

# Annual Report Summary 2015



SPANISH OMBUDSMAN

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SPANISH OMBUDSMAN

# Annual Report Summary 2015

Madrid, 2016



# Summary

Presentation .....	9
Statistics and Management Overview 2015 .....	13
Supervision of Public Administrations.....	33
Administration of Justice .....	34
Penitentiary Centers .....	40
Citizenship and Public Safety .....	44
Migration .....	49
Equal treatment .....	56
Education .....	59
Health Services.....	65
Social Policy .....	71
Housing.....	77
Social Security and Employment .....	81
Tax Authorities .....	86
Economic Activity.....	92
Communications and Transport.....	100
Environment.....	102
Urban Planning .....	107
Local Administration.....	112
Civil Service and Public Employment .....	114
Transparency, State Liability and Expropriation.....	118
National Preventive Mechanism against Torture (NPM) .....	120
Activities of Institutional Representation.....	123



## Presentation

**The 2015 Annual Report** that is submitted to the Spanish Parliament (*Cortes Generales*) reflects the changes that have been made in the manner in which the Institution worked in the course of the year. The main objective of said changes was to establish **a closer relationship with citizens**, based on their right to know the actions of the public administrations and the reasons behind them, as well as those of all public institutions in matters which affect them or in which they are interested.

Not only has the introduction of new technologies in the daily work has facilitated and speeded up the response to citizens, **but it has also increased the Institution's effectiveness** and the effort of its staff to respond faster and with understandable language to all those who address the Institution.

Furthermore, these technologies enable **establishing a permanent contact with a large number of citizens, bodies, associations, foundations, non-governmental organizations and all the public administrations** in order to better inform regarding the activities carried out, and that a larger number of persons may benefit from said knowledge. It also allows highlighting matters of interest and learning about the position upheld by the Ombudsman regarding said matters.

Some of the modifications made are highlighted.

- To facilitate **the presentation of complaints through the internet** and enable the follow-up of the complaints, in a personalized and reserved manner, without detriment to other procedures such **as telephone calls or the presentation of written documents**.
- To simplify the written documents sent to public administrations highlighting the action or facts that are requested in order to **facilitate responses**.

- To account for the **time employed** by the Ombudsman Institution in responding to citizens as well as the **time employed** by the administrations in providing their answers.
- To inform of the **administrations that hinder** the Ombudsman's work, the delay times in replying and their geographic location on a map.
- To update weekly the **number of complaints received** and the area to which they belong.
- To report weekly the number of **ex officio actions taken and of Recommendations or Suggestions** made, their basic content and the administration to which they were addressed.
- To enable the geographic localization of the visits carried out to **detention centers** and to inform regarding the **Recommendations** made following issue of the corresponding reports.

**The detailed report of the Institution's activity:** contains the statistics regarding the actions carried out; the number of complaints received and their processing status; ex officio actions in respect to administrations, the resolutions of said actions, their follow-up and requests of intervention before the Constitutional Court (*Tribunal Constitucional*). Evidently, it contains **information regarding the response of the administrations** (without revealing personal information which must remain confidential) and those pending a response.

It also includes the most relevant institutional representation activities carried out: work meetings held with non-governmental organizations, associations and foundations in different cities and towns, as well as international trips to participate in forums, assemblies and meetings of European, Mediterranean and Latin American Ombudsmen, and the visits made to immigrant detention centers, places of deprivation of liberty, centers for minors, and centers for elders.

The chapter on **transparency provides information on the budget:** contract awards and tenders for procurement, personnel expenses, official trips and the reasons for said trips as well as the Institution's structures, organizational chart and remunerations.

Information is also provided regarding the **digital transformation** process carried out by the Institution, which culminated with the publication of a new website, enabling a more direct and simple

manner in which to establish contact with citizens in a permanent fashion, making all actions carried out available to them and providing links to other sites that may be related with the said actions. The website's presentation page highlights the matters considered of importance or interest, such as, for example, the **Recommendation** accepted regarding:

**Protection of minors, victims or witnesses in criminal proceedings.**

**Obligation to identify the risk of financial products by means of a color code.**

**Second Chance Act (*Ley de segunda oportunidad*).**

**Access to a public dwelling and promotion of rentals.**

**Equal opportunities for persons with disabilities in the educational system.**

**Fundamental rights of persons seeking asylum and international protection.**

**The National Preventive Mechanism against Torture (NPM),** which entails the supervision of places of deprivation of liberty, **for which the Institution is competent since 2009 pursuant to a resolution of Parliament.** There is also a section in this chapter, although its activity is the subject matter of a specific report. Said report will be presented to the Congress of Deputies and to the Senate and has already been presented to the Subcommittee on Prevention of Torture of the United Nations.

Spain has overcome what some economists call "**severe episodes of recession**" between 2009 and 2014. Some time ago the economic prospects were somber and worrisome because of their repercussion on the image of Spain abroad, in all fields of internal economic activity and most particularly because of its consequences on employment.

In the course of 2015 an improvement has been noted in regards to the deficiencies and needs of citizens compared with previous months, but the marks left by the different economic crises are still visible.

The Ombudsman **has tried to pay as much attention as possible to those whose fundamental rights have been affected,** and the 2015 report provides a detailed account of all actions carried out, specially in **social and welfare areas of action.**

**The terrorist actions committed** in friendly countries, some nearby and others further away, which have cost so many human lives, including the lives of fellow citizens, **have lead us once again to firmly condemn all acts of terror and to always place ourselves on the side of the victims.** For this reason, and for the unfortunate experience we have due to terrorism in Spain, **we have requested that the voice of the victims may be heard in international bodies,** and that through Spain's exterior action the damage and pain produced by terrorism be known. **We cannot share the position of countries who resist extraditing terrorists who should be tried in Spain,** where they committed their crimes, and who have doubts regarding the guarantees of our rule of law. These are unusual positions that denote absolute lack of knowledge of our reality.

The 2015 report could not conclude without referring to the concern for the situation of all those persons who as a result of wars, persecutions and threats have had to abandon their lands and homes: **refugees, those who request international protection and asylum.** On behalf of this Institution we have advocated for reinforcing the care towards these persons who reach Spain, so that their situation may be resolved as quickly as possible, seeking their integration and attending in particular to the circumstances of minors. And we believe that the measures to achieve these objectives have improved.

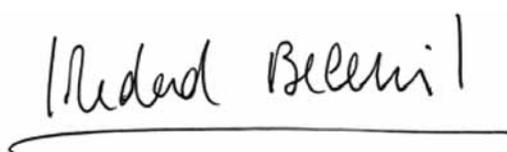
The actions of the European Union in this matter have also been a focus of attention on our part. In order to know first hand the situation of persons displaced for the aforementioned reasons, in addition to the frequent visits to the Centers for Temporary Stays, we visited the **Zaatari refugee camp near Amman [Jordan]** and drafted a document, which was submitted to the government, containing assessments of the national and international aid at the camp, and the deficiencies and needs we observed.

In respect to the proposal by the Council of the Europe that **the member states accept a specific number of refugees,** depending on their capacity, the Ombudsman has publicly stated its favorable opinion and acknowledgement of those countries which make it possible.

As a constitutional institution which supervises the administrations and is not dependent on any of them, the Ombudsman does not express an opinion regarding electoral results or the formation of government; however it does **safeguard compliance of fundamental rights and freedoms included in the Spanish Constitution,** and for this reason it must reiterate that the fundamental right to decide regarding the principle of unity of the Spanish nation corresponds to all the people of Spain, in whom **national sovereignty** resides. And that the fact that all citizens and public authorities are subject to the law is what makes us equal in rights and obligations, and what marks the difference between democracy and the abuse of power that leads to tyranny.

**All the progress made by Spaniards in the field of rights, liberties and the indispensable separation of powers** must be preserved, defended and transmitted as achievements which enable us at present, and will enable us in the future, to live together in a social and democratic state subject to the rule of law.

Madrid, 25 February



Soledad Becerril

DEFENSORA DEL PUEBLO

[SPANISH OMBUDSMAN]



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Statistics  
and Management  
Overview 2015

## Statistics

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### The Ombudsman Institution presented 1,503 resolutions before the administrations

**In 2015 the Ombudsman Institution received 17,822 written complaints and 123 written requests for appeal on the grounds of unconstitutionality. Ex officio investigations numbered 522. In total, 18,467 cases were processed. The Institution presented 1,503 resolutions before the Public Administrations. The issues of greatest concern to citizens were those related to the administration of justice, public safety, economic activity, health and employment.**

This year the Ombudsman Institution received 17,822 written complaints from citizens and 123 written requests for appeal on the grounds of unconstitutionality. It should be borne in mind that part of several documents may be accompanied on occasion by a significant number of signatures, such that a total of 50,154 citizens have been in written contact with this Institution.

Added to this figure is the number of citizens who have been **personally assisted by the Institution: 17,152**, of which 3,306 were in-person and 13,846 were assisted by telephone.

**99,048 users** entered the Institution's **website**; different sections were visited (pages visited within the website) on **553,358 occasions**.

Throughout the year, **522 ex officio investigations were undertaken**, or opened, at the initiative of the Institution.

As a result of complaints and inspection visits, the Ombudsman Institution drew up **706 Recommendations** and **613 Suggestions** before the various administrations. Those resolutions were resolved as follows:

- **311 Recommendations were accepted, 95 were rejected** and 300 were pending a response from the administration concerned at the time this report was completed.
- **324 Suggestions were accepted, 112 were rejected** and 177 were pending a response at the time this report was completed.

### COMPLAINTS, EX OFFICIO INVESTIGATIONS AND REQUESTS FOR APPEAL ON THE GROUNDS OF UNCONSTITUTIONALITY

In 2015, the Institution processed a total of 18,467 cases corresponding to the following three categories: complaints, ex officio investigations and requests for the filing of appeals on the grounds of unconstitutionality.

Both complaints and requests for appeal before the Constitutional Court are divided between those processed individually and those processed jointly, such that this report will refer to individual and joint cases (complaints and requests).

TABLE 1 shows the total for each category and its comparison with the data corresponding to the previous year.

