures is the slowness with which the decisions are rendered. The Administrations do not respect the time periods stipulated under the regulations for processing and rendering decisions concerning the procedures, this being a situation which is worsened when the proceedings involve an economic aspect.

The administrative staff cuts are directly reflected in this matter, and the shortage of resources leads to expropriation, personal asset liability, engaging, benefit approval and similar procedures becoming long and drawn out over the course of time, meaning yet another added burden to be borne by citizens and companies.

The lack of coordination among public Administrations in violation of the principles of Article 103 of Spain's Constitution which must govern every administrative measure have also been an issue in some proceedings in 2012 to which the Administrations have to provide a solution, as the lack of understanding among them must not be damaging to the citizens they must serve.

## Economic-Administrative Courts

The Regional Economic-Administrative Courts (TEAR) failing to comply with the time periods stipulated under Article 239 and Article 240 of General Tax Law 58/2003 of December 17<sup>th</sup> for rendering decisions regarding economic-administrative claims continues to be a constant cause for complaint.

Especially significant is the number of complaints received in related to the Economic-Administrative Court of Catalonia in which the aforementioned time period is generally longer than two years.

An investigation was opened with the Office of the Secretary of State of the Treasury concerning the measures for which provision is made for shortening the lengths of time required for a decision to be rendered within the scope of the different

courts. The Office of the Secretary recognized the need for an in-depth measure to be undertaken for modernizing the Economic-Administrative Courts for the purpose of heightening their efficacy, given that the currently delays are damaging to the rights and interests of citizens. A set of regulatory changes aimed at enhancing the use of online electronic means is under way for simplifying the procedure and achieving a structural reorganization. The Ombudsman is currently awaiting confirmation of the implementation of these measures, as well as the actual enforcement thereof, given that the improvement has not been as yet noted at the time of the conclusion of this report.

## Real-Estate Register

One of the prime Real-Estate Register functions is to serve as an official resident list for taxation categories by ascribing ownerships for tax purposes, which is one of the main sources of complaints. Some of the irregularities reported have involved ownership being erroneously ascribed, registries made to the name of people living on neighboring properties, an entire property being registered to the name of only one of the joint owners, or the changes in ownership following the approval of collective assessment procedures or for renewal of undeveloped areas or by the procedure of converging databases in which the undeveloped properties are located.

As far as the economic characteristics of the property being registered is concerned, the most common complaint in 2012 was related to a value out of proportion to the current circumstances being assigned, not amounting to 50% of the market value. The negative evolution of the real-estate industry has brought to fore the problems caused by using a static value such as the real-estate register value as compared to the reference to a changing magnitude, such as the market behavior. Many of these complaints have made reference to the unsuitability of the market study required under the real-estate register regulations prior to the Assessments being made and the individual real-estate register value being assigned. Also the "M" module, which is the basic module configuring the value, being the same throughout the common territory. These two factors combined have had a bearing on a greater number of complaints being lodged for these reasons.

Combined complaints have been received from one same municipality, and complaints have been conveyed by the mayors proper as a result of considering the values assigned to the municipality as not complying with the stipulated parameters. Some assigned values have been ruled null and void by the courts, but the effects thereof have reached only those who have been party to the proceedings, regarding which a complaint has also been lodged on the part of the citizens from the localities affected. More significant and recent examples are arisen in Pego (Alicante), Jerez de la Frontera (Cadiz), Benissa (Alicante), Cunit (Tarragona), Canet de Mar (Barcelona), Illescas (Toledo), San Carlos de la Rápita (Tarragona), Madrid, Valdemoro (Madrid), Manresa (Barcelona), Móstoles (Madrid), Vinalsa (Valencia), Medina del Campo (Valladolid), Zaragoza, Collado Villalba (Madrid) and Algeciras (Cadiz).

Problems have also been found to exist in regard to the values assigned to municipalities at the time when the real-estate market was in expansion. Approval was rendered of municipal plans which reassessed undeveloped land to include it within estates which had to be developed. Several years following the approval of this approach the urban development measures necessary for the land in question to



be brought up to the new status had not been carried out, which has given rise to the complaints from the owners who are quite often using these parcels zoned as urban land for farming. In some cases, the Real-Estate Register and the municipalities affected have drawn up a partial assessment in order to re-zone some estates back to undeveloped land. Other cases are currently still under investigation without there being any wish for the lands to be reassessed as undeveloped, such as in Medina del Campo (Valladolid), Pájara (Fuerteventura), Cuevas del Becerro (Malaga), Pastrana and Sigüenza (Guadalajara) and Villalonga (Valencia).

In relation to the procedures by way of which the applications are processed and the administrative action of the Directorate-General of the Real-Estate Register is carried out, numerous complaints have continued being lodged concerning the procedure for correcting discrepancies, the opening thereof depending upon the decision of the Administration, which sometimes greatly delays the processing thereof and usually issuing notice as to their not being inadmissible.

Most of these problems already underwent an investigation process within the 2009-2011 period, which was published in the monographic report titled "The Actual Situation of the Real-Estate Register in Spain", which was presented to Spanish Parliament in March 2012. A total of 42 recommendations were put forth therein, still undergoing an investigation with the Directorate-General of the Real-estate Registry and the Office of the Secretary of State of the Treasury.

## Administrative contracts

The largest number of administrative contracting-related complaints have commonly involved managing to get payment from some municipal governments for the different facilities, services and supplies carried out in accordance therewith following the respective expense reports and contracting procedures. One example of this situation is that of the Municipal Government of Tarancón (Cuenca), the Municipal Government of Tobarra (Albacete), the Municipal Government of Motilleja (Albacete), the Municipal Government of Pétrola (Albacete) or the Municipal Government of Villalpardo (Cuenca). These complaints are still currently under investigation at the point of time of the writing of this report.

The passage of Royal Decree-Law 4/2012 of February 24 setting forth information-related obligations and procedures necessary for setting up a funding mechanism for the payment of the suppliers of local entities, making it possible to finance these debts by way of long-term payment scheme has provided a solution to a great many problems which have been put forth in the complaints. This is the case of municipal governments including the Municipal Government of Reocín (Cantabria), the Municipal Government of Pinto (Madrid), the Municipal Government of Humanes (Madrid), the Municipal Government of Valdemoro (Madrid), the Municipal Government of Ocaña (Toledo), the Municipal Government of Parla (Madrid) and the Municipal Government of Hellín (Albacete).

## Public Aid

Complaints have been received throughout 2012 regarding public aid granted but not paid out by the competent Administration, the most numerous complaints being those having to do with international cooperation projects. In most of these cases, the Non-Governmental Organization (NGO) paid the funds in advance for the purpose of not standing in the way of



the project getting started and the commitments undertaken by the contracting parties. At the time of the conclusion of this report, payment is currently pending from such as the Autonomous Community of Valencia Department of Justice and Social Welfare or the Castile-La Mancha Autonomous Community Department of Health and Social Services.

## Transport and communications

### Communications

The problems concerning the subject of communications are recurring, consisting mainly of the need for the legitimate rights of customers to be defended against the operators. Social awareness is also growing regarding the protection of privacy on Internet.

### Universal telecommunications service

Citizens are still continuing to bring up the problems resulting from deficient service being rendered on the part of the companies. The incidents of a technical nature in the fixed telephone services are due, for the most part, to the delay in the installation, transfer and portability of the lines and the repair of breakdowns.

