

THE BOOK OF THE OMBUDSMAN

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PRESENTATION

The term *Defensor del Pueblo* (literally, 'Defender of the people'), has become very popular in Spain, both in legal circles and in daily life. Although there are Spanish dictionaries that also include *ombudsman*¹, simply copying the Swedish, this word has not enjoyed such wide acceptance. In Latin America, *ombudsman* is used only in a collective, federational sense, and because it instils a certain historical respect. *Procurador del Ciudadano*, *Defensor de los Habitantes*, *Procurador de los Derechos Humanos* (all different versions of the term in Spanish), *Provedor de Justiça* (Portuguese), *Valedor do Pobo* (Galician), *Sindic de Greuges* (Catalan), *Defensor del Pueblo*. Here we see, contrary to what tends to be the case, that the different Iberian languages have not been very receptive to this particular lexical import, which can be considered a first, something more than pyrrhic, victory in the realm of human rights.

This new work, *El libro del Defensor del Pueblo*, has a singular structure and character. Conceived as a book targeting the general public, it also partakes of the rigour of specialised works, due to its subject matter. The idea was to combine, and I hope this has been the case, the enjoyable with the instructive, as in those encyclopaedias of our childhood that aimed to 'teach by entertaining'.

The main part of the book comprises two principal sections: one, a review of the origin and development of the ombudsman institution around the world, and the other, much more detailed, focusing on the Ombudsman of Spain. The author, Antonio Mora, an expert in both the theory and practice of our anatomy and our physiology, has wielded his scalpel with ease in dissecting, from both a historical and a functional perspective, the institution's foundations, antecedents, nature, and characteristics. He has consistently woven together –skilfully mingling historical, sociological, and legal factors– a series of materials that are not very easily melded.

Looking outward, taking the evolutionary nucleus of human rights principles –and the institutions derived from them– as a point of departure, we see the appearance, as in concentric circles, of the first known examples of organisations on a purely national level, and then, successively, the appearance of supranational figures, and then of organisations for their co-ordination and liaison, with a special focus on the Latin American context.

Looking inward, the spotlight is placed on different incisions that methodically lay bare, in meticulous detail, unexpected situations related to the Ombudsman of Spain's regulatory framework and the institution's history. This includes its legal and constitutional mandate, its characteristics, its procedural norms, and its establishment and progressive consolidation, both in the hearts of the citizenry and in prestige among Spanish branches of government– and most especially, within the different Administrations, whose activities it is charged with supervising. All of which, to tell the truth, is one of our greatest sources of pride, the most gratifying manifestation of the effects of the auctoritas, the power of persuasion, that is consubstantial with the Ombudsman's work.

The body of the text is followed by other, complementary sections that are no less informative and interesting. I am referring, particularly, to the documents appendix, limited to truly fundamental texts affecting the institution: the Universal Declaration of Human Rights, article 54 of the Spanish Constitution, the Organic Act Regarding the Ombudsman and the Organisational and Functioning Regulations of the Ombudsman; to the general bibliography and summary of the literature which, like the rest of the book, is offered in three languages (English, French, and Spanish), and a series of selected addresses, including websites which were considered of interest to academics and to those who work in the field of defending human rights.

Another attractive aspect which I cannot fail to mention in this introduction is what we could call the *colourful* side of the present work. Colourful photos, and colourful prose. Regarding the former, photographs of the Spanish Ombudsman's Headquarters, in the Palace of the Marquis of Bermejillo, and the artworks displayed there, contribute –or so we believe– to making the reader feel physically closer to our institution. The colourful prose is that which was used to summarise the lives of the Ombudsmen who preceded me in this post, and to describe Bermejillo Palace. The latter, exemplary bit of prose sprang from the pen (or the keyboard) of María José Imbernón, and has a deeper, warmer feeling. It is a matter of enabling the reader to enter into the very heart of the building's history, and that of its successive renovations, carried out for the efficiency and comfort of those working here, and for those who do us the honour of paying a visit. Getting to the bottom of a house's history is the same thing as 'giving a tour of the house', what people used to do in the old days, a remnant of the ancestral hospitality owed to friends when one changed residences or moved into a brand-new home.

That is, in sum, what this book aims to do: give a tour of the entire house (the building and the spirit that infuses it), and to show the citizenry, in the most personal way possible, the resources for defending their constitutional rights that the current legislation provides for them. With the aim of giving an attractive, artistic air to a good number of these rights, this book includes illustrations copied from engravings that decorate the palace which form part of a limited edition produced to commemorate the 500th Anniversary of the birth of Father Bartolomé de las Casas, in 1984. To honour this pioneering activist on behalf of Amerindians and African slaves in the New World, the artists Roberto Matta, Rufino Tamayo, Robert Motherwell, Julio Le Parc, Antoni Tàpies, Antonio Clavé, Eduardo Chillida, Antonio Saura, José Guerrero, and Rafael Canogar provided their very personal interpretations of each one of the articles in the Universal Declaration of Human Rights.

As to the usual list of acknowledgements, I shall limit it to mentioning the masterful skill with which the palace's paintings –some of which have been reproduced here as faithfully as possible– have been described. This informative, enlightening work was carried out by the art historian José María Quesada, and by the Diocese of Madrid's Delegate for Historical and Artistic Heritage, the Reverend Monsignor José Luis Montes Toyos, who is currently the parish priest of Madrid's Real Iglesia de San Ginés.

¹ For example, M. Moliner, *Diccionario de uso del español*, 2nd ed. Madrid: Gredos, 1998

THE OMBUDSMAN:

Origin and expansion

Human rights: From their declaration to their application

In his inimitable manner, the 20th-century Spanish philosopher José Ortega y Gasset reflected on the office of 'inspector of unanimity', current in the Greek state of Heraclea during the 4th century BC: 'I have often let my mind dwell on such an evocative official title, and although I hate the idea of holding any kind of public post, this is surely the only one I would have enjoyed'. Although he did not know it, Ortega y Gasset would have liked to be an Ombudsman, an institution born in the Scandinavian countries and disseminated-not without major variations-throughout the world. This is a history in itself. Or rather, a collection of histories, which we would do well to examine one by one, since the idea, and the very evolution, of the figure of the ombudsman is based on two main pillars: on the one hand, *human rights*, from their first multiple 'national' declarations to their internationalization, institutionalization, and effective application; on the other, the growing scope of the rule of law, which involves an expansion (indeed, a multiplication) of state administration; this often brings with it inattention, delay, and maladministration, which must also be controlled and corrected. Between these two pillars, we find the birth and development of the institution of the Ombudsman. Sometimes one side of the equation is given more consideration than the other, but it is only by considering both of them, and their complex history (especially insofar as human rights are concerned) that we can truly understand how it came about, and where it is today. Although in Spain we usually say *Defensor del Pueblo* (literally, Defender of the People), the name by which this position also known in much of Latin America, we shall use here the Scandinavian name known the world over: *Ombudsman*.

The beginnings

The idea that all people should enjoy certain essential, common rights can be found in some of the earliest civilizations, since it is the basis of many religions. However, we should remember that this incipient idea was still very far from its modern form. The most decisive difference lies in the fact that this ancient idea of a common link between all people has as its starting point the conviction that it is something that has *already been granted* (for

example, all men *are* equal in the eyes of God), whereas the truly innovative aspect of the modern declarations is that they proclaim an ongoing enterprise, an aspiration. Thus, human rights sometimes tend to be confused with natural rights –said to be inalienable to each person– but what each declaration about them really represents is a *desideratum*: the expression of a desire for things to be that way, and so it really represents a commitment, even a promise, to do something that, at the moment of its declaration, is far from being a reality. Indeed, the very act of making a declaration is a way of recognising this. The modern idea of human rights does not refer to their origin, but rather to something that needs to be done; there must be a mobilization so that this thing that is declared to be desirable can become possible, can become a reality. With this new implication is born something that we can truly call the history of human rights, with its different phases of declaration, realization, institutionalization, and expansion throughout the world. And this history, evidently, is far from over. We are right in the middle of it.

At the end of the 18th century, there was an outpouring of declarations of rights in two very specific places in the world: in the British colonies of America, which were very soon to become an independent country, the United States, and in the Kingdom of France, on the verge of becoming a republic. Both of these changes soon came to be known by a name that, until then, had not been applied to human events: *revolution*.

The Virginia Declaration of Rights (June 1776), written to accompany that state's constitution, and used by Thomas Jefferson as the basis for the preamble to the Declaration of Independence of the United States (signed in Philadelphia on 4 July 1776), contained an enumeration of the rights of man that is quite close to our modern idea of the concept: equality of all men, separation of powers, power invested in the people and their representatives, freedom of the press, subordination of the military to the civil power, the right to a fair trial, and freedom of religion. The translation of this declaration into French had a major impact on the committee working on France's first constitution and the Declaration of the Rights of Man and the Citizen in 1789, at the beginning of the French Revolution.

The beginning of its first article has been, since then, a point of reference for every other declaration –or statement, for that matter– regarding human rights: 'Men are born and remain free and equal in rights'. It was, in fact, something more than a declaration. Jules Michelet called it the 'Creed of the New Age'.

The Declaration of the Rights of Man and the Citizen, besides enunciating a series of fundamental political principles, attributes to the people and the individual a series of rights that are as relevant now as they were then:

The right to resistance against oppression (article 2), the right to be presumed innocent until declared guilty (article 9), freedom of opinion and religion (article 10), freedom of expression (article 11), and the right to property (article 17).

But the Declaration was not, by any means, established once and for all. The French Revolution, as we all know, spiralled into complications that led to new declarations of rights. Olympia de Gouge's authorship of a proposed Declaration of the Rights of Woman and the Female Citizen (1791) literally cost her her head. Other declarations did not fare quite so badly. That of the Rights of Man and the Citizen of the Year I (1793) was a reworking of the 1789 Declaration, emphasising equality and adding the right to public relief (article 21), the right to work (articles 17 and 21), the right to an education (article 22), and the right to insurrection (article 35). Article 18 ('Every man can contract his services and his time, but he cannot sell himself nor be sold') represents a first attempt at outlawing slavery, although without naming it explicitly. This declaration was followed by that of Rights and Duties of Man and the Citizen (1795), much more restrictive than the previous two (indeed, it abolished all of the new rights promulgated in 1793), and which, after the Reign of Terror, was aimed at re-establishing a balance between rights and duties.

After that, our story goes underground. The French Revolution went downhill and devoured its children, but the idea of the Rights of Man survived; it was now something more than just an idea held by a few philosophers, lying in a few books, and had gone on to be an openly declared and proclaimed idea that began to bear fruits over the course of the following century. This time, it was not due to the new-born euphoria of revolution (although there was some of that, too), but to a crucial new development of the 20th century: world war.

The impact of World War I led to a proliferation of new declarations that, in one way or another, once again advocated the proclamation and protection of human rights, including the Constitution of the United States of Mexico (1917), the Soviet Declaration of the Rights of the Working and Exploited People (1918), and the Weimar Constitution (1919). However, the aspirations towards an international dimension, although addressing only a segment of the population, were expressed in the Declaration of the Rights of the Child, known as the Geneva Declaration, adopted in 1924 by the League of Nations.

The Universal Declaration of 1948

The decisive impulse towards more universal human rights standards were a direct consequence of the following world war: the Atlantic Charter, the result of a meeting between Churchill

and Roosevelt on a warship in 1941, bore fruit in 1942 with the Declaration of the United Nations, in which 26 states declared their commitment to fight against the Axis powers and to create, at the end of the conflict, an international organization to work for world peace.

Once the war was over, the United Nations Charter –the first international treaty whose objectives were based expressly on universal respect for human rights– was signed on 26 June 1945, and followed in the same year by the founding of the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

Thus, we can see that the protection of human rights was an integral part of the development and maturation of the United Nations, which only three years after it was created considered it necessary to promulgate a universal, specific recognition of these rights. The Universal Declaration of Human Rights was signed in the UN General Assembly in Paris on 10th December 1948.

The Declaration begins with these now famous words: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'. For the first time, human rights are recognised 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Its major innovation lay in that it was not a mere proclamation of objectives, but it also included the commitment to promote 'universal respect for and observance of human rights'. To fulfill this mission, the UN was endowed from that moment on a series of attributes and methods revolving around three concepts: *study, examination, and recommendation*. The General Assembly demanded that all member states publish the text, and 'to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories'.

This international definition of human rights and their scope was defined as a 'common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction'.

Article 30, which closes the text of the Declaration, is the one that determines its planetary scope, which has been continually affirmed and confirmed down the years: 'Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'.

From the time of this Declaration, one of the main objectives of the UN would be to develop its contents, creating new instruments to that end over the years. This process got started very soon, on 12 August 1949, when the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (known as Convention IV), was approved by the diplomatic conference held to draw up international conventions aimed at protecting victims of war.

Following this line of reinforcement, the Universal Declaration of Human Rights was complemented with two different agreements, both closely related to it: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both dating from 1966 (although they entered into force in 1976). The first highlights various points related directly to the 1948 Declaration, stating that 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life' (article 6). The International Covenant on Economic, Social, and Cultural Rights, within the same guidelines of ensuring universal protection, puts the accent on creating bespoke solutions for the signatory countries, differentiating between developed and developing countries: 'Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals' (article 2). To ensure the efficacy of these two agreements, various mechanisms were created to oversee that the signatory countries were meeting their obligations.

Institutionalization

Within the UN, the Economic and Social Council had discussed the need to create national human rights institutions as early as 1946 (that is, two years after the Universal Declaration of Human Rights). The general conviction was that national institutions should be created, even regional ones, in order to achieve a true dynamic in favour of the protection and implantation of human rights.

It was, above all, in 1978 that this type of institution received a major boost. In a seminar held that year by the UN in Geneva, the first guidelines regarding the structure and operations of these national human rights institutions were set down. These guidelines suggested that the functions of national institutions should be:

- Act as a source of human rights information for the Government and people of the country;
- to assist in educating public opinion and promoting awareness and respect for human rights;
- to consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;

- to advise on any questions regarding human rights matters referred to them by the Government.

Regarding the structure of such institutions, the guidelines recommended that they should:

- Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;
- function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- in appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

In the following years, over the course of the 1980s, many of these institutions were created around the world. In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris. Its conclusions were expressed in a statement of principles regarding the status of these national institutions (known as the 'Paris Principles'), which was endorsed by the General Assembly in 1993. It expanded on the previous set of guide-lines for these institutions, further defining the scope of their mandate:

- To present to the government, parliament, or any other relevant body recommendations, proposals, and reports on all issues relating to human rights;
- to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- to encourage ratification and application of international human rights regulations;
- to contribute to the reports which States are required to submit, pursuant to their treaty obligations;
- to assist in the formulation of human rights programmes;
- to co-operate with the United Nations, the regional institutions and the national institutions of other countries.

The actual structure of these national organisations was expected to vary from one country to another, given that, although their institution was recommended by the UN, their implantation always depends very directly on a national process and a specific legislative framework. Many countries have opted for another kind of institution, and others even maintain several operating parallel to one another. In the 1993 World Conference on Human Rights, held in Vienna, a declaration was signed to address this issue, recognising the advisability of each member state choosing the type of national institution that was best adapted to its own needs.

Towards the creation of an international tribunal: The World Criminal Court

Parallel to this process of going from different human rights declarations to their international and institutionalised expression

through the UN, is the process that led to the creation of a World Criminal Court. Its roots can already be found in the Treaty of Versailles (1925), whose article 227 declared Kaiser Wilhelm II guilty of having instigated a war of aggression. It was the first time that an international crime had been punished, although it was not called a crime against peace or a crime of aggression. In 1945, the winners of World War II –the United Kingdom, the Soviet Union, the United States, and France– approved the London Accords, which led to the creation of the first International Military Tribunal, known as the Nuremberg Tribunal, which recognised four crimes: conspiracy, crimes against peace, war crimes, and crimes against humanity. A year later, a unilateral decision of the American military governor in the Far East established an international tribunal (the International Military Tribunal for the Far East) whose judges not only belonged to the four Great Powers, but also to other belligerents, such as Japan, and neutral countries, such as India.

In the 1990s, under the auspices of article 41 of the United Nations Charter, two ad hoc tribunals were created. In its Resolution 208, the UN Security Council created the International Criminal Tribunal for the Former Yugoslavia, to judge all those persons, including heads of state (articles 6 and 7) who committed international crimes in the territory of the former Yugoslavia between 1 January 1991 and a date that was to be determined by Security Council (article 8, Resolution 827). This Tribunal was to examine grave violation of international humanitarian law (as defined by article 2 of the 1949 Geneva Convention), violations of the laws and customs of war (as defined by article 3 of the Hague Convention and article 4 of the Convention Against Genocide), and crimes against humanity, i.e., systematic or massive murder, torture, and rape of civilians (article 5).

In 1994, at the petition of the Government of Rwanda, the United Nations Security Council adopted Resolution 955 to create an international tribunal to judge crimes committed within the territory of Rwanda and those of neighbouring states (Burundi, Zaire, Uganda, and Tanzania) between 1st January and 31st December 1994 (article 7 of the Resolution). This tribunal investigated crimes of genocide (as defined by article 2 of the Convention Against Genocide) and crimes against humanity (under article 3 of the Geneva Conventions and Additional Protocol II).

In 1989, in the United Nations General Assembly, a group of Latin American Countries promoted a movement to reactivate the process of creating international criminal jurisprudence, an idea first mooted in 1947, but which never took form due to lack of support. At the Conference of Rome in July 1998, representatives of the UN member states met with those of non-government organisations to negotiate a treaty known as the Rome Statutes, and approved unanimously more than 100 of its 128 articles. By the end of 2000, 139 UN member states had signed the agreement. Afterwards, in a second phase, the treaty was ratified by a third of

the international community, the minimum required in order to establish an international institution representing all of the countries in the world. The creation of the World Criminal Court is an attempt to create a permanent, general, and universal international tribunal, because the tribunals created to date are an easy target for criticism, given that they have meted out justice selectively and occasionally, and were created after the fact. The World Criminal Court has under its jurisdiction crimes of genocide (article 6), against humanity (article 7), of war (article 8), and of aggression (articles 5, 121 y 123). Its territorial jurisdiction extends to all of the signatory countries and those states accepting its authority (article 12). The Court may judge all persons nationals of these states who may have committed one of the crimes for which the Court has jurisdiction (article 25), as well as all such crimes committed in a signatory state.

In the evolution of human rights and the implantation of institutions that promote and defend them, the materialization of a judicial sphere, through the creation of a World Criminal Court, is another piece in the edifice, another part of the same process.

Maladministration

It cannot be said that the concept of *maladministration* is an easy or unambiguous one to define, although, without entering into more or less exact definitions, everyone knows what it is, since everyone has at one time or another suffered this type of phenomenon. There are those who simply call it 'bureaucracy', or an excess, an exaggeration, of it. Generally speaking, maladministration tends to be identified with a kind of administrative turpitude, or with the type of administrative incompetence that is, in principle, neither susceptible to recourse nor worthy of being taken into the courts. It is, to a certain extent, a sickness of developed administrative systems, but also of their lack of control. The concept has an especially high profile in the legislation of France and the English-speaking world (where the very term *maladministration* was invented—first used in academic circles, but now increasingly current in political and journalistic parlance). However, we can say that today, it is a world-wide problem.

What is easier to pinpoint are the symptoms and cases that can be associated with, and are symptomatic of, maladministration. Let us make a preliminary list: administrative slip-ups and omissions, unfairness, discrimination, abuse of power, neglectfulness, illicit procedures, lack of or refusal to provide information, unnecessary delays, favouritism, dysfunction, incompetence... But the most extreme example of maladministration is the inability of a public service to consider, locate, and overcome these symptoms and cases, because then they will simply continue, and be repeated, or even multiply.

According to some who are studying this issue –and maladministration is becoming an increasingly popular subject–

addressing this concept does not necessarily imply pointing a finger at any particular administrative apparatus, or accuse certain civil servants of being inept. On the contrary, they say, such considerations are a healthy part of democracy. Conscious of the side effects caused by its operations, a bureaucracy should be able to recognise and seek out the bumps and snags that keep it from running smoothly. Let us say that it is the minimal condition for beginning to find the solution to any illness: to recognise that it exists. Therefore, only by periodic check-ups can the organisational effectiveness of an administration or public service be renovated and improved.

An *administration*, according to a commonly-held definition, should be at the service of the general welfare, and concerned about respecting the rights of its users, dealing with the missions under its mandate as efficiently as possible. This idea can be better understood if we examine it from the viewpoint of a private business-which, in any case, analysts often do, beyond any kind of comparative criteria. In business circles, no one has any difficulty acknowledging the fact that a budget control mechanism is a sign of self-criticism in the field of financial management, which tends to bring nothing but profit (and not only of an economic nature).

However, of course, in a public service, the damage that can be inflicted through maladministration can be much more severe than just economic loss. In the realm of health care, maladministration can generate literally irreparable damages, and although some kind of compensation is generally made, sometimes this can seem almost irrelevant when what is at stake is the life or the health of the patient. To attain a health care administration system with minimal aversive side effects –or even better, to eliminate them entirely– is the dream of any democratic society worthy of the name. Here, then, we are not dealing with some kind of petty imperfections or mild dysfunction, but with the possible worsening –or even death– of patients on a waiting list. And, as we have already pointed out, the whole affair cannot simply be reduced to having the administrative system and the judiciary solve the problem with compensation for the families involved and punishment for those responsible in a given case, who often form part of a bureaucratic vicious circle. Continuing with our health care example, a truly effective solution demands the localisation of the root of the problem, and all of its ramifications. Often, maladministration can be nipped in the bud at the point where, from the public's standpoint, it shows the least, and from politicians' viewpoint, where it is least showy: perhaps by modifying a seemingly insignificant rule, before (and above all, after) some major legislative reform is announced. In our health care example, this could also involve anything from the inevitable increase in the number of staff physicians to reorganising their hierarchic relationships to adapt to new situations, or the creation of training programmes not only for health care personnel, but also for the civil servants in

charge of processing patients' data. These steps form part of a new approach to health care policy, which is in itself healthy, and is the measure of the level of consciousness of all administrative levels regarding the problems generated by their own operations.

Public services are not assessed in the same way from one side of the desk or the other; to recognise this is to make a good start in discussing maladministration (and discussing it with the maladministrators). Perhaps the best way to poll the citizenry on this issue would be to carry out a survey amongst those waiting on a queue in any public office. What is certain is that someone affected by maladministration feels powerless, frustrated, and wary, since he or she does not understand the bureaucratic processes involved, and does not always have a favourable relationship with the civil servant dealing with the case. To add insult to injury, we find such factors as the turgid language of forms that are often difficult to understand, and the delays in processing paperwork.

Those who study the issue of maladministration tend to argue that the efficiency of watchdog organizations is always limited by the fact that it is the administrative system itself –and often the same administrative body– that defines its sphere of action and is responsible for providing solutions. Here we can see the importance of an outside control system: one outside not only a given administration, but outside the administration entirely. In other words, one that is independent, and autonomous. It is a matter, therefore, of a body that goes beyond acting as a simple complaints office. The latter has its place, but there should be some body outside of it, which is also capacitated to control it.

This brings us to another major function of ombudsmen. The rest of this section of the book devoted to this institution will deal, more or less directly, with the issue of maladministration, and how best to deal with it. We should note here that the European Ombudsman's Office has specially emphasised this concept of maladministration, linking it to the institution of the Ombudsman, to the point of drawing up a *European Code of Good Administrative Behaviour*, approved by the European Parliament in 2001. Scanning its articles, we can get a good overall idea, albeit expressed somewhat sententiously, of what could be called the contrary of maladministration, which is nothing other than what the code calls *good administrative behaviour* (or as we could say more simply, good administration):

- Legitimacy.
- Absence of discrimination.
- Proportionality.
- Absence of abuse of power.
- Impartiality and independence.
- Justice.
- Courtesy.
- Answer in the citizen's own language.
- Official receipt from civil servants.
- Compulsory referral to the appropriate department.

- Right to be heard and make observations.
- Reasonable time taken in making decisions.
- Duty to indicate the motives behind decisions.
- Indication of the possibilities for appeal.
- Notification of the decision.
- Data protection.
- Acceptable maintenance of files.

And in order for the code itself to be on its good behaviour, and for the sake of its good use, the next-to-last article states that the code must be made public.

Let us take a look at the what we have seen in these last two chapters. First, we have examined the process that began in the late 18th century with the declaration of human rights, and is now ongoing with their institutionalization, above all since the Universal Declaration of 1948 and the ensuing work carried out by the UN. Secondly, we have pointed out specific examples of the negative impact of public administrations, expressed through the concept of maladministration. Now we need to look at how, in reaction to both the infringement of human rights and the practice of maladministration, institutions have sprung up around the world, which we shall do in the pages that follow.

The institution of the Ombudsman

Origins and history

In just a few years, institutions with a mandate to defend citizens' fundamental rights and control or supervise public administrations have become established, although with different configurations and under different names.

The office of the Ombudsman was created in the 19th century, in the kingdoms of Scandinavia. This word, which has been adopted the world over, tends to be translated as 'administrator' or 'representative', or even more freely, as 'administrator and interpreter of the law', although we can consider it to be the equivalent of what we call *Defensor del Pueblo* in Spanish.

It was King Karl XII of Sweden –whose dominion also extended over Finland, the Baltic States, and parts of what are now Russia, Norway, and Germany– who in 1713 named a representative called the *Högsteombudsmännen* to control government administration. His mandate was in addition to that of the Chancellor of Justice, whose priority obligation was to oversee the execution of laws and regulations on the part of civil servants. Between both of these offices, then, complemented each other to a certain extent, prefiguring between them what would, in future, be the office of the Ombudsman. After 1766, the Chancellor of Justice was no longer designated directly by the king, but by the Swedish Parliament, becoming another royal civil servant; he later assumed the functions of a Minister of Justice after Gustav III's coup d'état.

Origin and development of the office in Scandinavia

The office of ombudsman first appeared in Sweden, with the name of *Justitieombudsman* (Justice Ombudsman), in its Constitution of 1809, born out of the era's revolutionary upheaval, and which laid special emphasis on the separation of powers: the King and his council, Parliament and the courts. The Ombudsman, named by Parliament, was in charge of controlling government activities, ensuring the correct application of the law, and of denouncing all irregularities and negligence on the part of civil servants and administrators of justice, as well as investigating citizens' complains. Part of this constitution remains in effect today in Sweden, especially those sections referring to the form of government, in which the figure of Ombudsman was established. Later, other laws have been passed to complement the constitution: the General Act of Succession, in 1970; the General Act of Parliament, in 1866; and lastly, the Law of Freedom of the Press, which establishes a series of parameters related to the Ombudsman's Office, such as the citizen's right to have access to public documents. Although many of their details have been modified over the years, all of them remain in effect.

In the Swedish Constitution (article 6, chapter XII, on parliamentary control) the Ombudsman's Office is established in the following terms: 'Parliament shall designate one or several parliamentary commissioners (*Ombudsmän*) who shall be placed in charge, according to the instructions given by the assembly, of overseeing the application of laws and regulations within the public sphere, and who shall be empowered to act before the courts in those situations envisioned by said instructions.' The possibility of designating as many ombudsmen as necessary was also considered, thus creating a tradition, which continues today, of having various ombudsmen, such as the Justice Ombudsman, Ombudsman for Free Trade, Military Ombudsman, and, more recently, Environmental Ombudsman. The union of these different Swedish ombudsmen into a single institution, supervised by one of them, was made official in 1968.