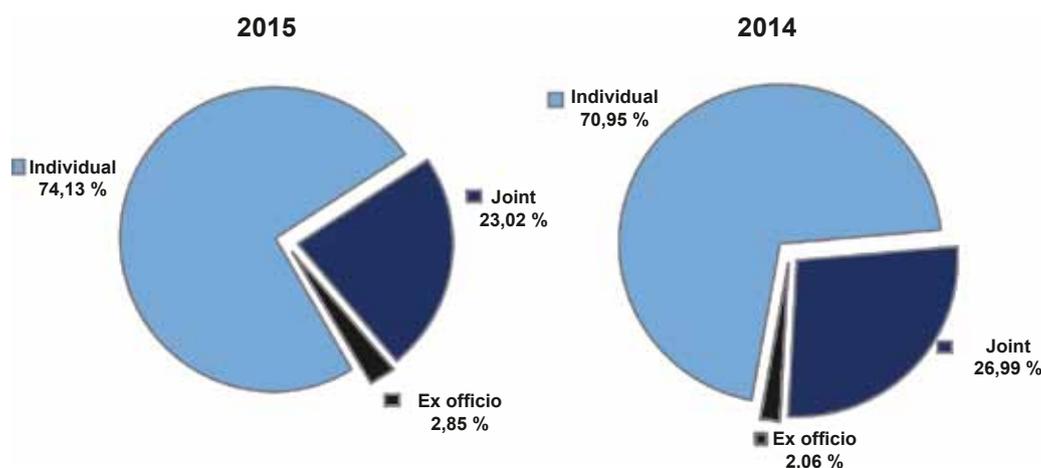
Table 1			
Number of complaints, ex officio investigations and requests for appeal opened in 2015 and comparison with 2014			
		2015	2014
Complaints	Individual	13,599	16,797
	Joint (*)	4,223	6,389
	<b>Total</b>	<b>17,822</b>	<b>23,186</b>
Ex officio investigations	Ex officio	522	489
	<b>Total</b>	<b>522</b>	<b>489</b>
Requests for appeals	Individual	49	57
	Joint (*)	74	232
	<b>Total</b>	<b>123</b>	<b>289</b>
<b>TOTAL</b>		<b>18,467</b>	<b>23,964</b>

\* Complaints and requests having equal content or objective grouped together for joint processing.

FIGURE 1 provides information on the overall processing of cases, distributed proportionally into complaints and ex officio investigations (requests for appeal before the Constitutional Court have not been

included here). Moreover, complaints are divided between those corresponding to an individual request and those that have been grouped together due to the sharing of a common concern.

Figure 1  
Percentage of complaints and ex officio investigations (not including requests for appeal before the Constitutional Court) opened in 2015 and comparison with 2014



### Average case response times

The following tables show: the Ombudsman's average times in responding to citizens, the first time that notification is given of acceptance or rejection

of a case, and the time taken for the Institution to respond time with a resolution after having received a response from the administration (TABLE 2); the average times for administrations to respond the Ombudsman (TABLE 3).

Table 2

Ombudsman average response times to citizens and administrations in 2015 and comparison with 2014

AVERAGE RESPONSE TIMES	DAYS	
	2015	2014
Initial response to citizen, confirming acceptance, non-acceptance or request for information	29	36
Resolution from Ombudsman after receiving response from Public Administration	47	65

Table 3

Public Administration average response times (in days) to requests for information concerning files processed in 2015 and comparison with 2014

ADMINISTRATIONS	DAYS	
	2015	2014
General State Administration	77	66
Autonomous administration	97	96
Local administration	95	91
Office of the Attorney General (*)	84	94
Other public entities	81	67
Judiciary	76	97
Universities	62	59
<b>TOTAL AVERAGE</b>	<b>85</b>	<b>79</b>

(\*) The Office of the Attorney General keeps the Ombudsman Institution informed as to cases in process on a periodic basis (every three or four months).

## Distribution of complaints and requests for appeal

### According to method of receipt

Citizens address their written submissions to the Ombudsman Institution using different means of

communication. The following two tables show the entry of written submissions through different channels: post, fax, email, using the Ombudsman Institution website, or in person. TABLE 4 shows the corresponding distribution of complaints; TABLE 5 indicates written requests for the filing of appeals.

Table 4

Number of complaints in 2015 distributed by means of receipt and comparison with 2014

COMPLAINT RECEIVED BY	2015		2014	
	Number	%	Number	%
Postal Service	5,595	31.39	9,026	38.93
Fax	265	1.49	498	2.15
Email	4,582	25.71	3,497	15.08
In person	1,089	6.11	2,472	10.66
Website form	6,291	35.30	7,693	33.18
<b>TOTAL</b>	<b>17,822</b>	<b>100.00</b>	<b>23,186</b>	<b>100.00</b>

Table 5

Number of requests for filing appeals before the Constitutional Court in 2015 distributed by means of receipt and comparison with 2014

REQUEST RECEIVED BY	2015		2014	
	Number	%	Number	%
Postal Service	80	65.04	22	7.64
Fax	4	3.25	1	0.35
Email	14	11.38	238	82.64
In person	9	7.32	11	3.82
Website form	16	13.01	16	5.56
<b>TOTAL</b>	<b>123</b>	<b>100.00</b>	<b>288</b>	<b>100.00</b>

### Method of submission

The vast majority of complaints and requests for appeal are submitted directly by citizens to the Ombudsman. This is reflected in the following tables, as

well as the number of cases submitted from autonomous parliamentary commissioners and from other public entities or organisms.

Table 6

Complaints according to method of submission in 2015 and comparison with 2014

COMPLAINTS SUBMISSION	Number		%	
	2015	2014	2015	2014
Submitted directly by citizens	16,047	21,319	90.04	91.95
Autonomous parliamentary commissioners	1,740	1,820	9.76	7.85
Various entities and organisms	35	47	0.20	0.20
<b>TOTAL</b>	<b>17,822</b>	<b>23,186</b>	<b>100.00</b>	<b>100.00</b>

Table 7

Requests for the filing of appeal on the grounds of unconstitutionality before the Constitutional Court by method of submission in 2015 and comparison with 2014

SUBMISSION OF REQUESTS FOR APPEAL	Number		%	
	2015	2014	2015	2014
Submitted directly by citizens	121	285	98.37	98.62
Autonomous parliamentary commissioners	2	4	1.63	1.38
<b>TOTAL</b>	<b>123</b>	<b>289</b>	<b>100.00</b>	<b>100.00</b>

Table 8

Complaints received by autonomous parliamentary commissioners in 2015 and comparison with 2014

ORIGIN	Number		%	
	2015	2014	2015	2014
Ombudsman of the Basque Country ( <i>Ararteko</i> )	47	72	2.70	3.96
Catalonian Ombudsman ( <i>Síndic de Greuges de Catalunya</i> )	268	297	15.40	16.32
Galician Ombudsman ( <i>Valedor do Pobo</i> )	83	111	4.77	6.10
Ombudsman of Andalusia ( <i>Defensor del Pueblo Andaluz</i> )	468	377	26.90	20.71
Valencian Ombudsman ( <i>Síndic de Greuges de la Comunitat Valenciana</i> )	199	198	11.44	10.88
Ombudsman of Aragon ( <i>Justicia de Aragón</i> )	218	273	12.53	15.00
Canary Islands Ombudsman ( <i>Diputado del Común</i> )	199	226	11.44	12.42
Ombudsman of Navarre ( <i>Defensor del Pueblo de Navarra</i> )	78	90	4.48	4.95
Ombudsman of Castile and Leon ( <i>Procurador del Común de Castilla y León</i> )	165	176	9.48	9.67
<b>TOTAL</b>	<b>1,725</b>	<b>1,820</b>	<b>100.00</b>	<b>100.00</b>

Table 9

Requests for the filing of appeals before the Constitutional Court received from autonomous parliamentary commissioners in 2015 and comparison with 2014

ORIGIN	Number		%	
	2015	2014	2015	2014
Ombudsman of Andalusia ( <i>Defensor del Pueblo Andaluz</i> )		2		50.00
Valencian Ombudsman ( <i>Síndic de Greuges de la C. Valenciana</i> )	1	1	50.00	25.00
Ombudsman of Aragon ( <i>Justicia de Aragón</i> )	1		50.00	
Canary Islands Ombudsman ( <i>Diputado del Común</i> )		1		25.00
<b>TOTAL</b>	<b>2</b>	<b>4</b>	<b>100.00</b>	<b>100.00</b>

Table 10

Complaints originating from various entities and organisms in 2015 and comparison with 2014

ORIGIN	Number		%	
	2015	2014	2015	2014
Spanish Parliament	28	22	80.00	46.81
Judiciary		1		2.13
Attorney General	1		2.86	
Autonomous organisms	3	1	8.57	2.13
Foreign ombudsmen	3	23	8.57	48.94
<b>TOTAL</b>	<b>35</b>	<b>47</b>	<b>100.00</b>	<b>100.00</b>

## Geographic origin

Using the map of Spain, the following two figures show the origin of complaints and requests for appeal submitted to the Ombudsman Institution in 2015. It is worth mentioning the fact that these statistics on origin indicate only the address for notification

purposes provided on citizens' written submissions, such that a necessary link may not be established between the issues and problems put forth and the different locations and territories.