Some people, such as the elderly, depend on their fixed home telephone service for communicating with the outside world and covering their health needs. In view of this circumstance and the need for an immediate solution to the problems raised, these complaints are notified as fast as possible. This is the case of a complaint in which a citizen stated that her mother, an elderly 92-year-old woman, required Red Cross teleassistance, and that she had been without her home telephone service provided by the Movistar company for two weeks. The operator responded rapidly, saying that the breakdown had been fixed, checking the proper working order of her line with the interested party and making the refund of the respective amounts for the legal penalty stipulated for the number of days throughout which the incident had lasted.

## Cell telephones

In 2012, the problems of coverage in certain geographical areas continued. Similarly, the amount of the bills for cell phone use is the aspect most highly controversial among cell phone service customers. Complaints are received concerning the billing of the telephone service strictly speaking and also regarding collection for unlocking cell phones once the length of time one is obligated under contract to remain with the phone company has expired.

## Internet: personal data–related incidents

In 2012, this Institution opened a still as yet ongoing investigation with the Spanish Data Protection Agency (AEPD) after having learned of the changes made in the privacy policy by an internet social network, which had allowed messages of a private nature to be published in a user's publicly-accessible space known as a "wall".

Investigations have also been conducted into complaints related to the difficulty involved in deleting damaging data gathered by search engines.

In the opinion of the Ombudsman, it is fundamental that the public powers enhance the safety measures for guaranteeing the protection of user rights in this realm, although citizens must be the first ones to take the necessary measures to ensure their privacy.

## Transport

In 2012, the shortage of resources has been the controlling force governing the decisions of the Administrations which have authority over transport regarding both the provision of the services as well as the infrastructures serving as the basis of these services.

The transportations service has found its routes shortened and its frequency lessened, which has affected its quality, meeting with protest from citizens, plus the price being raised without taking into account the economically less fortunate. The transportation industry companies have reduced their services depending on profitability, as has been the case of some airlines, the Administration having to fulfill citizen needs.

The new infrastructure projects, as well as the revamping and upkeep of currently-existing infrastructures have felt the crunch of the economic situation in 2012.

## Rail transport

The cost of railway fares is a constant in the complaints, as well as the discounts given to some groups, such as Gold Card holders. The problem lies in the fact that some people not qualifying for being given a discount consider the principle of equality set forth under Article 14 of the Constitution to have been violated as a result of no reason existing to justify their not being qualified. This is the case of the military personnel retired due to permanent disability who were ineligible for the Gold Card. Following a recommendation put forth to Spain's state-owned train service "Renfe Operadora", this group will be included among those eligible for this card without taking into account the degrees of disability, the justification of which was required.

## Air transportation

The social concern due to the announcement of the Spanair airline company going out of business along with the complaints received concerning the frequency of air transport among the Balearic Islands and the Canary Islands and between both of these island chains and the Spanish mainland, as well as the price for residents, gave rise to an ex officio investigation being opened with the Office of the Secretary of State for Transport. The Ministry replied that it has stepped up its focus on these markets by monitoring the evaluation of the competition and the prices.

With the exception of the case of the connection between the Island of Menorca and Madrid, no behavior out of the ordinary whatsoever had been found to exist on the rest of the routes, given that there is sufficient competition for the market to continue functioning.

The Ministry decided to set out a new Public Service Obligation (PSO) to be tendered for the connection between Menorca and Madrid, given that the Spanair company having gone out of business meant there being no direct connections between Menorca and Madrid during the months when demand is lowest.

Apart from the above, the rise in the "airport taxes" has met with the protest of the customers affected, given that some companies have charged these new rates retroactively on tickets purchased prior to the regulation in question having entered into effect. In the opinion of the Office of the Secretary of State of the Treasury, this tax is not being charged retroactively, given that the aforementioned pecuniary public service is being charged on trips not as yet made. The question which must be cleared up is the point in time at which this service was requested by the Spanish Airport Management and Air Navigation Group (AENA), which is currently in processing.

Lastly, a recommendation was put forth to the National Consumer Affairs Institute as to a petition being filed requesting the nullity of the clause which some airlines include in the general conditions of contract enabling them to cancel the return flight ticket when the outbound portion of a round-trip ticket has not been used. A reply has been received stating acceptance of this recommendation.

## Urban transportation

The complaints due to the shortage of resources for providing the public urban transportation service have been frequent throughout the year. The public authorities having failed to meet their obligation of providing infrastructures and facilities has given rise to complaints on considering this to have a negative bearing on the right of Spanish citizens to freely choose their place of residence under Article 19 of the Constitution.

Apart from the above, some facilities built for the purpose of facilitating access to Madrid subway system stations have ceased providing service, which is forcing those using the subway system to take a longer way around, walking a longer distance to use this means of transport or sometimes not being able to use it at all. The closing of subway station entrances has been approved after a drop in the number of people using the subway having been noted. In the opinion of this Institution, the adequate use of the resources available must be verified not so much with regard to the monetary savings entailed in these closing processes, but rather with regard to the justification on which based, on the degree of passenger demand which was taken into account for deciding to build these infrastructures being unknown.

# The Ombudsman investigated infrastructures which are costly or questionably useful as a result of non-strategic planning

*In 2012, an investigation was conducted of overly high-cost facilities which are currently closed or underused and certain projects having turned out to be much more costly to build in the end than initially budgeted. Investigations were also opened due to complaints regarding noise, air pollution, and rational land use, empty lots with vacant apartment houses, unfinished residential developments and architectural barriers.*

## ■ Environment

### Rights of access to information and public participation

By way of the complaints lodged, it became evident that public administrations are still linking the right of access to environmental information to the administrative status of being an "interested party", which is in violation of the legal regime thereof (Law 27/2006). In the opinion of this Institution, public administrations must provide access to the environmental information of which they are in possession regardless of whether or not the person requesting the information is an interested party, whether or not the information requested comprises part of case proceedings and whether or not the case proceedings have closed.

Within the scope of entitlement to participation, numerous suggestions have been put forth as to the interested parties being furnished with a copy of the relevant documentation enabling them to exercise their right to citizen participation in the process of informing the public.

Worthy of special note is a complaint opened in 2012 concerning the administrative silence of the Ministry of Agriculture, Food and Environment and the Ministry of Industry, Energy and Tourism regarding a request for information in relation to the permit given to a company for investigating the existence of hydrocarbons in the Autonomous Community of Valencia.

### Impact assessment. Municipal permits

#### Strategic plan and program evaluation

Building infrastructures which are scarcely useful for the common good is a fine example of the lack of planning and scheduling strategy. This way of doing involves damages to natural areas which are irreversible or difficult to remedy to natural areas, in addition to involving economic losses.

Last year's report made reference at the time to strategy assessment only making sense if done prior to final decision-making.

Many facilities, such as airports, conference centers, museums, stations, railways lines and even roads are closed or underused. Some investigations on this situation were opened some years ago due to deficiencies in the impact assessment and other irregularities, such as no permit having initially been granted, which is something tolerated and even considered justifiable in some cases by the Public Administration, all of which has major

economic consequences. It is fair to say that, in many other cases, the legal control systems have functioned properly.

An ex officio investigation was opened in this regard concerning the Castellon Airport, which has been officially opened but is not being used. This Institution is interested in knowing the current status of the processing procedure, the approximate date by which this airport could be operating, the cost differential between the budgeted cost and the actual final cost of construction, the source of the funding (public and private) and the deviations between what was stated in the Airport Master Plan and the actual situation. Information was requested from the State Air Safety Agency (AESA) and from the Directorate-General of Civil Aviation operating under the Ministry of Public Works. Verification of the effectiveness of the airport planning is also being pursued.