In Finland, which had had experience with the ombudsman's precedents while forming part of the Kingdom of Sweden, readopted the institution, after achieving its independence from Russia, in its first Constitution of 1919. Denmark instituted the Ombudsman's Office as part of its constitutional reform of 1953, widening its mandate and placing it in control of the entire administration, both civilian and military. At around the same time,

Table 1. THE OMBUDSMAN IN SCANDINAVIA

Country	Title	Type(s)	Founded
Denmark	Ombudsman	National	1953
Finland	Eduskunnan Oikeusiamies	National	1919
Norway	Ombudsman	National and Specialised	1955-1962
Sweden	Ombudsmän	National and Specialised	1809

Table 2. THE OMBUDSMAN IN THE REST OF EUROPE

<i>Country</i>	<i>Title</i>	<i>Type(s)</i>	<i>Founded</i>
Germany	Wehrbeauftragter des Bundestages	Specialised (Military)	1956
Andorra	<i>Raonador del Ciutadà</i>	National	1998
Austria	Volksanwaltschaft	National	1982
Belgium	<i>Le Médiateur fédéral</i>	Regional	1991
Cyprus	Commissioner for Administration	National	1991
Spain	<i>Defensor del Pueblo</i>	National and Regional	1981
France	<i>Médiateur de la République</i>	National	1973
Greece	<i>Sinigoros Tou Politi</i>	National	1997
Greenland	<i>Lanstingets Ombudsman</i>	National	1994
Ireland	Ombudsman	National	1980
Italy	<i>Difensore Civico</i>	Regional	1971
Luxembourg	<i>Commission des Pétitions</i>	National	2001
Malta	Parliamentary Ombudsman	National	1995
Netherlands	<i>Nationale Ombudsman</i>	National and Regional	1981
Portugal	<i>Provedor de Justiça</i>	National	1975
United Kingdom	Parliamentary Ombudsman	National and Regional	1967
Switzerland	Ombudsman	Regional	1971

Norway created the office of Military Ombudsman 1955, which was complemented by a civilian one in 1962.

Spread to other democracies after World War II

The reconstruction of Europe after the devastation of World War II was carried out guided by the conviction that the ideals of freedom and democracy should be protected and supported by specific institutional instruments (however, it must be said that this reconstruction was carried out under the conditions of the Cold War, which explains why the whole process was so enormously slow, and advanced only by fits and starts). We have already seen the process that led to the Universal Declaration of the Rights of Man, and the UN's efforts to develop a consciousness in favour of creating national institutions that would actively work on behalf of these rights. Simultaneously, a number of countries began to institute the figure of the ombudsman. This history is not

only that of adopting or putting into practice an idea (which was already a reality in northern Europe), since it involves a more complex process of variations, reforms, and renovation, which is not yet finished. In fact, in many countries where these institutions were established, the laws were revised just a few years thereafter to grant them broader powers. And, as we shall see further on, there are institutions that bear the name of, say, the National Human Rights Commission, but which in fact have many –if not all– of the characteristics of the ombudsman's role; and there are others that ostensibly take on the role of the ombudsman (under whatever name), but without having all of these characteristics (beginning with one of the most important, that of being elected by a parliament or other representational body).

Israel instituted a similar figure (known as the State Comptroller) at nearly the same time as the modern state was born, in 1949, and reformulating it in 1971 as an Ombudsman. West Germany, for its part, adopted the model of a Military Ombudsman in 1956, considering it unnecessary to establish a civilian one, since it already had a Commission for the Right to Petition, which carried out the same function. Indeed, the 1975 Law on the Powers of the Petitions Commission of the German Bundestag (parliament) granted it a range of authority going beyond that of other parliamentary commissions of petition in other countries, such as the power to investigate independently (and indeed, Germany's Commission is a member of the International Ombudsman Institute, and considered a national body by the European Ombudsman's office).

The office of Ombudsman was adopted in New Zealand in 1962. In 1972, two federal Ombudsmen were established in Australia, one in the north and one in the south, and an

Table 3. THE OMBUDSMAN IN OTHER COUNTRIES

<i>Country</i>	<i>Title</i>	<i>Type(s)</i>	<i>Founded</i>
Australia	Ombudsman	Regional	1972
Canada	Ombudsman/ Protecteur du Citoyen	Regional	1967
South Korea	Ombudsman	National	1994
USA	Ombudsman	Regional	1969
Israel	Ombudsman	National	1971
Japan	Administrative Evaluation Office	National	2001
New Zealand	Ombudsman	National	1962
Russia	Plenipotentiary for Human Rights	Federal	1996

Ombudsman for the Commonwealth of Australia was instituted in 1976.

At this same time, in some other countries similar institutions were being created, although they did not coincide completely with the national ombudsman model, nor that of a parliamentary commissioner. This is the case of Britain, which in 1967 (with some revisions in 1994), created a Parliamentary Commissioner for Administration (called 'Ombudsman' only by extension), formally named by the sovereign at the proposal of the Prime Minister. His investigative powers are limited, since he is not allowed to investigate matters involving the police or local authorities. France created the office of a *Médiateur de la République* in 1973, named by the government, but who can only receive citizens' complaints through a member of parliament.

Meanwhile, different models of specialised ombudsmen were being developed, as in the case of West Germany's Military Ombudsman, as well as regional ones. This process was especially striking in Italy, which, after the creation of a Regional Ombudsman for Tuscany, in 1971, saw the creation of 11 more such regional figures between 1979 and 1989 (with the Ombudsman for Tuscany acting as their co-ordinator). Regional or local institutions more or less related to the idea of

an ombudsman's office have been appearing in North American since the 1960s. In Canada, the Ombudsmen of Alberta and New Brunswick were named in 1967, followed by Quebec, 1969; Manitoba, 1970; Nova Scotia, 1971; Saskatchewan, 1973; Ontario, 1975; Newfoundland, 1975; British Columbia, 1979; and Yukon, 1996. The first in the United States was in the State of Hawaii, in 1969, followed by Nebraska, in 1971, and Iowa, the next year; there have also been municipal ombudsmen, in places like Jamestown, New York (1970), Dayton, Ohio (1971) and Seattle (1971).

In 1980, an Ombudsman was named in Ireland, and in the Netherlands, in 1981 (with some modifications, after its new Constitution of 1983). In Austria, there is a *Volksanwaltschaft* (Ombudsman's Junta), included in that country's Constitution, with a specific law dating from 1982 (although with an antecedent in 1976). They were followed by Hong Kong (1988), South Korea, and Malaysia (the latter both in 1994). Greenland has had its own Ombudsman since 1994. Belgium has two federal ombudsmen –representing Flanders (since 1991) and Wallonia (1994)– regulated by a 1995 law. Both are elected by Parliament.

Well into the 1990s, South Africa established the office of Public Protector in 1996. In Greece, although an Ombudsman

Table 4. THE OMBUDSMAN IN AFRICA AND ASIA

Country	Title	Type(s)	Founded
Botswana	<i>Protector Público</i>	National	1997
Burkina Faso	<i>Médiateur</i>	National	1995
Gabon	<i>Médiateur de la République</i>	National	---
Ghana	Commissioner for Human Rights & Administrative Justice	National	1969
Gambia	Ombudsman	National	---
India	<i>Lok Ayukta</i>	Regional	1972
Indonesia	Ombudsman Commission	National	---
Jamaica	Parliamentary Ombudsman	National	1978
Madagascar	<i>Défenseur du peuple</i>	National	1992
Malaysia	Public Complaints Bureau	National	1994
Malawi	Ombudsman	National	1994
Mauricio	Ombudsman	National	1968
Mauritania	<i>Médiateur de la République</i>	National	--
Namibia	National Ombudsman	National	1990
Nigeria	Public Complaints Commission	National	1975
Pakistan	<i>Wafaqi Mohtasib</i>	National	--
Senegal	<i>Médiateur de la République</i>	National	1991
Sudan	Public Grievances and Correction Board	National	1995
South Africa	Public Protector	National	1996
Tanzania	Permanent Commission of Enquiry	National	1966
Taiwan	Control Yuan	National	1992
Thailand	Ombudsman	National	1999
Tunisia	<i>Médiateur Administratif</i>	National	1992
Uganda	Inspector General of Government	National	1986
Zambia	Investigator General	National	1973
Zimbabwe	Ombudsman	National	1982

Table 5. THE OMBUDSMAN, OR DEFENSOR DEL PUEBLO, IN LATIN AMERICA

<i>Country</i>	<i>Title</i>	<i>Type(s)</i>	<i>Founded</i>
Argentina	<i>Defensor del Pueblo</i>	National and local	1993
Bolivia	<i>Defensor del Pueblo</i>	National	1997
Brazil	<i>Ouvidoria Geral do Estado</i>	Regional	1995
Colombia	<i>Defensor del Pueblo</i>	National	1991
Costa Rica	<i>Defensoría de los Habitantes</i>	National	1992
Ecuador	<i>Defensor del Pueblo</i>	National	1997
El Salvador	<i>Procurador para la Defensa de los Derechos Humanos</i>	National	1991
Guatemala	<i>Procurador de los Derechos Humanos</i>	National	1985
Honduras	<i>Comisionado Nacional de los Derechos Humanos</i>	National	1995
Mexico	<i>Comisión Nacional de Derechos Humanos</i>	National and federal	1992
Nicaragua	<i>Procuraduría para los Derechos Humanos</i>	National	1995
Panama	<i>Defensoría del Pueblo</i>	National	1997
Paraguay	<i>Defensoría del Pueblo</i>	National	1995
Peru	<i>Defensor del Pueblo</i>	National	1993
Puerto Rico	Commonwealth Ombudsman	Regional	1977
Venezuela	<i>Defensoría del Pueblo</i>	National	1999

was instituted in 1997, since this post was originally named by the Council of Ministers, the statute had to be modified to due a constitutional amendment in 2001 regarding the creation of an independent Ombudsman with executive powers and a wider mandate.

In Africa, there is generally a correlation between a country's independence and the institution of an Ombudsman or similar institution, which tends to follow. We can see this in the case of Tanzania, which gained its independence in 1964, and created a Permanent Commission of Enquiry in 1966; in Ghana, with independence in 1957 and a Commissioner for Human Rights and Administrative Justice in 1969; Mauritius, the same pattern in 1968 and 1970; and Zambia, in 1964 and 1973.

Democratic transition on the Iberian Peninsula and in Latin America

In the 1970s, Portugal and Spain both experienced, only a few years apart, the end of two very long dictatorships. In both transitions to democracy, and their respective constitutional processes, an ombudsman's office was instituted. In both cases, a major emphasis was placed on the post's role in defending fundamental rights.

Created in 1975, Portugal's official is called the Provedor de Justiça; Spain's Ombudsman, or *Defensor del Pueblo*, was instituted in 1981 (we shall have a chance to go into more detail about the latter in the second part of this book). Shortly thereafter, regional ombudsmen were created in a number of Spain's autonomous regions, each one dependent on their respective regional assemblies: in 1983, Andalusia's *Defensor del Pueblo*; in 1984, Catalonia's *Síndic de Greuges* and Galicia's *Valedor do Povo*; in 1985, the Basque Region's *Ararteko*, the Aragonese *Justicia de Aragón*, and the *Diputado del Común* of the Canary

Islands; in 1988, the Region of Valencia's *Síndic de Greuges*; in 1994, the *Procurador del Común* in Castilla y León; in 2000, Navarre's *Defensor del Pueblo*; and in 2001, the *Defensor del Pueblo* of Castilla La Mancha. There has been a law for instituting a *Síndic de Greuges* for the Balearic Islands since 1993, although it has yet to be put into practice, just as the Autonomous Statutes of Extremadura provide for the creation of a such a post, although a specific law has yet to be passed.

The implantation of an Ombudsman's Office in Spain –and even its autonomous regions– was a consequence of the country's transition to democracy, and we can see a relatively comparable process regarding the implantation of this institution in different Latin American countries. Indeed, during this process the Spanish model was a constant point of reference, despite the major differences in their respective social and political contexts; moreover, in some countries, the process involved in adopting this institution was quite long, and nearly always with important local peculiarities. However, every case in Latin America shares a common emphasis on fundamental rights, with administrative control taking a back seat, although they all have this second mandate, as well.

In various Latin American countries, the implantation of an Ombudsman or similar figure has come out of a constitutional reform, as is the case of the first to have one, Guatemala, which included this institution –called the *Procurador de los Derechos Humanos* (Human Rights Advocate)– in its Constitution of 1985. Mexico is the second Latin American country to adopt a national Ombudsman, although this post had clear antecedents, even in the 19th century, such as the *Procuraduría de los Pobres* (Advocate for the Poor), in the state of San Luis de Potosí (1847), as well as more direct, recent examples, such as the *Procuraduría Federal del Consumidor* (Federal Consumer's Advocate), created in 1975 and

put into practice the following year. In 1990, a national Department of Human Rights was created, a direct antecedent of the National Human Rights Commission, created in 1992 (through a constitutional reform) and which, and although it began as the kind of institution that does not fully coincide with the concept of a parliamentary commissioner, it has wound up becoming fully assimilated to this model after another legal reform, in 1999.

Puerto Rico's *Procurador del Ciudadano* (Citizen's Advocate) also has a somewhat convoluted story, existing since 1977, although it would be a decade before the post ceased to be named by the executive branch, and became responsible to the legislature (since the law's reform in 1987). In El Salvador, the creation of a *Procurador para la Defensa de los Derechos Humanos* in 1991 was a result of the constitutional reform that followed the end of that country's civil war. That same year, Colombia proclaimed a new constitution, which also included a proviso creating a national *Defensor del Pueblo*, after various previous attempts to create a similar figure. Peru's Constitution of 1993 also establishes the office of *Defensor del Pueblo*.

Costa Rica created its *Defensoría de los Habitantes* (Defender of the Inhabitants) in 1992, after various attempts during the previous decade. In Argentina, there is a recent tradition of regional and municipal ombudsmen (the pioneer being Buenos Aires, in 1985), leading to the creation of a national *Defensor del Pueblo* in 1993. These were followed, in quick succession, by the creation of the *Comisionado Nacional de los Derechos Humanos* (National Human Rights Commission), in Honduras, in 1995; the *Procuraduría para los Derechos Humanos* of Nicaragua, in 1995; Paraguay's *Defensoría del Pueblo*, in 1995; Ecuador's *Defensor del*

Pueblo, in 1997; the *Defensoría del Pueblo* of Panama, in 1997; and Bolivia's *Defensor del Pueblo* in 1997.

Democratic transition in Eastern Europe and Russia

The same expression, 'democratic transition', can refer to very different situations. One thing is the democratic transition of the three countries in the south of Europe that experienced military dictatorships which were, in their geopolitical context, extraordinarily long –obviously, we mean Greece, Portugal, and Spain– and another, very different one is the transition of the Iron Curtain countries that went through decades of 'real socialism' as satellites, to a greater or lesser degree, of the Soviet Union. In the first case, we are dealing with a transition from a dictatorial regime to a democratic system, whereas in the second, the change in regime was not only political, but also social and economic.

Regarding the theme under discussion here, that of the ombudsman institution, the difference is not an unimportant one: in the three southern European countries, the Ombudsman's Office was born as part of –indeed, was a result of– a constitutional process, so that the institution is a direct consequence of democratization. This is especially clear in Spain, where the institution of an Ombudsman was implanted after several general elections had already been held, and even more so in Greece, where the institution was implanted quite a long time after the dictatorship ended. However, in the much slower transitions of Eastern Europe, the appearance of an Ombudsman's Office was, itself, often an active contribution to the process of democratization itself, a factor worth bearing in mind. Be that as it may, an apparently opposing element must be added: the ombudsmen in these countries undergoing a slow transition to democracy often faced particular, very serious problems when they tried to exercise their mandate and prerogatives, since the transition process was produced through an often highly accelerated change in legislation, hampered by a lack of democratic tradition which affected how the new regulations are interpreted. The constitutions of these countries (whether brand-new or, as in the case of Latvia, restored) had to go through a period of being assimilated by the very people who were governing them, and even by society as a whole, all of which had little or nothing in common with the quick and effective restoration of constitutional systems experienced in Spain, Greece, and Portugal.

Moreover, the democratization process itself varied widely from one country to another, beginning with the fact that they had very different constitutional traditions: there were countries that already had democratic constitutions before World War II (in the case of Czechoslovakia, Rumania, and Poland); others that had a certain amount of constitutional control, even during the Communist period (Yugoslavia, Rumania, Czechoslovakia, and Hungary, the latter two as late as 1982 and 1985, respectively); and there were also countries for which a constitutional system and rule of law were completely new, coming out of the transition period itself (Albania, Bulgaria, the Baltic states, and Russia).

Table 6. THE OMBUDSMAN IN EASTERN EUROPE AND THE BALKANS

Country	Title	Type(s)	Founded
Albania	Ombudsman	National	2000
Bosnia-Herzegovina	Human Rights Ombudsman	National and Regional	1995
Croatia	National Ombudsman	National	1993
Slovenia	Human Rights Ombudsman	National	1993
Estonia	Ombudsman	National	1999
Hungary	Parliamentary Commissioner for Human Rights	National	1993
Latvia	National Human Rights Office	National	1996
Lithuania	Seimas Ombudsmen	National	1994
Macedonia	Ombudsman	National	1997
Poland	Protector of Civil Rights	National	1987
Czech Republic	Ombudsman	National	2000
Rumania	National Ombudsman	National	1997

Many of these new constitutions included an article instituting an Ombudsman's Office (Albania, Slovenia, Estonia, Hungary, Macedonia, Poland, Rumania, Russia and Ukraine). Poland now has its Protector of Civil Rights (1987); Hungary, its Parliamentary Commissioner for Human Rights (1993); Slovenia, its Ombudsman (1993); Latvia, a National Human Rights Office (1996); Rumania and Macedonia (1997), Estonia (1999), and the Czech Republic and Albania (2000) all have Ombudsmen. As is always the case, their respective mandates differ from one place to another, and in many cases it is probable that legal reforms will be passed soon. A noteworthy example is that, of all these countries, the only Ombudsmen authorised by the constitution to present appeals for unconstitutionality are those of Albania, Slovenia, Estonia, Poland, and Ukraine.

Democratic transitions after the Balkan wars

The Balkan wars mark a point of inflection in these Eastern European democratization processes. Although overall, they were linked to events set off by the fall of the Berlin Wall and the collapse of the Soviet Union, in a part of the Balkans we see a new and unusual context, since these were transitions marked by a postwar situation. This circumstance, and those under which the wars took place, explain why these transitions took place under the direct supervision and consultation of other countries. Remember that it was *between* these wars that the Bosnia Peace Plan was approved in Paris on 15 December 1995, signed by the Presidents of Bosnia, Croatia and Serbia, witnessed by the Presidents of France and the United States, and the Prime Ministers of the United Kingdom, Germany, and Russia, as well as the European Union's rotating President.

After the wars, the new Balkan constitutions also tended to institute the figure of the Ombudsman, which has already been established in Croatia (1993) and Bosnia-Herzegovina (1995).

Types of ombudsmen, and their limits

One of the main differences between this variety of ombudsman models and the Scandinavian original is that the latter, initially specialised and centred on supervising the government, has developed into a kind of state defender, with a wide mandate and a special emphasis on citizens' fundamental rights. Beyond this evolution of the Scandinavian model, and its implantation elsewhere, there are very different kinds of ombudsmen. They feature the widest possible variety of criteria and characteristics; their mandate may be general or specialised, state or regional, depending on the legislative or the executive branch of government; with greater or lesser emphasis on supervising the administration or on the protection of human rights. The key to an ombudsman's independence obviously lies in who chooses him, and what obligations he, in turn, has to those who have chosen him; whereas the key to the scope of his mandate lies in the

range of his powers to investigate, and the means he is given to do so. Besides all of this, sometimes serving as an orientation, but more often disorienting, is the variety of names: *Ombudsman* as the universal title, *Defensor del Pueblo* in Spain and much of Latin America, *Médiateur* (literally, Mediator) in the French-speaking world, and an endless variety of *Commissioners* (such as the National Human Rights Commissions with a specific mandate, linked to the UN, or the parliamentary Commissions of Petition), *Counsels*, and so on. Let us try to come up with a general typology, using as our guidelines the following distinctions.

General Ombudsman

An independent institution, not under jurisdictional control, whose head is named by parliament (the only body to which it is responsible), and which has the dual mission of watching over citizens' fundamental rights, and supervising the operations of all public administrations. It has a national scope, and the specific obligation to attend to those complaints received directly from citizens regarding infringements of their fundamental rights or maladministration, as well as being empowered to act on its own initiative. The ombudsman's term of office is independent of the legislative period. Usually the figure of the ombudsman is established in the country's constitution, and he has the power to present appeals of unconstitutionality.

This is the model born in Scandinavia, and which tends to be considered that of the true ombudsman, to the extent that it unites all of the characteristics listed above. The office is usually called one of these two names, and besides the Nordic countries, it has been implanted in much of Europe (e.g., Austria, Portugal, Spain) and Latin America.

DISTINCTIVE CHARACTERISTICS OF DIFERENT TYPES OF OMBUDSMEN

Institution cited (or not) in the Constitution
Greater or lesser emphasis on protection and promotion of human rights
Chosen by: <i>Legislative branch or Executive branch</i>
Term of office independent (or not) from the term of legislature
Capacity to receive complaints: <i>Directly, from the citizens, or indirectly, through a member of parliament</i>
Scope of investigative powers: <i>Territorial –national or regional; Mandate– general or specialised</i>

Mediator

Like the general ombudsman, the *médiateur* (mediator), a model associated with France and adopted by most franco-phone countries (such as Senegal and Gabon), has a mandate to supervise the administration on a national level; however, in this case the holder of the post is designated by the executive branch (or by the sovereign or president), and he is sometimes not empowered to receive complaints directly from the citizens. His term of office often coincides with that of the legislature, and there tend to be limitations on the scope of his activities.

Specialised Ombudsman

Named by Parliament, the functions of this office are similar to that of the general ombudsman, but they are restricted to a single segment of the population (e.g., minors, the aged, the military, consumers).

As we have seen, this is the model born in the Scandinavian countries, which later developed into that of the general ombudsman.

Regional Ombudsman

Named by the regional (or state or provincial) legislature, the office comprises the same mandate as that of the general ombudsman, only restricted to that particular local administration. This is the system used in Italy and Germany.

There are multiple combinations possible. In Germany, there is a specialised state ombudsman (for the military), a Committee on Petitions with a wide-ranging mandate, and several regional ombudsmen, as well. In Spain, as we shall see in more detail further along, there is an ombudsman, whose scope is general and national (i.e., with a mandate for all public administrations), various regional ombudsmen, and some specialised ombudsmen with specific mandates (and even specialised *and* regional, as in the Madrid's Ombudsman for Minors).

Parliamentary committees and the Right of Petition

The phrase *right of petition* harks back to another antecedent, and also another tradition, which has certain points in common with the ombudsman institution. The *Petition of Right*, in 1628, was presented to Britain's Charles I by Parliament in response to his request for funds to wage a war against Spain and France, and as a precondition for granting it. Among other demands, it forbade the levying of taxes without parliamentary consent, arbitrary detentions, and the proclamation of martial law, as well as guaranteeing all accused persons the right to due process of law, with respect for the rights and freedoms established by the laws of the kingdom, and accepted by the King himself. The Petition's conditions remained in force during the two years of the war with France and Spain, since at the end of

that conflict, Charles went back to his absolutist ways, ignoring Parliament until he was dethroned and executed in 1649. However, the influential antecedent remained.

In the course of their day-to-day operations, parliamentary committees on petitions (now known in the United Kingdom as the Parliamentary Commission for Administration) carry out work similar to that of an ombudsman, to the extent that they are empowered to receive petitions from citizens. In some countries, both figures co-exist, i.e., there is both an Ombudsman's Office and a Committee on Petitions, although in that case, the latter is generally quite inactive. However, in certain countries where there is no national ombudsman, such as Germany, this kind of parliamentary committee's role has been reinforced.

As in the case of the ombudsman, such committees on petition have no legally binding power, but provide information and suggestions to parliament regarding cases of maladministration. The main difference vis-à-vis the ombudsman is that this kind of committee is presided by a senator or member of the upper house, and formed by senators from the various parties in parliament.

Spain is one of the countries where there is both a national Ombudsman and a Committee on Petitions, the latter regulated by the Constitution in its articles 29.1 ('All Spaniards shall have the right to personal and collective petition, in writing, in the form and with the effects the law shall define') and 77 ('(1) The Houses of Parliament may receive individual and collective petitions, always in writing, while direct presentation by citizens is prohibited. (2) The Houses of Parliament may forward to the Government the petitions they receive. The Government is obliged to explain itself on the contents whenever Parliament so requests'). The General Act Regulating the Right of Petition, from 2001, details this petition process.

In any case, over the years the contrast between petitions sent to the Houses of Parliament and to the Ombudsman's Office has become evident: between 1982 and 1989 (a period covering two entire legislatures), both Houses of Parliament together received 4566 petitions, whereas during the same period the Ombudsman received a total of 132,795 complaints.

National Human Rights Commissions

As we have seen, parliamentary Committees on Petitions are not equivalent to an Ombudsman, although they do have certain similarities and there are even some countries affirming that the former carry out the same function as the latter. Be that as it may, something similar may be said, but perhaps even more emphatically, regarding the National Human Rights Commissioners: they are not Ombudsmen, although their respective mandates sometimes coincide quite closely, especially insofar as rights protection is concerned.

As noted in chapter 1.3, these Commissions have been promoted directly by the United Nations, although they do not necessarily depend ultimately on the UN. Their mandate is

centred on the defence and promotion of human rights, and their respective configurations depend on the legislation passed in each country where the institution is adopted. It does not exist in Spain, with the justification that there is already an Ombudsman who carries out these functions, among others.

The limits of the ombudsman institution

This success of the ombudsman concept, and its institutionalization, is evident in the growth of different models based on the original idea, and their expansion around the world. But the practice of generalization, according to some commentators, has become excessive. The name of *ombudsman* has been given to institutions, and above all to bodies, that do not truly fit the term's definition, or even fail to fit it at all. When a complaints office is called a 'Customer's Ombudsman', or some similar name, we could say that this has closed the circle, since it signifies a return to what was an antecedent, losing the defining characteristic of the ombudsman—true independence and autonomy, which comes from being outside of the administration itself.

We are also seeing an expansion in scope, which is both proof of the success of these institutions, but also form of their use that some consider immoderate: private enterprises around the world have introduced the name of *ombudsman*, taking certain traits of this type of institution, but not all of them (since they belong neither to a parliamentary setting, nor even any kind of public administration). A good example of this can be found in the media, especially daily newspapers, which have a 'Readers Ombudsman' (or television stations, with a 'Viewers Ombudsman'). Many universities also have a similar figure, with the same name or something like it, and even the Roman Catholic Church has considered the possibility of creating its own Ombudsman's Office. Obviously, no one can claim to have exclusive use of the term, or even the idea: it is simply a matter of distinguishing among the different uses of a word, having its own specific meaning, that is often used merely to refer to democratic habits and aspirations. However, we must remember that a true ombudsman is named by a parliament for the protection of citizens' basic rights, and to supervise the public administration. If the term is applied to other settings or situations, we can only say that this use is approximate, imitative, and metaphorical.

Supranational institutions

The European Ombudsman

Given the variety of posts that are sometimes called an ombudsman without actually being one, and not forgetting those that, while not being called an ombudsman, really are one, and also given that the tendency to create state or national ombudsmen has been followed by one of institutionalising others covering more restricted areas but on a national scale, or covering a general mandate on a regional scale, it would seem that the only thing lacking was to consider similar institutions, on a supra-state scale. Said

and done: in recent years, this idea has begun to mooted, as well. Human rights, after all, are nothing if not universal. The same is true of public administration, and its evil twin, maladministration. Since globalization is the order of the day, the ombudsman institution can globalise, as well. Or it seems that perhaps it can also globalise. At the moment, we have the example of the ombudsman created in the process of building a united Europe.

The interest in creating a figure similar to that of an ombudsman, but on a European level, goes back to when the Council of Europe was first created. At the time, a figure was considered that could be integrated into the the European Human Rights Commission. In 1974, the Legal Affairs Committee sent an Assembly Recommendation to the Council of Europe advocating this possibility, pointing out the advisability of an institution able to guarantee human rights protection. Later, in the process of creating the European Union, the importance granted to the political sphere, and not just the economic, made manifest the existence of a democratic failing within the Community, in addition to an evident distancing of European citizenry from that ongoing project. Therefore, the Community proposed to the Council of Europe, in June 1985, in Milan, the initial idea of creating a European Mediator. However, this proposal was not included in the Single European Act upon its approval in 1986, with the argument that, at bottom, it would be duplicating the citizens' right of petition.