Figure 2

Complaints filing distribution by autonomous community, 2015

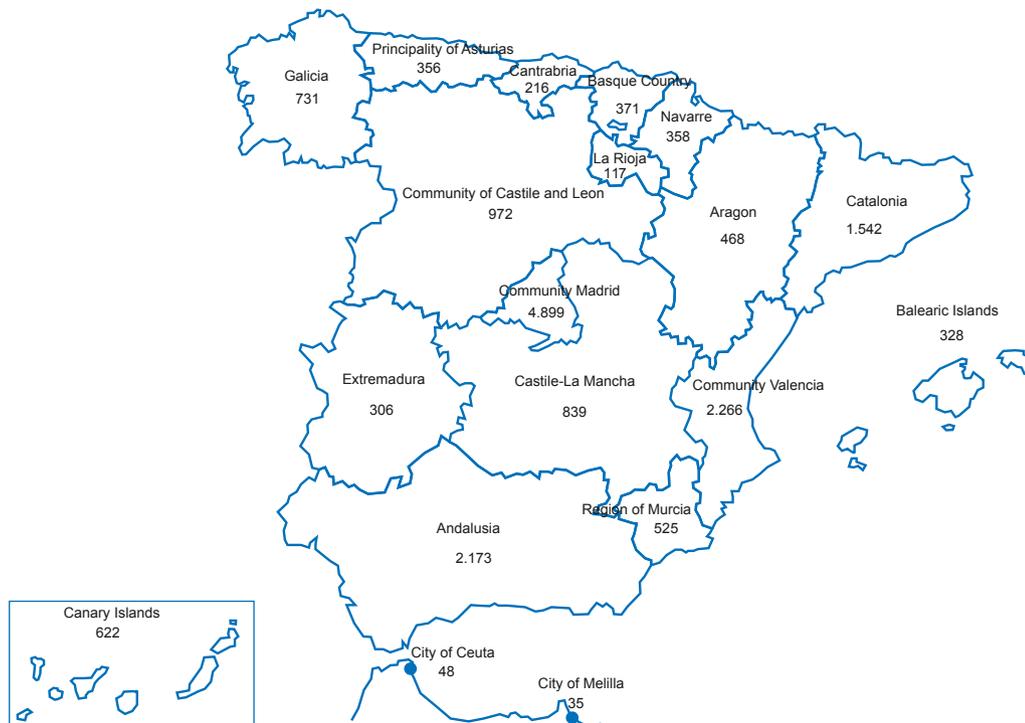


Figure 3

Requests for the filing of appeals before the Constitutional Court, distribution by autonomous community, 2015



## Distribution of cases by sector of administrative activity

In TABLE 11, complaints, ex officio investigations and requests for appeal are classified thematically,

differentiating between individual and joint cases accordingly.

AREA OF ACTIVITY	Complaints		Ex officio investigations	Requests for the filing of appeals before the Constitutional Court		Total
	Individual	Joint		Individual	Joint	
Administration of justice	1,834		47	21		1,902
Public safety	1,249	515	31	3		1,798
Economic activity	1,671	2	19	3	74	1,769
Health services	560	862	43			1,465
Employment and social security	1,227		6			1,233
Education	669	488	44	1		1,202
Taxes	1,108		25	3		1,136
Civil service and public employment	912	189	4	12		1,117
Social policy	846		67	4		917
Migration	811	46	25			882
Penitentiary centers	402		63			465
Environment	444		2			446
Housing	349		16			365
Urban planning	324	31	2			357
Local administration	238		1			239
Equal treatment	108		11			119
Prevention of torture			106			106
Other areas*	375	2,059		2		2,436
Under study	472	31	10			513
<b>TOTAL</b>	<b>13,599</b>	<b>4,223</b>	<b>522</b>	<b>49</b>	<b>74</b>	<b>18,467</b>

\* The majority are complaints against an exhibition in Pamplona which have been grouped together.

## CASE PROCESSING STATUS

TABLE 12 shows the processing status of complaints and ex officio investigations, once these have been

received or opened by the Institution, and their status at the time of this report's completion.

STATUS		Individual		Joint		Ex officio		Total	
		No.	%	No.	%	No.	%	No.	%
■ Admitted	■ In process	2,817	20.71	2,752	65.17	354	67.82	5,923	32.29
	■ Concluded	2,808	20.65	477	11.30	122	23.37	3,407	18.57
	■ Suspended	17	0.13			31	5.94	48	0.26
	<b>Total</b>	<b>5,642</b>	<b>41.49</b>	<b>3,229</b>	<b>76.47</b>	<b>507</b>	<b>97.13</b>	<b>9,378</b>	<b>51.12</b>
■ Not admitted	■ Not accepted	6,998	51.46	964	22.83			7,962	43.40
	<b>Total</b>	<b>6,998</b>	<b>51.46</b>	<b>964</b>	<b>22.83</b>			<b>7,962</b>	<b>43.40</b>
■ Under study (as of 31 Dec.)	■ Opened	482	3.54	30	0.71	15	2.87	527	2.87
	■ Pending response from applicant	477	3.51					477	2.60
	<b>Total</b>	<b>959</b>	<b>7.05</b>	<b>30</b>	<b>0.71</b>	<b>15</b>	<b>2.87</b>	<b>1,004</b>	<b>5.47</b>
<b>GENERAL TOTAL</b>		<b>13,599</b>	<b>100.00</b>	<b>4,223</b>	<b>100.00</b>	<b>522</b>	<b>100.00</b>	<b>18,344</b>	<b>100.00</b>

## Individual complaints

TABLE 13 indicates the reasons for non-acceptance of complaints, all referring to factors owing to which it was not possible to initiate action on behalf of applicants or carry out an investigation of public

administrations. As can be seen, the main cause of non-acceptance refers to the lack of evidence indicating unlawful conduct on the part of the administration.

Table 13	
Individual complaints. Reasons for non-admission in 2015	
REASONS FOR NON-ADMISSION	Number
No evidence of unlawful conduct	2,599
Lack of prior administrative action	1,089
No response to request for further details	704
Court intervention	691
Other reasons outside the competence of the Ombudsman Institution	395
Multiple reasons for non-acceptance	386
Private conflict outside of administrative competence	210
Final court judgment	196
Incorrect action acknowledged, currently being resolved through other cases	124
Only information requested	97
Only information sent	88
Resolved without intervention from Ombudsman Institution	78
Intervention from autonomous parliamentary Commissioners	76
Not related to public authorities	60
Case withdrawn by applicant	45
One-year period elapsed	44
No grounds	43
No legitimate interest	26
No claim	15
Requirements for acceptance of request not fulfilled	7
Administrative authority in matters within their competence	6
Anonymous complaint	6
Against current legislation	5
Damaging to third parties	3
Not possible to contact applicant	3
Non-response to rectifiable defect	2
<b>Total</b>	<b>6,998</b>

The following two tables show the procedures carried out for individual complaints that were accepted, the administrations involved in the different actions and

the type of conclusion reached for those cases that were completed in 2015.

Table 14

## Admitted individual complaints. Number processed with the administration in 2015

ADMINISTRATIONS	In process	Concluded	Suspended	Total
General State Administration	1,308	1,414	12	2,734
Autonomous administration	597	699	2	1,298
Local administration	551	388	1	940
Attorney General	38	39		77
Other public entities	27	89		116
Judiciary	51	44		95
Various administrations	166	109	1	276
Actions linked to other proceedings	64	17	1	82
Universities	15	9		24
<b>TOTAL</b>	<b>2,817</b>	<b>2,808</b>	<b>17</b>	<b>5,642</b>

Table 15

## Individual complaints admitted and concluded. Type de conclusion reached, administration in 2015

ADMINISTRATIONS	Correct action	Rectified	Not rectified	Other type of conclusion	Total
General State Administration	687	418	82	227	1,414
Autonomous administration	186	365	19	129	699
Local administration	205	117	9	57	388
Attorney General	19	2		18	39
Other public entities	61	16		12	89
Judiciary	16	5	13	10	44
Various administrations	35	28	4	42	109
Actions linked to other proceedings	2	1		14	17
Universities	3	4		2	9
<b>TOTAL</b>	<b>1,214</b>	<b>956</b>	<b>127</b>	<b>511</b>	<b>2,808</b>

## Joint complaints

The following tables show, on the one hand, the causes of non-acceptance of joint complaints; and

on the other hand, the administrations affected by those complaints that were accepted.

Table 16

## Joint complaints. Reasons for non-acceptance in 2015

REASONS FOR NON-ACCEPTANCE	Number
Other reasons outside the competence of the Ombudsman Institution	811
Multiple reasons for non-acceptance	88
No evidence of unlawful conduct	65
<b>TOTAL</b>	<b>964</b>

Table 17

## Accepted joint complaints. Number of cases processed with the Administration in 2015

ADMINISTRATIONS	In process	Concluded	Total
General State Administration	516	353	869
Autonomous administration	31	123	154
Attorney General	2,059		2,059
Various administrations	146	1	147
<b>TOTAL</b>	<b>2,752</b>	<b>477</b>	<b>3,229</b>

## Ex officio investigations

Table 18

Ex officio investigations opened and processed with the Administration in 2015

ADMINISTRATIONS	In process	Concluded	Suspended	Total
General State Administration	133	52	3	188
Autonomous administration	168	40	24	232
Local administration	11	8	4	23
Attorney General	6	3		9
Other public entities	1	6		7
Judiciary	4	1		5
Various administrations	27	12		39
Actions linked to other proceedings	1			1
Universities	3			3
<b>TOTAL</b>	<b>354</b>	<b>122</b>	<b>31</b>	<b>507</b>

Table 19

Concluded ex officio investigations. Type of conclusion reached, by administration, in 2015

ADMINISTRATIONS	Correct action	Rectified	Not rectified	Other type of conclusion	Total
General State Administration	12	26	6	8	52
Autonomous administration	14	20	1	5	40
Local administration	2	5	1		8
Attorney General	1			2	3
Other public entities	6				6
Judiciary	1				1
Various administrations	1	6	2	3	12
<b>TOTAL</b>	<b>37</b>	<b>57</b>	<b>10</b>	<b>18</b>	<b>122</b>

## RECOMMENDATIONS, SUGGESTIONS, REMINDERS OF LEGAL OBLIGATIONS AND WARNINGS

For the purpose of processing individual and joint complaints and ex officio investigations, as well as

resolutions of requests for appeal on the grounds of unconstitutionality and the monographic studies, resolutions were drawn up and addressed to the different public administrations shown below, classified as Accepted, Rejected or Pending Response.