#### Municipal permits for classified activities

The outcomes under this heading are summarized in the general recommendations regarding municipal measures concerning annoying activities which the Ombudsman has put forth to the Spanish Federation of Municipalities and Provinces (FEMP), requesting the collaboration thereof. These recommendations were made as a result of the passage of Royal Decree-Law 19/2012 of May 25<sup>th</sup> on urgent measures for liberalizing commerce and certain services, replacing the prior permit-issuing intervention with a responsible statement and prior notice for the activities which do not need to be placed under the environmental protection regime.

The new legislation governing exemption from a permit previously having been issued being a decisive step forward in eliminating formalities for being granted permits, the issuance of this permit must not be construed as being an exemption from environmental responsibility. The new provisions streamline formalities but do not do away with guarantees. The recommendations have been taken and the Spanish Federation of Municipalities and Provinces (FEMP) has conveyed the suggestions made by this Institution to the local authorities.

### Natural resources

#### Protection and conservation of natural areas, flora and fauna. Mines and hunting

In 2012, the actions continued concerning the difficulties in agriculture and pollination due to the use of neurotoxic pesticides. This Institution reiterated the two suggestions put forth in 2009 and 2011, in which it was requested that the use of these





pesticides be regulated and restricted during blossoming time and also in areas and at the times of year when bees are active.

The Ombudsman does not find the reasons given by the Administration for not accepting these suggestions to be convincing, putting forth the reminder that Royal Decree 2163/1994 of November 4<sup>th</sup> does not allow authorization of a plant health product if the consequences of the use thereof have unacceptable effects on the environment.

The measures adopted by the Administration, which are confined to the manufacturers' labeling obligations, lack coercive force.

## Cattle trails and public ways

In 2012, the number of complaints regarding public ways being blocked have grown, and the investigation on 14 kilometers of the "Cañada Real Gadiana" (historically traditional cattle trail) having been removed from the public domain is currently ongoing. Other cases studied are those of public ways fenced using game fencing, or the disputes concerning who must repair a roadway, whether the River Basin Authority or the Municipal Government, following the way having been washed out completely by torrential rains.

## Continental waters

Relevant under this heading are the recommendations to the River Basin Authorities concerning the calculation of the flowrate for granting concessions, such that the prospect of urban growth not be taken into account until growth actually occurs (partial planning currently under way).

One investigation worthy of special mention has been that regarding the municipalities of Vilar de Barrio (wastewater from the population center of Arnude in the province of Ourense) and Baños de Molgas (Calvelo, province of Ourense) which do not have wastewater effluents standardized, and their not being any sign of their being standardized on a short-range basis, as inferred from the information furnished. This investigation has now been going on for five years, reminders of legal duties having been put forth to both of these municipal governments but currently still as yet not having been heeded.

Numerous investigations have resulted from wastewater-related complaints, one of the most noteworthy of which are those concerning an effluent from a guest house being classified as a household or industrial effluent (Jucar River Basin Authority),

investigations concerning persistent effluents flowing into rivers despite having been penalized with coercive fines, and others in which the treatment of the effluents depends upon putting a new sewer main into operation which is to be done by the Autonomous Community, as well as the frequent investigations on faulty residential development effluents, etc.

This Institution has also taken numerous actions with the irrigation communities due to a request for a change in an irrigation gate refused in the interest of the rest of the community members; regarding lands integrated into a community but without access to irrigation for different reasons; due to no reply having been furnished to letters to the community members; due to no compensation for damages for improvements made in the interest of the community; due to undue revenue not being refunded and refusal to recognize the right to cease membership in the community, due to someone who has not stated their wish to belong to the community being forcibly included therein for the purpose of enlarging the irrigable area, or due to default on the obligation of the River Basin Authorities of settling the appeals filed against the decisions of the irrigation communities.

## Sea, coasts and ports

A particular interest in these areas has been found to exist on the part of the citizenry. Citizen clean-up initiatives are in place for preserving the beaches due to a situation of abandonment. Not all beaches are suitable for swimming, nor are all easily accessible, but the lack of surveillance and safety or of conditioning of entrances are not always deserving of criticism.

The incidents are varied and include everything from illegal structures built, the prohibition of surf casting in port areas and an ex officio investigation concerning effluents at the Port of Cartagena.

The Ombudsman has concluded the ex officio investigation with the Directorate-General of Coastal and Seaboard Stability (Ministry of Environment, Rural and Marine Affairs) concerning the recovery of Spain's beaches by way of sand replenishment. The information furnished is valuable and comes to confirm our thoughts concerning a number of aspects, which puts our minds to ease regarding duly processing the few yet very serious complaints lodged with us concerning the problems of coastal erosion and the restoration of beaches in Spain.

Some remarks have solely been made as off-the-record warnings or suggestions aimed at better safeguarding such a highly valuable natural resource in Spain as the beaches (Art. 45 of the Constitution).

## Pollution

### Air pollution

Over the course of several years' time, the Ombudsman has investigated the problem of foul odors given off by the waste treatment plant located in the Valdemingómez Technology Park (Madrid).

Regarding urban planning, this Institution is not of the same opinion as the Municipal Government of Madrid and considers the recommendation of synchronizing the urban development plans and infrastructure plans through the coordination between administrations and between plans to have gone unheeded. There is no rule of law or subjection whatsoever placing the residents of Valdemingómez under the obligation of putting up with this foul odor. In Partial Plan 2 of the UZP 3.10 Eastern Development Valdecarros, an environmental impact



study was incorporated “which did not include anything about odor pollution”. Based thereon, it can be inferred that the study was incomplete, not that the foul odor was unforeseeable.

The right to ownership of land and built structures (Art. 33 of Spain's Constitution) entails a true subjective right for the residents affected.

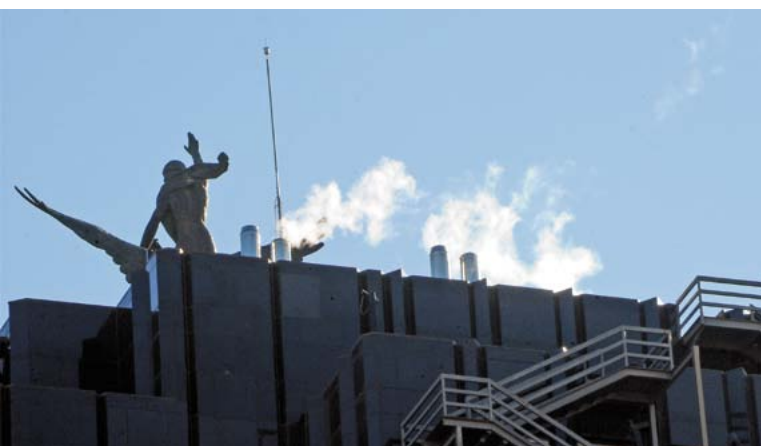
In such buildings, which are legal structures, the right exists to the enjoyment of a suitable environment (Art. 45 Spain's Constitution) and to the enjoyment of a decent dwelling (Art. 47). These are three rights, all three of which are subject to being claimed and invoked before the judge by those holding these rights. For the people affected, the latter two are in no way simply mere “principles”.

The Ombudsman is currently evaluating the opinions as to whether the residents are noticing any improvement (noticeable or slight), as the Municipal Government says they are, or whether they consider the situation to still be more or less the same, or rather that it has worsened, this being a possibility which could not be ruled out even though it can be inferred as improbable from the municipal information. In due course, all of the allegations will be combined with one another to take them up with the Municipal Government again along with new suggestions.