On 4 May 1990, the Spanish Prime Minister sent a letter to the rest of the Council's members in which he proposed creating a European Ombudsman, with the aim of guaranteeing the rights linked to the condition of being a European citizen. This proposal was accepted by the European Council meeting in Rome that same year, and in November, the Danish government, citing its own experience with a national Ombudsman, and the feeling of judicial security that the institution gave its citizens regarding the administration, made a new proposal for the creation of a European Ombudsman, based on the Danish model. This suggestion was well received, and the Danes were put in charge of drawing up a proposal, which was presented in March 1991. The 1992 Treaty of Maastricht introduced various elements aimed at formally involving citizens in the EU project, with the creation of a European Ombudsman being the most important and constructive element of this.

The priority of this institution, as it is defined in the Treaty of Maastricht, is to defend Europe's citizens, granting them an appropriate form of redress in the case of maladministration on the part of EU institutions. The terms of the treaty centred on general principles of the competencies, powers, independence, and length of term of the European Ombudsman. The result was the creation of a new kind of ombudsman, presenting simultaneously characteristics of the different models in existence (general and specialised ombudsmen, and parliamentary commissioner for administration), conceived as a democratic body within the EU that aims to foster a relationship of trust between the citizens and European institutions.

The requisites for candidates seeking the office of European Ombudsman were described as follows: they must be citizens of the EU, enjoying all civil and political rights, and having the requirements necessary in their own countries for exercising judicial functions, or be well-known for their experience and competence (point III of the Committee on Petitions report). Some of these requirements correspond to those established by the national legislatures of the different EU member countries for civil servants or high political officials, whereas others derive from the European scope of the new Ombudsman's post.

The European Parliament designates the Ombudsman, by majority vote, for a five-year term. Article 195.6 of the Treaty on European Union specifies that the Ombudsman shall be named by the European Parliament after each parliamentary election, and his term shall last until the end of the legislative period, with the possibility of re-election. The election rules specify that a candidate must have the vote of a group of at least 29 parliamentarians hailing from at least two member states, and that each parliamentarian may support only one candidate.

At the end of each term, the Ombudsman may run for re-election; the European Parliament may also ask the Ombudsman to resign if he fails to meet the necessary conditions for carrying out the duties of his office, or in the event of a serious error. In both of these cases, the European Ombudsman must present his resignation to the Court of Justice.

The most striking characteristic of the office of European Ombudsman is its independence from EU institutions, so that it does not have to ask for or accept instructions from any body, whether the Committee, the Council, or Parliament. Likewise, it is independent of both national and EU legal jurisdiction. For this reason, the person who accepts this post may not exercise any other professional, political, or administrative activity or function, even unpaid ones. To ensure the office's independence, the European Ombudsman has the same rank, rights, and privileges as a judge sitting on the Court of Justice. Moreover, the European Ombudsman enjoys such supplementary guarantees as immunity for all acts committed in EU member states in fulfilment of his office, with the same diplomatic privileges as an ambassador within the European Union.

Insofar as EU institutions are concerned, Ombudsman has a close relationship with the European Parliament, which names him to the office and which may demand his resignation, as well as determining the structure of his staff and supervising his budget. Likewise, the European Ombudsman must send an annual report to the Parliament on the results of his investigations.

The European Ombudsman may investigate and report on maladministration in nearly all of the institutions and bodies of the European Community, with the exceptions of the Court of Justice and the Court of First Instance acting in their judicial role. Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State may lodge a complaint with the Ombudsman. Here, the office's jurisdiction differs from those of national ombudsmen, since

the European Ombudsman may not accept complaints from persons who are nationals of an EU member state, but do not reside within its territory.

There are three mechanisms enabling the European Ombudsman to start an investigation: after receiving a complaint directly from an EU citizen, through a European parliamentarian acting as intermediary, or on his own initiative. This system is, therefore, more flexible than those in place elsewhere, because certain countries only allow complaints to be presented in one of these ways. If the European Ombudsman considers that the complaint or situation is related to an infraction in the application of Community law, or is a case of maladministration, and therefore justified, he may send it to the European Parliament so that it may consider the matter and, if it so decides, create a temporary investigation committee or send the case to the European Commission to decide whether the matter should be pursued further. To ensure that the Ombudsman's Office may carry out its work efficiently, all EU institutions and bodies must provide it with all requested information and documents.

The European Ombudsman has the power to make recommendations. When he confirms that there has been a case of maladministration, he presents a report to the body that committed the error, and proposes means to remedy the situation. According to the Treaty on European Union, this body then has a period of three months to explain what occurred. Afterwards, the Ombudsman presents his definitive opinion in a report sent to the European Parliament and the EU body in question. If no satisfactory response is forthcoming, the Ombudsman may include his recommendations in the report. It is the body itself that has the power to re-examine or re-assess the situation, or provide some redress for its inaction. The European Ombudsman's report is non-binding on the EU body; however, should it persist in such maladministration, the Ombudsman may continue to present new demands to EU institutions, and inform the competent authorities, as well as national ombudsmen.

Through these investigations, evaluations, reports, and recommendations, the office of the European Ombudsman has been forging its role and function within the range of its mandate. However, the importance that it acquires in the future will depend not only on its own efforts, but also on the development of the European Union itself. To the question of a sceptic who asks about the scope of this Ombudsman's competencies –and he can only act *within the European administration?*– the best response is an exhaustive list of the EU bodies and institutions under his supervision: the European Commission, Council, and Parliament, the Court of Auditors, the Court of Justice (with the exception of acts committed in its judicial capacity), the Economic and Social Committee, the Committee of the Regions, the Monetary Institute, the Central Bank and the Investment Bank... From this viewpoint, one can tell our Euro-sceptic that it all depends on the future of European political unity whether the office that we have considered the first suprastate ombudsman turns out to be no more than just another institution with a strictly national scope: that of European Nation.

The Council of Europe's Commissioner for Human Rights

The Council of Europe created the office of its Commissioner for Human Rights in 1999. It is a non-judicial institution whose principal mandate is to "promote education in, awareness of, and respect for human rights, as embodied in the Council of Europe's human rights instruments" (according to Article I of the Resolution that instituted the office). Therefore, it is an organisation created to reinforce the Council's efforts in this area, supporting the work of other entities –both national and European– and specifically, collaborating with such institutions as ombudsmen (at the European, regional, and national levels). The Commissioner is answerable to the Council of Europe's Committee of Ministers and Parliamentary Assembly, to which he submits an annual report.

His day-to-day duties mainly involve acting on information relevant to his duties sent to him by governments, national parliaments, national ombudsmen, or similar institutions; however, he is not authorised to take up individual complaints. Based on this information and later investigation, the Commissioner for Human Rights may make recommendations or publish those opinions or reports authorised by the Committee of Ministers. He is elected by the Parliamentary Assembly, by a majority of votes cast from a list of three candidates drawn up by the Committee of Ministers, for a six-year, non-renewable term of office, and his headquarters is in the General Secretariat of the Council of Europe.

International co-ordinating organizations

The expansion of ombudsmen around the world has made manifest the need to create international organizations able to bring them together to foster co-ordination and exchange, as well as to promote human rights and the creation of this type of institution where it does not yet exist.

The International Ombudsman Institute

The first of these organizations was the International Ombudsman Institute (IOI), established in 1978 as a worldwide organization of ombudsman offices, and incorporated as a non-profit organization under the Canada Corporations Act. Its voting members are public sector, independent ombudsman offices located around the world. Specialised ombudsman offices and public human rights organizations may become voting members if they meet certain criteria. The University of Alberta, in Edmonton, Canada and its Faculty of Law provide office space, a library and administrative support for the IOI Secretariat. The International Ombudsman Institute funds its regular activities purely on the subscription revenue obtained from its members, and special projects are funded by grants from governmental official development assistance agencies and private foundations.

The IOI has six regional constituencies: 1) Africa, 2) Asia, 3) Australasia and Pacific, 4) Europe, 5) Caribbean and Latin America, and 6) North America. Most regions have a structure for regular meetings and communication between their ombudsman offices. The By-Laws of the International Ombudsman Institute set out the purposes of the IOI, establishing the following objectives: promotion of the concept of ombudsman and the encouragement of its development throughout the world; development and operation of programmes to enable an exchange of information and experience among ombudsmen throughout the world; development and operation of educational programmes for ombudsmen, their staff and other interested people; encouragement and support for research and study into the office of ombudsman; collection, storage and dissemination of information and research data about the institution of the ombudsman; organization of international conferences; and provision of scholarships, fellowships, grants and other types of financial support to individuals throughout the world to encourage the development of the ombudsman concept and to encourage study and research into the institution of the ombudsman.

The International Ombudsman Institute is managed by a Board of Directors composed of voting members from around the world. The members of the Board represent the IOI's six regional constituencies, and are elected by the voting members of their particular region. The number of Board members per region (three or four persons) depends on the number of IOI voting members in each region. The executive Board members (elected by the Board), are the President, Vice-President, and Treasurer, and the Board also has a Secretary. The directors of each region elect their regional Vice-President.

One of the IOI's main activities is organising International Ombudsman Conferences, held every four years. Since 1978, there have been seven conferences: 1) Edmonton, Canada (1978); 2) Jerusalem, (1980); 3) Stockholm (1984); 4) Canberra (1988); 5) Vienna (1992), 6) Buenos Aires (1996); and 7) Durban, South Africa (2000). The IOI's three official languages, adopted in October 1996, are English, French, and Spanish.

Another major IOI activity is the organisation of workshops and conferences for ombudsmen; in recent years, the main focus has been placed on assisting the promotion of the ombudsman office in young democracies or countries in the process of making a democratic transition. The IOI's Special Projects Committee works to obtain financing for such activities, as well as for organising the workshops and conferences. The various regions of the IOI also hold their own regional conferences, workshops and meetings. On a regular basis, members of the IOI Board of Directors provide advice and support to new ombudsman offices around the world, and to countries that are interested in establishing an office. For example, in the past few years, advice and support has been provided to new offices in Central and East Europe, and to countries in Latin America and Africa which are considering or have established the institution.

The Institute publishes *The International Ombudsman Yearbook* (formerly called *The Ombudsman Journal*), a quarterly

newsletter, collections of articles based on conference papers, *the Directory of Ombudsman Offices*, and other publications on the ombudsman model around the world. The IOI's library and resource centre at the University of Alberta is one of the most important international centres for ombudsman research.

The European Ombudsman Institute

There is also a European Ombudsman Institute, which is an association under Austrian law. The Institute's headquarters is in Innsbruck, Tyrol, where it was founded in 1988, after operating unofficially since 1983 at Innsbruck University under the name European Ombudsman Academy.

The European Ombudsman Institute is a non-profit making, research-oriented association, aimed at adopting a scientific approach to addressing issues relating to human rights, civil protection and the institution of the ombudsman. It carries out research in these areas, as well as promoting and disseminating the ombudsman concept, and cooperating with institutions advocating similar objectives. Any natural or legal person involved with issues relating to the ombudsman concept and who agrees with the objectives of the association may become an ordinary member of the European Ombudsman Institute. There are also extraordinary members; these may be persons who share the Institute's objectives and are in a position to promote them, or anyone dealing with issues of the European ombudsman system outside Europe.

One of the Institute's main subjects of study has always been the reform of ombudsman's offices around the world, addressing such issues as whether ombudsmen should have the right to intervene in legal proceedings and provide legal assistance; or whether the collective 'popular complaint' system (in place in Sweden, Finland, and Denmark) should be favoured over systems that allow only individual citizens to present complaints. It also promotes preference for the model of an ombudsman elected by a qualified majority of Parliament –at least two-thirds– to guarantee democratic legitimacy, and the need to distance the office from party interests.

The Institute's Board of Directors, elected from among its ordinary members, comprises a President, two Vice-presidents, a secretary, a treasurer, one representative from each division, and at least three, but at the most ten, other members, taking the membership structure into consideration. The Board is elected for a term of two years.

The Institute has become a major point of reference and encounter, above all for Europe's regional ombudsman's offices. Since 1985, it has organised conferences in Innsbruck, Bolzano (Italy), Lochau (Austria), Eisenstadt (Austria), Constanza (Germany), Bonn, Gadertal (Italy), Vitoria (Spain), and Berlin.

The Latin American Ombudsman Federation

Latin America has also felt the need to create an organization bringing together the different national initiatives to

promote ombudsman's offices in each country, and, as this project has become a reality, that of a common reference point and coordination centre. Before the definitive creation of the *Federación Iberoamericana de Ombudsman* (Latin American Ombudsman Federation, known by its Spanish initials, FIO), there were two antecedents: the *Instituto Iberoamericano del Ombudsman*, founded in 1984, in Caracas, and the *Asociación Iberoamericana del Ombudsman*, created in Buenos Aires, in 1992.

The FIO was established in 1995, in Cartagena de Indias, Colombia. It brings together Ombudsmen, Councillors, Commissioners, and Presidents of Human Rights Committees from Latin American countries, whose mandates may be national, regional, state, or provincial. The FIO defines itself as a forum for cooperation and exchange, and for the promotion, dissemination, and strengthening of the ombudsman institution throughout Latin America, independently of the specific title that might be used, as long as they meet the basic requisites of an ombudsman office and are constitutionally mandated or specifically created by law. The head of each ombudsman office serves as its representative.

Among its prime objectives is to strengthen co-operative ties among the ombudsmen of Latin America, Spain, and Portugal, supporting the work of its members; promote, expand, and strengthen the culture of human rights in Latin American countries; establish and maintain collaborative relationship with international and intergovernmental institutions and bodies, as well as NGOs, whose efforts are aimed at fostering respect for, and defending and promoting, human rights; denounce human rights violations to the international community; support the promotion of the ombudsman model in Latin American countries that do not yet have one; carry out joint task forces aimed at strengthening and modernising the FIO member institutions; and promote studies and research on issues under Federation's mandate, with the aim of supporting rule of law, democratic government, and peaceful coexistence among peoples.

The FIO has a General Assembly and an Board of Directors. The former is the Federation's maximum authority, and comprises the heads of ombudsman offices or the representatives designated by them. Each member's vote carries the same weight. The General Assembly meets annually, and extraordinary sessions may be called if the Federation's needs so require. Members of the Board of Directors are designated for two-year terms, and include the heads of national ombudsman offices in the FIO, as well as three representatives, elected by their peers, of the state, regional, and provincial ombudsman's offices, thus ensuring the representation of different geographic regions.

The FIO's rotating headquarters is located in the country of its current Chairman of the Board, who is in charge of setting up a FIO office for the length of his or her term. The General Assembly has met in Cartagena de Indias, Querétaro (Mexico), and Toledo (Spain).

THE OMBUDSMAN OF SPAIN

Origin and context

Historical antecedents

The Constitution of 1978 introduced the institution of the Ombudsman, or *Defensor del Pueblo* (literally, 'Defender of the People') into the Spanish politico-legal framework. However, some commentators have suggested historical antecedents having a more or less direct relationship with this figure which, as we have already seen, actually comes out of a Scandinavian tradition no more than two centuries old, and with major changes down the years.

An example of this kind of remote antecedent –shadow of a true antecedent– is a certain Sahib-al-Mazalim, named by the Sultan at the time when Spain was under Arab rule, who served as a kind of judge in charge of hearing and verifying complaints of abuse of authority. More often cited is the the 14th-century *Justicia Mayor* (literally, Justice Major), of what was then the independent Kingdom of Aragon, who acted preventively to impede the abuse of laws and regulations. There are undeniable, deep-seated differences between this remote antecedent and today's Ombudsman. Indeed, the Aragonese *Justicia Mayor* was a judge, whose decisions were binding on the authority to whom they were directed, so that failure to comply with them could involve severe punishment. But Aragon's *Justicia* could have his own problems with Spanish law: as a result of the uprisings of 1591, Juan de Lanuza the Younger was beheaded at the order of Phillip II for defending Aragon's regional jurisdiction, defying the King's will. And another King of Spain, Phillip V, decided to do away with the figure of the *Justicia* altogether in 1711. The memory of this historical figure is enshrined today in the name of the regional Aragonese parliament's Commissioner for Administration, who is called, of course, the *Justicia de Aragón*.

Other commentators have cited as an antecedent the figure of the *personero* (counsellor) and *vocero* (attorney) in colonial Latin America, whose mission was centred on defending the accused before tribunals. There is also the historical concept of *contrafueros* or *agravios* (infringement), known as *greuges* in Catalan, understood as infractions against local laws or against traditional local privileges, committed by the king.

The Constitution of 1978

We have seen the northern European origin of the ombudsman as an institution, and although its later implantation around the world can be considered part of common general processes, it

was also in response to highly specific national situations. In Spain, the Ombudsman appeared forcefully on the scene, with a specially wide mandate, given the special context of the debate on creating this institution: during the period after the death of the dictator Francisco Franco in 1975, and the following transition to democracy, including the redaction and final approval of the Constitution of 1978.

In Spain, therefore, it was the Constitution of 1978 that established the institution of an Ombudsman's Office for the first time in its article 54, under its first Title, 'basic rights and duties', in chapter IV, 'Guarantees of basic rights and freedoms'. This was expressed in the following terms: 'A public general act of Parliament shall regulate the institution of the Ombudsman as the Parliamentary High Commissioner for Administration, appointed for the protection of the rights contained in this Title, for which purpose he may supervise the activity of the administration, informing the Parliament of it'.

It should be remembered here that this chapter IV, in which were enshrined the guarantees of basic rights and freedoms, stresses the common bond of all public powers with these rights and freedoms, so that 'any citizen may assert a claim to protect the freedoms and rights recognised in article 14 and in division 1 of Chapter II, by means of a preferential and summary procedure before the ordinary courts and, when appropriate, by lodging an individual appeal for relief to the Constitutional Court'.

A key trait in the Constitution's definition of the Ombudsman as a Parliamentary High Commissioner for Administration is not only the fact that the office depends solely on the *Cortes Generales* (as the Spanish Houses of Parliament are known), but also that the Ombudsman is free to act independently of it. In fact, the office's acts are constrained only by the Constitution itself, which indicates clearly that in order to carry out its aim and purpose –the defence of basic rights– the Ombudsman is endowed with the power to lodge an appeal of unconstitutionality, stepping into terrain which is that of the very body that names the Ombudsman: that of legislating. Therefore, we should not confuse the Ombudsman's obligation to present an account of his actions to Parliament with any kind of functional dependency.

Regarding the importance of the Spanish Ombudsman's empowerment to lodge appeals for unconstitutionality, which the Constitution specifies in article 162, it is worth noting that this is a power otherwise held only by the Prime Minister, fifty deputies of the Congress of Deputies (the Lower House of Spain's Parliament) or fifty members of the Senate (the Upper House) acting together,

the executive body of one of Spain's autonomous regions and, where applicable, the assembly thereof.

The Ombudsman's place within Spain's constitutional framework

The task of defending basic rights, which is such a specific characteristic of the Spanish Ombudsman's mission, is not one that the Constitution assigns solely to that institution. Therefore, we should clarify where the Ombudsman's specific role lies in this regard. In article 124.1, the Constitution entrusts to the Public Prosecutor's Office the mission of 'promoting the action of justice in defence of legality, the rights of citizens and the public interest guarded by the law, *ex officio* or on petition by interested parties'. However, this is not only a task for the Public Prosecutor, since the same article indicates that this is established 'without prejudice to functions entrusted to other bodies'. Evidently, these 'other bodies' include the Ombudsman's office. Since this area –defence of citizens' rights– is where the mandates of the Public Prosecutor and the Ombudsman coincide, it would be useful to take a closer look to see the specific role assumed by each position, because far from giving them the same competencies, the law distributes their fields of action complementarily. The very location of each one of these two bodies within the Constitution itself gives us a clue regarding the different nature of each: the Ombudsman is defined in Title I, regarding 'basic rights and duties', as we have seen; the Public Prosecutor, in Title VI, devoted to 'judicial power'. The latter's domain is that of the courts, with one of its missions being to promote their actions, and like the Ombudsman, the Prosecutor may lodge appeals for protection; however, unlike the Ombudsman, the Prosecutor is not authorised to lodge appeals of unconstitutionality. Moreover, there is an implicit zone of co-operation between them, since any dysfunctions regarding the administration of justice that come to the Ombudsman's attention must be passed on to the Prosecutor, upon whom it is incumbent to take action. But here we are moving into the terrain of what is known as the 'Organic Act Regarding the Ombudsman', rather than that of the Constitution.

The general act of parliament establishing Spain's Ombudsman

Character, scope, and competencies

The Ombudsman's activities may be characterised generally –and following formulations made regarding different ombudsmen around the world– as that of non-judicial, and therefore non-binding, supervision. The office has been called a magistrate of opinion and dissuasion, so that it is distinguished

primarily by its *auctoritas*: its activity is that of exercising influence, which is in no wise jurisdictional. Its freedom from formally established channels of action and its flexible management enable the Ombudsman's office to co-operate and complement the judiciary, precisely because its role is different from that of a judge. Strictly speaking, it has no supervisory competencies, but if its function is understood as pre-supervisory, then we can see its potential for becoming an important instrument in the action of institutions that do have such competencies, such as the courts, tribunals, or the administration itself.

The Ombudsman's scope of action is clearly established, as we have just seen, in Title I of the Constitution: that of defence of citizen's rights. Some constitutional scholars have engaged in a debate regarding whether the list of rights covered by this title is restrictive or non-restrictive, although the predominant interpretation has been to consider the list to be wide-ranging, so that we could say that the constitutionally recognised basic rights are open to the interpretation implicit in any democratic state that respects the rule of law. And that state itself, in its entirety, represents the Ombudsman's scope of action.

This same article of the Constitution also establishes that the Ombudsman 'may supervise the activity of the Administration'. This wording assumes that the Ombudsman's Office's mandate covers the public administration in its entirety, at all levels: national, regional, local, military, judicial, and so on.

Qualifications and election

To be elected Ombudsman, the law places no other limits than that of being of age, and enjoying 'full civil and political rights'. Among the prerogatives specified in what, following Spanish usage for this general act of Parliament, we shall call the Organic Act Regarding the Ombudsman (or simply 'the Organic Act'), is that of not being 'subject to any binding terms of reference whatsoever', and 'not receiving instructions from any authority', carrying out his work with complete autonomy (Chapter III). The Ombudsman enjoys immunity, and may not be arrested, subjected to disciplinary procedures, fined, prosecuted, or judged on account of opinions he may express or acts committed while performing the duties of his office. Aside from this official sphere, 'in all other cases', while still holding the office, the Ombudsman 'may not be arrested or held in custody except in the event of in *flagrante delicto*', in which case the 'Criminal Division of the High Court has exclusive jurisdiction'.

The post of Ombudsman is incompatible with any elected or politically appointed office; active service in any public administration; membership in any political party, trade union, or even association or foundation; with practising the professions of judge or prosecutor, or any other professional or business activity. Therefore, within ten days of his appointment, the Ombudsman 'must terminate any situation of incompatibility'.

As Parliament's High Commissioner for Administration, the Ombudsman is named by the legislature for a five-year term. A joint committee from both Houses of Parliament (the Congress of Deputies and the Senate) proposes candidates for the office, and after they have been accepted by a simple majority vote, 'a Congressional Plenum shall be held once no less than ten days have elapsed'; the candidate who obtains a three-fifths majority in Congress, subsequently ratified by the same majority of the Senate, shall be appointed. However, should no candidate receive the three-fifths majority, the process is repeated, with the Joint Committee proposing a new set of candidates; in such a case, once a three-fifths majority has been obtained in Congress, the appointment's ratification requires an absolute majority in the Senate. The Speakers of the Congress and the Senate jointly authorise the appointment, and the new Ombudsman takes office in the presence of the Procedures Committees of a joint session of both Houses, either taking an oath or promising to faithfully perform his duties.

Since the Ombudsman's term has been fixed at five years, the Organic Act specifies that the office holder shall be relieved of his duties upon expiry of this term of office, or in case of resignation, death or unexpected incapacity, flagrant negligence in fulfilling the office's duties and obligations, or a nonappealable criminal conviction. In any of these cases, the aforesaid process of naming a new Ombudsman begins again.

Internal structure

Although it is very much a one-person institution –to the extent that the institution and the office holder are known by the same name– the Spanish Ombudsman's Office has a certain collective structure. The law establishes that the Ombudsman 'shall be assisted by a First Deputy Ombudsman and a Second Deputy Ombudsman, to whom he may delegate his duties and who shall replace him, in hierarchical order, in their fulfilment, in the event of his temporary incapacity or his dismissal' (article 8). The law also establishes that these deputies are proposed by the Ombudsman and confirmed by Parliament, and have the same prerogatives and incompatibilities established for the Ombudsman.

The Deputy Ombudsmen's competencies are specified in article 12 of the Ombudsman Regulations. Among others –besides substituting for the Ombudsman and carrying out delegated functions, under the conditions marked by the Organic Act, and of co-operating with the Ombudsman in liaising with Parliament and preparing annual or special reports– one of the most noteworthy is also very specific, having to do with the function that makes up most of the Deputies' everyday work: that of directing the processing, verifying, and investigating citizens' complaints and the Ombudsman Office's *ex officio* actions, proposing that the Ombudsman accept or reject them, as well as proposing the redress that they deem appropriate, and carrying out the pertinent

actions, correspondence, and notifications. Otherwise, it is up to the Ombudsman to distribute the work delegated to the Deputies, duly informing the Joint Parliamentary Committee. The regulations indicate only a single difference between one deputy and the other (besides the stipulation, cited above, that they shall substitute for the Ombudsman 'in their hierarchical order'): the co-ordination of the services depending on the Ombudsman's Office, and dealing with its Secretary General. Moreover, there is the stipulation in the General Act of Parliament Regarding the Legal Protection of Minors (from 1996), which determines that one of the Deputy Ombudsmen is in charge of issues relating to minors, with the Ombudsman deciding which Deputy is the First Deputy.

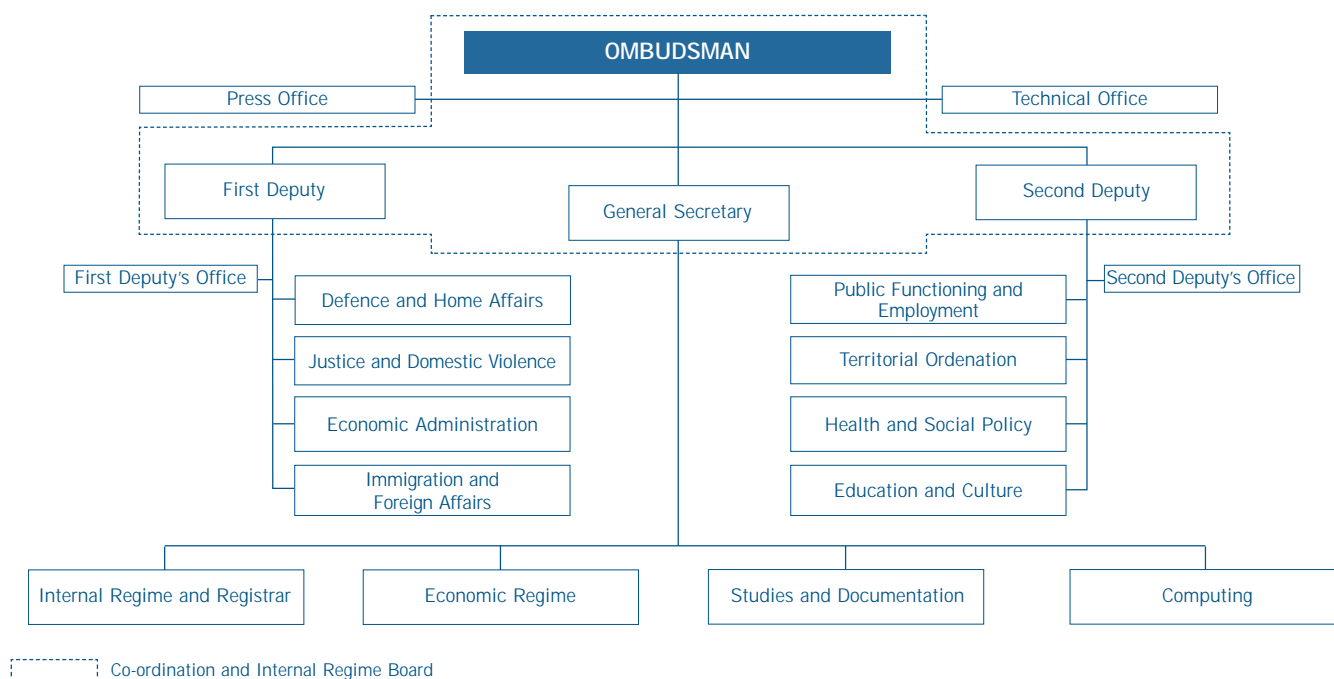
The Ombudsman Regulations go into somewhat more detail regarding the relatively collective structure of the institution, indicating that the executive and administrative functions correspond to the Ombudsman and the Deputy Ombudsmen, and that the body relating these functions is the Co-ordinating Committee, whose members are the Ombudsman, the Deputies, and the Secretary General, the latter attending meetings as a non-voting participant. It is an advisory body, for deliberations and consultation regarding economic and financial issues, public works, services and supplies, and the Office's personnel. The Committee is informed of the naming and resignation of the Secretary General, as well as the possible presentation of appeals to the Constitutional Court, annual and special reports to Parliament, and modification in the Ombudsman Regulation. Moreover, the Committee co-operates in co-ordinating the working areas, and in organization of services and consulting on matters determined by the Ombudsman.