Table 20

Resolutions drawn up in 2015

RESOLUTIONS	Accepted	Rejected	Pending	Total
Recommendations	311	95	300	706
Suggestions	324	112	177	613
Reminders of legal obligations				184
<b>TOTAL</b>	<b>635</b>	<b>207</b>	<b>477</b>	<b>1,503</b>

Table 21

## Recommendations, by administration

ADMINISTRATIONS	Accepted	Rejected	Pending	Total
Attorney General	78	64	77	219
Autonomous administration	203	26	128	357
Local administration	22	4	88	114
Attorney General	3			3
Other public entities	4	1	4	9
Judiciary	1		2	3
Universities			1	1
<b>TOTAL</b>	<b>311</b>	<b>95</b>	<b>300</b>	<b>706</b>

Table 22

## Suggestions, by administration

ADMINISTRATIONS	Accepted	Rejected	Pending	Total
General State Administration	154	50	44	248
Autonomous administration	99	18	52	169
Local administration	68	42	77	187
Other public entities	2	2	1	5
Universities	1		3	4
<b>TOTAL</b>	<b>324</b>	<b>112</b>	<b>177</b>	<b>613</b>

## REQUESTS FOR APPEAL BEFORE THE CONSTITUTIONAL COURT

This year, 123 requests for the filing of appeals on the grounds of unconstitutionality, against 29 laws, and 16 requests for protection were submitted to the Ombudsman Institution.

## UNCOOPERATIVE OR OBSTRUCTIVE ADMINISTRATIONS

Article 19 of the Organic Law 3/1981 of 6 April requires administrations to respond to the Ombudsman Institution as regards the information necessary for its activities. However, the response provided is not always immediate and, in some cases, albeit not those most frequently occurring, there may be no response, even after this has been requested on several occasions.

In such cases, Article 18.2 of the Organic Law 3/1982 of 6 April authorizes the Ombudsman Institution to declare the administrative body or unit concerned as

“hostile or obstructive in its duties” and, moreover, to inform the Spanish Parliament, by means of its inclusion in this annual report or, where applicable, in a special report.

These administrations have been classified into three groups:

- Administrations considered obstructive due to systematic or prominent hindering or obstructing of the work of the Ombudsman Institution in the course of an investigation.
- Administrations which, for one or several cases, have neglected to respond to a request for information after up to three attempts have been made.
- Administrations which have only provided a response to the Ombudsman Institution after having been requested to do so on three occasions.

The characteristics of each of these cases are different, as regards the repercussions of a failure to comply, the perseverance of the same or the resources available to the administrations themselves.

The new design of the website completed in 2015 includes a section dedicated to obstructive administrations. Administrations which have neglected to provide a response to the Ombudsman Institution after having been requested to do so on three occasions are listed therein. Administrations failing to provide a timely response to the Ombudsman Institution may be identified in two ways:

- A list classifying administrations according to general state administrations, autonomous administration, local administration, Attorney General, other public entities, Judicial Authority and universities.
- A map which provides geographical indication of the said obstructive administrations.

The administrations reflected are generally local governments and even smaller municipalities. The

Ombudsman Institution is aware of the shortages and lack of both material and human means in small municipalities, and of the difficulties that may be present in collecting the required information; however, this does not exempt them from their obligation to provide a response. In order that these administrations respond to the requirements of this Institution, actions have been taken so that those pending requests for information experiencing the highest delay have been answered.

The local government of Arenys de Mar (Barcelona), in addition to neglecting to provide a response after three requests, has not expressed a willingness to collaborate with the Ombudsman Institution, and this attitude has been conveyed to the Attorney General's Office, in the event that it constitutes a crime classified under Article 502.2 of the Penal Code.

## Management Overview

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### New institution website more efficient, transparent and accessible

In 2015, the Ombudsman Institution undertook a digital renovation project for the purpose of improving dialogue with citizens, optimizing efficiency in complaints processing, strengthening transparency and increasing accessibility.

### 2015 BUDGET

The titles of the chapters and sections of this entire summary include the names used in the Resolution

of 20 January 2014, on the General Administration of Budgets, by which the codes defining economic classification are established.

Table I	
BUDGET FOR EXPENDITURE 2015	Amount
CHAPTER I: personnel expenses	11,606,500.00 €
CHAPTER II: current expenditure on good and services	2,133,300.00 €
CHAPTER III: financial expenses	3,000.00 €
CHAPTER IV: current transfers	101,900.00 €
CHAPTER VI: investments	107,000.00 €
<b>TOTAL CHAPTERS I + II + III + IV + VI</b>	<b>13,951,700.00 €</b>

Table II

CHAPTER I. PERSONNEL EXPENSES		
Article	Description	TOTAL
10	Senior officials	451,100.00 €
12	Civil servants	8,489,500.00 €
13	Employees on contract	7,300.00 €
14	Other personnel	370,000.00 €
15	Performance incentives	5,000.00 €
16	Employer social security contributions, benefits and social expenses	2,283,600.00 €
TOTAL CHAPTER I		11,606,500.00 €
CHAPTER II. CURRENT EXPENDITURE ON GOODS AND SERVICES		
Article	Description	TOTAL
20	Rental and leasing fees	122,000.00 €
21	Repairs, maintenance and conservation	420,500.00 €
22	Material, supplies and other	1,373,800.00 €
23	Service-related compensation	117,000.00 €
24	Publication expenses	100,000.00 €
TOTAL CHAPTER II		2,133,300.00 €
CHAPTER III. FINANCIAL EXPENSES		
Article	Description	TOTAL
34	Deposits and guarantees	3,000.00 €
TOTAL CHAPTER III		3,000.00 €
CHAPTER IV. CURRENT TRANSFERS		
Article	Description	TOTAL
44	Companies, public business entities, foundations and other public sector entities	1,000.00 €
48	Families and nonprofit institutions	93,900.00 €
49	International transfers	7,000.00 €
TOTAL CHAPTER IV		101,900.00 €
CHAPTER VI. INVESTMENTS		
Article	Description	TOTAL
61	Investments in replacement of infrastructure and goods for general use	1,000.00 €
62	New investment associated with operation of services	53,000.00 €
63	Investments in replacements associated with operation of services	6,000.00 €
64	Intangible investment expenses	47,000.00 €
TOTAL CHAPTER VI		107,000.00 €
TOTAL BUDGET (CHAPTERS I + II)		13,951,700.00 €

## Year-over-year evolution, 2009-15

In recent years, from 2009 to 2015, budgetary evolution has been as follows:

Table III							
YEAR	2009	2010	2011	2012	2013	2014	2015
Amount (€)	15,968,400	15,886,500	15,175,800	14,492,900	14,021,300	13,951,700	13,951,700
Percentage variation over previous year	-	-0.51 %	-4.47 %	-4.50 %	-3.25 %	-0.50 %	0.00 %

Figure I



Table IV

2009	2015	% INCREASE
15,968,400.00 €	13,951,700.00 €	-12.63 %

Figure II



## Budgetary execution

Table V				
BUDGETARY EXECUTION 2015	Final amount	Payments made	Payments pending	Remaining
<b>CHAPTER I: PERSONNEL EXPENSES</b>				
Article 10: Senior officials	477,110.98	463,003.66	11,581.43	2,525.89
Article 12: civil servants	8,709,511.61	8,518,245.39	157,024.04	34,242.18
Article 13: employees on contract	7,300.00	0.00	0.00	7,300.00
Article 14: other personnel	354,477.41	336,446.11	5,444.02	12,587.28
Article 15: performance incentives	5,000.00	0.00	0.00	5,000.00
Article 16: employer social security Contributions, benefits and social expenses	2,140,200.00	1,950,681.11	173,241.71	16,277.18
<b>TOTAL CHAPTER I</b>	<b>11,693,600.00</b>	<b>11,268,376.27</b>	<b>347,291.20</b>	<b>77,932.53</b>
<b>CHAPTER II: CURRENT EXPENDITURE ON GOODS AND SERVICES</b>				
Article 20: rental and leasing fees	108,338.76	97,315.44	11,023.32	0.00
Article 21: repairs, maintenance and conservation	434,100.00	335,555.68	92,471.82	6,072.50
Article 22: office material, supplies and other	1,409,269.24	1,016,489.42	304,960.16	87,819.66
Article 23: service-related compensation	87,000.00	77,963.57	0.00	9,036.43
Article 24: publication fees	51,492.00	23,792.66	26,439.96	1,259.38
<b>TOTAL CHAPTER II</b>	<b>2,090,200.00</b>	<b>1,551,116.77</b>	<b>434,895.26</b>	<b>104,187.97</b>
<b>CHAPTER III: FINANCIAL EXPENSES</b>				
Article 34: deposits and guarantees	920.78	667.86	0.00	252.92
<b>TOTAL CHAPTER III</b>	<b>920.78</b>	<b>667.86</b>	<b>0.00</b>	<b>252.92</b>
<b>CHAPTER IV: CURRENT TRANSFERS</b>				
Article 44: companies, publicentities, foundations and other public sectorentities	1,000.00	0.00	0.00	1,000.00
Article 48: families and nonprofit institutions	3,400.00	2,124.78	0.00	1,275.22
Article 49: International transfers	7,000.00	6,386.39	0.00	613.61
<b>TOTAL CHAPTER IV</b>	<b>11,400.00</b>	<b>8,511.17</b>	<b>0.00</b>	<b>2,888.83</b>
<b>CHAPTER VI: INVESTMENTS</b>				
Article 61: investments in replacement of infrastructure and goods for general use	650.00	0.00	0.00	650.00
Article 62: new investment associated with services operation	332,879.22	83,571.67	244,531.60	4,775.95
Article 63: investments in replacements associated with services operation	224,050.00	35,920.31	186,889.13	1,240.56
Article 64: intangible investment expenses	148,000.00	93,701.50	54,020.08	278.42
<b>TOTAL CHAPTER VI</b>	<b>705,579.22</b>	<b>213,193.48</b>	<b>485,440.81</b>	<b>6,944.93</b>
<b>TOTAL BUDGET (CHAPTERS I, II, III, IV and VI)</b>	<b>14,501,700.00</b>	<b>13,041,865.55</b>	<b>1,267,627.27</b>	<b>192,207.18</b>

## INFORMATION FOR CITIZENS

The Institution offers information for citizens either in person or by telephone, in both cases advising them of the Ombudsman Institution's competencies with respect to their consultation. In some cases, this consultation may constitute a cause for a complaint,

while in others it may be a matter of providing information or referring the interested party to another state level.