Another case of interest, also in Madrid, is that of the air pollution measurements taken and making the data and diffusion warnings available to the public. This Institution has put forth suggestions as to road traffic being reduced for the purpose of curtailing the episodes of high nitrogen dioxide (NO<sub>2</sub>) concentrations which occur in the city under certain weather conditions. More specifically, it is suggested that during these episodes and as of the point in time at which the NO<sub>2</sub> concentration warning level is anticipated to be reached, that the Municipal Government of Madrid exceptionally and temporarily adopt measures for restricting traffic, speed and private parking of motor vehicles stipulated for the warning threshold.

This Institution is of the opinion that the suggestion put forth to the Municipal Government is being taken into consideration, even though it has not as yet explicitly been accepted.

Apart from the above, the metering stations must be situated such as to be able to avail of a correct diagnosis of the air quality. Therefore, stations must necessarily be located in the most highly polluted areas so as to ascertain the degree of air pollution that Madrid and its inhabitants are enduring under the worst of conditions. A recommendation has been put forth to the Municipal Government as to its continually supervising the way in which layout in which these stations are located is arranged.



An ex officio investigation was opened with the Spanish Office for Climate Change (Ministry of Agriculture, Food and Environment) concerning the national Plan for assigning carbon dioxide (CO<sub>2</sub>) emission rights. This action is aimed at gaining knowledge of the information on the latest presentation and debate at the corporate bargaining tables and on the participation of the trade union and employers' organizations in the preparation and follow-up on the national Plan and the effects thereof on competitiveness, job stability and social cohesion.

In addition to the foregoing, the Ministry has been asked for its opinion regarding whether the market implemented is managing to give preference to the companies that lower their emissions and achieve a CO<sub>2</sub> surplus, and whether there are then fewer rights assigned, a rise in the price per ton of CO<sub>2</sub> and an incentive for reducing the use of conventional energy. Information has also been requested as to whether the results achieved to date are those anticipated, whether CO<sub>2</sub> emission might have dropped due to the decline in economic activity and what changes there have been in the price per ton.

### *Noise pollution*

The investigations conducted due to noise-related problems were the most numerous of all of the environment-related complaints: 135 investigations currently under way, a total of 48 of which were opened in 2012. This Institution is still of the opinion that many municipal governments are not duly dealing with the issue of noise in their municipalities. Nor are the suggestions put forth by the Ombudsman being interpreted correctly when, for example, the replies from the municipal Administration seem to give the impression that this Institution is aiming to do away with traditional processions, pilgrimages to shrines, Christmas events... In several cases, the administrations reject the suggestions from this Institution concerning the issue of noise without delving into any in-depth analysis of the actual aspects entailed in the suggestion.

The cases are too widely-varying to be able to provide a synthesis here, although it can be said that they range from repeated incidents without any municipal action being taken, thus protecting those committing these infractions, to failing to pay any attention to those affected who report these incidents, with noise from sources ranging from groups of friends and traditional festivals to the well-known outdoor binge drinking gatherings in the street, dogs barking and bothering neighbors, bell towers and garbage trucks making noise. One of the crucial aspects concerning this issue is checking and measuring this noise, many times due to lack of means, in all types of establishments, another being the lack of corrective measures.

This Institution suggested a national anti-noise campaign which met with acceptance on the part of the Ministry of Agriculture, Food and Environment and the Spanish Federation of Municipalities and Provinces (FEMP). Both found the “Campaign for Informing and Raising Citizen Awareness on Environmental Noise” to be well-suited to the terms proposed by this Institution, although not precisely so in our opinion. The relationship between the objectives pursued in our suggestion put forth in December 2011 and the fundamental objectives stated by both of these two agencies is undeniable.

This suggestion was considered to have been definitely accepted and the case closed. Nevertheless, this Institution is currently pending receipt of the information to be furnished by both the Ministry and the Spanish Federation of Municipalities and Provinces (FEMP).

In addition to the above, the Spanish Federation of Municipalities and Provinces (FEMP) has accepted some general recommen-

dations regarding prevention and control of sources of noise pollution, more specifically regarding noise, inspection checks and measures in noisy establishments and on compatibility between the proper environment and certain noisy activities, especially in cities. The recommendations have met with acceptance.

## ■ Urban development

Nearly 200 investigations are currently under way, half of which were originally opened in 2012. Of note is the large number of complaints received through the Autonomous Community of Castile-La Mancha Parliament Officials following the Castile-La Mancha Ombudsman Institution having been eliminated, totaling 147 in number, almost half of which had to do with urban development. The same applies to the Autonomous Community of Murcia Ombudsman Institution having been eliminated, with 75 investigations concerning regional planning, environmental and urban development matters.

Regarding urban development matters, the investigations are commonly conducted in all cases with the municipal governments, but also through the state and autonomous community administrations. Many complaints have to do with problems of interest to specific groups. These investigations may also be lengthy, because the administrative procedures and the resulting actions (works, facilities) are drawn out over long periods of time and because the administrations do not always furnish the Ombudsman with enough complete information.

This year, the investigations opened due to complaints concerning the non-rational use of land, empty lots with vacant apartment buildings and unfinished residential developments, vacant apartments, insufficient street lighting, concrete structures, houses left half-built and other situations of obvious abandonment have continued

In addition to the above, the lack of an appropriate strategic evaluation of the planning of large-scale public works usually gives rise to actions being taken by the Ombudsman every year. One example of non-strategy-oriented planning is that of the infrastructures and structures of high cost or questionable usefulness for the common good. One ex officio case investigated is that of the *Metropol Parasol de Seville*, also referred to as the *"Mushrooms on Encarnation Plaza"*. The construction work commenced in June 2005, at an estimated cost of approxima-

tely 50 million euros. The project was finally officially opened in March 2011 at a total cost over 100 million euros. This Institution has requested information from the Municipal Government on the final cost of construction and commission the works and facilities, the ownership (including the land, concession and freehold estate) so as to distinguish between what is privately-owned and which is publicly-owned, and the cost differential between the budgeted costs and the actual cost of completing the project, including the source of the funding (public and private) and, lastly, the cost which has had to be paid for with public monies. No reply has been received to date.

## Planning and development

Regarding planning and carrying out urban development plans, this Institution has dealt with issues related to the processing as well as public participation and the delays in the approval of these plans, one of the main causes of the lack of coordination among administrations.

### *Irregularities in processing urban development. Water sufficiency*

One of the several irregularities in completing the formalities involved in carrying out urban development projects which continues to be a critical aspect is that of providing accreditation of sufficient water. The Autonomous Community Administration sometimes approves plans without having first verified that sufficient water exists and that it will be possible to avail thereof, which means the public services are malfunctioning, on being indicative a lack of coordination between the urban planning Administration and the water resources Administration.

Most of the cases in which accreditation of sufficient water resources is lacking arise in the Autonomous Community of Valencia. An investigation has been conducted of the urban development projects in Benisuera and Bellús (Valencia) without the required State report certifying sufficient water resources, and irregularities in the Integrated Action Programs (PAI) within the municipality of Benissa and on the "Dolores Golf" project. All of these projects have revealed a lack of coordination between the urban planning and water authorities, resulting in urban development lacking valid verification concerning the existence of sufficient water resources.

### *Delays in the processing and approval of urban management plans and projects*

The most noteworthy delays investigated in 2012 involving the processing and approval of plans are those for specific changes in Archena (Murcia) and Gondomar (Pontevedra) previously discussed in the 2010 and 2011 reports.

Also within this scope, this Institution has put forth a suggestion to the Municipal Government of Las Ventas de Retamosa (Toledo) as to it promoting the complete urban development management of a unit quantity quite behind schedule and with deficiencies in the sewer service, on unconsolidated lands zoned as urban and which are therefore in need of urban planning conversion through its integrated management in order to be equipped with the residential development elements required. This Institution has reminded the Municipal Government as to this being a situation widespread throughout many municipalities following several years of urban growth without sufficient guarantees, which has given rise to more or less isolated residential development cropping up without any utilities connections to the main population center of the municipi-



pality. This gives rise to the consolidation of less than well-equipped residential developments whose owners however have legitimate expectations as to their being covered on having claimed entitlement to rights as over the course of time.