The Secretary General is in charge of the Ombudsman's personnel, as well as being the Committee Secretary. The Secretary General's office is divided into two departments: Finances (with three sections: Accounting, Payroll, and Personnel and General Affairs) and Organization, Studies, Documentation, and Publications (as well as Records and the Information Office). The Secretary General also has an Archives section, and the Regulations stipulate that appropriate measures must be taken to ensure data protection and the security of classified documents.

Regarding the institution's working areas, the Regulations do not specify their contents and distribution. Each of Spain's Ombudsmen to date, during his mandate, has opted for an organization that, seen as a whole, has not differed from one term to the next in its contents, although there have been differences in the number of areas, and how they are distributed between the Deputy Ombudsmen. Here are the eight current working areas, with four under the jurisdiction of each Deputy:

- First Deputy Ombudsman: defence and home affairs, justice and domestic violence, economic administration, immigration and foreign affairs.
- Second Deputy Ombudsman: education and culture, territorial ordination, health and social policies, public services and employment.

Figure 1. ORGANIZATIONAL CHART OF THE OMBUDSMAN'S OFFICE



Procedures

The Organic Act Regarding the Ombudsman determines, in article 9, that the institution 'may instigate and pursue, ex officio or in response to a request from the party concerned, any investigation conducive to clarifying the actions or decisions of the Public Administration and its agents regarding citizens, as established in the provisions of Article 103.1 of the Constitution, and the respectful observance it requires of the rights proclaims in Part I thereof.' Herein, the Ombudsman's dual role is established, so it would be worthwhile for us to take a better look. But regarding 'the provisions of Article 103.1', we should simply quote them here literally: 'The Public Administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and co-ordination, and in full subordination to the law.' The Organic Act Regarding the Ombudsman also specifies that the office's mandate covers the activity of government ministers, administrative authorities, civil servants, and any other person acting on behalf of a public administration.

To address a complaint to the Ombudsman, there are no restrictions regarding nationality, place of residence, gender, age, legal incapacity (including here those who are in prison), or 'in general, any special relationship of subordination to or dependence on a Public Administration or authority.' The law places no other condition than having a legitimate interest. It

also specifies that individual parliamentarians from both houses may individually request the investigation of events, resolutions, or conduct affecting a private citizen or group of citizens, as may parliamentary investigations committees or committees related to the defence of civil liberties and rights. The only stipulation is that no administrative authority may present a complaint to the Ombudsman concerning matters under its jurisdiction. In any case, all of the Ombudsman's investigations are free of charge to those presenting the complaints, and all investigations carried out by the institution, including procedural matters, should be considered classified information.

The Ombudsman's activity, during his five-year term, shall not be interrupted in the event that Parliament is not in session, has been dissolved for early elections, or its mandate has expired; in such circumstances, the Ombudsman's Office shall address the Standing Committees of Parliament. Not even a state of emergency or siege shall interrupt the Ombudsman's work.

Regarding the scope of his competencies, the law specifies three aspects: issues involving Spain's regional governments, justice, and the military. The Ombudsman may supervise regional administrations, even if the region in question has its own Regional Ombudsman. The Ombudsman may co-ordinate with them or ask for their co-operation, but he may not delegate (according to the Ombudsman Regulations) his competencies regarding the defence of basic rights. The complaints that he receives regarding the administration of justice should be sent to the Public

Prosecutor or, referred to the General Council of the Judiciary, according to the kind of complaint involved. Complaints concerning the military administration may not involve any kind of interference in national defence command.

Regarding complaints procedure, the law specifies that they should be signed by the party concerned, providing a name and address in a document stating the grounds for the complaint, and within a maximum of one year from the time of the underlying events. All written complaints are filed and acknowledged in writing, regardless of whether they are later accepted or rejected. All anonymous complaints are rejected, as well as those showing obvious bad faith or are clearly unfounded, or those whose investigation could infringe upon the legitimate rights of a third party. As mentioned above, the Ombudsman may not investigate complaints regarding matters that are before the courts pending a judicial decision, although this does not impede him from investigating general problems related to such matters. All of these investigations must be carried out with the utmost discretion, both insofar as individuals and public institutions are concerned, regardless of the considerations that the Ombudsman considers appropriate for inclusion in his reports to Parliament.

In order for the Ombudsman's work of investigating and supervising public administrations to be effective, the law indicates the obligation of all public authorities to give preferential, priority treatment to assisting him. The Ombudsman, his Deputies, or any other person authorised by him may enter any offices or in-stallations of the public administrations to verify any data needed to carry out any research related either to a complaint or an *ex officio* initiative. He may also ask public officials for any documents that he considers necessary for carrying out his work, even those legally classified as secret.

The law establishes, in article 23, that 'should the investigations conducted reveal that the complaint was presumably the result of abuse, arbitrariness, discrimination, error, negligence, or omission on the part of a civil servant, the Ombudsman may request the person concerned to state his views on the matter,' with a copy to the civil servant's hierarchical superior. The persistence of a hostile or obstructive attitude towards the Ombudsman's investigations may be the subject of a special report, as well as being highlighted in the annual report to Parliament. The civil servant involved 'shall be considered guilty of an offence of contempt' (article 24).

Spain's Penal Code (General Act of Parliament 10/1995), article 502, determines the penalties for those who obstruct the work of the Ombudsman or the Parliamentary Commissioners for Administration of Spain's regional assemblies, by refusing to provide or unduly delaying the reports that they may request, or obstructing their access to records or administrative documents necessary for their investigations.

Resolutions

Although he is not empowered to overrule the public administration's acts and decisions, the Ombudsman may suggest modifications in the guidelines used to apply them. According to article 28 of the Organic Act, 'If as a result of his investigations he should reach the conclusion that rigorous compliance with a regulation may lead to situations that are unfair or harmful to those persons thereby affected', he may suggest legislative changes. However, usually what the Ombudsman does at the end of an investigation is to provide public authorities and civil servants with a series of resolutions, which may be grouped generally into the following categories:

- Reminders of the obligation to fulfil their legal duties.
- Warnings that a *de facto* situation exists which requires improvement.
- Recommendations regarding the revocation, revision, or adoption of certain administrative procedures, or modification in the guidelines or instructions concerning the application of official regulations.
- Suggestions on reconsidering or adopting certain administrative or regulatory procedures, or modification in the guidelines or instructions concerning the application of official regulations.
- Demands or requests regarding the exercise of administrative power or control, protection, inspection, or sanction regarding the action of entities, organizations or persons who exercise public functions or provide public services by delegation.

In any case, a report on the results of the Ombudsman's investigations is sent to the interested party, as well as the public authorities involved in the case.

Personnel and financial resources

The Ombudsman may freely appoint the personnel necessary for running the institution; they, as are the Deputies, are automatically relieved of their duties when a new Ombudsman takes office, and they are considered bound by a series of incompatibilities similar to those affecting the Ombudsman and his Deputies. Article 35.1 of the Organic Act indicates that this personnel, while in the service of the Ombudsman, be considered in the service of Parliament, although in practice, and hierarchically, they depend solely on the Ombudsman (and this is so for the entire staff: departmental consultants, technical consultants, administrative personnel, and their subordinates). The entire staff, therefore, is subject to short-term contracts (although this continues to be a matter under discussion), due to the legislature's desire to give the Ombudsman the highest possible degree of autonomy and independence.

Regarding financial resources, these depend on an item in the Parliamentary Budget, and fall under the same general regulations (regarding accounting, budgetary structure, billing, and so on).

How the institution functions

Investigation procedures: Complaints

The Ombudsman's day-to-day work revolves around complaints. Indeed, citizens' complaints are the defining aspect of the public's view of this institution. People talk of 'presenting a complaint', of 'complaining to the Ombudsman' (and within the course of carrying out investigations initiated *ex officio*, the term '*ex officio* complaint' is often used, and indeed appears in all of the Ombudsman's reports to Parliament). This custom of defining the Ombudsman's work through these complaints has its logic, since an expression had to be coined with which the new institution could be identified, one related to its most immediately operative content; that is, its relationship with the citizenry. Thus, the concept of a *complaint* differs substantially from that of a *reclamation* or a *petition*, although it shares traits with both of them. A *reclamation* is presented by the citizen to the public administration, which has its own procedures for receiving and responding to them, and for their resolution. An unsatisfied *reclamation* (or one treated irregularly, or unnecessarily delayed, or which involves discrimination, etc.) may be the subject, in turn, of a complaint presented to the Ombudsman, at which point it ceases to be considered a *reclamation*. On the other hand, a *petition* is presented within a parliamentary context, as we have seen some pages back, to Parliament's Petitions Committee. Somewhere between a *reclamation* and a *petition*, a complaint to the Ombudsman is characterised by an agility and efficiency, an informality and immediacy, that the others lack.

A complaint, therefore, is the most common mechanism by which a citizen may address the Ombudsman. It is a document signed by the interested party, providing his or her full name and mailing address, and stating the motives behind this request for intervention on the part of the Ombudsman, and including any documents which may have bearing on the case. The citizen may consult the Ombudsman's Office directly, whether personally or by telephone, to receive advice regarding the complaint to be made. In any case, he or she should be aware that processing a complaint has no bearing on the legally defined deadlines for appeals, whether administrative or judicial, or for the execution of resolutions or actions that may have motivated the complaint.

Once the complaint is presented to the Ombudsman's Office, it is registered and the signatory is sent notice of its reception. Within the office, the registrar sends the complaint to the relevant department, where it is studied to determine whether an infringement of rights or maladministration has occurred. If the issue at stake falls within the scope of the Ombudsman's competencies, and there is evidence of such infringement or administrative irregularity, then an investigation is launched. If not, the complaint's signatory is informed in writing of the reasons for this rejection, and

if possible, of the most appropriate channels for vindicating his or her rights. Regarding this point, it should be noted that the acceptance or rejection of a complaint, i.e., the verification of whether or not it needs to be investigated, is in itself a key aspect of the Ombudsman's work. Thus, the rejection of a complaint is usually accompanied by a report, sent to the citizen involved.

Once a complaint has been accepted, the Ombudsman then begins his investigation, requesting information from the administrative body or office cited therein. Refusal to comply with the Ombudsman's request, or negligence in doing so, whether on the part of a civil servant or his or her hierarchical superiors, shall be considered by the Ombudsman as a hostile and obstructive act. In the investigative process, the Ombudsman has no power to modify or overrule acts or resolutions of the public administration, although he may suggest modifications in the guidelines used in their application. We have already seen how the Ombudsman has the authority, after finishing an investigation, to formulate warnings, recommendations, reminders of legal obligations, and suggestions for adopting new measures.

Along with this reception of citizens' complaints, the Ombudsman may initiate *ex officio* investigations in the face of possible infringements of rights or administrative regularities that may come to his attention. We have mentioned that in the institution's day-to-day work, these investigations are called '*ex officio* complaints', although strictly speaking they are not begun due to a complaint, but because the Ombudsman receives information from other sources regarding possible irregularities or infringements of rights.

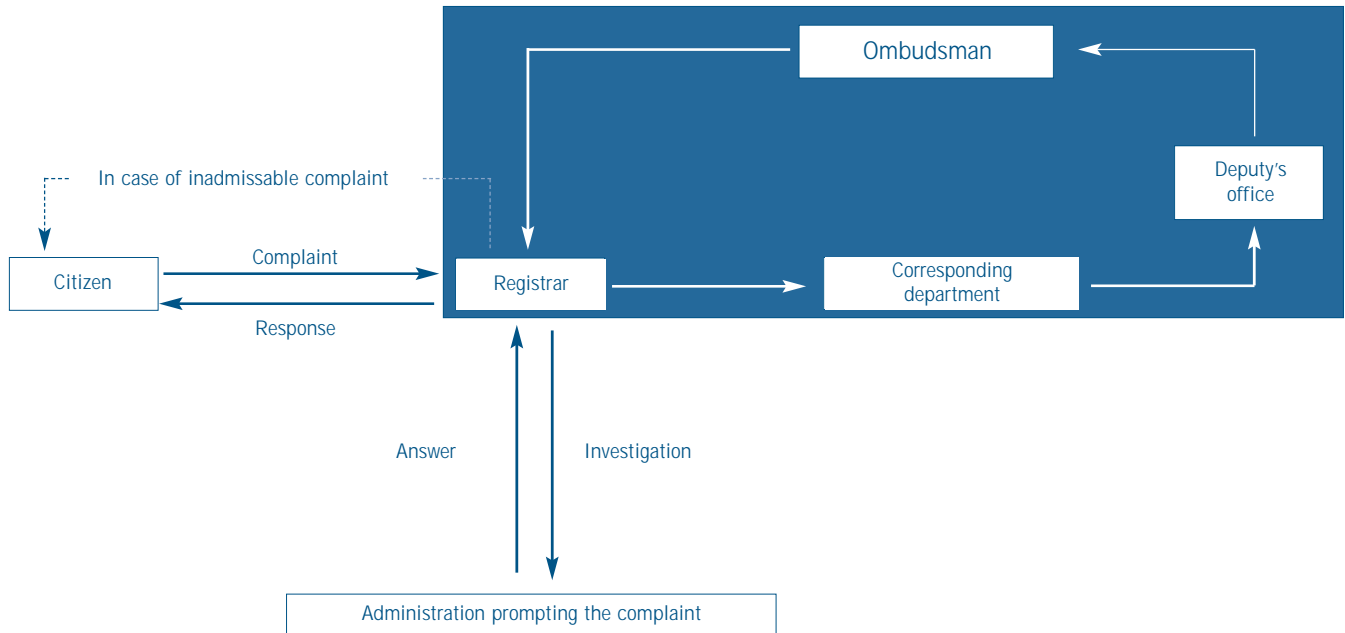
Moreover, the Ombudsman's Office carries out a regular task of inspecting and visiting public installations of a different kind. For example, the Ombudsman periodically visits every penitentiary in the country, regardless of the occasions when he does so because a particular prisoner has presented a complaint. He also visits the internment centres for illegal aliens. Regarding other kinds of public installations, such as military barracks, hospitals, or schools, these visits are more the result of specific investigations which are also carried out periodically.

Reports to Parliament

The Ombudsman's obligation to inform Parliament of his actions, first mentioned in article 54 de la Constitution, is further detailed in article 32 of the Organic Act, which specifies that the report should be annual, supplemented by special reports 'when the seriousness or urgency of the situation makes it advisable to do so'. This annual report is presented to Parliament's Joint Committee, where the different groups may discuss its contents with the Ombudsman, who later presents an oral summary to the Plenums of both Houses, which may then open debate on the report without the Ombudsman's presence in the chamber.

The contents of the annual report have some standard aspects: they always include the number and type of complaints

Figure 2. THE COMPLAINT PROCESS



presented, specifying which have been rejected and why, as well as those that have been accepted, indicating their results and specifying the recommendations and suggestions accepted by the Administration. The report should never include personal information that may make it possible to publicly identify the citizens submitting a complaint, and it is also understood that this confidentiality should be extended to the civil servants whose actions are the subject of an investigation. In an appendix, the report should include a detailed account of the Ombudsman's budget for that year.

Regarding the Ombudsman's special reports, perhaps the most noteworthy are those referring to the Ombudsman's ongoing work in penitentiaries, which is in no wise limited to receiving complaints from prisoners, but involves periodic visits to every penitentiary in the country. Although in every annual report the Ombudsman details this everyday prison work, he also periodically undertakes global or specialised investigations that are later presented as special reports. To date, three have been published: *Situación penitenciaria en España* (The Penitentiary Situation in Spain, 1988), *Situación penitenciaria en Cataluña* (The Penitentiary Situation in Catalonia, 1990), and *Situación penitenciaria y depósitos municipales de detenidos 1988-1996* (The Situation of Penitentiaries and Municipal Police Lockups, 1997).

Another sphere of investigations revolved around issues involving minors: *Menores (Estudio sobre la situación del menor*

en centros asistenciales y de internamiento y recomendaciones sobre el ejercicio de las funciones protectora y reformadora) (Minors in Community Homes and Young Offender Institutions, 1991), *Seguridad y prevención de accidentes en áreas de juegos infantiles* (Safety and Accident Prevention on Children's Playgrounds, 1997), *Violencia escolar: el maltrato entre iguales en la educación secundaria obligatoria* (Violence in the Schools: Peer-group Violence in Compulsory Secondary Education, 2000). The Ombudsman's Office has also devoted two special reports to the elderly: *Residencias públicas y privadas de la tercera edad* (Public and Private Rest Homes for the Elderly, 1990) and *La atención sociosanitaria en España: perspectiva gerontológica y otros aspectos conexos* (Social Work and Health Care in Spain: Gerontological Perspectives and Related Aspects, 2000).

Three special reports have centred on different issues involving the disabled: *Situación jurídica y asistencial del enfermo mental en España* (Legal and Health Care Situation of Mental Patients in Spain, 1991), *Atención residencial a personas con discapacidad y otros aspectos conexos* (Residential Care for Disabled Persons, and Related Aspects, 1996), and *Presente y futuro de la fiscalidad del discapacitado* (Present and Future of Tax Treatment for the Disabled, 2000). The Ombudsman's Office has also produced reports on other issues considered an essential part of its work, and the following have been published to date: *Situación jurídica y asistencial de los extranjeros en España* (Legal Situation and Welfare of Foreigners in Spain, 1994), *La violencia*

doméstica contra las mujeres (Domestic Violence Against Women, 1998), and *La gestión de los residuos urbanos en España* (Urban Waste Management in Spain, 2000).

All of these special reports, once they have been presented to and debated in the Houses of Parliament, have been published as books, and many have become the basis for legal reforms.

Appeals for unconstitutionality

Undoubtedly, one of the most noteworthy aspects of the Spanish Ombudsman's mandate is the power to make appeals for unconstitutionality to the Constitutional Court regarding laws approved by Parliament. This is evidently not part of his everyday work, nor even the most important, if we consider it to be processing the thousands of complaints received from citizens annually, as well as carrying out a good number of specific investigations; however, appeals for unconstitutionality have a political impact –often a very timely one– that centres a great deal of attention on this particular aspect of the Ombudsman's work.

When presenting one of his first reports to the Houses of Parliament, that of 1984, the Ombudsman made some very specific comments regarding the connotations involved in his being empowered to present this kind of appeal. It is worth dwelling on them for a moment, here. He began by pointing out the difference between being authorised to present an appeal for relief and an appeal for unconstitutionality: the former, said the Ombudsman, has no special politically or socially relevant connotations, unlike the latter, because, with very few exceptions, all citizens have recourse to the Constitutional Court, just as the Ombudsman himself does. But the power to present appeals for unconstitutionality against laws already approved by the Houses of Parliament or by the parliaments or legislative assemblies of Spain's regional governments 'has a politico-ethical scope of indisputable importance', in the Ombudsman's words. He added that he had long reflected on the fact that by making use of this power, the Parliamentary Commissioner for Administration had become transformed into a 'Defender of the Constitution vis-à-vis the legislative branch, not only by reaffirming his autonomy in the face of any imperative mandate, or even instructions from any authority (as stated in article 6 of the Organic Act), but he goes one step beyond, setting himself up as a prosecutor of the constitutional legitimacy of a law emanating from Parliament, which assumes or represents the sovereignty of the people.' This reflection, he added, does not mean that his is intimidated by taking action against any legal measure that he considers unconstitutional, although, he concluded, 'no one can fail to understand the overwhelming responsibility involved in exercising such a serious prerogative'.

Therefore, in this 1984 report the Ombudsman referred to the need to draw up some 'rational guidelines' in this area, and

explained that he had exercised his right to act against laws passed by the legislative branch in those cases in which he found solid legal reasons for doing so; on the contrary, when he failed to find motives for such action, he explained them to those who had asked for such an appeal, and preferred to use his power to propose to the Government or the Houses of Parliament the recommendations or suggestions that he deemed most appropriate. In light of the Ombudsman's actions over the following years, as expressed in the institution's annual reports, one can say that these criteria have been consistently maintained over the course of different requests for appeals for unconstitutionality received since then.

The resolutions on all of these appeals have been published as books by the Ombudsman Office. The following table summarises the appeals for unconstitutionality presented by the Ombudsman between 1983 and 2002.

Number 1/1983, presented on 14 October, against the stipulation 'more representative, in keeping with the Sixth Additional Disposition of Law 8/1980, of 10 March, of the Workers Statute', contained in Chapter 04, article 48, concept 483, of Section 19, Labour and Social Security, of Law 9/1983, of 13 July, from the National Budget for 1983.

Accepted.

SENTENCE 20/1985, of 14 February, handed down regarding the appeal for unconstitutionality presented by the Ombudsman, against the stipulation 'more representative, in keeping with the Sixth Additional Disposition of Law 8/1980, of 10 March, of the Workers Statute', contained in Chapter 04, article 48, concept 483, of Section 19, of Law 9/1983, of 13 July, from the National Budget. Dissenting opinion signed by Justice Francisco Rubio Llorente.

Number 1/1984, presented on 28 March, against the stipulation 'more representative, in keeping with the Sixth Additional Disposition of Law 8/1980, of 10 March, of the Workers Statute', contained in Chapter 04, Service 01, Ministry and Undersecretaryship. Programme 132, of Law 44/1983, of 28 December, from the National Budget for 1984.

Accepted.

SENTENCE 26/1985, of 22 February, handed down regarding the appeal for unconstitutionality presented by the Ombudsman, against the stipulation 'more representative, in keeping with the Sixth Additional Disposition of Law 8/1980, of 10 March, of the Workers Statute', contained in Section 19, Service 01, Programme 132 of Law 44/1983, of 28 December from the National Budget for 1984.

Number 1/1985, presented on 27 March, against the stipulation 'more representative, in keeping with the Transitional Provision of Law 32/1984, of 2 August', contained in Section 19, Service 01, Ministry and Undersecretaryship, in Chapter 4, article 48, concept 483. Programme 311 A of Law 50/1984, of 30 December, Regarding the National Budget for 1985.

Accepted.

SENTENCE 72/1985, of 13 June, handed down regarding the appeal for unconstitutionality, presented by the Ombudsman, against the stipulation 'more representative, in keeping with the Transitional

provision of Law 32/1984, of 2 August', contained in Section 19, Chapter 4, article 48, concept 483, of Law 50/1984, de 30 December, Regarding the National Budget for 1985.

Number 2/1985, presented on 27 March, against Madrid Regional Law 15/1984, of 19 December, Regarding the Municipal Solidarity Fund.

Rejected.

SENTENCE 150/1990, of 4 October, handed down regarding the appeal for unconstitutionality, presented by the Ombudsman and 54 parliamentarians against the Law of the Madrid Regional Assembly 15/1984, of 19 December, Regarding the Madrid Municipal Solidarity Fund. Dissenting opinions signed by Justices Francisco Rubio Llorente, Miguel Rodríguez-Piñero y Bravo-Ferrer, and José Gabaldón López.

Number 3/1985, presented on 28 March, against certain aspects of General Act of Parliament 8/1984, of 26 December, regulating the appeals and penal system for conscientious objectors and those carrying out substitute social service, and of Law 48/1984, of 26 December, regulating conscientious objection and substitute social service.

Rejected.

SENTENCE 160/1987, de 27 October, handed down regarding the appeal for unconstitutionality, presented by the Ombudsman, against Law 48/1984, de 26 December, in its entirety, regulating conscientious objection and substitute social service, and against article 2, sections 1, 2, 3 and 4, of General Act of Parliament 8/1984, regulating the appeals and penal system for conscientious objectors and those carrying out substitute social service. Dissenting opinion signed by Justices Carlos de la Vega Benayas, Fernando García-Mon González-Reguera, and Miguel Rodríguez-Piñero y Bravo-Ferrer.

Number 4/1985, presented on 29 March, against the stipulation 'considering to this effect only those Trade Union Centres that have reached a 10 per cent ratio of delegates among personnel, and members of Workers' Committees', contained in Additional Disposition the Thirteenth of Regional Law 21/1984, of 29 December, in the 1985 Annual Budget for Navarre.

Dismissed.

EDICT 636/1985, of 26 September, regarding abandonment of the appeal for unconstitutionality on the part of the Ombudsman, since its underlying motive no longer existed, as detailed in a brief received by the Constitutional Court on 23 July.

Number 5/1985, presented on 3 October, against article 7, 8, 26 and 34 of General Act of Parliament 7/1985, of 1 July, Regarding Rights and Freedoms of Foreigners in Spain.

Accepted in part.

SENTENCE 115/1987, of 7 July, handed down regarding the appeal for unconstitutionality, presented by the Ombudsman, against articles 7, 8, 26 and 34, of General Act of Parliament 7/1985, of 1 July, Regarding the Rights and Freedoms of Foreigners in Spain. Dissenting opinion signed by Justices Francisco Rubio Llorente, Francisco Tomás y Valiente, and Fernando García-Mon.

Number 6/1985, presented on 8 November, against the second paragraph the Third Additional Disposition of General Act of Parliament 11/1985, of 2 August, Regarding Trade Union Freedoms.

Rejected.

SENTENCE 101/1991, of 13 May, handed down regarding the appeal for unconstitutionality presented by the Ombudsman against Additional Disposition the Third of General Act of Parliament 11/1985, of 2 August, Regarding Trade Union Freedoms.

Number 1/1986, presented on 21 February, against the Law of Catalonia 22/1985, of 8 November, Regarding the Creation of a Professional Association of Journalists of Catalonia.

Rejected.

EDICT 812/1988, of 21 June, of the Plenum of the Constitutional Court, agreeing to consider that the Ombudsman had waived on the appeal for unconstitutionality number 187/1986, which he presented against article 1 of Law of Catalonia 22/1985, of 8 November, Regarding the Creation of a Professional Association of Journalists of Catalonia.

Number 2/1986, presented on 14 April, against the stipulation 'with preference for those who have the most representatives, in keeping with the dispositions in General Act of Parliament 11/1985, Regarding Trade Union Freedom', contained in article 3, paragraph 1° of Law 4/1986, of 8 January, Regarding the Assignment of Accumulated Trade Union Property, and against article 5.2 of the same.

Rejected.

SENTENCE 75/1992, of 14 May, handed down regarding the appeal for unconstitutionality presented by the Ombudsman against articles 3 and 5.2. of Law 4/1986, of 8 January, Regarding the Assignment of Accumulated Trade Union Property.

Appeal for unconstitutionality, presented on 28 January 1993, against articles 19.1 and 22.2 of General Act of Parliament 5/1992, of 29 October, Regarding the Computerised Treatment of Personal Data.

Ex post facto loss of jurisdiction by the Ombudsman and the Popular Party Group in the Lower House of Parliament, and dismissal of the appeal presented in their stead by the Consulting Council of the Catalan Regional Government and the Parliament of Catalonia.

SENTENCE 290/2000, of 30 November, handed down regarding the accumulated appeals for unconstitutionality numbers 201/1993, 219/93, 226/93, and 236/93 against certain precepts of General act of Parliament 5/1992, of 29 October, Regarding the Computerised Treatment of Personal Data. Dissenting opinion signed by Justice Manuel Jiménez de Parga.

Appeal for unconstitutionality, presented on 23 August, de 1994, against section 8 of the single article of Law 9/1994, of 19 May, modifying Law 5/1984, of 26 March, regulating the right to asylum and the condition of being a refugee, in the wording of paragraph 3° of section 7 of article 5 of Law 5/1984, of 26 March.