The following table shows comparative data between in-person service and consultations provided via the two telephone lines.

	2015	2014
In-person service	3,306	3,426
Telephone	8,427	9,775
Toll-free 900 number	5,419	6,908
<b>TOTAL</b>	<b>17,152</b>	<b>20,109</b>

## TRANSPARENCY

The application of transparency in accordance with the Law 19/2013 of 9 December for transparency, access to public information and good governance has practical implications in the obligation for active publication of information in various areas: institutional, organizational, legal, economic, budgetary and statistical, as well as publically accessible information found in the institutional website. always related to the Institution's activities and subject to administrative Law (Article 2.1.f of the Law).

Requests for information have been concerned with the use of certain budgetary items in the draft law on budgets for 2015 corresponding to the Ombudsman Institution as well as additional items relating to other institutions. Access was given solely to information concerning this Institution.

Information has also been requested concerning the number of qualifications accepted in the last five years from the Institution's personnel for work as part-time associated university professors. Access was given to the requested information, which has already been included on the institutional website.

Also information was requested concerning the functioning of the Institution's internal system, as well as concerning personnel at the service of the Ombudsman Institution and comprising the Institution's staff, in comparison with the limit for the age of retirement. Access was also given to the requested information.

## COMMUNICATION

The principal work of the Ombudsman Institution's Department of Communications is to convey the Institution's work to citizens. Its objective is to communicate the recommendations, suggestions and activities carried out by the Institution and show how the Ombudsman Institution's work brings benefits to all citizens. In order to fulfill this objective, the Department of Communications maintains fluid, transparent and ongoing relations with the media.

In addition, the Ombudsman Institution has a Twitter account with over 17,000 followers through which the Institution's activities can also be followed. Complaints may not be submitted via this channel, as the character limits required by Twitter do not make it possible for it to be used for providing further details which citizens need to attach in many cases.

### Media impact

Media relations form a prominent part of the Communications Office's daily work and, as a result of these relations, the Institution has achieved a strong and habitual presence in newspapers, radio, television and digital media.

Over 28,000 mentions were made in digital media, written press, radio and television in 2015. Many of these appeared as a result of the 162 press releases that were sent to the media as well as the content created for the website.

The Institution made a strong impact on the media with the publication of its annual report and the presentation of monographic studies: *Hospital Emergencies in the National Health System: Patient rights and guarantees*; *Hearing minors, victims or witnesses*; *Spanish Prisoners Abroad*; *Safety and Access to Children's Play Areas*; and *Urban License Processing: Procedures and duration of proceedings*.

## New website

In 2015, the Ombudsman Institution undertook a digital renovation project for the purpose of improving dialogue with citizens, optimizing efficiency in complaints processing, strengthening transparency and increasing accessibility.

With this objective, the services and content involving citizens' relations with public Administrations has been reoriented. Likewise, consultations of ex officio

investigations and other relevant activities initiated have been simplified and made more accessible, as well as those of published annual reports and monographic studies, such that citizens may have a better understanding of what the Institution does and when and how it may be of greater use.

The new website has preserved the institutional information and documentation that was published on the previous website: annual reports, monographic studies, announcements and press releases, budgetary activities, expenditure, hiring and agreements. This year the complete texts of resolutions drawn up and other relevant activities in 2014 and 2015 are also available on the renovated website. Resolutions are published **15 days after** their submission to the competent Public Administration.

The total number of visits to the institutional website is shown below in TABLE VII, as well as a breakdown of visits by certain sections (TABLE VIII).

Table VII

Visits to the Ombudsman Institution website ([www.defensordelpueblo.es](http://www.defensordelpueblo.es))

2015

Pages viewed

553,358

Table VIII

Breakdown of Ombudsman Institution website visits by section, 2015

Section

Visits

Check the status of your complaint

63,952

NPM

29,650

Childhood

3,121

School drawing contest

1,239

Library

753

Human Rights Award

180

Ombudsman Institutional Prize

153

TOTAL

99,048



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## Supervision of Public Administrations

## Administration of Justice

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### The Ombudsman presents a study on hearing minors in criminal proceedings

**The Recommendations of the study *Hearing Minors, Victims or Witnesses (La escucha del menor, víctima o testigo)*, published in May 2015, were well accepted by the administrations. The delays and holdbacks in the different jurisdictional orders and the delays in processing nationality files have been cause for complaints in respect to issues of Justice.**

#### Undue delays

**The labor jurisdiction** was affected by a situation of generalized delays. The labor courts of Seville, Palma de Mallorca, Castellon and Murcia were also affected by unjustified delays. The need to increase the number of labor courts was submitted to the Ministry of Justice. In its answer, the Ministry reported the measures taken to try to overcome the situation, but stated that it did not think new labor courts were necessary. The Ministry of Justice accepted the Recommendation that in the General State Budget sufficient budgetary allocations be made for both personnel and material resources in order to solve the situation affecting different labor courts.

The generalized delays in processing matters in the **commercial jurisdiction** should also be considered as a cause of concern. The Ombudsman Institution has taken steps to find out the reasons that may have caused the delays in the actions processed in said jurisdiction, many of which are pending assignment of the date of the trial in proceedings involving mortgage floor rate clauses. Likewise, a general ex officio initiative is being processed, aimed at knowing the origins of the generalized situation of matters pending resolution by judicial bodies belonging to

the commercial jurisdiction, and the measures taken to try to solve the problem.

#### The public service of justice

The complaints received regarding the actions of **psychosocial teams assigned to family courts** have led to initiating an action at the Ministry of Justice and the autonomous communities to which competence in this matter was transferred. Once all the information requested is received, an in-depth study of the situation will be carried out and if fitting, appropriate proposals or modifications will be made in order to guarantee the best protection of minors.

The economic situation has affected **family meeting center's (puntos de encuentro familiares)**, many of which have been closed in all the autonomous communities, leading to an increase of waiting lists for users. Some of the actions taken by the Ombudsman Institution had positive results. This is the case of the budget allocation approved to increase the number of cases handled at the Meeting Centers of Murcia and Cartagena and to set up an itinerant service.

The Institution is currently waiting for the report requested from the Secretary of State of the Ministry of Justice regarding delays in payment of the **salaries of the substitute public prosecutors**. In September 2015, the public prosecutors had not yet received the legal remuneration corresponding to the work they had performed. It is usual that salaries are paid with two months of delay, and the situation may have been provoked because the Ministry of Justice brought the deadline for paying remunerations forward due to the holiday period, when the head public prosecutors did not yet have information to substantiate the hours worked by each substitute public prosecutor.

## Civil registry

The situation of provisional regulations persists, resulting in delays at many civil registries.

In November 2015, Royal Decree 1004/2015 was published, regulating the procedure for acquiring Spanish nationality on the basis of residence. This new procedure entails acceptance of several Recommendations made by the Ombudsman Institution in respect to homogeneous examination of integration to avoid disparity of criteria amongst the heads of Registries, by means of a double exam of knowledge of the Spanish language and integration performed by the *Instituto Cervantes*, and in respect to clarification of the moment in which certifications submitted must be in force, avoiding the disparity of criteria between those who required they be in force on the day of appointment was requested and those who required they be in force on the date of presentation of the application.

## Intensive plan for processing nationality dossiers

According to the latest official data published, at 1 January 2016 761,409 dossiers had been digitized since the beginning of the Intensive Nationality Plan (*Plan Intensivo de Nacionalidad-PIN*), of which 657,690 had already been processed by the Registries. In 77,578 cases additional documentation was requested from the applicant, 636,539 had already been reported on by the Registries and 614,039 had already been resolved by the Ministry of Justice. In

respect to the dossiers of 2010 to 2013 still pending resolution, on 30 October 2015 the Secretary of State for Justice informed that he had requested that they be urgently and preferentially processed, which led to a 40 % reduction of dossiers pending, in other words from 70,000 to 27,725.

In 2014 a total of 205,880 foreign residents acquired Spanish nationality, which is 8.8 % less than the previous year. The preview published by the National Statistics Institute (*Instituto Nacional de Estadística-INE*) corresponding to the first semester of 2015 reported that the provisional number of Spanish nationality acquisitions was 66,454.

In November 2013, the commission made in April that year to the General Council of Spanish Notaries, asking them to administer the oath or promise of loyalty to the King, to the Spanish constitution and to the laws of the nation, was suspended. The idea had been to avoid delays, in many cases of more than one year, of the civil registries in the procedure to notify the resolution granting nationality and in arranging the appointment for taking the oath.

However, since final registration in the registries was required, and as many registries refused to register persons who had taken the oath before a Notary before registering persons who taken it at the registry, taking the oath before a Notary did not result in a reduction of final processing times. In December 2015, oaths taken in 2013 were still pending registration. In the worst of cases, there are delays of more than 2 years (Civil Registry of Alcorcon in Madrid). In Andalusia, the Canary Islands, Catalonia, Madrid and Valencia, diligence in resolution thanks to the Intensive Nationality Plan has increased the collapse of those civil registries that lack proper resources.

In order to reduce the delays in registrations following an oath taken before a Notary, in 2014 the Department of Justice of Catalonia adopted a plan of action, consisting of sending a mobile support team to the most affected registries. Following implementation of this measure, in 2015 complaints regarding delays in registrations at civil registries after taking oath in Catalonia diminished drastically, in comparison with what happens at civil registries in Madrid, Andalusia, the Canary Islands and Valencia, where this measure was not adopted.

In respect to **nationality**, the majority of complaints referred to the difficulty in filing the application, the

delays at each step, disagreement with the reasons for denial, delays of several years and even failure to provide an express resolution and misplacement of applications.

The Ombudsman Institution has made several recommendations, including ex officio reversal of refusal resolutions, the introduction of objective parameters to assess social integration (as provided in the new procedure for nationality through residence), resolution of the situation of citizens from territories whose state authority is not acknowledged by Spain, and modification of article 22.1 of the Civil Code so that Sahrawi citizens can benefit from the preferential treatment granted to the Sephardim.