Other serious cases are those of the Mosaicos Plan (municipal district of Tarazona de la Mancha in Albacete) with serious delays in completing the formalities of the reparcelling Project and that of the Special Interior Reform Plan (PERI) in Cazalegas (Toledo), the resolution in favor of the commencement thereof having been passed in March 2009. In neither of these two cases has it been possible to get any reply from the Administration, it having been necessary to place a third request.

### *Planning incompletely unrolled. Residential development defects*

It is highly difficult to achieve a solution to the delays in the processing and approval of plans or in the complete management of incomplete unit quantities. One typical situation is that which results in urban sprawl, in other words, in individual residential developments located by themselves without service connections to the main center of population.

Cases arise of housing granted first occupancy permits which however have no basic utilities as a result of the development work not having been fully completed. The municipal government – not the developer – is the one who must check to ensure that the urban development commitments have been correctly fulfilled.

Special attention must be given to the problem of the plans not being fully unrolled and the resulting deficiencies in the residential developments. An ex officio procedure was opened with the Spanish Federation of Municipalities and Provinces (FEMP) regarding this matter. In this procedure, it was set forth to the FEMP how, in many cases, once the developers have sold the lots, they “vanish in thin air” without completing the development work, leaving streets and sidewalks unpaved, street lighting uninstalled and deficiencies in the basic utilities (sewer, water supply and electricity). Those buying the homes must not be liable for finishing out the development and carrying out what the developer was under the obligation of doing. In this regard, this Institution usually recommends to the municipal governments that they cash in the performance bonds furnished for the development works.

In its reply, the Spanish Federation of Municipalities and Provinces (FEMP) expresses sharing our concern and considers the recommendations to be useful for the municipal agents and experts, as a result of which they will be passing these recommendations on to the municipalities.

## Urban development regulations

From the social standpoint, this Institution has intervened several times in evictions and demolitions of marginal settlements, some of which were ex officio (“Puerta de Hierro” and “El Gallinero” settlements in Madrid). These are not cases in which municipal government actions are in violation of the land legislation with regard to recouping lands which may be unduly occupied, although there may be some doubts as to the stringency with which the municipal services carry out certain provisions of law, especially with regard to the way in which those evicted are treated and the times of day at which the evictions are carried out.

According to case law and international doctrine on carrying out demolitions and evictions, especially in the case of vulnerable individuals and groups, these procedures must not take



place in times of year in which is the weather is inclement, during other than daytime hours or without first furnishing sufficient advance notice regarding the assistance required for the persons involved.

The intervention on the part of the Ombudsman is justifiable not only by the need of the persons involved being assisted and not left to fend for themselves, but rather has also tried to seek individual solutions for groups which have minority yet actual true customs and ways of establishing themselves. This Institution has found some citizen resettlement initiatives to be worthy of being taken into consideration and has even gone so far as to recommend the suspension of evictions of families whilst these initiatives are studied and confirmed (“El Gallinero” settlement and demolitions in “Cañada Real Galiana”).

### *Architectural barriers*

This Institution has customarily investigated the rules of law governing accessibility to buildings and housing not having been fully expanded upon. As a result of the actions taken, Government approval of the basic conditions of accessibility and non-discrimination for access to and use of the goods and services at the disposal to the public has been found to be taking an exceedingly long length of time.

The Ombudsman is of the opinion that in order for persons with disabilities to be able to be integrated fully into society, it is absolutely essential that both the Government and public administrations take a staunchly committed, active attitude with regard thereto.

This Institution has opened an investigation concerning this subject with the Ministry of Public Works.

## Local Administration

This section includes the general complaints concerning public administration at this territorial level. From its investigations, the Ombudsman feels that some municipal governments are overwhelmed by the breadth of their duties, by the resulting demands placed on them by residents and due to the lack of resources for the purpose of providing solutions to these demands.

A major number of complaints of importance due to the large number and seriousness issues involved have been lodged concerning deficiencies in the services and supplies in gene-



ral and in regard to the cleaning services in general. The municipal governments often find themselves overwhelmed by the circumstances and are unable to provide solutions to the problems of their residents.

One problem which is typically local due to the location where it occurs but not so due to its far-reaching social importance is that of what is known as “*botellon*” (outdoor binge drinking gatherings in the street). In the opinion of this Institution, this matter, regarding which numerous complaints are lodged, is not only a health problem (underage individuals drinking alcohol), a noise problem or a problem of the resulting waste and collection thereof, nor is it solely a problem of public order. The municipal governments are right in alleging that, with the means available, it is extremely difficult if not impossible to prevent, dissuade or redirect this way in which some young people are spending their leisure time. What is more debatable, on the other hand, is the case when, instead of dealing with the problem in conjunction with other administrations, they opt for channeling and even “organizing” it into places specifically for this purpose.

Complaints were also lodged regarding certain municipal governments not flying the Spanish flag or the European Union flag (Law 39/1981 of October 28<sup>th</sup> on the use of the flag of Spain and that of other flags and standards. In the opinion of this Institution, the legal requirement of the Spanish flag being flown is based on grounds including that of indicating to people, passers-by, residents and visitors that in this location citizens are dispensed the treatment corresponding to a social, democratic State, to a State governed by Law which recognizes and guarantees the fundamental rights, also a State which is autonomous, that is to say, which recognizes and guarantees the autonomy of nationalities and regions.

Flags therefore provide an indication useful to people for recognizing the headquarters of an organization which protects their rights and interests and where they can find their legitimate claims to be addressed. The Spanish flag therefore marks the seat of an organization structured into a constitutional State. Therefore, if the Spanish flag is flown, a sign useful, positive and beneficial for all is being provided.

## Government institution functions

Several actions have been carried out regarding the possibility of recording the municipal government meetings and afterward disseminating what has been recorded. The main action taken is the recommendation to the mayors that, for the benefit of the exercise of the fundamental rights recognized under Article 20 of the Constitution, they approve or refrain from obstructing the requests for recording and disseminating, in respect for the personal data protection standards and other laws, after informing all of those taking part in the Meeting as to the fact that the meetings may be recorded not only in sound format but also audiovisual format for the possible future broadcast thereof.

In the judgment of this Institution, no person attending the meeting can be prohibited from recording what goes on at these plenary meeting or from disseminating this material, provided that those who do so do not disrupt the order of holding of the meeting and respect the personal data protection standards and other laws.

## Information and citizen participation

A suggestion has been put forth to the Ministry of Finance and Public Administrations in this regard as to its facilitating citizen

participation in the preparation of the bill for the Law on Rationalization and Sustainability of the Local Administration which makes provision for the elimination of many of the 3,725 extant Smaller Local Entities. This suggestion has met with acceptance on the part of the Ministry, although the measures are currently ongoing until it is determined whether the measures taken by the Ministry can be considered as full acceptance of our suggestion.

Complaints have also been dealt with concerning co-official languages for translating edicts, tax ordinances and other documents and information published in solely one of the co-official languages in the Official Gazette of the province or on municipal government webpages.