Rejected.

SENTENCE 53/2002, of 27 February, handed down regarding the appeal for unconstitutionality presented by the Ombudsman against section 8 of the sole article of Law 5/1984, of 26 March, regulating the right to asylum and the definition of a refugee.

Appeal for unconstitutionality, presented on 12 April 1996, against the stipulation 'who reside legally in Spain', section a) of article 2 of Law 1/1996 of 10 January, Regarding Free Legal Assistance. *Pending.*

Appeal for unconstitutionality, presented on 25 March 1997, against articles 36, 37, 41.2 and Additional Provisions the Fourteenth, Fifteenth, Sixteenth, Nineteenth, Twenty-first, Twenty-fifth, and Twenty-sixth of the Law of the Canary Islands Parliament 5/1996 of 27 December, Regarding the Annual Regional Budget for 1997.

Accepted in part

SENTENCE 274/2000, of 15 November, handed down regarding the appeal for unconstitutionality presented by the Ombudsman against articles 36, 37, and 41.2, and Additional Provisions the Fourteenth, Fifteenth, Sixteenth, Nineteenth, Twenty-firs, Twenty-fifth, and Twenty-sixth of the Law of the Canary Island Parliament 5/1996, of 27 December, Regarding the Annual Regional Budget 1997.

Appeal for unconstitutionality, presented on 31 March 1997 against Transitional provision the First of the Statute of the Canary Islands in the version given by General Act of Parliament 4/1996 of 30 December, and more specifically against its second paragraph.

Rejected.

SENTENCE 225/1998, of 25 November, handed down regarding the appeal for unconstitutionality presented by the Ombudsman against the second paragraph of 1997 against Transitional provision the First of General Act of Parliament 4/1996, Regarding the Reform of General Act of Parliament 10/1992, of the Canary Islands Statute.

Appeal for unconstitutionality, presented on 17 February 1998, against section 3 of Additional Disposition the Second of Law 6/1989, of 6 July, Regarding Basque Public Operations, as well as article 10 of the Law of the Basque Region 16/1997, of 7 November. Accepted; ruling on 3 March 1998.

Pending.

Appeal for unconstitutionality, presented on 12 March 1998, against article 8, number 1 of Law 8/1997, of 9 December, of the Valencia Region, Regarding Business Hours in the Valencia Region. Accepted; ruling on 17 March 1998.

Pending.

Appeal for unconstitutionality, presented on 31 March 1999, against article 72, paragraph the first, final stipulation 'the content of

the 1991 census', of Law 49/1998, of 30 December, of the National Budget for 1999.

Pending.

Appeal for unconstitutionality, presented on 14 March 2000, against the stipulation 'or due to a higher-ranking provision regulating its use' in article 21.1; against the stipulations 'functions of supervision or verification of the public administrations' and 'persecution of administrative infractions' in article 24.1; as well as against the first paragraph of article 24.2, all from General Act of Parliament 15/1999, of 13 December, Regarding Protection of Personal Data.

Accepted

SENTENCE 292/2000, of 30 November, handed down regarding the appeal for unconstitutionality presented by the Ombudsman against the stipulation 'or due to a higher-ranking provision regulating it use' in article 21.1; against the stipulations 'functions of supervision or verification of the public administrations' and 'persecution of administrative infractions' in article 24.1; as well as against the first paragraph of article 24.2, all from the General Act of Parliament 15/1999, of 13 December, Regarding Protection of Personal Data.

Regional scope

Article 12 of the Organic Act Regarding the Ombudsman states that this institution may receive complaints or investigate *ex officio* the activities of Spain's different regional administrations, with the same mandate as for other public administrations. It is obvious that with this article, the law was looking ahead to the possibility that similar institutions being established at the regional level, and indeed at the time when the Organic Act was passed, several Regional Statutes were already in force, and the role of their parliamentary commissioners for administration would be developed through specific laws and legislation over the following years. Therefore, the second section of article 12 goes on to say that 'For the purposes of the previous paragraph, Autonomous Community [the official name for Spain's regions] bodies similar to the Ombudsman shall co-ordinate their functions with the latter, who may request their co-operation'.

Table 7. REGIONAL PARLIAMENTARY COMMISSIONERS FOR ADMINISTRATION IN SPAIN

<i>Region</i>	<i>Institution</i>	<i>Law</i>	<i>Founded</i>
Andalusia	<i>Defensor del Pueblo Andaluz</i>	Law of the Andalusian Parliament 9/83 of 1 December	1984
Aragon	<i>El Justicia de Aragón</i>	Law of the Aragonese Parliament 4/1985 of 27 June	1988
Castilla-La Mancha	<i>Defensor del Pueblo de Castilla-La Mancha</i>	Law of the Parliament of Castilla - La Mancha 16/2001 of 20 December	2002
Castilla y León	<i>Procurador del Común</i>	Law of the Parliament of Castilla y León 2/1994 of 9 March	1994
Catalonia	<i>Síndic de Greuges</i>	Law of the Catalan Parliament 14/1984 of 20 March	1984
Region of Valencia	<i>Síndic de Greuges</i>	Law of the Valencian Parliament 11/1988 of 26 December	1993
Galicia	<i>Valedor do Pobo</i>	Law of the Galician Parliament 5/1984 of 5 June	1990
Balearic Islands	<i>Síndic de Greuges</i>	Law of the Balearic Islands Parliament 1/1993 of 10 March	Pending
Canary Islands	<i>Diputado del Común</i>	Law of the Canary Islands Parliament 1/1985 of 12 February	1986
Navarre	<i>Defensor del Pueblo de Navarra</i>	Law of the Navarran Parliament 4/2000 of 3 July	2001
Basque Region	<i>Ararteko</i>	Law of the Basque Parliament 3/1985 of 27 February	1989

So in practice, the Ombudsman's writ extends to all of the territorial administrations in the entire country, including regional ones, whereas the regional parliamentary commissioners have their sphere of action restricted to the administration of their own regions. To the extent that these commissioners come out of their respective parliaments, and given the similar configuration of their laws, we could say that they are true ombudsmen. But having said that, it is worth pointing out that, as regional ombudsmen, they differ from their national counterpart insofar as his mandate covers not only the administration, but also the decisions of the legislative, executive, and judicial branches-as far as his own law allows.

Relations between the Ombudsman and similar regional institutions are regulated by their own law (36/1985). Herein, it is established that in cases of irregularities regarding non-regional public administrations that are presented before a Regional Parliamentary Commissioner for Administration, he or she shall notify the national Ombudsman of the infractions or irregularities observed, so that the Ombudsman may intervene. By the same token, as part of his work of supervising the activity of the national administrative bodies operating within Spain's different regions, he may ask for the co-operation of the corresponding Parliamentary Commissioner in order to carry out his duties more efficiently.

In those cases in which the public administration involved is a regional one, the law limits itself to determining that the national Ombudsman and the regional Parliamentary Commissioner should work together on everything that involves competencies of Spain's regions as established in the Constitution and in the relevant Regional Statutes. In other words, it is up to the institutions themselves, national and regional, to agree on how to proceed when doubts arise.

In practice, the Ombudsman has reached agreements of co-operation and co-ordination with each of the regional parliamentary commissioners for administration, as well as holding annual meetings bringing all of them together to debate ways to co-ordinate, which are held in a different regional capital each year.

Institution and development

Instauration and history

As we have seen, the institution of the Ombudsman was established in the Constitution of 1978, although it was three years later, on 24 March 1981, that Parliament passed the General Act of Parliament regulating its activities (number 3/1981 of 6 April). One year later, on 28 December 1982, in response to a proposal made by the Joint Committee for Relations with the Ombudsman, the Congress of Deputies accepted the candidacy of Joaquín Ruiz-Giménez (after rejecting him on a first-round vote)

as Spain's first Ombudsman, with the Senate ratifying this decision the following day.

The Regulations Regarding the Organization and Operations of the Ombudsman were approved 6 April of the following year, and then Álvaro Gil-Robles y Gil-Delgado and Margarita Retuerto Buaes were named as his First and Second Deputies.

During these first months, the recently named Ombudsman and his secretaries were provisionally installed in an annex to the Congress, while the rest of his staff was provisionally installed in some rented offices on calle Alfonso XI. At the end of 1983, all of the Ombudsman's Office was moved to calle Eduardo Dato 31. This building, formerly the palace of the Marquis de Bermejillo (whose history and architecture are described in detail later in this book) has been the Ombudsman's headquarters ever since.

At the beginning of 1984, Spain's Ombudsman became a full member of the International Ombudsman Institute, and a few months later presented his first annual report to Parliament, on his activities in 1983. In June of that year, he participated in the 3rd Ombudsman Conference, held in Stockholm.

In June 1985, Spain's Ombudsman organised, in the Congress's International Room, a meeting of various European ombudsmen. Afterwards, the Council of Europe's first European Ombudsman Panel Discussion was held.

At the petition of the regional parliaments of Catalonia, Aragon, and Andalusia, Parliament approved Law 36/1985 of 6 November, regulating the relationship between the Ombudsman Office and similar institutions in Spain's different regions. In May of that year, he presented the annual report for 1984, which was debated in both Houses in October.

In April 1986, the annual report for the previous year was presented to Parliament, and debated in both Houses in September. In November, the first Regional Parliamentary Commissioners for Administration Meeting, with the participation of the national Ombudsman, was held in Madrid. The meeting has been periodically repeated since then, with a frequency depending on the circumstances.

In April 1987, the annual report for the previous year was presented, and debated in both Houses between June and October. Also in 1987, the Ombudsman presented a special report regarding Spain's penitentiary system. In June, in Las Palmas de Gran Canaria, the 2nd Regional Parliamentary Commissioners Meeting was held; in November, the 3rd Regional Parliamentary Commissioners Meeting was held in Barcelona.

In December, Mr Ruiz-Giménez's term of office expired. The new Ombudsman was Alvaro Gil-Robles y Gil-Delgado, who until that time had held the post of First Deputy and, as such, had been the interim Ombudsman until the Senate confirmed his election on 15 March 1988. One week later, Mrs Retuerto and Soledad Mestre García were named the First and Second Deputies. In June, the annual report for 1987 was presented in Parliament and debated. In June, the Ombudsman participated in the Council of

Europe's 2nd European Ombudsman Panel Discussion, held in Strasbourg (France).

In April 1989, the annual report for the previous year was presented in the Houses of Parliament, and debated in June. Also in April, the Ombudsman participated in the 4th Regional Parliamentary Commissioners Meeting; in May, he took part in the annual Meeting of the IOI's Board of Directors, held in Vienna.

In April 1990 the 5th Regional Parliamentary Commissioners Meeting was held in Zaragoza. Between April and June, the annual report for 1989 was presented in Parliament and debated. In October the Ombudsman took part in the 2nd European Ombudsman Conference, held in Bolzano. In November, the Second Deputy resigned, and was replaced by Antonio Rovira Viñas. That year, two special reports were presented: *Residencias públicas y privadas de la tercera edad* (Public and Private Rest Homes for the Elderly) and *Situación penitenciaria en Cataluña* (The Penitentiary Situation in Catalonia).

In April 1991, the annual report for the previous year was presented to Parliament, and debated by both Houses in June. That same month, in Vitoria, the 6th Regional Parliamentary Commissioners Meeting was held. In May, the Ombudsman participated in an IOI Board of Directors meeting in San Juan, Puerto Rico. In November, he participated in the 3rd European Ombudsman Panel Discussion, held in Florence. That year, two special reports were published: *Situación jurídica y asistencial del enfermo mental en España* (Legal and Health Care Situation of Mental Patients in Spain) and *La situación del menor en centros asistenciales y de internamiento (y recomendaciones sobre el ejercicio de las funciones protectora y reformadora)* (Minors in Community Homes and Young Offender Institutions).

In January 1992, Spain's Ombudsman was named a member of the Latin American Ombudsman Institute, in recognition of his efforts on behalf of the institution's development in Latin America. In April, the annual report for 1991 was presented to Parliament, and debated in both Houses in November. In May, the Ombudsman organised a meeting in Madrid for ombudsmen offices and other human rights institutions, coinciding and in collaboration with the Conference on Security and Co-operation in Europe (CSCE) meeting.

That year, the first act of the Joaquín Ruiz-Giménez Chair in Ombudsman Studies (endowed by the Ombudsman Office and Carlos III University), a lecture series was organised called *The 10th Anniversary of Organic Act Regarding the Ombudsman: Problems and Perspectives*. Indeed, an attempt was made to debate the possibility of modifying the Organic Act Regarding the Ombudsman, according to its Transitional Provision, 'Five years after the coming into force of this Act, the Ombudsman may submit to Parliament a detailed report containing the amendments that he considers should be made thereto.' But the only modification to the law, made that same year, was to create a Joint Congress-Senate

Committee for Relations with the Ombudsman (until that time there had been two, one for each House of Parliament). In June, the Ombudsman attended an ombudsman meeting called by the European Parliament, to express his opinion regarding the possible creation of a European Ombudsman. In October, as a member of the International Ombudsman Institute, he took part in the IOI's 5th Conference in Vienna. In a parallel meeting of the Assembly of the European Ombudsman Institute, Spain's Ombudsman was named a member of its Board of Directors. At the end of that year, the Joaquín Ruiz-Giménez Chair in Ombudsman Studies held a debate series on the institution of a European Ombudsman (like the previous lecture series, its proceedings were published as a book).

In February 1993, the Ombudsman's annual report was presented to Parliament (and debated at the end of the year). In March, Mr Gil-Roble's term of office expired, and his First Deputy, Mrs Retuerto, served as interim Ombudsman.

In May 1994 the annual report was presented to Parliament, and debated in both Houses between September and November. In May and June, the Ombudsman participated in the 4th European Ombudsman Conference in Berlin, organised by the European Ombudsman Institute and the German Parliament's Petitions Committee. In June the Declaration of Latin American Ombudsmen and Human Rights Commissioners was signed, in San José, Costa Rica, to promote the ombudsman institution in all Latin American countries. In November, Fernando Álvarez de Miranda was chosen as Spain's new Ombudsman, with Mrs Retuerto and Mr Rovira again serving as the First and Second Deputies. In December, the Spanish Ombudsman's headquarters were the venue for Latin American Ombudsmen and Human Rights Commissioner Summit (organised by the Inter-American Institute for Human Rights and Spain's Ombudsman). That year, one special report was presented, *Situación jurídica y asistencial de los extranjeros en España* (Legal Situation and Welfare of Foreigners in Spain).

In March 1995, the annual report was presented to Parliament, and debated by both Houses in May. In March the Ombudsman participated in Paris in the 1st Europe-Africa Meeting of National Ombudsman, organised by France's Mediator of the Republic. In August, he participated in the Annual Meeting of Latin American Ombudsmen and Human Rights Commissioners, held in Cartagena de Indias, Colombia, and organised by the Inter-American Institute for Human Rights and the Colombian Ombudsman. During this meeting, statutes of the Latin American Ombudsman Federation (or FIO) were approved. In September, the first European Ombudsman was named by the European Parliament, and Spain's Ombudsman attended his investiture. In November, the 5th European Ombudsmen Conference was held in Las Palmas de Gran Canaria, in Spain's Canary Islands, organised by the European Ombudsman Institute and the Parliamentary Commissioner for Administration of the Canary Islands. Several days before, in the same place, the first Tri-Continental Conference of Institutions for the Defence and Promotion of Human Rights was held.

In April 1996, the 1st Congress of the Latin American Ombudsman Federation was held in Querétaro (Mexico). In May, the Ombudsman took part in the 5th European Ombudsman Meeting, held in Cyprus and organised by the Secretary General of the Council of Europe, in collaboration with Cyprus's ombudsman, the Commissioner for Administration. In June, the annual report for 1995 was presented, and debated in both Houses in November and December. In October, upon the resignation of Mrs Retuerto, the First Deputy (who left the Ombudsman Office to become a member of the General Council for the Judiciary) Mr Rovira was named First Deputy, and Antonio Uribarri Murillo became Second Deputy. The Ombudsman took part in the 6th International Ombudsman Conference, in Buenos Aires, organised by the Argentine Ombudsman. That year, a special report was presented on *Atención residencial a personas con discapacidad y otros aspectos conexos* (Residential Care for Disabled Persons, and Related Aspects).

Also noteworthy here are the entry into force of the General Act of Parliament Regarding Legal Protection of Minors, a partial modification of the Civil Code and the Code of Civil Procedure (1/1996, of 17 January), whose article 10 establishes that, for the defence of and in order to guarantee the rights of minors, one of the Ombudsman's Deputies should permanently supervise issues regarding minors. To this end, Spain's Ombudsman assigned the area to his First Deputy.

Spain's Ombudsman organised, in April 1997, the 2nd Annual Conference of the Latin American Federation of Ombudsmen, in Toledo. There, he was elected President of the FIO, for a two-year term. In May, he participated in Strasbourg in the seminar held to debate the Finnish proposal to create a Human Rights Commissioner for the Council of Europe. In June, the annual report for 1996 was presented to Parliament, and debated in both Houses in September and October. In July, he participated in the Latin American Forum on Democratic Governability and Human Rights, held in Caracas in preparation for the 7th Latin American Summit of Heads of State and of Government. In September, he took part in the 6th European Ombudsman Meeting, held in Jerusalem, and organised by the Israeli Ombudsman. That year, two special reports came out: *Seguridad y prevención de accidentes en áreas de juegos infantiles* (Safety and Accident Prevention on Children's Playgrounds) and *Situación penitenciaria y depósitos municipales de detenidos 1988-1996* (The Situation of Penitentiaries and Municipal Police Lockups).

In April 1998, the Ombudsman participated in the 1st Mediterranean Meeting of National Institutions for the Protection and Promotion of the Rights of Man, held in Marrakech, Morocco, organised by the Advisory Council on the Rights of Man, to celebrate the 50th anniversary of the Universal Declaration of the Rights of Man. In May and June the annual report for 1997 was presented to Parliament. In July, the Ombudsman met with the United Nations High Commissioner for Human Rights, at the UNHCR

headquarters in Geneva. In September, he took part in the 3rd Annual Conference of the FIO, held in Lima. That year, the annual European Ombudsman Meeting was hosted by Malta, followed, in the same place, by the 6th European Ombudsman Panel Discussion, organised by the Secretary General of the Council of Europe. A special report was also presented this year: *La violencia doméstica contra las mujeres* (Domestic Violence Against Women).

In April 1999, Spain's Ombudsman, in his role as President of the FIO, made a speech at the 55th session of the UN Human Rights Commission, in Geneva. In June, the preliminary meetings for the 2nd Mediterranean Meeting of National Institutions for the Protection and Promotion of the Rights of Man, were held in Rabat, organised by the Moroccan Advisory Council on Human Rights. Between June and September, the annual report for 1998 was presented to Parliament and debated by both Houses. In September, the Ombudsman took part in the 4th Annual Conference of the FIO in Tegucigalpa (Honduras). That year, the following special reports were presented: *Presente y futuro de la fiscalidad del discapacitado* (Present and Future of Tax Treatment for the Disabled) *Violencia escolar: el maltrato entre iguales en la educación secundaria obligatoria* (Violence in the Schools: Peer-group Violence in Compulsory Secondary Education), *La gestión de los residuos urbanos en España* (Urban Waste Management in Spain), and *La atención sociosanitaria en España: perspectiva gerontológica y otros aspectos conexos* (Social Work and Health Care in Spain: Gerontological Perspectives and Related Aspects). On 1 December, the Ombudsman's term of office expired, and the First Deputy, Mr Rovira, became interim Ombudsman.

In February 2000, the Ombudsman took part in a seminar on procedures for dealing with victims of acts of racism, in preparation for the World Conference Against Racism, organised by the UN High Commissioner for Human Rights, and held in Geneva. In March, he participated in the International Conference on New Ombudsman Regulations, organised by Belgium's Regional Ombudsmen for Flanders and Ghent, held at the University of Ghent.

In June, Enrique Múgica Herzog was named Spain's new Ombudsman, with María Luisa Cava de Llano y Carrió and Manuel Ángel Aguilar Belda selected as his First and Second Deputies. In October and November the annual report for the previous year was presented to both Houses of Parliament. In October and November, the Ombudsman participated in the 7th Conference of the European Ombudsman Institute, held in Durban, South Africa. In November, the 5th Annual FIO Conference was held in Mexico City.

In April 2001, the Ombudsman took part in the Joint Committee on Women's Rights. In May, he appeared before Parliament's Joint Committee for Relations with the Ombudsman to present the Ombudsman's Office studies on gerontological aspects of social work and health care in Spain, and on peer-group violence in compulsory secondary education. In June, he returned to present studies on urban waste management and on

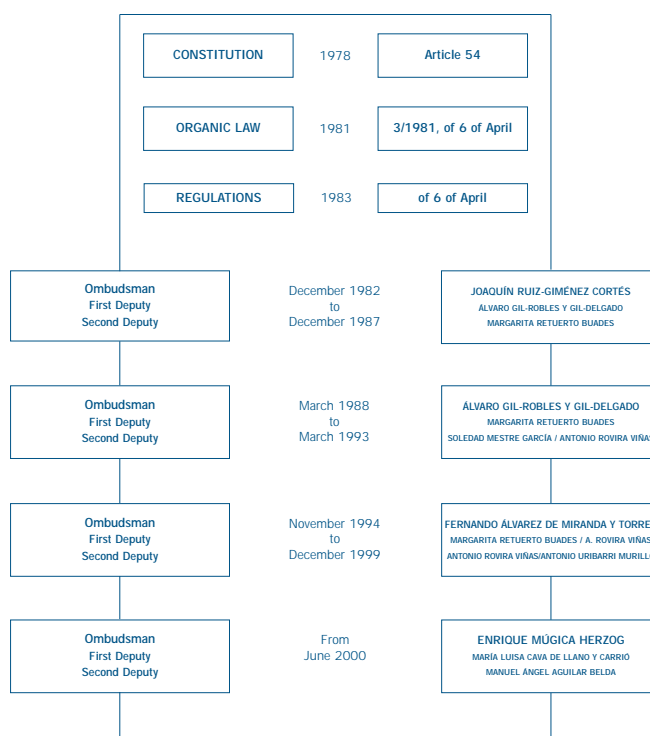
special tax treatment for the disabled. Between September and October of that year, he presented his annual report to Parliament. In November, the Senate hosted the 16th edition of the Regional Parliamentary Commissioners Meeting. On an international scale, the Ombudsman took part in the regional seminar entitled *The Central American Ombudsman: The Challenges Ahead*, organised by the Costa Rican Ombudsman's Office; gave a speech on 'The Processes of Democratic Transition: The Spanish Experience' at the Argentine Ombudsman's Office; took part in a working meeting organised by the Ombudsman of Greece, in co-operation with the European Commission; in the conference organised by the European Ombudsman and other ombudsmen from around Europe on *The Ombudsman Against Discrimination*, in Brussels; and spoke at a conference on co-operation among ombudsmen and national human rights institutions. In Copenhagen, he gave a speech on 'The Role of Ombudsman Institutions in the Protection of Immigrants' Rights'; and in Caracas, he spoke before the 19th Session of the Andean Parliament on issues involving women, children, and the family, Native and Afro-Americans, and the defence of human rights. Co-operation agreements were signed with the Ombudsman's Offices of Argentina and of Paraguay. Another co-operation agreement, with the University of Alcalá de Henares (Madrid), established a Regional Programme for the Support of Latin American Ombudsmen and a Chair in Human Rights at the university.

In February 2002, the Ombudsman appeared before the Senate's Committee on the Information Society to discuss the rights of contestants and the audience with regard to game shows, contests, and betting. In June, he presented a report to the Senate on the efforts of the Ombudsman's Office regarding the situation at the Fuerteventura Detention Centre (Las Palmas, Canary Islands). In June, he presented his annual report for 2001 to Parliament, which was debated in June and September. A protocol for a co-operation agreement was signed with the Commission on Petitions and Basic Rights of the Principality of Asturias, as well as co-operation agreements with the Ombudsman of Portugal and the Youth Council of Spain. In October, the special report on the first year of the Young Offenders Law was presented to Parliament.

The first annual report to Parliament

Given that the ombudsman institution was new in Spain, without any immediate antecedents –not to mention its birth under the special circumstances of Spain's post-Franco transition to democracy– the first steps taken after its implantation were highly decisive for its later development. A good summary of the direction that these first steps took can be found in the first annual report presented to the Houses of Parliament, as well as the ensuing debate.

THE OMBUDSMAN OF SPAIN – A CHRONOLOGY



This first report, on the Ombudsman's activities in 1983, was published in Spain's *Boletín Oficial del Estado* (Official State Bulletin) on 17 May 1984, and was debated in both Houses during September and October of that year. The report begins with this significant declaration of intentions: 'With our eyes on the horizon, we reaffirm our aspiration to make this institution, which is growing day by day and now bearing its first fruits, into an instrument for promoting dialogue, communication, and deeply-felt solidarity in the life of our people.' The report shows a keen awareness of marking, to a large extent, an essential signpost on the path that the institution would take after its first months in action. This consciousness can be seen among its first lines, referring to 'interpretative criteria' applied to the management of the Ombudsman's Office.

The first report goes on to stress that the concept of the complaint has been approached with a maximum degree of flexibility and economy of action, so that the institution could avoid, the danger of paperwork getting in the way of a clear, in-depth vision of the issues raised by the citizens. Along these lines, the criteria for an unacceptable complaint were reduced only to those cases in which the law specifically required rejection (private legal cases, non-existence of irregular action on the part of the administration, a situation in which the matter was already the subject of a bill in Parliament, or before the courts).

The complaints were divided, in this report, into the working areas used during that first term of the Ombudsman: residence, foreign affairs, defence and home affairs, justice, economic issues, territorial administration, labour, health, social security, public works, city planning, housing, transportation, tourism, communications, education and culture, and general issues (we have already seen, in chapter 2.3 of this section of the book, the current distribution of areas).

The Ombudsman's first report concludes with some final considerations to stimulate future reforms. Here, they serve us as a testament to the spirit in which Spain's Ombudsman Office began its work:

1. More flexible relationship between citizens and the administration.
2. Co-ordination among the different public administrations.
3. Objectivity in reviewing administrative actions.
4. Non-execution or delay in executing judicial decisions.
5. Consideration of civil court decisions as legal precedents, to be applicable to persons in the same situation as those whose rights have already been recognised in such a sentence.
6. Non-expiration of the right to social assistance, and fulfilment of article 14 of the Constitution.

The parliamentary debate following the presentation of this first report –to the committees, and then in both Houses– centred on something that has become a common theme in later debates: the need for more fluid, frequent contacts between Parliament and its High Commissioner for Administration. This is something, we should add here, that has been carried out through the presentations and debates of the special reports, as well as the occasions on which the Ombudsman has been called by various parliamentary committees to debate specific issues, contributing his institutional experience.

Spain's Ombudsmen: Brief biographies

JOAQUÍN RUIZ-GIMÉNEZ

Ombudsman December 1982 to December 1987

Born in Madrid, 1913. Doctor of Law. Chair in Philosophy of Law, Complutense University, Madrid.

President of the *Pax Romana* International Student Organization (1939-1946). Spain's Ambassador to the Vatican (1948-1951) and Minister of Education (1951-1956). Pope John XXIII named him as an expert advisor on social, legal, and political issues, and he participated in the working session of Vatican Council II. Pope Paul VI named him a member of the Holy See's *Consilium de Laicis* (1967-1972). President of the Spanish National Committee for Justice and Peace (1971-1975). President of the Spanish Committee of UNICEF (1988-2001). His books include, *La concepción institucional del Derecho* (The Institutional Conception of Law, 1944), *Introducción a la filosofía Jurídica* (Introduction to Legal Philosophy, 1958), *La propiedad*

(Property, 1961), *Del ser de España* (On the Being of Spain, 1962), and *El Concilio y los Derechos del hombre* (The Council and the Rights of Man, 1968). He was the founder and Editor-in-Chief of the magazine *Cuadernos para el diálogo* (1963-1977).

ÁLVARO GIL-ROBLES Y GIL-DELGADO

Ombudsman March 1988 to March 1993

Born in Lisbon, 1944. Doctor of Law. Professor of Administrative Law, Complutense University. Served as a counsellor of the Constitutional Court, (1980-1983), Chairman of the Forum for the Social Integration of Immigrants (1995-1999), and Chairman of the Spanish Committee for Refugee Aid (CEAR) in 1998.