## Consular registries

The Spanish Consulate General in Havana (Cuba) continues to be the one that causes the most complaints concerning delays in processing nationality applications.

At the Consular Registry of Guayaquil (Ecuador) there is a delay of one year from the time the application is submitted until the applicant is given an appointment. This Consular Registry has been known to request DNA tests for the children of Spaniards in order to register their birth. In December 2015, the Ombudsman Institution initiated actions to find out why.

An action was initiated after receiving complaints regarding the changes in procedures detected at Spanish Consulates abroad, where they refused to carry out the ordinary oath taking procedure in nationality dossiers based on residence.

The General Directorate for Spaniards Abroad and Consular Affairs (*Dirección General de Españoles en el Exterior y de Asuntos Consulares*) considered that the said action did not entail a change of criterion, but rather that it stemmed from the strict application of the provisions of the Civil Registry Regulations.

The Ombudsman considered that the strict application of a rule can be described as a change of criterion if it produces the modification of a habitual procedure. Thus, it was highlighted that not only was there no impediment to formalize the oath by swearing or promising at the Consular Civil Registries, but that

the rule expressly permitted that it be done when concurrence of the requirements to obtain nationality on the basis of residence has been confirmed, and a resolution in this sense has been made. The Recommendation was accepted, but actions are still underway to find out what measures the Administration plans to take to enable citizens whose applications to formalize the process at the consulates were rejected to recover their right to do so.

## Lawyers

The Institution initiated ex officio action after learning that since 2010, the Autonomous Community of Madrid had reduced expenditure in the service of **free legal aid** by 31 %, budgetary allocation for this concept being insufficient to cover the real cost of the service.

The Ombudsman Institution recommended that appropriate measures be adopted, geared at paying within the deadlines the amounts owed to these professionals, and to review, where possible, existing scales of fees to adjust them to the current reality and recover the value they had before the reduction.

The Regional Department of the President's Office, Justice and Spokesperson of the Government of the Community of Madrid (*Consejería de Presidencia, Justicia y Portavocía*) announced a plan for individualized payment of registered grants for the 2015 financial year so that the certification and payment be made monthly and not quarterly, a measure that will certainly reduce the deadlines for payments.

In respect to the review of existing scales of fees, as of 2016 the allocation to the registered grant is going to increase, which in practice will entail 25.20 % more in comparison with 2015.

The Institution initiated ex officio action before the General Secretariat of Penitentiary Institutions (*Secretaría General de Instituciones Penitenciarias*) after learning that the lawyers who went to the Penitentiary Center Las Palmas II had to pass under the metal detector and that –in some cases– female attorneys had to take off their undergarments, after the alarm had gone off when they passed due to some metal piece in said undergarments.

The Ombudsman made a Recommendation to the General Secretariat of Penitentiary Institutions to in-

clude lawyers entering penitentiary centers for professional reasons in the list of persons exempt from accessing penitentiary centers through the metal detector. This Recommendation was not accepted.

## Gender violence

On occasion of the tenth anniversary of the effective date of Organic Law 1/2004, the Government Delegation on Gender Violence (*Delegación del Gobierno para la Violencia de Género*) has been requested to submit an assessment of application of this law.

In 2015 note should be made of the set of measures provided in Organic Law 8/2015, of 22 July, which modifies the system of protection of children and adolescents and improves the tools for the effective identification and protection of women who are victims of gender violence and of their children. The number of minors murdered by their parents increased in 2015.

The Statute of Victims of an Offense (*Estatuto de la víctima del delito*) also became effective, and seeks to make minors in surroundings affected by gender or domestic violence visible as victims in order to guarantee their access to aid and support services, and the adoption of protection measures to facilitate their full recovery. The Ombudsman Institution has requested concrete information on the execution of the Basic Protocol on Intervention against Child Abuse in the Family Environment.

In 2015, the **Directorate General of the Police (*Dirección General de la Policía*)** was asked to update information on women and minors victims of gender violence. Information was also requested regarding the preparation of the Instruction to set up Family Assistance Services (*Servicios de Atención a la Familia*) in all police headquarters which did not have them, as well as the results of the “Protocol for Coordination, Collaboration and Referrals of Professionals who deal with Gender and Domestic Violence” (*Protocolo de coordinación, colaboración y derivación entre profesionales que abordan la violencia de género y doméstica*).

The Ombudsman Institution also initiated an action before the Directorate General of the Police to obtain information regarding the new Protocol for Police Assessment of Risk and Police Assessment of Evolution of Risk (*Protocolo para la Valoración Policial del Riesgo (VPR) y Valoración Policial de la Evolu-*

*ción del Riesgo (VPER)*), as well as the contents of the new Instruction of the Office of the Secretary of State for Security on risk assessment.

This year the Institution has continued to monitor the recommendations made by the Ombudsman following the Opinion of the Committee for the Elimination of Discrimination against Women (CEDAW) of 16 July 2014, Communication number 47/2012 (González Carreño v. Spain).

The Ombudsman Institution requested information on the actions of Spanish institutions to comply with the CEDAW’s recommendations. It was considered that sufficient channels existed to provide compensation in cases of abnormal operation of the Administration of Justice or judicial errors. Spanish courts ruled against acceptance of the petition for compensation submitted by Ms. González Carreño, considering that the necessary requirements to determine liability did not concur, and confirmed the initial decision of the Ministry of Justice.

The Ombudsman assessed the response of the Spanish Administration regarding the contents of the said Report and requested information from the Office of the Secretary of State for Justice regarding the subsequent actions to grant adequate reparation and comprehensive and proportional compensation to the interested party in compliance with international obligations.

Moreover, given that the Draft Bill on the exercise of joint parental responsibility did not pass the stage of parliamentary processing, the Office of the Secretary of State for Justice was asked for information on the measures to be adopted within the framework of custody and visitation arrangements for the protection of minors in a context of gender violence, indicating the plans to implement these measures.

Likewise, information was also requested regarding the plans with the Autonomous Communities for “Common guidelines for comprehensive and individualized intervention with women who are victims of gender violence and their children, attending to their needs during the recovery process in a comprehensive manner” (*Pautas comunes para la intervención integral e individualizada con mujeres víctimas de violencia de género y sus hijos e hijas, que atiende de manera integral a sus necesidades en el proceso recuperatorio*).

In addition, on occasion of the recommendations made by the CEDAW Committee, information was

requested from the General Council of the Judiciary regarding the measures to be adopted to implement the obligatory training of judges and administrative personnel.

In 2015 the Office of the Government on Gender Violence was also asked to provide information on:

- the degree of fulfillment of the “National Strategy for the Eradication of Violence Against Women 2013-16” (*“Estrategia Nacional para la Erradicación de la Violencia Contra la Mujer 2013-16”*) and the reinforcement of all plans of autonomous governments and municipalities for comprehensive and individualized actions with women who are victims of gender violence and their children;
- information on progress made to establish Family Assistance Services in all headquarters of the National Police Corps (*Cuerpo Nacional de Policía*) where they do not yet exist;
- information on the processing status of the “Protocol for Coordination, Collaboration and Referrals of Professionals who deal with Gender and Domestic Violence” and of the Protocol of Offices for Aid to Victims (*Protocolo de las Oficinas de Asistencia a Víctimas*), as well as the Protocols of Legal Medicine Institutes (*Protocolo de los Institutos de Medicina Legal*).

The Ombudsman Institution also initiated several actions ex officio in connection with the violent deaths of women and minors who were victims of gender violence in 2015.

## Minors and justice

In 2015 the Institution prepared a study entitled **Hearing minors, victims or witnesses** (*La escucha del menor, víctima o testigo*) (presented to the Congress of Deputies in May and debated 9 June), which analyzes how minors who are victims of an offense or appear in Court as a witness are heard. The right to be heard must be a reality at three specific moments: at the police facilities, at the so-called “pre-constitution of evidence” and at the trial.

The study contains 19 Recommendations that in general have been well received. The proposals include implementation of training programs, focusing on matters such as the manner in which the declaration should be made, the reasoning for the reso-

lutions and any other aspects that promote hearing minors adequately in the criminal proceedings.

Another proposal is that necessary measures be adopted to reduce the emotional impact that going to court entails for a minor, taking into account the experiences of countries who share our cultural context, in which the minor’s declaration takes place in play centers or facilities for children. If this option is not possible, efforts should at least be made to avoid all formalism that could intimidate the minor, such as entering the court through the main door and not having a special adapted waiting room.

The objective is to equip all judicial buildings where criminal oral trials are held with videoconference systems in a specific room, other than the courtroom, where the minor can declare in the company of persons he or she trusts. This room could also be used to record pre-trial evidence.

It is important to enhance existing offices providing aid to victims with more personal and material resources to ensure optimal functioning and response to social needs. In particular, efforts should be made so that a person in the Office assist the minor from the moment the charges are made to keep him/her informed and to act as the minor’s contact and support person, accompanying the minor throughout the police phase, pre-trial evidence phase and the trial.

The Public Prosecutor’s Office was asked to adopt necessary initiatives to avoid public knowledge of the identity of minors victims of an offense in criminal proceedings, during both the pre-trial proceedings and the trial. And that, in all cases, efforts be made to avoid the visual confrontation of minors witnesses of offenses with the accused.

It would also be advisable to foment the self-regulation of the media in order to preserve the privacy, dignity and rights of the victims.

## Minors as offenders

The death of a minor at the Es Pinaret Detention Center as a consequence of a fire in his room led to initiating actions with the Regional Department for Social Services and Cooperation of the Balearic Islands (*Consejería de Servicios Sociales y Cooperación de las Illes Balears*), which some months before had been sent the conclusions of the visit made in February 2015 by the National Preventive Mecha-

nism against Torture and other types of Cruel, Inhuman or Degrading Treatment or Punishment (NPM).