Residents can take part in that portion of the meeting devoted to requests and questions put forth to the members of the Local Government during the plenary sessions. Following adjournment of the meeting, the mayor may hold a request and question period for the public in attendance, but not as part of the meeting proper. The Municipal Governments go by the rule of the requests and questions put forth by the public in attendance not being stated on record in the meeting Minutes as a result of not being required by law and because if the questions were to be written into the Minutes, this document could become quite lengthy. In the judgment of the Ombudsman, however, this is a misinterpretation of the law. Thus, in addition to the connection this problem may have to the aforementioned problem of recording the plenary sessions, the idea which some municipal governments have of the secretary's duties and of the end purpose of the Minutes seems exceedingly formalistic and narrow, as a result of which they refrain from recording in the Minutes highly relevant questions and answers which have taken place at a public meeting.

The municipal government has heeded suggestions for furnishing interested parties with copies of Minutes for plenary sessions and also so that a record will be made of the disapproval of how they were stated in the plenary meeting Minutes.

## Municipal resident register management

In Las Hormazas (Burgos), several people were taken off the electoral census in 2010 despite the fact, according to the Municipal Government, of their having been enrolled in the official municipal resident register. Following the required proof of residence having been submitted by the interested parties, the means of proof provided were accepted as sufficient by the Municipal Resident Register Board, they therefore now being stated as registered on the official municipal resident register and on the electoral census for the Municipality.

In Valdemaqueda (Madrid), an interested party found her registration in the official municipal resident register to have been rejected because the former tenant of the dwelling she was now renting had apparently not had his name removed from the register. The Municipal Government remedied the problem.

One particularly serious case, previously discussed last year, concerning the Municipal Government of Robledo de Chavela (Madrid) regarding complaints from foreign citizens who, despite having been residing in the municipality since November 2010 and having a home rental agreement, were denied registration in the official municipal resident register. In 2012, it was not possible to get an answer from the Municipal Government either after several requests, it having, in fact, stated its intention, by phone, of not providing a reply, as a result of which this matter has been turned over to the Attorney General's Office.



# In its NPM capacity, the Ombudsman visited 52 facilities where persons are deprived of their liberty

*In its capacity as a National Preventive Mechanism against Torture (NPM), the Ombudsman visited 52 facilities where persons were deprived of their liberty in 2012. The findings from these visits resulted in 118 recommendations, 79 suggestions and 8 reminders of legal duties. This Institution will soon be presenting a specific report on all of the NPM work done in 2012.*

The NPM makes visits to facilities where people are deprived of their liberty for the purpose of detecting structural and procedural problems making it possible to prevent torture or abuse from being committed and avoiding any possible cases thereof going unpunished. A total of 52 visits were made in 2012.

The inspections were conducted by teams comprised of individuals possessing legal training, with the assistance and cooperation of external experts of recognized professional experience and accredited knowledge in medicine, psychiatry or psychology, thus contributing to an integral, multidisciplinary evaluation of the facilities and places where people are deprived of liberty, focusing on the specific aspects of the facilities visited.

Types of places visited where people are deprived of liberty

Places	No. visits
Police stations and other places for short-term custody: National Police Force	18
Local police	7
Prison facilities	6
Headquarters and other places for short-term custody: Spanish Civil Guard	5
Autonomous Community Police Forces (Catalonia, Basque Country and Navarre)	4
Alien detention facilities	4
Juvenile offender facilities	3
Alien repatriation facilities	2
Court building jails	1
Hospital custodial units	1
Nursing homes	1
Total	52

A total of 12 of the 52 visits made were multidisciplinary visits. Some of the facilities visited had been previously inspected, a follow-up visit however being considered suitable for the purpose of verifying compliance with the recommendations made and identifying any possible new deficiencies. In the specific case of the alien detention facilities, these follow-up visits were made accompanied by external experts so as to be able to focus special attention on the medical or psychological aspects.

New aspects worthy of special mention include the visit to the "San José" nursing home in Toledo, as well as the visit to an alien repatriation flight organized by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONT-EX).

The "San José" assisted-living facility located in Toledo was initially opened in 1977 as a psychiatric hospital serving a population divided into two areas of care: persons with disabilities and elderly persons. This complex is the largest facility of this type in Spain, staffed by 413 professional, with a capacity for more than 400 residents.

On this three-day visit, a review was conducted, on one hand, of the possible deprivation of liberty to which some residents who had been admitted to this center without their consent might be subjected and, on the other, the living conditions and public health care generally dispensed to all those residing at this facility, as well as the use of mechanical and pharmacological restraints. For the public health care aspects, it was considered necessary to have a psychiatrist, a psychologist and a general practitioner on the team as external experts.

The NPM experts also supervised, unannounced, a FRONTEX flight. FRONTEX is the European Agency in charge of organizing joint flights among the member States for the deportation of third-country nationals who have been sentenced to be deported.

On the flight organized by Holland, this country in conjunction with France, Germany, Norway and Sweden repatriated a total of 24 Nigerian citizens. At the Madrid-Barajas airport, five deportees from Spain, two from Portugal and three from Greece boarded the plane. During the entire operation, each deportee was under the custody of police officers from the respective deporting countries. The Spanish team for the repatriation of the five Nigerian citizens was comprised of 11 people: the chief of operations, the chief of the police escort team, who headed the team comprised of 9 officers from the Central Deportation and Repatriation Unit (UCER).

During this visit, the Central Deportation and Repatriation Unit (UCER) facilities at the Madrid-Barajas airport were inspected, and the entire process, from the arrival to the boarding of the deportees, was observed. NPM experts also interviewed the citizens who were going to be deported by Spain.

In 2012, in its NPM capacity, the Ombudsman put forth 118 recommendations, 79 suggestions and 8 reminders legal duties which will be detailed in the 2012 Annual NPM Report to soon be published.

### Advisory board

Apart from the above, the full design of the NPM set forth by way of Organic Law 1/2009 of November 3<sup>rd</sup>, which introdu-

ced a sole final provision into the Organic Law for the Ombudsman involved the creation of the Advisory Board. The reform of the Ombudsman Regulations in which the creation of the Advisory Board was included was passed in 2012 (Resolution of the Congress of Deputies and Senate Boards of January 25, 2012, Spanish State Gazette (BOE) No. 52 of March 1<sup>st</sup>), the public announcement for the creation thereof was made in early 2012.

Since the Spanish NPM commenced its activity in March 2010, it has conducted 363 visits to places where people are deprived of their liberty and has consolidated ample doctrine effectively having an impact on the activity of all public administrations concerned.



## Institutional Representation Activities







## Institutional Representation Activities



### ■ Parliamentary activity

The most significant event in Parliament in 2012 was the election of the new Ombudsman. On July 18<sup>th</sup>, the election of Soledad Becerril Bustamante was ratified at the Senate Plenary Session, by the favorable vote of 221 senators (Spanish State Gazette No. 174 of July 21, 2012). This voting took place on the next day following the voting in the Congress of Deputies plenary session, at which the final vote count totaled 264 votes in favor and none against, of a total of 307 deputies in attendance. In following, on July 23<sup>rd</sup>, the Ombudsman took office before the presidents of both the upper and lower houses at the Parliament Building.

Following this election, the Ombudsman was granted the prior approval of the Joint Committee for Relations with the Ombudsman for the appointment of Francisco Fernández Marugán as First Deputy and Concepció Ferrer I Casals as Second Deputy (Spanish State Gazette No. 178 of July 26<sup>th</sup>).

But both before and after these appointments, this Institution's activity has been intense with regard to presenting reports and appearing before the different parliamentary bodies.

At the beginning of the year, on January 25<sup>th</sup>, the acting Ombudsman, María Luisa Cava de Llano, presented to the Houses of Parliament the monographic report on *"Economic Crisis and Mortgage Debtors: Measures and Suggestions from the Ombudsman"*.