His ties to the institution of the ombudsman date to before its implantation in Spain, to which he made a decisive contribution, from the redaction of the original Ombudsman Bill to holding the post of First Deputy during the Ombudsman's first term. He is the author of many articles and books, the latter including *El Ombudsman (comentarios en torno a una proposición de ley orgánica)* (Commentaries on an Ombudsman Bill, 1979), *El Ombudsman para España* (An Ombudsman for Spain, 1981) *El control parlamentario de la Administración* (Parliamentary Supervision of the Administration, 1976; second, expanded, edition, 1981); *Los nuevos límites de la tutela judicial efectiva* (The New Limits of Effective Judicial Protection, 1996). Since 1999, he has been the Council of Europe's Commissioner for Human Rights.

FERNANDO ÁLVAREZ DE MIRANDA Y TORRES

Ombudsman November 1994 to December 2000

Born in Santander, 1924. Lawyer. Former Professor of Procedural Law, Complutense University, Madrid. Author of the books *Al servicio de la democracia* (At the Service of Democracy, 1979) and *Del contubernio al consenso* (From Conspiracy to Consensus, 1985). Doctor *honoris causa*, Miguel Hernández University, Elche (1999).

During the 1960s, he was active in the European Movement (serving as President of its Spanish Federal Council, and Vice-President of the International Executive Committee). He was also a member of the Count of Barcelona's Private Council (1964), a group advising the exiled head of the Spanish royal family. During the Franco era, he suffered imprisonment and exile for his political activities (in 1962 he attended a Conference of the European Movement, which the Francoist authorities called the 'Munich conspiracy'). Founded the Christian Democrat Popular Party, in 1976, part of the Union of the Democratic Centre coalition, for which he served two terms in Parliament as a member for Palencia. In 1977 he was elected Speaker of the Congress, and during his term the Constitution of 1978 was ratified. Spanish Ambassador to El Salvador, 1986-1989. In 1990, he was designated a State Councillor, and 1992 he was named head of the European Union's Committee of Experts for its Multiannual Programme for the Promotion of Human Rights in Central America.

ENRIQUE MÚGICA HERZOG
Ombudsman since 15 June 2000

Born in San Sebastián, 1932. Lawyer.

Began his political activism in 1953. In 1956 he was the head organiser of the University Conference of Young Writers, an event that set off the student protests of 1956. As a result, he was imprisoned for three months. His anti-Francoist political activity put him in gaol four times, for a total of two-and-a-half years, as well as period of house arrest. Until being elected Ombudsman, he served as a member of Guipúzcoa during every legislature since the return of democracy; during his first term, he was named Chairman of the Defence Committee and Deputy Chairman of the Congress of Deputies Constitutional Committee. He was Minister of Justice from 1988-1991, and major laws passed during that time include those regarding Judicial Demarcation, Corporations, and Procedural and Penal Reforms, which led to the creation of the Penal Courts. In 1997, by Royal Decree 1131/97, he was named Chairman of the Committee Investigating Transactions Involving Gold from the Third Reich during World War II. He is the author of the book *Itinerario hacia la libertad* (Itinerary to Freedom), and a frequent contributor to Spain's leading daily newspapers.

The Ombudsman of Spain's headquarters: Bermejillo Palace

Introduction

In 1983, the Office of the Ombudsman of Spain moved its headquarters from calle Alfonso XI to the recently restored Bermejillo Palace, built between 1913 and 1916 on calle Eduardo Dato (at the time called Paseo del Cisne), and designed by the architect Eladio Laredo. This decision avoided the more than probable destruction of a building that, over the course of its eventful history, had been a family residence, an embassy, a bomb shelter during the Spanish Civil War, a museum, and an official office building, before being transformed, in our times, into the headquarters of Spain's Ombudsman. The renovation project rescued a singular building that many historians consider a masterpiece of the early 20th-century Neo-Plateresque style, which arose at the height of the nationalist trend that characterised the period's architecture.

However, there was a time when rigid avant-garde criteria, barricaded behind an openly anti-historicist attitude, refused to recognise any merit in the eclectic, historically vernacular styles that, until the appearance of rationalism, defined Spanish architecture during the first three decades of the 20th century, labelling it collectively as archaeological and afunctional. At one stroke, they condemned to oblivion figures such as

Eladio Laredo, and works such as the one under discussion here were subjected to ferocious criticism. Labelled half-baked imitations of the past, created by architects lacking their own creative spirit, they were nothing, in the opinion of many, but the reflection of a conservative era that, unable to assume its historical responsibilities, carried a torch for the past.

Be that as it may, at the end of the 1960s another critical trend began to appear, one accusing the Modernist movement of having spawned an anodyne, faceless architecture, and vindicating the return of narrative styles, of hybrids and pluralism, once again supporting an architecture having some meaning, one related to its physical surroundings and to their history. Within this context, we can better understand this period's fresh interest in 19th and early 20th-century eclecticism, crucible of the past's Babel of architectural languages.

This movement dared to challenge the rationalists' linear concept of time, one which, in the name of progress and innovation, insisted on denying the value of everything that had gone before. Faced with the uncertainty produced by ending one century and beginning another without any reference points or models to follow, doubts arose regarding the illusion of having tried to start anew without looking back to the past. With the intuition that the same things are always coming back, albeit in a different form, the critical discourse understood and accepted the desire, one recurring over the course of history, to try to recover the past—the only possible way, as Marcel Proust understood very well, to conquer the inexorable passing of time.

For several decades, now, many critics and historians have again felt the need to revise, in all of its complexity, this eclectic period, whose legacy includes some works of undeniable quality. This turn-about occurred, according to Chueca Goitia, because we now better understand their surrounding historical context; because we are simply more indulgent with the period's eclectic trends; because we now reject the accusation that those architects were simply copycats; and, in sum, as the architect J.D. Fullaondo put it, because we cannot simply destroy the historic memory of a certain period, the fragments of the past. In the words of Borges: 'We are our memory, we are the illusory museum of inconstant forms, that pile of broken mirrors'.

The past in the present: Architecture for a time of crisis

Between the end of the 19th century and the early 20th century, art in Spain was filled with constant references to the past, justified by historic as well as aesthetic motives. The 20th century, witness to the new lifestyles imposed by technological progress, began before it had completely relinquished those of

the 19th century. Until the 1930s, architecture continued to follow the same paths as it had in the previous decades, with a repeat performance of the repertory of forms that had opened the 1800s, such as the Neo-Classical, Neo-Mudejar, and Neo-Mediaeval styles, and eclecticism, juxtaposed with the new trends that were arising at the time, also inspired by Spanish traditions, especially the regional architectural styles—Cantabrian, Basque, Catalan, Neo-Plateresque, Neo-Baroque, and Madrid Baroque—that rounded off this complex panorama of Spanish architecture.

There is, however, a black year in the history of Spain which was fated to indelibly mark the country's later development: the events known collectively as the Disaster of 1898—including the defeat in the Spanish-American War and the loss of Cuba and the Philippines, almost the last remnants of a once-mighty colonial empire—crossed the path of a country that was fighting to modernise, and wound up casting a long shadow over its political and social relationships until well into the 20th century.

More than any other Spanish city, Madrid was the most inclined to serve as the setting for a large number of experiences, with the result that we can see a wide variety of stylistic trends, one that prevented it from finding a style of its own, as Barcelona did during this same period. The absence of an enterprising capitalist, industrialist bourgeoisie—such as the one that, in Catalonia, embraced avant-garde trends through its own version of Art Nouveau—meant that Madrid depended far more on history and tradition. A pre-industrial city, dominated by artisans, Madrid's conservative bourgeoisie refused to consider any other forms than those that history had already sanctioned as valid, the only possible way to connect with the idealised past that defined its identity.

The Disaster of 1898 not only opened up a deep national scar, but also highlighted the problems that had long plagued Spain, setting off the birth of the so-called Generation of '98. This term, coined by the writer Azorín, was the name for a group of intellectuals united by the same moral consciousness and a firm commitment to launching a campaign to bring the country out of its morale crisis. Although at the beginning they claimed that the solution was for Spain to get closer to the rest of Europe, most of its members wound up adopting a more nationalist attitude, believing that the only way for a people to renew itself was to go deeper into its essence, its traditions. Concerned with seeking what they called the 'soul and being' of Spain, they wound up creating their own myths, such as the identification of Spain with Castille, which led to the appearance of new nationalist and regionalist icons. And if in painting, Sorolla and Zuloaga were the triumphant figures, architects also sought to dig into the eternal source of the Spanish heart, adapting it to the new times, finding here the key to their longed-for architectural renaissance.

However, due to the extreme political and social situation that arose after the bloody workers' uprising known as the Tragic

Week of Barcelona (1909), these ideas, in a more or less twisted form, switched sides and fed the flames of the conservative political movement. Conscious of the ideological clout of exalting any glorious period in Spanish history, this group did not hesitate to support any artistic movement involving a discourse eulogising Spanish traditions. This surprising turn of events led to the heyday of a movement that came to be known as National Architecture, whose spirit was very different from the original ideas mooted by the Generation of '98.

This revivalist, nationalist movement was centred on Madrid. Given the Spanish capital's cosmopolitan, open nature, it led to a wide-ranging variety of styles, which besides invalidating this kind of architecture's own founding principles, left the city bereft of any style of its own. Was it not Chueca who said that Madrid is, perhaps, the Spanish city that has strayed the furthest away from itself, always engrossed in weaving and unweaving? However, and even though as late as 1920, the statesman Azaña described Madrid as a city evocative of nothing, 'weighed down by a faceless past', it was in fact around 1914, at the same time Bermejillo Palace was under construction, when Madrid began to come round from the collapse of 1898, and leave behind its old image as a mediocre provincial capital to become the cosmopolitan, modern city that a series of dubious projects carried out in preceding years had failed to produce.

Madrid between two centuries

Despite its extreme contradictions and unhealed wounds, the Madrid described in the works of Ramón Gómez de la Serna had become a bright, bustling city with a notorious nightlife, enlivened by the wide variety of new shows that were constantly opening, from the latest cabaret hits to the light opera of the *zarzuela*, as well as the Spanish symphonic music then in its heyday, with such great composers as Granados, Turina, and Albéniz. Besides the Conservatory's programming, there was the new Madrid Philharmonic Orchestra, founded in 1915, the same year that Falla premiered *El Amor Brujo* (Love the Magician) at the Lara Theatre. In 1916, he brought out *Noches en los Jardines de España* (Nights in the Gardens of Spain), one year before Diaghilev's Ballets Russes came to Madrid with *Parade*, starring the great Nijinsky. In the theatre, the big hits of 1913 were Benavente's *La Malquerida* (known in English as *The Passion Flower*) and Martínez Sierra's *Los Románticos* (The Romantics). Leading lights on the literary scene included Francisco Ayala, Gabriel Miró and Ramón Pérez de Ayala, but the towering figures were Ortega y Gasset, who exercised considerable influence through his writings in the newspaper *El Sol* and the journals *España and Revista de Occidente*, and Gómez de La Serna, the standard-bearer for the avant-garde, over which he presided, from 1913, at his celebrated salon, or *tertulia*, held at Café Pombo on calle Carretas. It was, in fact, the heyday of the literary café

scene, at El Colonial, El Universal, El Café Cervantes, and El Gijón, which became the centre of the city's political life, where all of the most important issues of the day were discussed—although the most passionate arguments were over World War I, because although Spain remained officially neutral, no one was indifferent to the Great War, and everyone split into pro-German or pro-Allied camps. Along with Switzerland, Spain became the centre for both Red Cross activities and international espionage, and reaped a bonanza from the fabulous profits to be made from neutrality. Meanwhile, Madrid began to fill up with illustrious refugees and deserters, suddenly acquiring a cosmopolitan atmosphere, while it continued to serve as a magnet for intellectuals from the provinces, drawn by such institutions as the Ateneo cultural centre, Complutense University, the Free Education Institute, or the Student Residence (later home to Dalí, García Lorca, and Buñuel).

These were years of enormous vitality, during which a booming Madrid consolidated its role as a European capital, thanks to the public works projects launched between 1910 and 1920, which changed the face of the city. On Paseo del Prado, besides the new Bank of Spain offices, in 1917 the cathedral-like 'Communications Palace' (headquarters of the national postal service) went up, and on Neptuno Plaza, the Ritz and Palace Hotels (1910-1913) were built with foreign capital, hotels of a luxury never before seen in Madrid. Together, these new constructions brought the decadent style of France's *Belle Époque* to this corner of the capital. However, the most important urban renewal project of time was, along with Arturo Soria's new Ciudad Lineal suburbs, the opening of the Gran Vía in 1910. Built with the aim of linking the Argüelles and Salamanca districts and renovating the old city centre, it was soon lined on both sides by such notable buildings as the Gran Peña, the Military Casino, or the Telefónica headquarters, along with such major department stores as the Madrid-Paris, cinemas like the Callao or the Capitol, and grand bank offices. In 1917, the first underground line was inaugurated, running from Puerta del Sol to Cuatro Caminos. Cuatro Caminos was one of the many shantytowns that proliferated on the outskirts of the city, lacking in any kind of town planning, spontaneously generated proletarian settlements. It was the other face of the city, a sordid situation denounced by Baroja when he wrote of 'the African life, like something in Aduar, of the outskirts, compared with the refined life of the city centre.' Indeed, Salamanca, Chamberí, and Argüelles were the districts of choice for Madrid's upper-middle class, now comprising high-level civil servants and professionals, who would carve out a social landscape somewhat more complex and diversified than that which had still defined the city when the century began.

Faced with the urgent need to expand Madrid beyond the limits of the encircling walls raised by Phillip IV in the early 17th century, and to relieve the demographic pressure of the chaotic, unhealthy old town, in 1860 an expansion plan, designed by the

engineer Carlos María de Castro, was approved. Castro proposed the creation of eight new districts, creating gardens, plazas, and public services, all built on a modern street grid, lined by four-storey buildings, each with its own patio gardens. Born during the period of instability at the end of Isabella II's reign, the project was only put into practice after the Bourbon restoration, although in a very altered form—due to the distorting effects of real estate speculation, administrative inertia, and lack of resources—which failed to resolve the shantytown problem. What was achieved, however, was the creation of the new bourgeois districts, concentrated on the northern end of the expansion zone, known as the *Ensanche*, with its prime locations along Paseo de la Castellana, the boulevard that has been, since then, the backbone of Madrid.

Under these conditions, Madrid crossed the threshold into the 20th century with the feeling of having lost its opportunity to become a major European capital. In spite of some undoubted achievements, it continued to be, according to its own chroniclers, a big, ugly city that bore the marks of the Ensanche project's failures, a city tied to 19th-century forms of expression, and stuck in a crisis of morale still revolving around the loss of Spain's colonial empire, which made it, in the eyes of that generation's writers, the mirror of Spanish inner life: 'the stage', as Azaña put it, 'where the decline of Spain was enacted'.

Tradition vs. Art Nouveau: The 'Monterrey style'

This turn-of-the-century crisis, although it had a special impact in Spain, was not only felt there. From 1880 it had been shaking up the rest of Europe which, as the century ended, tried to escape from the narrow limits imposed by Realism and Positivism, to plunge deeper into worlds that responded to needs of the soul and the spirit. This was the beginning of the Symbolist and Art Nouveau styles (whose Spanish version was known as *Modernismo*)—the heads and tails of the same coin—both enveloped in a certain morbid attraction for the so-called Decadents, whose literary leaders included Wilde, Huysmans, Verlaine, and Rubén Darío.

Searching for a possible solution to its problems, Spain turned its eyes, for a time, towards Europe; Madrid—where Art Nouveau was barely noticed—opted for fin-de siècle decadence. As we have seen, some of the buildings that went up between 1900 and 1914—such as the Ritz and the Palace, the Madrid Casino, or the palatial villas designed by Saldaña and Aldana for Madrid's industrialists and aristocrats—were in the lovely, elegant style of the French *Belle Époque*, giving the architecture of these years a cosmopolitan look.

This cosmopolitan fashion, however, did not long endure the virulent criticism of those who preferred a return to Spanish sources over this internationalised language, convinced, like Unamuno, that architectural regeneration could only be achieved

by reviving 'the eternal Spain'. Digging through Spanish history for styles that could inspire national pride, a new historicism sprang up, inspired in the Renaissance, a movement dubbed Neo-Plateresque, which, far from being a revivalist fad, had an enormous impact on Spanish architecture for more than a decade, with Salamanca's celebrated Monterrey Palace being reflected in many modern buildings, such as the Sueca Palace on calle Barquillo (1904) or Bermejillo Palace (1913). However, we should note here that although both buildings arose from the same nationalist movement, Bermejillo Palace was not a reaction to the Disaster of 1898, but to the Francophile style later espoused by some architects.

A key building in what came to be known as the Monterrey style was Jerónimo de la Gándara's 1867 design for the Spanish Pavilion at the Paris Universal Exposition. Although barely noticed at the time, it was remembered after the colonial disaster, and in the very year of 1898, its impact could be seen in the blueprints that José Urioste y Velada drew up for the Spanish Pavilion of the 1900 Paris Universal Exposition. Urioste was not only inspired by Monterrey Palace, but by the contemporaneous University of Alcalá de Henares and the castle in Toledo known as the Alcázar, among other landmarks of Spanish Renaissance architecture. This style, in the accurate assessment of Navascués, arose 'out of the power and international prestige of Spain's 16th-century Golden Age, one that forged an overseas empire which was, paradoxically, being dashed to pieces during those very months of 1898'. Urioste's pavilion was such a success, even internationally, that not only did its architect receive many prizes, but his design became endowed with enormous semantic weight, turning into a formal manifesto, the architectural version of the aspiration for regeneration shared by the entire country.

Unamuno's words, written from his haven in Salamanca, reflect the special mood underlying this nationalist option: 'The tower of my dear Monterrey Palace speaks to me of our Renaissance, of the Spanish Renaissance, of the eternal Spain made into a vision of stone, and it tells me to consider myself a Spaniard and tell myself that if life is a dream, the dream is all that is left and the other, that which is not a dream, is no more than a passing fancy...'. In any case, it was not exactly by chance that Monterrey Palace became one of the principal sources of inspiration for this new Spanish Style, since it was considered a prime example of the 16th-century Plateresque school, which was itself a reaction, in its own day, against Italian Classicism. Even though more recent, opposing theories suggest that the palace was just another example of the Mannerist style then in vogue all over Europe, it is no less certain that Rodrigo Gil de Hontañón (1500-1577), who also designed the façade of the University of Alcalá and Guzmán de León Palace, was a key figure in the architecture of his times, since he was able, without turning his back on tradition, to

overcome mediaevalism once and for all, adapting the Gothic syntax to the early modern era.

Identified with the Spanish Style, Plateresque architecture, called to lead a longed-for national revival, was supported by such figures as Vega March, Cabello Lapiedra, Eladio Laredo, and above all, Vicente Lampérez, whose campaign in its favour played an essential role in its resurgence. Defenders of architectural nationalism, they maintained that a new style could only be found by adapting –rather than merely imitating– traditional styles, because, in the words of Lampérez, '*tradition* means the distilling, over the course of centuries, of certain principles that do not change: the country, the climate, the idiosyncracies of a race of people'.

The climate of political instability that Spain experienced after the Barcelona workers' uprising of 1909 led the political establishment to promote these ideas, conscious of their propaganda value; as a result, the Spanish Style reached the height of its popularity. However, this nationalist regeneration movement got away from its avant-garde origins, and by the 1920s had become emblematic not only of conservative ideals, but also, in the opinion of Isabel Ordieres, of the ideals and completely unrealistic outlook of the aristocracy, which turned its eyes back to that time in Spanish history when the nobility actually served a purpose.

Be that as it may, from 1911 the Neo-Plateresque style became all the rage among the haute bourgeoisie and the aristocracy for their residences. It was around this time when, in 1913, Eladio Laredo received the commission to take over the project for the Marquis of Bermejillo's new palace on Paseo del Cisne, originally to have been built by the architects José Reynals and Benito Guitart Trulls.

The architect Eladio Laredo

With close ties to King Alfonso XIII and the nobility, Laredo was a favourite architect of Madrid's aristocracy, above all after the King chose his design, in the Monterrey style, for the Spanish Pavilion at the 1911 Universal Exposition in Rome.

By then, Laredo was already a well known, respected figure on the Madrid art scene, where he had acquired a reputation as an expert on Spanish architectural styles, and as one of their staunchest defenders, through his writings for a journal he founded in 1906, *Pequeñas Monografías de Arte*, now a key source of information for scholars of that period. Born on the northern Cantabrian coast, in Castro Urdiales, in 1865, Eladio Laredo Carranza was one of the most important figures in the National Architecture boom. After working as his hometown's municipal architect, where he also worked for the local magnate Luis Ocharán, he set up his studio in Madrid in 1904, and soon became a champion of the nationalist style. As a result he was chosen by the Marquis de la Vega Inclán to take on the task of

recovering national artistic treasures that this aristocrat from Valladolid, who was fascinated by art restoration, had decided to sponsor. The successful restoration of the El Greco House, in Toledo, led Alfonso XIII, conscious of the initiative's ideological impact, to create the Royal Council for Tourism and Popular Culture, naming the Marquis de la Vega Inclán its Commissioner, and Laredo its head architect. After restoring the house of El Greco –an artist revived by the Generation of 1898, along with Velázquez and Goya, to represent ‘the spiritual expression of the Castilian soul’– they embarked on a series of restoration projects with major nationalistic connotations, such as the Velázquez House or the El Tránsito Synagogue. In 1911, came the Spanish Pavilion at the Rome Exposition, which definitively consolidated Laredo's reputation. Two years later, he designed Bermejillo Palace, together with Reynals and Guitart Trulls. Although Laredo also signed such emblematic buildings as Gran Vía 1, it was this palace that made his name, ‘the masterpiece,’ said Pereira, ‘of the nationalist style of its time, approached as an urban alternative to cosmopolitanism.’ A critical success, the building was also praised by architects such as Cabello Lapiedra, who eulogised it in his book *La Casa Española* (The Spanish House), published in 1917. After condemning what he considered the pernicious influence of the Art Nouveau style in architecture, Cabello expressed approval that ‘in the middle of this architectural revolution dominated by imported styles,’ palaces like this one were being built, which he defined as the ‘work with the greatest Spanish artistic intensity, the most influential in the development of a style based on our traditional architecture,’ referring to it as an example of what he called the ‘Alfonso XIII style’.

Almagro: An aristocratic neighbourhood

The palace was to be built on the corner of calle Fortuny and Paseo del Cisne (now Eduardo Dato), in the Almagro area, which was, along with the Paseo de la Castellana, a favourite of the haute bourgeoisie and the nobility.

Some years before, this easternmost part of the Chamberí district had consolidated its reputation as one of the capital's most prestigious addresses, compared with the more proletarian flavour of the rest of that part of the city. Enormously contradictory due to its chaotic, disorderly growth, Chamberí witnessed how, on the other side of calle Santa Engracia, on the lots extending down to the Castellana, the neighbourhood that came to be known as Almagro was being built up by the city's moneyed classes who, during the last decade of the 19th century, began to prefer living in a less crowded part of the city, far from the narrow streets of the old town. As early as 1864, when the area was still on the outskirts of Madrid, and the expansion plan that would create the Ensanche was still being debated, Miguel Sainz de Indo, a Basque stockbroker, began to buy land in this vicinity, eventually acquiring a total of 22 hectares –including the so-

called *Huerta de España* (Spanish Gardens) bought by the City of Madrid in 1864, as well as other lands coming from the state expropriation of the property of religious orders– and began building luxurious villas on them, including his own, which has disappeared. Similar to the Huerta de España was the *Huerta de Loínaz*, along the Castellana and Paseo del Huevo (now calle Almagro), which was bought by the French firm Parent Shakeen et Compagnie, at 45 pesetas per square metre. After tearing down walls and levelling the area, they sold off the resulting lots, creating, along with what had been the Indo holdings and Paseo de la Castellana, one of the most beautiful areas of Madrid. Therefore, from the mid-19th century, luxurious palaces and villas started going up, many of them now gone, such as that of the Duke of Montellano, although some can still be seen, such as Castro's, on number 16, calle Fernando el Santo, later renovated by Count Heredia Espínola, or those built by Saldaña between 1897 and 1914, such as the palace of the Countess of Adanero (now offices of Ministry of Public Administration), the Duke of Plasencia's villa (the Turkish Embassy, today), or what is now the Provincial Council, designed by Aldana–all inspired by the elegant French style, the same that inspired the Duke of Mauro's villa on calle Zurbano, just a stone's throw from Antonio Garay's palace. Designed by the architect Smith Ibarra, and built at the same time as the neighbouring Bermejillo Palace, this building, now housing the Civil Engineers Association, is one of the finest examples of the Madrid regional style in architecture.

This area was also home to institutions with an enormous impact on Madrid cultural life, such as the Free Education Institute, founded by Francisco Giner de los Ríos to defend freedom in teaching; the International Young Ladies' Institute of Spain, on calle Miguel Angel, in a building also designed by Saldaña; and, on calle Fortuny, and until it moved to calle del Pinar, the Student's Residence.

Plaza de Chamberí is the starting place for calle Eduardo Dato, one of the district's main streets. Built at the same time as Paseo de la Castellana, it was called Paseo del Cisne until 1939, after the swan adorning the lead fountain at the end of the street. During the period when Pedro de Répide described the neighbourhood, Paseo del Cisne was entirely lined by palaces or religious buildings, such as the convent of the Servants of Mary, the Orphans Asylum founded by the Marquis of Vallejo between calle Fernández de la Hoz and Zurbano, or the Neo-Mudejar Church of San Fermín de los Navarros. Among the palaces, one of the most striking was the Arab-style villa belonging to Guillermo de Osma. Located on a corner of calle Fortuny, it was built by Fort between 1889 and 1893, and turned by its owner into a museum, the Valencia de Don Juan Institute, which still houses different collections of the applied arts, with notable holdings in Hispano-Arabic ceramics. Across the street was the palace belonging to the Marquis of Bermejillo, according to Pedro de Répide, ‘one of the most delightful palaces built of late in Madrid’.

The Palace of the Marquis of Bermejillo

The history of Bermejillo Palace began in March 1912, when Javier Bermejillo del Rey, Marquis of Bermejillo, bought, for 177,500 pesetas, a plot of land measuring 604 m² on Paseo del Cisne, where at the time there was a villa designed by Ortíz y Villajos. Its owner to that point, María de la Concepción Ramón Ortíz y Gómez, had inherited it from her father, Joaquín Ortíz y Sainz, who had in his day received it as a legacy from his uncle Miguel Saínz de Indo-who, as we have seen, masterminded the build-up of the Almagro area. The need for a bigger lot led the marquis to buy the property next door, a villa belonging to Francisco and Antonio Ardemins; once it was torn down, the resulting lot totalled 1134 m², of which 400 were to be a garden.

José Reynals and Benito Guitart Trulls were the first architects to receive the commission for the Marquis's new palace, which was, in keeping with the express desires of the Marchioness, Julia Schmidlein y García Teruel, to be in the Neo-Renaissance Spanish style, then all the rage amongst the Madrid aristocracy. Reynals' approach to the building's decoration apparently did not satisfy the Marchioness, and 1913 Laredo was contracted to draw up new plans, with a décor adhering more closely to the Monterrey style. These circumstances have led to frequent confusions regarding the palace's designers, which some scholars have even mistakenly attributed to Reynals and Guitart, without mentioning Laredo.

Without major changes to Reynals's design insofar as infrastructure and layout were concerned, Laredo redesigned the façade completely, covering it with motifs from the Plateresque lexicon: galleries, towers, latticework, heraldic devices, and even an evocation of the gargoyles on the Guzmán de León Palace are all there. The resulting building was a synthesis of both designs, which brought together the past and the present, providing an example of the kind of architecture championed by Lámpera, because it responded to the needs of modern life without giving up tradition.

The layout of the palace

The palace was built on an irregular, quadrilateral lot, with its main façade facing south along Paseo del Cisne, joined to a curve in calle Fortuny. Based on a simple cubic structure built around a central, roofed atrium, upon which open the different rooms, this four-storey building rests on a dado of lime-stone, with the remainder of the façade in brick and different kinds of natural and artificial stone. Although the entrance is on Fortuny, of the palace's four façades, the principal one was, and is, the side facing what used to be Paseo del Cisne.