The Department was asked to provide a report on the result of the investigation of the causes of the fire, and of the internal investigation carried out by the center to find out if the intervention on behalf of its personnel corresponded to protocols of action in emergency situations, and if, in view of the conclusions provided by the NPM, measures were adopted, or are to be adopted, to improve the deficiencies observed.

### Center of Sograndio (Oviedo)

A complaint was received from a group of private security guards in Asturias, requesting the intervention of this Institution to supervise what they considered to be the irregular operation detected at the Center for Minors of Sograndio.

The NPM had previously visited the Center and had submitted proposals to the General Directorate for Justice and Interior of the Principality of Asturias (*Dirección General de Justicia e Interior del Gobierno del Principado de Asturias*), most of which were related to the complaints made by the security guards.

The response provided by the General Directorate in respect to the suggestion regarding manipulation

of the video surveillance system in the center's common areas pointed out that a report should first be drafted by experts in the subject, specifically the location and technical features of the cameras, and in respect to compliance with the appropriate legal procurement procedure.

The Ombudsman Institution also suggested that the center allow minors punished with separation from the group to eat at the table of the common area of the facilities intended for that purpose, which was done with specific instructions being given for that purpose. Likewise, the suggestion to avoid exceeding seven days in the consecutive execution of more than one punishment of separation from the group was accepted, together with the suggestion that in case seven days were exceeded, the inmate be taken out of the room for a consecutive period of 12 hours.

In respect to the suggestion that application of provisional isolation as a means of restraint be used only for the amount of time strictly necessary, note was made that they were not aware of any complaints in that respect, and that the Public Prosecutor's Office even confirmed that the means of physical restraint are used as the last resort when they are essential to ensure the safety of others and of the inmate himself, immediately notifying the Court of Incident.

## Penitentiary Centers

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### Transfers and health-hygiene issues are the main cause of complaints to the Ombudsman

**The Ombudsman Institution has continued to work to guarantee the rights of prison inmates. 524 complaints were received from inmates, which entails an increase of 11.25 % in respect to 2014 (471). The majority of the complaints had to do with difficulties during transfers, health-hygiene issues and problems with interior separation or classification.**

Actions carried out by the Ombudsman Institution in this matter are geared at guaranteeing the rights of inmates in accordance with penitentiary legislation and at trying to improve the latter.

At the end of 2015, in Spain there were 61,835 persons deprived of liberty in 98 prisons. On comparing this figure (official data at 25 December 2015) with the figures at the beginning of the year (official data at 2 January 2015), a descent of the total population from 65,020 to 61,835 persons (-4.89 %) is observed.

In 2015, the Institution received 524 complaints from inmates, which entails an increase of 11.25 % with respect to 2014 (471). There were 64 ex officio actions in this matter. The largest number of complaints dealt with transfers (87), health-hygiene issues (74) and interior separation-classification (40).

### Deaths and suicides

The latest available data corresponding to prisons dependent on the General Secretariat for Prisons show that **in 2014 128 inmates died**. Of this number, 119 were men and nine women. 50 % of the deceased inmates were under the age of 45.

The number of **deaths due to suicide** was 24 (22 men and two women), which represents a rate of 0.42 per 1000 inmates, as compared to the rate of 0.53 per 1000 in 2013. The average age of the deceased for this reason was 38.4 years of age. The 24 inmates committed suicide by hanging themselves.

In March 2014 a thorough revision of the Program for the Prevention of Suicides became effective with the new name of Framework Program for the Prevention of Suicides (*Programa Marco de Prevención de Suicidios*) and intensified surveillance of risk factors and of the possible situations that could trigger a suicide by an inmate, from the moment of the latter's entrance to prison. This Institution reiterated the advisability of providing all professionals working in the Penitentiary Administration with a standardized protocol to detect situations of simulation that would supplement the tools available in the renovated Program for the Prevention of Suicides. The Administration claimed that there was not specific working instrument to detect suicide simulation. Nonetheless, this Institution has insisted that since such instrument does not exist, it could be useful for professionals who are obliged to act in this kind of situation to have standardized guidelines to help

them detect conducts or attitudes of simulation, as a supplement to the Program for the Prevention of Suicides currently in force.

## Abuse in Prison

The 2014 report noted the deficiencies of the Penitentiary Administration in the field of **recording inmate complaints** against actions of civil servants in the centers in which the complaints were filed. In the course of 2015 the Institution tried, without success, to have the Administration accept the former's view that the prison directors should have a registration system geared at recording inmate complaints against civil servants for serious incidents, such as abuse, sexual abuse and other serious types of irregular actions.

The Institution followed up on a Recommendation made in 2014 on the methodology of investigating reports of abuse. This Institution's view is that complaints submitted by inmates must be investigated, and that the investigation must be carried out by external specialized personnel using methods that favor receiving the testimony free of interferences, to the extent this is possible, and enable analyzing it technically to determine its plausibility and honesty. Even though it appears that the administration has modified its guidelines and criteria of action in the sense indicated by this Institution, the Ombudsman will continue to act in respect to this aspect of penitentiary activity.

## Health

The Institution took action regarding the state of the **infirmary** of the prison of Villabona (Asturias) and the lack of infirmary personnel at the prison of Cordoba.

Likewise, it also initiated actions in respect to the treatment given to persons incarcerated who suffer from mental illnesses, to the medical care given to a drug addict inmate, to the deficient care given to an inmate in the Prison of Aranjuez (Madrid), and to the conditions in which an inmate's right to ocular prostheses is acknowledged and the process in order to obtain them.

## Rights of inmates

In 2015 a Recommendation made by this Institution in connection with the **therapeutic and educational unit** (*Unidad Terapéutica y Educativa-UTE*) of Villabona (Asturias) geared at restoring its traditional mode of operation was followed up on. The basis of the Recommendation was the document drafted by the civil servants who created the project of intervention "Therapeutic and Educational Unit of the Prison of Villabona" and which has been used since 1998 as the guide for this initiative which has become a benchmark of penitentiary intervention in Spain.

This model is currently at risk of disappearing as a result of the mechanical application of Instruction 9/2014, precisely when special circumstances require specific treatments, just as the treatment of each inmate must also be individualized.

The Institution also focused on the issue of **radiological tests** carried out by the Penitentiary Administration in 2015. The latter is reticent to attend to the considerations made by this Institution regarding processing of files regarding this matter. This Institution's criterion, as observed in the course of visits to prisons, is that the current document which records the inmate's consent to the performance of radiodiagnosis tests does not constitute true informed consent. In consequence, it does not entail the valid effects attributed to it by the Administration. It is hardly possible to claim that said standardized forms offer information.

In addition, the lack of balance in the relationship between the Penitentiary Administration and the person deprived of liberty does not allow for the latter to grant non-conditioned consent. If the inmate refuses to have the radiographic tests performed, while the consent of the judicial authority is obtained the inmate is placed in an isolated cell and his/her movements are severely restricted, so that he/she is being conditioned to give consent which will free him/her from said restrictions, but without receiving information regarding the negative effects of said tests.

This Institution considers that it would be a good practice to provide precise information to the jurisdictional body which has been asked to grant authorization regarding the effects of this type of test for the inmate on the basis of his/her medical records as well as the number of times he/she has had the

same type of test and of course the results obtained during a specific period of time.

For this purpose, there would have to be a unified registration system in all prisons in which this type of test is performed.

There are difficulties in having the Administration accept the criterion upheld by this Institution regarding the need for permanent supervision of **physical restraint** measures by personnel of the Penitentiary Administration with capacity to intervene in case of an emergency. In one of the last reports issued on this matter, there appears to be a certain willingness to analyze the control measures that could reduce to a minimum the risks stemming from physical restraints.

As a provisional solution, this Institution accepts that inmates subject to physical restraint measures be supervised by means of video surveillance systems. It is also advisable that the adoption, monitoring and cessation of said measures be recorded by the video surveillance systems.

It is also necessary to have a document in which regular note is made of the state of the inmate in respect to the circumstances which justified at one point adopting physical restraint measures or the ones that subsequently concurred, from both the medical and purely regimental point of view, to enable verifying in the case of possible administrative or judicial complaints whether the adoption or continuation of said measures was correct.

The application of intense and prolonged coercive measures such as provisional isolation and physical restraint require the concurrence of the prison physician, who must report prior to adoption of the measure regarding the existence or not of circumstances of the inmate's state of health which advise against applying said measures. The Ombudsman's criterion is that the physician's intervention is of an enabling character and in consequence must be simultaneous with adopting of the provisional isolation measure, or must occur as soon as possible following said adoption, and that in the case of physical restraint, the measure cannot be applied without the physician's prior enabling participation, irrespective of whether the Administration considers that the restraint is for regimental or health reasons.

It cannot be construed that there is correct action when a person deprived of liberty is subject to physical restraint and a physician supervises application

of the measure with delay. In the case of delays and if the intervening physician decides said measure must be removed because it is inappropriate, the only possible interpretation is that up until that moment the measure was applied incorrectly, from which there could arise a situation of possible abuse of the person deprived of liberty.

This Institution also upholds the criterion that the prison physician who supervises the initial application of the cell isolation or physical restraint measure, or continuation thereof, must also take care of the state of the inmate in his/her cell or room where the measures are carried out, and take care that the physical restraint straps were placed correctly and do not cause injuries to the inmate due to incorrect application.

This position is based on situations detected on occasion of visits to prisons or processing dossiers, during which note was made that the facilities in which provisional isolation or physical restraint measures are carried out do not meet appropriate conditions, with the certainty that if the physician participating in said measures had had the obligation to express an opinion, said situations would not have occurred. A frequent complaint of civil servants is that they lack training regarding the proper use of these measures.

In the last few years, the Ombudsman Institution has been insisting to the Administration that **civil servants** working in prisons must be perfectly well **identified**. The inspection serviced dealt with this matter on occasions of the visits made in 2014. From the information received it is inferred that in two of the seven prisons visited the provisions contained in Instruction 1/2008, regarding the identification of civil servants, were not correctly implemented.

Although the Penitentiary Administration has acknowledged that the current identification system can be improved, at the end of 2015 it had not yet adopted any measure geared at replacing the identification system with another more functional system.