Another two monographic reports were presented in 2012: the report on *"The Actual Current Real-Estate Situation in Spain: The Ombudsman's Viewpoint"*, presented to Parliament on March 12, 2012, and *"Human Trafficking in Spain: Invisible Victims"* registered on September 20<sup>th</sup>. At the close of the year, these monographic reports were still pending presentation and debate in an appearance before the Joint Commission for Relations with the Ombudsman.

In addition to the monographic studies, the main institutional management report setting out the activity of the Ombudsman in 2011 was presented in the Parliament records on March 28<sup>th</sup>,

several days ahead of the date submitted in other years. Despite having been presented early, this report was not dealt with before the Joint Commission until November 6<sup>th</sup>. The other appearances regarding the 2011 annual report, before the plenary sessions of both the upper and lower Houses, took place respectively on November 29<sup>th</sup> and December 19<sup>th</sup>.

In addition to all of the foregoing, on December 18<sup>th</sup>, the Ombudsman received the Chairman and several members of the Joint Committee for Relations with the Ombudsman at the headquarters of the Ombudsman Institution, with whom she shared opinions concerning the progress being made regarding the matters at hand and the projects on which the Ombudsman was working. She was accompanied at this meeting by the Deputy Ombudsmen as well as by those in charge of the different case management areas.

### ■ Relations with Autonomous Community Parliament commission members

In addition to XXCII Coordinating Meetings being held with the ombudsmen from the different Autonomous Communities at the Aragon Ombudsman Institution Headquarters in Zaragoza on June 19-20, 2012, several meetings were held for the purpose of following up on the collaborating effort being carried out among those heading this Institution and various Autonomous Community Parliament commission members.

At the beginning of the year, on January 16<sup>th</sup>, the acting Ombudsman was visited by the new Canary Island Autonomous Community Ombudsman, Jerónimo Saavedra Acevedo.

On February 9<sup>th</sup>, the first of the workshops in preparation for the Coordinating Meetings was held on the topic of "Penal, Procedural and Prison Treatment of the Mentally Ill". Two further workshops were held in preparation for these Meetings: "Involuntary Treatments in Mental Health" (Seville, March 15<sup>th</sup>) and "Mentally Ill Persons and Special Groups of Young and Elderly People" (Vitoria, March 23<sup>rd</sup>).

Following the summer holidays, the recently-appointed Ombudsman began a round of bilateral contacts with some of the institutional heads of the different Autonomous Communities. In September, she met with the Basque Ombudsman, Íñigo Lamarca (September 5<sup>th</sup>); the Andalusian Ombudsman, José Chamizo (September 7<sup>th</sup>) and the Catalan Ombudsman, Rafael Ribó (September 19<sup>th</sup>).

On November 20<sup>th</sup>, she was visited by the Autonomous Community of Murcia Ombudsman, José Pablo Ruiz Abellán. At this meeting, the management of matters pending from the Murcia Ombudsman Institution was dealt with in view of the elimination of this Ombudsman announced for in early 2013.

On December 3<sup>rd</sup>, the Ombudsman and Deputies received all of the Autonomous Community Ombudsmen for the purpose of readying and planning the drafting, for the first time, of a joint report. The subject matter proposed for this report is that of the supervision of hospital emergencies throughout the entire country. This meeting was attended by Javier Amoedo (Castile



and Leon); José Cholbi (Valencia); María Antonia Fernández Felgueroso (Principality of Asturias) Javier Enériz (Navarre), Ínigo Lamarca (Basque Country), José Chamizo (Andalusia), Rafel Ribó (Catalonia), Jerónimo Saavedra (Canary Islands); Fernando García Vicente (Aragón) and José Julio Fernández (acting Ombudsman, Galicia).

## ■ Working meetings with authorities, citizens and civil organizations

Throughout the year, many gatherings and meetings were held with the aim of gaining a first-hand knowledge of the opinions and concerns of both the citizens and civil organizations that are in contact with this Institution, as well as those in charge of the Administration proper, when the importance of the matters at hand requires a direct sharing of opinions.

These gatherings may be classified into two major groups: those held with authorities and public officials and, to a greater measure, those held with individual private citizens, social groups and civil organizations, the main aim of which has normally been that of conveying the details of the problem affecting them directly to this Institution.

Several citizen platforms came to the Institution during this year for the purpose of explaining their work and their requests in person. This is the case of the Platform of People Affected by the Stolen Babies Cause, the Platform of People Affected by Mortgages, the State Association of Directors and Managers of Social Services, the Spanish National Federation of Romani Women (Kamira), the National Association of Unemployed People (ADESORG), the Coordinator for Non-Governmental Organizations for Development or the Platform of Trade Unions and Professional Associations of Public Employees.

The different interest groups took advantage of some of these meetings to directly present their requests for institutional action, mainly requests for appeals to be filed before the Constitutional Court. This is the case of the requests presented for the top leaders of the “Unión General de Trabajadores”

and “Comisiones Obreras” trade unions in relation to the Royal Decree-Law for the labor reform and Royal Decree-Law 28/2012, of November 30<sup>th</sup> on measures for the consolidation and guarantee of the Social Security System.

Commencing as of July, the Ombudsman held a round of consultations with the leading associations and foundations at the nationwide level devoted to the memory of the victims of terrorism. These meetings were held within the August-October period, in parallel to the respective steps being taken before the competent authorities to whom new recommendations were being put forth for the purpose of moving ahead regarding the legislation being drafted for a Victims Statute.

Other noteworthy meetings with citizen interest groups are for the purpose of dealing with issues related to a more specific geographical area or subject. One example thereof would be the visit by the representatives from interest groups promoting a new Plan for “El Gallinero” in Madrid, in defense of those living in that impromptu settlement or the meeting with the platform for the development of Villafra de los Barros (Badajoz).

The meetings with Administration officials and authorizes also serve to channel some of the issues customarily dealt with in the complaints and ex officio investigations. To mention a few, the Ombudsman held meetings in 2012 with the Attorney General, the Secretary of State for Security, the governor of the Bank of Spain, the president of the Spanish Federation of Municipalities and Provinces and with the Central Government Delegate for Madrid.

In addition thereto, both the Ombudsman and her Deputies take advantage of their trips to different places around the country to hold meetings with the Autonomous Community or municipal authorities. For example, in December, when the Ombudsman and First Deputy were visiting the Autonomous City of Melilla and the facilities for foreign nationals in that city, they have the opportunity to meet with the president of that Autonomous City and with the Central Government Delegate for Melilla.

Meetings have also been held with the General Council of the Notariat, with the representatives from the State Confederation of the Deaf, with the Spanish Banking Institution Association and with the president of Transparency International in Spain.

The activity of supervising the public Administrations which the Ombudsman carries out is rounded out with first-hand inspections of facilities and centers of the different administrative entities. These supervisory visits have increased remarkably since the Institution undertook its authority as a National Preventive Mechanism against Torture. Prison facilities, temporary alien holding and detention facilities, Spanish Civil Guard posts and police stations, hospital or senior citizen living facilities are all included in this in situ supervisory activity being attempted to be stepped up yet further year after year.

Having a street-level knowledge of what is actually going in the world on is key, in many cases, to clarifying the effectiveness of the public management of the different services and for more precisely preparing the recommendations to then be put forth to the different authorities. This is also the way of checking to see how the determinations put forth in the past for the purpose of improving the conditions in terms of human and material resources found at all these administrative facilities and centers are actually evolving.





## ■ Official meetings and acts

A few short days after taking office on July 30<sup>th</sup>, the Ombudsman was received by His Majesty the King at an audience held at the Zarzuela Palace.