Flanked by two towers that close the space and provide an air of peace and repose, this façade transmits unity and balance thanks to a skilful distribution of the spaces that it comprises, although the architect did not shy away from a certain

complexity in playing with the different decorative elements. The memory of the great Renaissance architect Gil de Hontañón, whose enormous versatility in using the languages prevalent in his times can be seen in the Palaces of Monterrey and of Guzmán León, is a constant in this façade, which employs many of his favourite elements: windows and balconies with latticework, corner windows, a gallery with basket-handle arches, running like a *loggia* across the third storey, and, above all, the two towers. Joined by an open-worked balustrade, the towers, a motif which often evokes the military in architecture, here –as in the work of Gil de Hontañón– become elegant vantage points for gazing out over the city, thanks to the galleries running through them.

Although the decoration was largely taken from the classical repertory, Laredo, faithful to eclecticism that characterised the Plateresque style, did not hesitate to mix in elements from the Gothic period, such as the two bay windows on the main floor, resting on corbels, or the purely decorative gargoyles that punctuate the cornices running over the top of the arched gallery until it passes through the two towers, highlighting the building's horizontal lines.

More contained, the decoration of the other façades is based on the positioning of empty spaces. Not all the same size, nor always distributed along the same axes, occasionally opting for highly calculated asymmetries, they impose rhythm and dynamism. To the west, a Gothic turret, besides serving as a reference to Spain's mediaeval past, breaks the monotony of the northern façade, a role played by the balcony on the eastern façade. This playful mixture of heterodox elements even extends to the main entrance to the palace, which instead of being on the main façade, is on calle Fortuny, running through a flat-roofed, rectangular portico with a triple arcade. The corner was turned into an entrance for motorcars, which had access to the garage in the basement through the portico.

This portico leads to the vestibule, the starting point for a short staircase running up either side leading to an 18th-century wooden door which opens onto the central atrium, serving as a modern-day hall, onto which all of the other rooms in the palace face, following the style of Renaissance palaces. One side of this central area, and set somewhat back, is the bottom of a magnificent staircase, inspired by Toledo's Alcázar, leading up to the main floor. An elevator and a service elevator, situated to the left, as well as a spiral staircase, were built to provide access to the upper floors.

The building has four levels. The ground floor, which had a salon, smoking room, office, ballroom, and, in the axis of main entrance, a formal dining room opening onto the garden; the main floor, with its bedrooms-the Marquis's bedroom was over the formal dining room, so he had a large balcony, looking over the garden, resting on the apse of the dining room; the second floor, with the kitchen and other installations used by the servants, some of which were later turned into a nursery for the Marquis's grandchildren and their nanny; and a third floor, with

the laundry room and more bedrooms. The basement, besides the garage, had the boiler room and servants' bedrooms.

The most spectacular part of the house is the atrium and its stairway, which when it reached the main floor was closed off with glass panelling that divided the patio into two levels. These glass panels differentiated the principal rooms of the house from those used by the servants, and allowed the light coming in through the glass roof over the atrium to go all the way down to the ground floor. This way of breaking up the space also made it possible to open up a gallery on each floor, so that the building, and the lives of those within it, revolved around this central nucleus.

History of the palace

The construction of the palace took three years. At last, on 3 January 1916, Benito Guitart Trulls presented proof of its completion at City Hall, and requested an official certificate stating that the palace was now in a condition to be used as a residence. But the lack of protective railings on the gables, at the time compulsory under municipal security ordinances, led to a long bureaucratic battle between the City of Madrid and the owners, which was not resolved until December, so that it was nearly another year before the Marquis and the Marchioness finally moved in.

The Bermejillos' reluctance to place protective rails on the rooftops was due to aesthetic reasons linked to the palace's special architectural style. In their opinion, such rails would be 'an attack on good taste' and 'strike a jarring, anti-artistic note', which would ruin the palace's harmonious whole. The solution to the problem, after the initial controversy, came from the Municipal Advisory Committee, which finally ruled that the owners should be exempt from this obligation, because placing iron railings on the edges of the overhanging wooden roofs of 'one of the capital's most interesting modern constructions in the Spanish Neo-Renaissance style' would be such an aberration that, were it to actually be imposed, would discredit City Hall. Therefore, the Committee decided that the safety issue could be resolved by placing mooring hooks around the gables, so that roofers would be able to use safety belts and ropes. Based on this ruling of 18 December 1916, permission to occupy the house was finally granted, and the Marquis and the Marchioness could, at last, move into their new home.

Julia Schmidtlein herself was the palace's interior decorator. The magnificent handcrafted woodwork, the tiles –from Talavera for the baseboards, Sevillian for the floors– and doors, the latticework and the furniture, all were carefully selected to suit the tastes of the Marchioness, a lover and connoisseur of Spanish art. Her merits were immediately recognised, receiving the highest praise from Cabello Lapiedra, who described her as 'the living incarnation of Art, a lover of the 16th century.' Even though Cabello goes a bit too far in saying that she was the 'life and soul of work; it was she

who drew up the plans of the noble villa with a sure hand', it is true that Lady Bermejillo supervised the entire project down to the last detail, so that everything, inside and outside, fit in with the Spanish style that she wanted to dominate her entire residence.

A personal friend of many artists, she was especially close to José María López Mezquita. Among other commissions for the Marchioness, he painted the *Portrait of the Bermejillo Family*, which won him a gold medal at Madrid's 1910 National Exposition. This splendid group portrait, in which the couple appears with their children, Carmen, Ignacio, Javier, and Carolina, gives no hint of the hard times that were soon to come—the early death of one of the sons, and the economic difficulties that led to the forced sale of the palace. In retrospect, the painting is charged with intensity and nostalgia, a testimony to the fragility of happiness. Looking at it now, our minds wander back to the origins of this family, whose story begins in Mexico, where Lord and Lady Bermejillo lived as children, and where they met.

Originally from Balmaseda, the Marquis's family emigrated to Mexico, where they made their fortune. The Marchioness's father, a German physician, also emigrated to Mexico, but in his case it was the result of a failed love affair: to recover, he had enrolled in the army of the Archduke Ferdinand Maximilian of Habsburg, and followed him to Mexico on a mission from Napoleon III to defend the French interest in that country. Alarmed by the turn that events were taking—which finally ended in the death of the short-lived Emperor Maximilian—Dr Schmidtlein left the army, but not the country. He decided to settle in Mexico and practise medicine, gaining a high professional reputation, and married a Mexican lady. Their daughter Julia married Javier Bermejillo, and shortly thereafter the young couple decided to move to Spain and set up house in Madrid, where they lived provisionally on calle Covarrubias while their palatial residence was under construction on Paseo del Cisne. The palace was, for some years, the setting for banquets and receptions attended by all of the capital's high society, including, on more than one occasion, the King and Queen of Spain. A personal friend of Alfonso XIII, with whom he shared a passion for hunting, Javier Bermejillo's friendship was rewarded with the title of Marquis of Bermejillo del Rey in 1915.

However, the political instability that reigned in Mexico after the 1911 Revolution broke out led to severe financial setbacks for many of the foreigners who had property there, with the result that Lord Bermejillo was eventually forced to sell his palace.

The Bermejillos lived in the palace until June 1932, the year when María Bauzá Rodríguez, married to Ramón Rodríguez, bought it for 750,000 pesetas. During the 30 years that she lived in the palace, until her death in 1960, she turned it into a real museum, a landmark on the Madrid art and cultural scene of the day.

Originally from Uruguay, once Mr Rodríguez had retired from his work as an industrialist and the couple established its residence in Spain, they devoted themselves almost exclusively to completing the art collection that they had begun years before in

South America. The unexpected death of Mr Rodríguez, just at the moment when they were about to acquire Bermejillo Palace, did not stop María Bauzá from continuing the work they had begun together. As a result, the collection features a great many objects of extraordinary artistic quality, which with constant efforts and dedicated searching she brought together in their home on Paseo del Cisne. Porcelain, tapestries, jewels, ceramics, ivory carvings, glasswork, enamel, laces, sculptures and paintings, as well as several valuable archaeological pieces, are spread throughout the palace, together with the Spanish style furniture, also very valuable, which gave the Museum 'a highly pleasing homey look', as José Ferrandis put it in an article published in 1943 in the Bulletin of the Spanish Excursions Society.

Among the long list of major artworks, some highlights are Old Masters such as a *Crucifixion* attributed to Antonio del Rincón, El Greco's Saint Francis, Ribera's Descent from the Cross, Tiepolo's *Saint Anthony or a Murillo Immaculate Conception*, as well as a painting by Lucas Cranach. One room devoted to Zuloaga and another to Sorolla, as well as paintings by Paret y Alcázar, Giménez Aranda, Madrazo, Romero de Torres, and Rusiñol, among others, make up the splendid contingent of Spanish modern art.

Also worthy of mention is the palace's library, filled with first editions by modern authors, rare books and princely editions, and rare manuscripts illuminated by French or Flemish scribes, and some oriental works, as well.

This house, open to all who wished to visit, was also the scene of intellectual gatherings –every Sunday there was a salon for leading figures from the arts, sciences, and cultural scene– as well as conferences and congresses. Pilar F. Vega, in her obituary on the death of María Bauzá, published in the magazine *Arte Español*, recalls the reception held in 1951 to commemorate the 500th Anniversary of Queen Isabella the Catholic, during which the ladies there in representation of the different Latin American countries signed a petition asking Pope Pious XII to beatify her.

At the beginning of the Spanish Civil War, Mrs Bauzá, with the intention of protecting her palace and its art collection, ceded the building to the the government of Czechoslovakia for use as its embassy. Since Madrid, as capital of the Republic, was Loyalist territory throughout the war, Bermejillo Palace became a sanctuary for a number of people fleeing from the Republican authorities, who took over the top floor until they could be evacuated. Among these illustrious refugees were the Duke of Infantado and his son and heir, Íñigo de Arteaga; the Marquis of Mirasol, Emilio Lamo de Espinosa, and several members of his family; Baron Champourcin and his children; the Conservative politician Santiago Fuentes Pila; the Marquis of Vadillo; and the statesman Romero Robledo's widow.

These efforts to provide sanctuary, apparently the initiative of Jenia Formanek, wife of the wartime Czech Ambassador, were recognised by the first postwar Spanish government, which granted her the *Gran Cruz de la Beneficencia* medal.

After the death of María Bauzá in 1960, her heirs –six children and three grandchildren– immediately signed a pact to not divide up the building for a period of ten years, in order to avoid its public auction in keeping with the terms of her will, although they finally wound up selling it in July 1963. The buyer was a mercantile firm, Talleres y Garajes Alas S.A., which made an extraordinary transaction, if we are to believe the figures stated in the corresponding deeds, by selling it for five times more just over six months later. The fact is that the data appearing in public records indicate that Talleres y Garajes Alas bought the palace on 1 July 1963 for 6 million pesetas, and sold it seven months later, on 6 February 1964, to Spain's National Heritage Department for more than 30.47 million pesetas.

In any case, what we do know for certain is that the Council of Ministers had authorised, with a decree on 23 December 1963, the acquisition of this palace so that it could become property of the state. Originally, the palace was allocated to the Ministry of Education, which used it to house the National Heritage Department, the National Institute for Special Education, and later, what is today the Royal Association for the Prevention of Disabilities and Assistance for Disabled Persons, presided over by Queen Sofia, who once had an office in the building.

After the figure of the Ombudsman had been created by the Constitution of 1978, Spain's first Ombudsman was elected in December 1982. It then became necessary to endow the institution with an appropriate venue for its headquarters. It was decided to use Bermejillo Palace, with the renovation project going to the National Heritage Department's in-house architect, José Ramos Illán.

The building had long suffered from poor upkeep, exacerbated by the passing of time. A complete renovation, therefore, was necessary, so that the palace could regain its former splendour, and also to adapt it to its new role as the Ombudsman's Office.

The reform sought to take advantage of the existing spaces, making the most of them for their new use, overcoming the obvious difficulties involved in adapting a building originally conceived as a private residence to make it something completely different, which also needed to project an official image. A very simple face-lift solved much of the problem: opening the entire atrium all the way from the ground floor up to the roof, and covering it with one big skylight. This reform was true to the original design for this patio –which, during a previous reform, had been completely changed by added ironwork to the former glass panelling– as well as enhancing the building's grandeur for public use with the much larger atrium.

To gain space without completely going against the spirit of the original design, it was decided to raise the roof of the top floor by 1 m, to make it possible to locate more offices there. The space in the towers was also used, respecting their outside appearance by panelling them inside with glass, not visible from the street. In addition, a glassed-in office area was created over the entry vestibule, to take advantage of every bit of space available, but without altering the palace's architectural style.

The renovation project, ever respectful of Laredo's original architectural language, was oriented, as far as the exterior was concerned, towards restoring the façades' decorative elements to their original state; and regarding the interior, to recovering as much as possible all of the palace's original materials and elements, such as the magnificent 19th-century chimney, now in the library, which had been lying in ruins in the basement. Whenever this was not possible, similar elements were commissioned to substitute for them. A good example of this are the ceramics from Seville and Talavera used on the floors and wainscoting, which had to be fabricated *ex profeso* to replace any broken antique originals.

On the ground floor, the grandest areas, such as a formal dining room and the ballroom, are now used, respectively, as the Ombudsman's own office and a conference room. The panelling on the ceilings and the splendid doors were carefully restored, among other elements in these rooms.

In 1998, another reform project was begun in the palace, one not as extensive, but still not lacking in technical difficulties, and aimed at giving the building wheelchair access. To prevent this renovation from altering the original design of the building's façade on calle Fortuny, an entrance was created through the garden, one without any architectural barriers, and from which –thanks to an adaptation in the elevator– there is access to the entire complex.

In sum, the careful restoration of Bermejillo Palace has made it possible to save a landmark building which, since its re-inauguration in 1983 –and in spite of having lost its original perspective since its façade was partially hidden by the overpass crossing Paseo de la Castellana– is today the image of citizen's rights protection in Spain.

A kind of summary

The success of this institution, which really had no true antecedents in Spain, was relatively unforeseeable. However, since it was born, as we have seen, during the transition to democracy that led to the Constitution of 1978, the Ombudsman has been one of the institutions that has had the most popular impact on the democratic system born of that Constitution. Proof of this came very soon after its implantation, because the expectations that it aroused materialised in an overwhelming number of complaints during its first year, a record that has yet to be repeated. We should also bear in mind here the lack of awareness regarding the scope of the Ombudsman's mandate during this first, foundational period. Today, the Ombudsman's Office has consolidated its reputation to the extent that it always figures among the top slots in periodical opinion polls on the Spanish public's level of knowledge regarding public institutions.

Moreover, as we have also seen, Spain's Ombudsman was, from the beginning, one of the ombudsman offices that put the most emphasis on the mission of protecting basic rights, above –and as an underlying motivation for– its other task, that of controlling and supervising the public administrations. This is why today, all around the world, Spain's Ombudsman is one of the most respected, due to the institution's special characteristics, and 20-year history.

APPENDIX: DOCUMENTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or

territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. 1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. 1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. 1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. 1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21. 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

SPANISH CONSTITUTION OF 1978

TITLE I

Concerning Fundamental Rights and Duties

CHAPTER FOUR

Concerning the Guaranteeing of Fundamental Rights and Liberties

Article 54. An organic law shall regulate the institution of Defender of the People, who shall be a high commissioner of the Cortes Generales, appointed by them to defend the rights contained in this Title; for this purpose he may supervise Administration activities and report thereon to the Cortes Generales.

ORGANIC ACT 3/1981, 6TH APRIL, REGARDING THE OMBUDSMAN (BOE 109, 7TH MAY 1981)

ONE

Appointment, Functions and Term of Office

CHAPTER I

Nature and Appointment

Article 1. The Ombudsman¹ is the High Commissioner of Parliament² appointed by it to defend the rights established in Part I of the Constitution, for which purpose he may supervise the activities of the Administration and report thereon to Parliament. He shall exercise the functions entrusted to him by the Constitution and this Act.

Article 2. 1. The Ombudsman shall be elected by Parliament for a term of five years, and shall address it through the Speakers of the Congress and the Senate, respectively.

2. A Joint Congress-Senate Committee shall be appointed by Parliament, to be responsible for liaison with the Ombudsman and for reporting thereon to their respective Plenums whenever necessary³.

3. This Committee shall meet whenever so jointly decided by the Speakers of the Congress and the Senate and, in all

cases, in order to propose to the Plenums the candidate or candidates for the Ombudsman. The Committee's decisions shall be adopted by simple majority⁴.

4. Once the candidate or candidates have been proposed, a Congressional Plenum shall be held once no less than ten days have elapsed in order to elect him. The candidate who obtains the favourable vote of three-fifths of the Members of Congress, and is subsequently ratified by the Senate within a maximum of twenty days and by this same majority, shall be appointed.

5. Should the aforementioned majorities not be obtained, a further meeting of the Committee shall be held within a maximum of one month in order to make further proposals. In such cases, once a three-fifths majority has been obtained in Congress, the appointment shall be made when an absolute majority is obtained in the Senate.

6. Following the appointment of the Ombudsman, the Joint Congress-Senate Committee shall meet again in order to give its prior consent to the appointment of the Deputy Ombudsmen proposed by him.

Article 3. Any Spanish citizen who has attained legal majority and enjoys full civil and political rights may be elected Ombudsman.

Article 4. 1. The Speakers of the Congress and the Senate shall jointly authorize with their signatures the appointment of the Ombudsman, which shall be published in the *Official State Bulletin*.

¹ The name of the Ombudsman in Spanish is *El Defensor del Pueblo* (The Defender of the People).

² The name of the Spanish Parliament is *Las Cortes Generales* (the General Assembly); it comprises a Lower House, the Congress, and an Upper House, the Senate.

³ Drafted according to Organic Act 2/1992, March 5th, amending Organic Act 3/1981 Regarding the Ombudsman, for the purpose of establishing a Joint Congress-Senate Committee for liaison with the Ombudsman, the Preamble of which is as follows: Organic Act 3/1981, April 8th, which establishes the legal framework for the Ombudsman, provides in Article Two, section 2, for the creation of two Committees responsible for liaison with the Ombudsman, in the Congress and Senate respectively.

⁴ Although it is true that on certain occasions both Committees may, and under some circumstances must, hold joint meetings, the fact that the usual form of procedure is independent often hinders the relationship between the Parliament as an institutional whole comprising two Houses, and the Ombudsman of which is the High Commissioner.

⁵ With a view to correcting this deficiency and seeking to establish a more efficient relationship with the irreplaceable institution of the Ombudsman, it would seem advisable, as long as it does not contravene the Constitution, to establish a single Committee in Parliament, responsible for liaison with the Ombudsman and comprising members of both the Congress and the Senate.

⁶ This is the purpose of this Organic Act, amending Organic Act 3/1981 which in accordance with its ranking is limited to laying down the aforementioned provision on a unitary Committee, while its system of appointment and operation defers to the internal statutes of Parliament, as does the Act hereby amended.

⁷ Drafted according to Organic Act 2/1992, March 5th.

2. The Ombudsman shall take office in the presence of the Procedures Committees of both Houses meeting jointly, and shall take oath or promise to perform his duties faithfully.

CHAPTER II

Dismissal, Resignation and Replacement

Article 5. 1. The Ombudsman shall be relieved of this duties in any of the following cases:

- 1) Resignation.
- 2) Expiry of this term of office.
- 3) Death or unexpected incapacity.
- 4) Flagrant negligence in fulfilling the obligations and duties of his office.
- 5) Non-appealable criminal conviction.

2. The post shall be declared vacant by the Speaker of Congress in the event of death, resignation or expiry of the term of office. In all other cases it shall be decided by a three-fifths majority of the Members of each House, following debate and the granting of an audience to the person concerned.

3. Upon the post becoming vacant, the procedure for appointing a new Ombudsman shall be commenced within one month.

4. In the event of the death, dismissal or temporary or permanent incapacity of the Ombudsman, and until Parliament makes a subsequent appointment, the Deputy Ombudsmen, in order of seniority, shall fulfil his duties.

CHAPTER III

Prerogatives, Immunities and Incompatibilities

Article 6. 1. The Ombudsman shall not be subject to any binding terms of reference whatsoever. He shall not receive instructions from any authority. He shall perform his duties independently and according to his own criteria.

2. The Ombudsman shall enjoy immunity. He may not be arrested, subjected to disciplinary proceeding, fined, prosecuted or judged on account of opinions he may express or acts he may commit in performing the duties of his office.

3. In all other cases, and while he continues to perform his duties, the Ombudsman may not be arrested or held in custody except in the event of in flagrante delicto; in decisions regarding his accusation, imprisonment, prosecution and trial the Criminal Division of the High Court has exclusive jurisdiction.

4. The aforementioned rules shall be applicable to the Deputy Ombudsmen in the performance of their duties.

Article 7. 1. The post of Ombudsman is incompatible with any elected office; with any political position or activities involving political propaganda; with remaining in active service in any Public Administration; with belonging to a political party or performing management duties in a political party or in a trade union, association or foundation, or employment in the service thereof; with practising the professions of judge or prosecutor; and with any liberal profession, or business or working activity.

2. Within ten days of his appointment and before taking office, the Ombudsman must terminate any situation of incompatibility that may affect him, it being understood that in failing to do so he thereby rejects his appointment.

3. If the incompatibility should arise after taking office, it is understood that he shall resign therefrom on the date that the incompatibility occurs.

CHAPTER IV

The Deputy Ombudsmen

Article 8. 1. The Ombudsman shall be assisted by a First Deputy Ombudsman and a Second Deputy Ombudsman to whom he may delegate his duties and who shall replace him, in hierarchical order, in their fulfilment, in the event of his temporary incapacity or his dismissal.

2. The Ombudsman shall appoint and dismiss his Deputy Ombudsmen, following approval by both Houses, in accordance with their Regulations.

3. The appointments of the Deputies shall be published in the *Official State Bulletin*.

4. The provisions contained in Articles 3, 6 and 7 of this Act regarding the Ombudsman shall be applicable to his Deputies.

PART II

Procedure

CHAPTER I

Initiation and Scope of Investigations

Article 9. 1. The Ombudsman may instigate and pursue, ex officio or in response to a request from the party concerned, any investigation conducive to clarifying the actions or decisions of the Public Administration and its agents regarding citizens, as established in the provisions of Article 103.1 of the Constitution and the respectful observance it requires of the rights proclaimed in Part I thereof.

2. The Ombudsman has authority to investigate the activities of Ministers, administrative authorities, civil servants and any person acting in the service of the Public Administration.

Article 10. 1. Any individual or legal entity who invokes a legitimate interest may address the Ombudsman, without any restrictions whatsoever. There shall be no legal impediments on the grounds of nationality, residence, gender, legal minority, legal incapacity, confinement in a penitential institution or, in general, any special relationship of subordination to or dependence on a Public Administration or authority.

2. Individual Deputies and Senators, investigatory Committees or those connected with the general or partial defence of public rights and liberties and, especially, those established in Parliament to liaise with the Ombudsman, may, in writing and stating their grounds, request the intervention of the Ombudsman to investigate or clarify the actions, decisions or specific conduct of

the Public Administration which may affect an individual citizens or group of citizens and which fall within his competence¹.

3. No administrative authority may submit complaints to the Ombudsman regarding affairs within its own competence.

Article 11. 1. The activities of the Ombudsman shall not be interrupted in the event that Parliament is not in session, has been dissolved, or its mandate has expired.

2. In the circumstances described in the previous paragraph, the Ombudsman shall address the Standing Committees of the Houses of Parliament.

3. The declaration of a state of emergency or siege shall not interrupt the activities of the Ombudsman, nor the right of citizens to have access to him, without prejudice to the provisions of Article 55 of the Constitution.

CHAPTER II

Scope of Competence

Article 12. 1. The Ombudsman may in all cases, whether ex officio or at the request of a party concerned, supervise the activities of the Autonomous Communities, within the scope of competence defined by this Act.

2. For the purposes of the previous paragraph, Autonomous Community bodies similar to the Ombudsman shall coordinate their functions with the latter, who may request their cooperation.

Article 13. Whenever the Ombudsman receives complaints regarding the functioning of the Administration of Justice, he must refer them to the Public Prosecutor to allow the latter to investigate their foundation and take appropriate legal action, or else refer them to the General Council of the Judiciary, according to the type of complaint involved, independently of any reference that he may make to the matter in his annual report to Parliament.

Article 14. The Ombudsman shall protect the rights proclaimed in Part I of the Constitution in the field of Military Administration, without however causing any interference in the command of National Defence.

CHAPTER III

Complaints procedure

Article 15. 1. All complaints submitted must be signed by the party concerned, giving his name and address in a document stating the ground for the complaint, on ordinary paper and within a maximum of one year from the time of becoming acquainted with the matters giving rise to it.

2. All action by the Ombudsman shall be free of charge for the party concerned, and attendance by a lawyer or solicitor shall not be compulsory. Receipt of all complaints shall be acknowledged.

Article 16. 1. Correspondence addressed to the Ombudsman from any institution of detention, confinement or custody may not be subjected to any form of censorship whatsoever.

2. Nor may the conversations which take place between the Ombudsman or his delegates and any other person enumerated in the previous paragraph be listened to or interfered with.

Article 17. 1. The Ombudsman shall record and acknowledge receipt of the complaints made, which he shall either proceed with or reject. In the latter case, he shall do so in writing, stating his reasons. He may inform the party concerned about the most appropriate channels for taking action if, in his opinion, these exist, independently of the fact that the party concerned may adopt those it considers to be most pertinent.

2. The Ombudsman shall not investigate individually any complaints that are pending judicial decision, and he shall suspend any investigation already commenced if a claim or appeal is lodged by the person concerned before the ordinary courts or the Constitutional Court. However, this shall not prevent the investigation of general problems raised in the complaints submitted. In all cases, he shall ensure that the Administration, in due time and manner, resolves the requests and appeals that have been submitted to it.

3. The Ombudsman shall reject anonymous complaints and may reject those in which he perceives bad faith, lack of grounds or an unfounded claim, and in addition those whose investigation might infringe the legitimate rights of a third party. His decisions may not be appealed.

Article 18. 1. Once a complaint has been accepted, the Ombudsman shall begin appropriate summary informal investigations to clarify the allegations contained therein. In all cases he shall report the substance of the complaint to the pertinent administrative agency or office for the purpose of ensuring that a written report be submitted within fifteen days by its director. This period may be extended if, in the opinion of the Ombudsman, circumstances so warrant.

2. Refusal or failure on the part of the civil servant or his superiors responsible for sending the initial report requested may be considered by the Ombudsman as a hostile act which obstructs his functions. He shall immediately make such an act public and draw attention to it in his annual or special report, as the case may be, to Parliament.

CHAPTER IV

Obligatory Cooperation of Bodies Requested to do so

Article 19. All public authorities are obliged to give preferential and urgent assistance to the Ombudsman in his investigations and inspections.

2. During the stage of verifying and investigating a complaint or in the case or proceedings initiated ex officio, the Ombudsman, his Deputy, or the person delegated by him may present himself at any establishment of the Public Administration or attached thereto or responsible for a public service, in order to verify any necessary information, hold relevant personal interviews or examine pertinent records and documents.

¹ As established in the Organic Act 2/1992, March 5th.

3. In the pursuit of this objective he may not be denied access to any administrative record or document related to the activity or service under investigation, without prejudice to the provisions of Article 22 of this Act.

Article 20. 1. Should the complaint to be investigated concern the conduct of persons in the service of the Administration in connection with the duties they perform, the Ombudsman shall so inform them and the immediate superior or body to which the former are attached.

2. The persons concerned shall reply in writing, supplying whatever documents and supporting evidence they may consider appropriate, within the period established, which in no case may be less than ten days and which may be extended at their request by half the period originally granted.

3. The Ombudsman may verify the veracity of such documents and propose to the civil servant concerned that he be interviewed, in order to furnish further details. Civil servants who refuse to comply may be required by the Ombudsman to submit to him in writing the reasons justifying their decision.