The head of the Ombudsman Institution also attended, for example, the formal sitting on June 24<sup>th</sup> at the Parliament Building honoring the victims of terrorism and the official ceremony opening the Judicial year on September 18<sup>th</sup>.

In addition to the above, as in previous years, the awards ceremony was held for the students who won the **Human Rights Art Contest** organized by the Ombudsman Institution in collaboration with the Autonomous Community Governing of Valencia. It had not been possible for the 2011 Contest awards ceremony to be held in December that year due to the situation of Parliament having been dissolved. Thus, this act was exceptionally held in March 2012. It was possible, however, for the awards ceremony for the 2012 contest to be held at the Parliament Building on December 10<sup>th</sup>, International Human Rights Day proper.

On November 28<sup>th</sup>, the Ombudsman attended and took part in the acts honoring women parliament members in the Constituent Legislature also held at the Parliament Building.

In turn, the acting Ombudsman attended the institutional act held commemorating the Bicentennial of the 1812 Constitution of Cadiz which was held in March in San Felipe Neri Oratory in Cadiz.

## ■ Collaboration, dissemination and public outreach activities

The visits which different cultural associations, schools or community centers make to the Ombudsman headquarters to take a close look at how it functions in addition to all of the historic and artistic details of the Ombudsman Institution's building in Madrid come under this heading.

The Ombudsman Institution also collaborates with other organizations in joint projects or for facilitating some of the activities of the community institutions. In 2012, several meetings were held

with the chancellor of the University of Alcalá and the members of the Democracy and Human Rights Department for planning the academic activities in which the Ombudsman collaborates. The meetings were also held for the panel of judges for the **Human Rights Art Contest** and the **Fifth King of Spain Human Rights Award**, which will foreseeably be awarded in the spring of 2013.

The public outreach and dissemination acts concerning the Ombudsman in 2012 included several groups of students from different academic institutions having been received at the Institution. Some of these school trips include those by master's degree-level students organized by the National Judiciary Board for magistrates and judges from Latin America; applied political science master's degree student from the Ortega y Gasset Research University in Madrid, students from the School of Law of the Bar Association of Vizcaya, students from the Center for Political and Constitutional Studies of Madrid; Public Administration and Management master's degree students from the National Public Administration Institute (INAP) in Madrid or students from DePaul University in Chicago, in collaboration with the Comillas Pontifical University-ICADE in Madrid.

Apart from the above, the Ombudsman and the Deputy Ombudsmen have gone to university schools and different forums for debate to give lectures on this Institution and its scope. This is the case of the event scheduled annually for the master's degree program in International Human Rights Protection at the University of Alcalá or the opening ceremony of the academic year at the University of San Pablo – CEU (Madrid).

## ■ International activity

One of the noteworthy aspects of the relations for **cooperation with other Ombudsman institutions abroad** involves rolling out and completing the twinning project funded by the European Commission for strengthening the Ombudsman Institution in the Former Yugoslav Republic of Macedonia. A project carried out in collaboration with the Ombudsman of France and headed by the Spanish Ombudsman Institution. This project has last for over eighteen months, during which an expert from the Spanish Ombudsman Institution served as the coordinator in Macedonia of the different exchange and training activities scheduled in the project.

The ombudsmen normally keep in touch with one another to a major degree by way of international activities due to the great similarity in both their scope of authorities and in relation to the problems and difficulties with which they must deal. The sharing of experiences stemming from international activities makes it possible to improve the working procedures and the training of their own personnel. The fact that Spanish institutions engage in this type of working agreements under European Union sponsorship is useful to Spain, given that, in addition to the institutional presence abroad this involved, this enhances the functions of our diplomatic corps and familiarizes the countries in which they are carried out with Spain's ways of doing and with Spanish culture.

The fact that these projects are funded by the European Union through what are known as the PAIs (Pre-Adhesion Instruments) funds makes it possible for these projects to be carried out without being costly for this Institution, which does not take upon itself any economic cost whatsoever chargeable to its



own budget. This is an example of what is known as “delegated cooperation”.

Also worthy of special mention within the scope of bilateral collaboration and cooperation is the activity within the **Association of Mediterranean Ombudsmen** and the ongoing work with the governing bodies of the **Latin American Ombudsman Federation**.

Throughout 2012, this Institution was visited by several ombudsmen from other countries, some of the most noteworthy of which were the visit of a delegation from the Portuguese Ombudsman Institution headed by the First Deputy (March 8<sup>th</sup>); the visit of the Serbian Ombudsman, accompanied by a delegation from the Ombudsman Institution (May 10<sup>th</sup>-11<sup>th</sup>); the visit of the Bolivian Ombudsman (May 16<sup>th</sup>); by representatives from the National Human Rights Commission of Oman (July 5<sup>th</sup>); the Human Rights Commissioner from Hungary (July 10<sup>th</sup>) or the visit of the Ombudsman from Andorra (November 29<sup>th</sup>).

Worthy of special mention within the framework of these collaborating relations is this Institution's participation in the Program for Accompanying the processes of Democratic Governance in the Arab World, known as the MASAR program, which the Spanish International Cooperation for Development Agency has promoted in 2012. In December, two delegations from Morocco comprised of young politicians and women members of Parliament visited the Ombudsman Institution.

Noteworthy on the subject of **international meetings in multilateral forums** are the meetings which were held under the auspices of the United Nations Organization (UN) with the organizational help of the office of the High Commissioner for

Human Rights. The 25<sup>th</sup> Annual Meeting of the International Committee for the Coordination of National Institutions for the Promotion and Protection of Human Rights (CIC-INDH) was held on March 19-22 in Geneva.

In 2012, the Ombudsman filed its request for second re-accreditation before this International Coordination Committee (CIC) for the confirmation thereof as a Spanish Institution for the effects of interaction with the U.N. and other international organizations working toward the promotion of human rights.

At the end of the year, the Institution was informed as to its new accreditation as a level “A” Institution having been recommended, in other words, as fully conforming to the Principles of Paris, which must be confirmed at the upcoming formal meeting of the International Coordination Committee.

The 11<sup>th</sup> International Conference of National Human Rights Institutions was held in Amman, Jordan on November 4-8 and was attended by the First Deputy, whose participation therein included the presentation of the monographic report on human trafficking.

Another meeting worthy of special note in 2012 was the 6<sup>th</sup> Meeting of the **Association of Mediterranean Ombudsman** (June 12-13). This organization, originally promoted by Spain's National Ombudsman, the Ombudsman of France and the Ombudsman of the Kingdom of Morocco – is aimed at encouraging dialogue among all of the Mediterranean Basin countries to enhance the democratic processes and improve the assistance provided to citizens by means of the consolidation of the official Ombudsman Institutions.

Apart from the above, the annual meeting of the **General Assembly of the Latin American Ombudsman Federation** was held in San José Costa Rica on October 24-26. Spain's National Ombudsman took part in the panel discussion on the subject of eradicating violence against women and the problem of human trafficking for purposes of exploitation.

In closing to this section, mention may be made of the **official** visits the Ombudsman has received in 2012. Especially noteworthy are that of the United Nations High Commissioner for Refugees, Antonio Guterres, accompanied by the representative from U.N. Refugee Agency ACNUR in Spain; the visit by Members of the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA), or the meeting of Spain's National Ombudsman and the head of the European Commission Delegation in Spain, Francisco Fonseca, on the subject of different approaches for institutional collaboration.

Several diplomatic representatives also contacted the Ombudsman Institution to schedule a meeting with the National Ombudsman. This is the case of the ambassadors from Ecuador, Bolivia, Netherlands, as well as the Consul General from Colombia. In December, the Ombudsman also held a meeting with the French Ambassador..







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