4. The information a civil servant may furnish through personal testimony in the course of an investigation shall be treated as confidential, subject to the provisions of the Criminal Procedure Act regarding the reporting of acts which may constitute criminal offences.

Article 21. Should a hierarchical superior or entity forbid a civil servant under his orders or in its service from replying to a demand from the Ombudsman or from holding an interview with him, he or it must state such prohibition in writing, justifying such action, both to the civil servant and to the Ombudsman himself. The Ombudsman shall thereafter direct whatever investigatory procedures may be necessary to the a-foresaid hierarchical superior.

CHAPTER V

Confidential Documents

Article 22. 1. The Ombudsman may request the public authorities to furnish all the documents he considers necessary to the performance of his duties, including those classified as confidential. In the latter case, the failure to furnish said documents must be approved by the Council of Ministers and accompanied by a document attesting to their approval of such refusal.

2. The investigations and relevant procedures conducted by the Ombudsman and his staff shall be performed in absolute secrecy, with respect to both private individuals and offices and other public bodies, without prejudice to the considerations that the Ombudsman may consider appropriate for inclusion in his reports to Parliament. Special measures of protection shall be taken concerning documents classified as confidential.

3. Should he be of the opinion that a document declared to be confidential and not made available by the Administration could decisively affect the progress of his investigation, he

shall notify the Joint Congress-Senate Committee referred to in Article 2 of this Act¹.

CHAPTER VI

Responsibilities of Authorities and Civil Servants

Article 23. Should the investigations conducted reveal that the complaint was presumably the result of abuse, arbitrariness, discrimination, error, negligence or omission on the part of a civil servant, the Ombudsman may request the person concerned to state his views on the matter. On the same date he shall send a copy of this letter to the civil servant's hierarchical superior, accompanied by any suggestions that he may consider appropriate.

Article 24. 1. Persistence in a hostile attitude or the hindering of the work of the Ombudsman by any body, civil servants, officials or persons in the service of the Public Administration may be the subject of a special report, in addition to being stressed in the appropriate section of his annual report.

2. A civil servant who obstructs an investigation by the Ombudsman by refusing to send the reports he requests or facilitating his access to the administrative records or documents necessary for the investigation, or is negligent in so doing, shall be guilty of an offence of contempt. The Ombudsman shall provide the Public Prosecutor with the records necessary for taking appropriate action.

Article 25. 1. If, in the performance of the duties of his office, the Ombudsman should obtain knowledge of presumably criminal acts or behaviour, he must immediately notify the Attorney-General.

2. The above notwithstanding, the Attorney-General shall inform the Ombudsman periodically, or whenever so requested by the latter, of the proceedings instituted at his request.

3. The Attorney-General shall notify the Ombudsman of all possible administrative irregularities with which the Public Prosecutor becomes aware in the performance of his duties.

Article 26. The Ombudsman may, *ex officio*, bring actions for liability against all authorities, civil servants and governmental or administrative agents, including local agents, without needing under any circumstances to previously submit a written claim.

CHAPTER VII

Reimbursement of Expenses to Individuals

Article 27. Expenses incurred or material losses sustained by individuals who have not themselves lodged a complaint but are called upon by the Ombudsman to provide information shall be reimbursed; such expenses will be met from the latter's budget once duly justified.

¹ As established by the Organic Act 2/1992, March 5th.

PART III
Decisions

CHAPTER I
Content of Decisions

Article 28. 1. Although not empowered to modify or overrule the acts and decisions of the Public Administration, the Ombudsman may nevertheless suggest modifications in the criteria employed in their production.

2. If as a result of this investigations he should reach the conclusion that rigorous compliance with a regulation may lead to situations that are unfair or harmful to those persons thereby affected, he may suggest to the competent legislative body or the Administration that it be modified.

3. If action has been taken in connection with services rendered by private individuals with due administrative authorization, the Ombudsman may urge the competent administrative authorities to exercise their powers of inspection and sanction.

Article 29. The Ombudsman is entitled to lodge appeals alleging unconstitutionality and individual appeals for relief, as provided by the Constitution and the Organic Act Regarding the Constitutional Court¹.

Article 30. 1. The Ombudsman may, in the course of this investigations, give advice and make recommendations to authorities and officials in the Public Administration, remind them of their legal duties and make suggestions regarding the adoption of new measures. In all cases such authorities and officials shall be obliged to reply in writing within a maximum period of one month.

2. If within a reasonable period of time after such recommendations are made appropriate steps are not taken to implement them by the administrative authority concerned, or if the latter fails to inform the Ombudsman of its reasons for non-compliance, the Ombudsman may inform the Minister of the Department concerned, or the highest authority of the Administration concerned, of the particulars of the case and the recommendations made. If adequate justification is not forthcoming, he shall mention the matter in his annual or special report, together with the names of the authorities or civil servants responsible for this situation, as a case in which although the Ombudsman thought that positive solution was possible, it was not however achieved.

CHAPTER II
Notifications and Communications

Article 31. 1. The Ombudsman shall inform the party concerned of the results of his investigations and operations, and similarly of the reply from the Administration or civil servants involved, except in the event that on account of their subject matter they should be considered confidential or declared secret.

¹ See the Organic Act Regarding the Constitutional Court, § 2.1, Articles 31.Ib, 46.1 and 46.2.

2. Should his intervention have been initiated under the provisions of Article 10.2, the Ombudsman shall inform the Member of Parliament or competent committee that requested investigation of the matter and, upon its completion, of the results obtained. Equally, should he decide not to intervene he shall communicate his decision, giving his reasons.

3. The Ombudsman shall communicate the results of his investigations, whether positive or negative, to the authority, civil servant or administrative office in respect of which they were initiated.

CHAPTER III
Reports to Parliament

Article 32. 1. The Ombudsman shall inform Parliament annually of the action that he has taken in an annual report submitted to it when meeting in ordinary session.

2. When the seriousness or urgency of the situation makes it advisable to do so, he may submit a special report that he shall present to the Standing Committees of the Houses of Parliament, if these latter are not in session.

3. The annual reports and, when applicable, the special reports, shall be published.

Article 33. 1. The Ombudsman shall give an account in his annual report of the number and type of complaints filed, of those rejected and the reasons for their rejection, and of those investigated, together with the results of the investigations, specifying the suggestions or recommendations accepted by the Public Administrations.

2. No personal data that enables public identification of the parties involved in investigation proceedings shall appear in the report, without prejudice to the provisions of Article 24.1.

3. The report shall include and appendix, directed to Parliament, detailing the settlement of the budget of the institution during the corresponding period.

4. An oral summary of the report shall be presented by the Ombudsman to the Plenums of both Houses. It shall be open to debate by the parliamentary groups in order that they may state their positions.

PART IV
Human and Financial Resources

CHAPTER I
Staff

Article 34. The Ombudsman may freely appoint the advisers necessary for the execution of his duties, in accordance with the Regulations and within budgetary limits².

² See the Regulations on the Organisation and Functioning of the Ombudsman, adopted by the Congress and Senate Standing Committees at their joint meeting on April 6, 1983, and amended at the joint meeting of the Congress and Senate Standing Committees on April 21, 1992.

Article 35. 1. Persons in the service of the Ombudsman shall, while so remaining, be deemed as being in the service of Parliament.
2. In the case of civil servants from the Public Administration, the position held by them prior to joining the office of the Ombudsman shall be reserved for them, and the time served with the latter shall be taken into consideration for all purposes.

Article 36. Deputy Ombudsmen and advisers shall automatically be relieved of their duties when a new Ombudsman, appointed by Parliament, takes office.

CHAPTER II *Financial Resources*

Article 37. The financial resources necessary for the operation of the institution shall constitute an item of the Parliamentary Budget.

TRANSITIONAL PROVISION

Five years after the coming into force of this Act, the Ombudsman may submit to Parliament a detailed report containing the amendments that he considers should be made thereto.

ORGANISATIONAL AND FUNCTIONING REGULATIONS OF THE OMBUDSMAN, APPROVED BY THE PROCEDURES COMMITTEES OF CONGRESS AND SENATE, AT THE PROPOSAL OF THE OMBUDSMAN, IN THEIR JOINT MEETING OF 6TH APRIL 1983¹ (BOE 92, of 18th April 1983)

The Procedures Committees of Congress and Senate, in their joint meeting of 6 April 1983, approved, at the proposal of the Ombudsman, the Organisational and Functioning Regulations of this latter Institution under the terms inserted hereinafter:

I. GENERAL PROVISIONS

Article 1.1. The Ombudsman, as High Commissioner of Parliament for the defence of the rights included in Part I of the Constitution, shall be able to supervise the activities of the Administration and report thereon to Parliament.

2. The Ombudsman shall not be subject to any imperative mandate whatsoever. He shall receive instructions from no authority and shall undertake his duties with autonomy and in accordance with his judgement.

3. He shall exercise the duties entrusted to him by the Constitution and his Organic Act.

Article 2. 1. The Ombudsman shall enjoy immunity, and he may not be arrested, disciplined, fined, persecuted or tried on account of the opinions he formulates or the acts he undertakes in the exercise of the powers inherent to his office.

2. In other cases, and while he remains in the exercise of his duties, the Ombudsman may not be held in custody except in the event of *in flagrante delicto*.

The decision on accusation, prison, prosecution and trial falls exclusively to the Criminal Courtroom of the Supreme Court.

3. The above rules shall be applicable to Deputy Ombudsmen in the performance of their duties.

4. The above points shall be expressly noted in the official document to be issued by Parliament accrediting his status and office.

Article 3. 1. The Ombudsman has sole responsibility to Parliament for his management.

2. The Deputies are directly responsible to the Ombudsman for their management and also to the Joint Congress-Senate Committee for liaison with the Ombudsman².

Article 4. The election of Ombudsman and of the Deputies shall be done in accordance with the provisions contained in his Organic Act and in the Regulations of Congress of Deputies and of Senate, or of Parliament, as appropriate.

Article 5. 1. The governing and administrative functions of the institution of Ombudsman correspond to the holder of that office and to Deputies within the scope of their respective authorities.

2. For the exercise of his duties, the Ombudsman shall be assisted by a Coordination and Internal Regime Board.

Article 6. The appointment of Ombudsman or of the Deputies shall, if they are public civil servants, imply that they go over to a situation of special leave or equivalent in the Profession or Staff from whence they came.

Article 7. 1. The Ombudsman and the First and Second Deputies shall have the treatment that corresponds to their constitutional

¹ Modified by Resolutions of the Committees of the Congress of Deputies and of the Senate on 21 April 1992 and 26 September 2000 (Official State Bulletin No. 99 of 24 April 1992 and No. 261, of 31 October 2000).

² Drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 21 April 1992.

category. The Regulations of Parliament shall determine as appropriate with regard to their participation and order of precedence in official acts of the Houses or of Parliament.

2. Otherwise, that established in the general legislation on the matter shall be abided by.

II. ON THE OMBUDSMAN

Article 8. In addition to the basic competencies established in the Organic Act, it falls to the Ombudsman:

- a) To represent the institution.
- b) To propose Deputies, so that the Joint Congress-Senate Committee for liaison with the Ombudsman can grant its conformity prior to the appointment and resignation of them.
- c) To maintain direct liaison with Parliament via the Speaker of the Congress of Deputies, and with both Houses via their respective Speakers.
- d) To maintain direct liaison with the President and Vice-Presidents of the Government, Ministers and Secretaries of State, and with the Delegates of the Government in the Autonomous Communities.
- e) To maintain direct liaison with the Constitutional Court and with the General Council of the Judiciary, likewise via their Chief Justice and Chairman, respectively.
- f) To maintain direct liaison with the Attorney General.
- g) To maintain direct liaison with the Presidents of the Executive Councils of the Autonomous Communities and with similar bodies of Ombudsman that might be set up in those Communities.
- h) To convene and determine the agenda for meetings of the Coordination and Internal Regime Board and to direct its discussions.
- i) To establish the staff and proceed with the appointment and resignation of the General Secretary and personnel of the Institution's service.
- j) In accordance with the general guidelines set by the Committees of Congress and Senate, to approve the draft budget for the Institution and to agree to its being sent to the Speaker of Congress, for its final approval by those Committees and its incorporation into the budgets of Parliament.
- k) To set the guidelines for the enforcement of the budget.
- l) To exercise disciplinary powers.
- m) To approve the bases for the selection of staff and the contracting of works and supplies, pursuant to that established in articles 27 and 38 of these Regulations.
- n) To approve instructions of an internal nature that are issued for the better organisation of the services.
- o) To supervise the functioning of the Institution.

Article 9. 1. The Ombudsman shall resign from his office for the reasons and in accordance with that set down in articles 5 and 7 of the Organic Act.

2. In these events, the Deputies shall carry out his duties, on an interim basis, and in their order of seniority.

Article 10. 1. The Ombudsman shall be able to be assisted by a Technical Office, under the direction of one of the Advisors, which shall be freely appointed and dismissed.

2. It falls to the Technical Office to organise and manage the private Secretariat of the Ombudsman, conduct studies and reports assigned to them and exercise the functions of protocol.

3. The Ombudsman shall be able to establish a Press and Information Office under his immediate dependency or that of the Deputy in whom he delegates this task. And he shall be able to set up any other assistance body that he considers necessary for the exercise of his duties.

Article 11. The annual report which, according to articles 32 and 33 of the Organic Act of the Ombudsman, the latter must provide for Parliament, shall be previously submitted to the Joint Committee for liaison with the Ombudsman¹.

Notwithstanding that report, and any extraordinary reports that he might present to the Standing Committees of the Houses when so advised by the gravity or urgency of events, the Ombudsman shall also be able to inform that Committee periodically of his activities in relation to a particular period or a specific topic, and the Committee shall be able to obtain information from him¹.

III. THE DEPUTY OMBUDSMEN

Article 12. 1. The following powers shall fall to the Deputy Ombudsmen:

- a) To perform the duties of Ombudsman in cases of delegation and substitution provided for in the Organic Act.
- b) To direct the processing, checking and investigation of complaints that are brought and of actions that are instigated ex officio, proposing to the Ombudsman as appropriate the admission for processing or the rejection of the complaints and the decisions that are considered proper, and carrying out the relevant actions, communications and notifications.
- c) To collaborate with the Ombudsman in liaison with Parliament and the Procedures Committee in it constituted for the purpose and in supervising the activities of the Autonomous Communities and within them, coordination with similar bodies that exercise their functions within this scope.
- d) To draw up the annual report or extraordinary reports that are to be placed before Parliament and to propose them to the Ombudsman.
- e) To take on the remaining duties entrusted to them by law and by the regulating provisions in force.

2. The demarcation of the respective scopes of duties of the two Deputies shall be drawn by the Ombudsman, who shall give notice of this to the Procedures Committee constituted in Parliament with regard to the said Ombudsman. For this purpose, each Deputy shall be responsible for the areas assigned to him¹.

Notwithstanding that established in article 8 of these Regulations, the First Deputy shall take on the coordination

¹ Drawn up in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 21 April 1992.

of the services coming under the Ombudsman, and also the ordinary business of the General Secretary. In his absence, these duties shall be performed by the Second Deputy.

3. The final acceptance or rejection and, as the case might be, the ultimate decision on complaints that are brought, falls to the Ombudsman or to the Deputy in whom this is delegated or who stands in for him.

4. The Ombudsman shall, having first listened to the Coordination and Internal Regime Board, be able to ask for a hearing, management or treatment of any complaint or investigation that it falls to the Deputies to deal with.

Article 13. 1. The Deputies shall be proposed by the Ombudsman via the Speaker of Congress, for which purpose, the Joint Congress-Senate Committee in charge of liaison with the Ombudsman shall grant its prior conformity to that appointment¹.

2. Within a period of fifteen days, the proposal for appointment of Deputies shall proceed to take place, as provided for in the Organic Act and in these Regulations.

3. Having obtained conformity, the corresponding appointments shall be published in the *Official State Bulletin*.

Article 14. The Deputies shall take possession of their post before the Speakers of both Houses and the Ombudsman, giving oath or promise to observe the Constitution and to carry out their duties faithfully.

Article 15. 1. Within fifteen days of their appointment and before taking office, the Deputies must terminate any situation of incompatibility that may affect them, it being understood that in failing to do so they thereby reject their appointment.

2. If the incompatibility should arise after taking office, it is understood that he shall resign therefrom on the date that the incompatibility occurs.

Article 16. 1. The Deputy Ombudsmen shall be relieved of their duties in any of the following cases:

- a) Resignation
- b) Expiry of their term of office
- c) Death or unexpected incapacity
- d) Flagrant negligence in fulfilling the obligations and duties of their office. In this case, removal shall require a reasoned proposal from the Ombudsman, which must have been approved by the Joint Congress-Senate Committee, in accordance with the same procedure and majority required for granting prior conformity to their appointment, and after having heard the concerned party¹
- e) Non-appealable criminal conviction

2. The relief of Deputies shall be published in the *Official State Bulletin* and in those for both Houses.

¹ Drawn up in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 21 April 1992.

IV. ON THE COORDINATION AND INTERNAL REGIME BOARD

Article 17. The Coordination and Internal Regime Board shall be composed of the Ombudsman, the Deputies and the General Secretary, who shall act as Secretary and attend its meeting with voice and without vote.

Article 18. 1. In order to perform its duties, the Coordination and Internal Regime Board shall have the following powers:

- a) To inform on matters affecting the determination of the staff, and on the appointment and relief of personnel in the service of the Institution.
- b) To know and be informed on the possible filing of writs of relief and appeals of unconstitutionality before the Constitutional Court.
- c) To know and be informed on any matters corresponding to the drawing up of the draft budget and its enforcement, as well as its settlement formulated by the General Secretary, prior to its referral by the Ombudsman to Parliament.
- d) To discuss proposals for works, services and supplies.
- e) To assist the Ombudsman in the exercise of its powers with regard to personnel and economic-financial matters:
- f) To cooperate with the Ombudsman in the work of coordinating the activities of the different areas and in the best performance of the services.
- g) To know and inform the Ombudsman on the annual report and on extraordinary reports that are placed before Parliament.
- h) To know and report on the appointment and relief of the General Secretary.
- i) To report and advise on the project for reforming these Regulations.
- j) To advise the Ombudsman on whatsoever questions that he considers are appropriate for being submitted to his consideration.

2. Meetings of the Coordination and Internal Regime Board shall be able to be attended by the area managers, for the purposes of information and having been duly summoned by the Ombudsman.

Likewise, any other person considered appropriate by the Ombudsman shall be able to attend for the purposes of information and for the better resolution of the matters subject to his consideration.

3. The topics forming the object of deliberation shall be noted in the Agenda of the summons, and the agreements adopted by the Coordination and Internal Regime Board shall be communicated to all its members.

V. ON THE GENERAL SECRETARY

Article 19. 1. The General Secretary shall have the following powers:

- a) The governing and disciplinary system of all personnel, exercising the powers not specifically attributed to the Ombudsman, the Deputies or the Coordination and Internal Regime Board.
- b) Directing the services coming under the General Secretariat.

c) Preparing and presenting to the Coordination and Internal Regime Board the proposals for the selection of Advisors and other personnel, for their report and subsequent decision by the Ombudsman.

d) Preparing the draft Budget and bringing it before the Coordination and Internal Regime Board.

e) Administrating credits for expenses of the Ombudsman's Budget.

f) Drawing up minutes and giving notification of the resolutions of the Coordination and Internal Regime Board.

2. In the event of vacancy, absence or illness, the General Secretary shall be replaced on an interim basis by the Manager designated by the Ombudsman, after hearing the Coordination and Internal Regime Board.

Article 20. The General Secretariat shall be structured into two services: the Economic Regime and the Internal, Studies, Documentation and Publications Regime.

An Advisor shall be able to assist the General Secretary in his duties.

Article 21. The Economic Regime Service shall be structured into the following units:

- a) Economic Affairs and Accounting Section
- b) Authorisations Section
- c) Personnel and General Affairs Section

Article 22. 1. Coming under the Internal, Studies, Documentation and Publications Regime Service shall be a General Registry and an Information Office.

All letters written to the Ombudsman shall be received via the Registry Office, where they shall be examined and classified. The General Secretary, by virtue of being in charge of the Registry, shall inform the First Deputy or otherwise the Second Deputy, of the number and nature of letters written to the Office of the Ombudsman, for the appropriate purposes.

2. The Archives Section shall be set up under the direct responsibility of the General Secretary. The appropriate measures shall be adopted in order to protect and safeguard confidential or secret documents, in accordance with the provisions of article 22 of the Organic Act and article 26 of these Regulations.

3. The Information Office, which shall be headed by an Advisor, shall inform people who so request in relation to the powers of the Ombudsman, and it shall provide guidance on the manner and means of filing a complaint with him.

The library, which shall include all means of reproduction of documents, shall also come under this Service.

VI. PRESENTATION, INSTRUCTION AND INVESTIGATION OF COMPLAINTS

Article 23. 1. In the exercise of the powers inherent to the Ombudsman and the Deputies, as well as in the processing and investigation of complaints, the provisions contained in the Organic Act and in these Regulations shall be abided by.

2. The presentation of a complaint before the Ombudsman, and its later admission as appropriate, shall in no case suspend the appeal periods provided in Law, whether via administrative or jurisdictional routes, nor the enforcement of the resolution or act concerned.

Article 24. 1. For the better exercise of the duties attributed to him by the Organic Act, the Ombudsman shall, with respect to all Public Administrations, exercise top-level coordination between his own powers and those attributed to similar bodies which might be set up in the Autonomous Communities, without prejudice to the autonomy corresponding to them in monitoring the activity of the respective autonomous administrations.

2. In the exercise of his own powers, the Ombudsman shall be able to request the collaboration and assistance of similar bodies of the Autonomous Communities.

3. The Ombudsman may not delegate to similar bodies of the Autonomous Communities the powers attributed to him by article 54 of the Constitution regarding the defence of the rights contained in its part one.

Article 25. 1. When the Ombudsman receives complaints referring to the functioning of the Administration of Justice, these must be passed on to the Attorney General's Office so that it can investigate into their reality and adopt the appropriate measures pursuant to the Law or pass them on the General Council of the Judiciary, depending on the type of complaint it concerns.

2. In ex officio actions, the Ombudsman shall act in coordination with the Chairman of the General Council of the Judiciary and with the Attorney General, as the case might be, to whom he shall report the result of his investigations.

3. The actions that might be undertaken in relation to the Administration of Justice and the result of them shall be reported by the Ombudsman to Parliament in his periodical reports or in his Annual Report.

Article 26. 1. Only the Ombudsman and, as appropriate, the Deputies and the General Secretary shall have knowledge of documents officially classified as secret or confidential.

2. Such documents shall be duly safeguarded under the Ombudsman's direct responsibility.

3. The Ombudsman shall order that which is appropriate with regard to the classification of 'confidential' for documents of an internal nature.

4. In no case may reference be made to the content of secret documents in the Ombudsman's reports or in his replies to persons who have presented a complaint or asked for his intervention.

5. References to confidential documents in reports to Congress and Senate shall be appraised with prudence by the Ombudsman.

VII. STAFF IN THE OMBUDSMAN'S SERVICE

Article 27. 1. The staff in the service of the Ombudsman shall have the consideration of being staff in the service of Parliament,

without prejudice to the organic and functional dependence of the Ombudsman.

2. When staff coming from other public administrations join the Ombudsman's service, they shall be in the situation provided for in article 35.2, of the Organic Act.

3. The selection of staff in the Ombudsman's service shall be freely made by him, in accordance with the principles of merit and ability. In making these appointments, the aim shall be to give priority to public civil servants.

4. Other staff who do not meet the conditions of being career servants of the public administrations shall have the nature of being temporary civil servants in the Ombudsman's service.

Article 28. Staff in the service of the Institution of the Ombudsman shall be composed of Area manager advisors, Technical advisors, clerks, assistants and subordinates.

Article 29. 1. The Advisers shall provide the Ombudsman and Deputies with the technical and juridical cooperation they need for carrying out their duties.

2. They shall be freely appointed and relieved by the Ombudsman, in accordance with the provisions of these Regulations and shall in all cases be relieved when the provisions of article 36 of the Organic Act occur.

Article 30. All persons in the service of the Ombudsman are subject to the obligation to maintain strict confidentiality in relation to the matters being dealt with as part of that service. Breach of this obligation shall be sanctioned in accordance with the provisions of these Regulations.

Article 31. 1. The system for the rendering of services shall be full-time for all staff.

2. The position of advisor to the Ombudsman shall also be incompatible with any representative mandate, with any public office or the exercise of managerial duties of a political party, trade union, association or foundation and with employment at the service of the same; and also with the exercise of what soever other professional, liberal, mercantile or labour activity. Nevertheless, with prior acknowledgement of compatibility granted in accordance with the provisions contained in the Statute of Institution Staff, advisors to the Ombudsman shall be able to be contracted for carrying out teaching or research duties in universities or other academic institutions having a similar nature and ends. In all cases, such activities shall be carried out on a part-time basis and they may not impair the rendering of services to the Ombudsman. Those wishing to obtain acknowledgement of compatibility must present an application, which shall be accompanied by all necessary data so that a pronouncement can be made. The Ombudsman, having heard the Coordination and Internal Regime Board and with a prior report from the General Secretary, shall decide as appropriate¹.

¹ Drawn up in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 26 September 2000.

VIII. DISCIPLINARY REGIME

Article 32. 1. Staff in the service of the Ombudsman shall be able to be sanctioned for committing disciplinary offences as a result of breach of their duties in accordance with Law.

2. The offences may be minor, serious or very serious.

3. Minor offences shall have a prescription of two months; serious ones, six months; and very serious ones, one year. The same periods shall apply to the prescription on sanctions, starting from the day on which the decisions that are imposed become definite, or their enforcement is violated.

Article 33. 1. Sanctions shall be imposed and shall accord with the greater or lesser severity of the offence, and shall be as follows:

a) For minor offences, those of warning and suspension of employment and salary for between one and ten days.

b) For serious offences, suspension of employment and salary for a period of up to six months.

c) For very serious offences, suspension or employment and salary or dismissal from the service, for between six months and six years.

Article 34. 1. Sanctions for minor offences shall be imposed by the hierarchical superior of the civil servant, they shall not lead to the opening of proceedings, though the offender must in all cases be heard.

2. Sanctions for serious and very serious offences shall be imposed by virtue of proceedings opened for the purpose and which consist of the procedures of charge sheet, evidence as the case might be, and proposed decision, with the civil servant having to be allowed to formulate pleadings in them.

3. The instigation of proceedings and the imposition of sanctions fall to the General Secretary. Nevertheless, the sanctions of suspension and dismissal from the service may only be imposed by the Ombudsman.

4. Notes made in the service sheet relating to sanctions imposed may be cancelled at the request of the civil servant once a period has passed equivalent to the prescription of the offence, always provided that no new proceedings have been instigated against the civil servant giving rise to a sanction. Cancellation shall not prevent the appraisal of re-incidence if the civil servant again commits an offence; in this case, the cancellation periods shall be double the duration.

IX. ECONOMIC SYSTEM

Article 35. 1. The budget for the Institution of the Ombudsman shall be included in the budgetary section of the budget for Parliament as a further service of the same.

2. The accounting and auditing system that shall apply in the Ombudsman shall be that of Parliament.

3. The Auditor of Parliament shall perform the critical and auditing function in conformity with the rules applicable to Parliament.

Article 36. 1. The structure of the budget for the Institution of the Ombudsman shall be accommodated to the budget for Parliament.

2. The rules applying in Parliament for the transfer of credits among budgetary items shall apply.

3. Authorisation for transfers shall be made by the Ombudsman, with a report from the Auditor of Parliament.

Article 37. The powers with regard to the ordering of payments shall correspond to the Coordination and Internal Regime Board; to the Ombudsman and to the General Secretary depending on the amount and the manner in which this is determined by said Board, at the proposal of the Ombudsman.

The ordering of the payment corresponds to the Ombudsman.

Article 38. The system of contracting and of acquisition in general in the Ombudsman shall be that which governs for Parliament.

ADDITIONAL PROVISION

The Ombudsman shall propose the reform of these Regulations, as appropriate, to the competent bodies of Parliament, via the Speaker of Congress.

FINAL PROVISION

These Regulations shall be published in the *Official Bulletin of Congress*, and in the *Official State Bulletin*, and they shall come into force on the day following their publication in the latter.