The Administration reported that in general terms, the physical restraint of persons deprived of liberty who are transferred in vehicles belonging to the State Security Forces consists of having their hands tied to their back, without prejudice to the situations in which it is advisable to have their hands tied in front.

The criterion upheld by this Institution is that in addition to producing situations of risk, the person de-

prived of liberty cannot react in case of sudden stops or maneuvers, which often cause pain in the joints and numbness of shoulders, arms and hands. For this reason, the Administration has been asked to assess the possibility of normalizing other means of restraint which, whilst ensuring the safety of driving, are not painful or possibly harmful for the persons deprived of liberty who are transported in this type of vehicle.

In respect to persons deprived of liberty who, following a transfer, wait to be assisted at hospitals outside a prison or of another nature, efforts must be made to avoid keeping them restrained with their hands tied behind their back, ensuring the security of the wait by means of appropriate measures.

A dossier regarding the need to have the Administration assess the effects, for a person with normal characteristics and psycho-physical conditions, of remaining immobile with his/her hands restrained in a small space for prolonged periods of time is currently being processed. The dossier involves persons who

are transferred between prisons on trips that on occasions can last several days, each of which involves up to seven hours of driving.

The Ombudsman has requested, as of yet to no avail, that the physicians dependent on the Ministry of the Interior prepare a general assessment of the effects, in particular physical effects, in connection with the functioning of the circulatory and nervous system arising from the a person remaining for long periods of time, sometimes even for consecutive days, in the kind of cells used in the vehicles for the transfer of inmates.

The Ombudsman Institution's criterion is that travelling between prisons must not be a distressing act and that the conditions of cells in vehicles intended for the transfer of persons deprived of liberty must be improved. However, on occasion of preparation of a new rule, this Institution's criterion was not taken into account, nor were technical-health reports requested regarding the conditions of said cells.

## Citizenship and Public Safety

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### The Institution made recommendations regarding the Citizen Security Law (*Ley de Seguridad Ciudadana*) which were accepted

**The Institution made recommendations regarding the Citizen Security Law in respect to the exercise of the fundamental rights of assembly and information, which were accepted. Furthermore, the Ombudsman has continued to carry out actions in defense of the victims of terrorism. In 2015, with the celebration of two electoral processes there were many complaints in connection with voting by mail abroad.**

#### Victims of terrorism

The Act on the Acknowledgement and Comprehensive Protection of Victims of Terrorism (*Ley de reconocimiento y protección integral a las víctimas del terrorismo*) establishes a quantitative distinction in the matter of compensations between victims whose attacks led to a judicial resolution and those which did not. If a terrorist attack was resolved by a judgment establishing civil liability arising from the crime, victims' families are entitled, in case of death, to a maximum compensation of 500,000 euros. If there is no judgment, the maximum amount is 250,000 euros. The number of terrorist crimes that have not been resolved by means of a judgment is calculated to be more than 300.

The Ombudsman made a Recommendation to the Ministry of the Interior to fully or progressively equate compensations for personal injuries on account of the State of victims of terrorism, irrespective of the existence of a judicial conviction judgment. The Recommendation was not accepted.

#### Right to vote

The largest number of complaints received in respect to electoral matters is related to the mechanism for appointing the members of the polling station and voting by mail.

In 2015 the two national electoral processes in Spain, namely the municipal and regional elections held on 24 May and the general elections of 20 December, gave rise to complaints of citizens whose fundamental right to vote had been violated: the municipal and autonomous community parliamentary elections held on 24 May and the general elections held on 20 December.

The majority of the complaints had to do with voting by mail from outside the country by citizens who are permanent residents overseas (*CERA* vote [Spanish abbreviation for Electoral Census of absent Spanish residents living abroad]). There were also some complaints from citizens residing temporarily outside Spain (referred to as *ERTA* vote). Both type

of complaints had to do with applications to vote and receipt of the documentation.

The system of applications to vote implies having to “apply” to the Administration in order to vote, as compared to the previous system in which the documentation was sent overseas ex officio by the Provincial Branches of the Electoral Census Office (*Delegaciones Provinciales de la Oficina del Censo Electoral*) corresponding to the elector’s district.

The Ombudsman Institution carried out actions geared at the Electoral Administration which resulted in the modification of the development of an electronic voter application procedure, intended to speed up the process.

The complaints related to voting by mail have to do with delays in receiving the electoral documentation. The law requires that said documentation must be sent by registered mail, a system which in some countries is basically non-existent.

This Institution had already carried out actions at one time, geared at the Ministry of the Interior, requesting that the voting procedure for Spanish residents overseas be modified to solve some problems it entailed. Even though different alternative solutions were considered, none seemed to offer the same level of guarantees as the current system. In fact, the Ministry has carried out studies in order to determine the feasibility of voting electronically, although lack of security and doubts regarding the secrecy of voting have caused the decision to be postponed.

According to the data of the Register of Spanish Citizens Living Abroad (*Padrón de Españoles Residentes en el Extranjero*), the number of persons with Spanish nationality living abroad was 2,183,043 on 1 January 2015. It is essential that all public authorities involved in this matter be aware of the problems these Spanish citizens have to exercise their fundamental right to vote.

## Organic law on citizen security

On 31 March 2015 Organic Law 4/2015, of 30 March, on the Protection of Citizen Security (*Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*) was published in the Spanish State Gazette (*Boletín Oficial del Estado*) and became effective on 1 July 2015.

A large number of organizations asked the Ombudsman Institution to lodge an appeal of unconstitutionality. The Institution resolved not to lodge an appeal, but it did make recommendations to the Secretary of State for Security, the Department of Interior of Autonomous Regional Government of Catalonia (*Departamento de Interior de la Generalitat de Cataluña*), the Department of Security of the Basque Government and the Department of the President’s Office, Justice and the Interior of the Regional Government of Navarre (*Departamento de Seguridad del Gobierno Vasco y al Departamento de Presidencia, Justicia e Interior de la Comunidad Foral de Navarra*):

1. To urgently draft instructions to implement the external body searches referred to in section 20.2 b) of Organic Law on Citizen Security.
2. To urgently draft instructions to guarantee the interpretation and application in the manner that is most favorable for full effectiveness of the fundamental rights of assembly and demonstration.
3. To urgently draft instructions to guarantee the interpretation and application in the manner that is most favorable for full effectiveness of freedom of expression, in respect to the fundamental right to information, of the serious infraction established in section 36.23 of the Law.

From the answers sent by the Secretary of State for Security, the Department of Interior of Autonomous Regional Government of Catalonia, the Department of Security of the Basque Government and the Department of the President’s Office, Justice and the Interior of the Regional Government of Navarre it is inferred that the said recommendations were accepted except in respect to “immediate referral to the competent court and public prosecutor’s office of the external body search formality, of its causes and of the identity of the agent who adopted it”. Nonetheless, said formalities are available for the judicial authority and the public prosecution in case a complaint is filed by a citizen.

## State security forces and citizen rights

The persons arrested by the National Police in Madrid are not brought before a judge once all the formalities of the police report have been performed.

Instead they are kept in the cells of the police headquarters until the end of the day, when they are taken in a police van to the Central Registry of Persons under Arrest (*Registro central de detenidos*), from where they are taken the next morning to the corresponding courts.

Bearing in mind the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and of article 17.2 of the Spanish Constitution, as well as the doctrine of the Constitutional Court regarding this matter, a Recommendation was made to modify the procedure followed by the different brigades and headquarters of the National Police in Madrid in order to **bring persons under arrest before the judicial authority**, so that the arrest does not last longer than what is strictly necessary in order to carry out the formalities that are required to draft the police report.

The Directorate General of the Police has reported that the National Police is in the position to strictly fulfill the obligation of immediately bringing persons under arrest before a judge, pointing out that it had requested a meeting of the Provincial Commission of the Judicial Police (*Comisión Provincial de la Policía Judicial*) to deal with this issue.

This Institution has addressed the President of the Madrid High Court, in his capacity as President of the Provincial Commission of the Judicial Police, to report regarding the plans in respect to this question.

In 2015 there were 12 complaints regarding alleged police abuse (in 2014 there were 9, in 2013, 21 and in 2012, 32) and 45 for incorrect treatment (the year before there were 67, in 2013, 56 and in 2012, 58). The **decrease of complaints due to abuse** is maintained and the number of complaints for incorrect treatment decreases.

This Institution believes that when the Administration is informed of conduct that is described as an offense by the Organic Law on the Disciplinary Regime of the National Police Corps (*Ley Orgánica del régimen disciplinario del Cuerpo Nacional de Policía*), the corresponding proceedings provided in said legislation should be initiated.

Incorrect behavior with citizens, non compliance of the rules regarding uniforms, lack of courtesy towards citizens in the exercise of their functions, abuse of authority, discrimination due to language, opinion or

any other personal or social condition or circumstance should give rise to disciplinary proceedings and to performing a reserved investigation. Even though there is no specific regulation regarding how it should be performed, said reserved investigation should not be carried out using the procedure provided for processing complaints and suggestions.

For this reason, a Recommendation was sent to the Directorate General of the Police to have appropriate instructions issued regarding initiating disciplinary procedures or reserved investigations when a citizen presents a complaint regarding police conduct liable of disciplinary measures, even if said complaint is recorded in the complaint and suggestion book, and to avoid having said complaints filed without obtaining the appropriate information or without documenting the actions carried out.

In the ex officio actions taken by this Institution in connection with suicides and suicide attempts by persons under arrest in facilities of the National Police and Civil Guard, the Ombudsman noted that the security measures applied to persons under arrest in police facilities are still insufficient, in which case a prevention program could entail significant progress to avoid suicidal behavior of persons under arrest.

Amongst other matters, the Ombudsman considers that more attention should be paid to the training of the agents in charge of guarding services to enable them to detect situations of special risk. In addition a protocol of actions should be drafted, including the possibility of referrals in case of medical or psychiatric emergencies.

A Recommendation was made to the Office of the Secretary of State for Security to modify Instruction 12/2007 by including a section containing the rules and directives to be followed by the State Security Forces in charge of guarding persons under arrest in order to minimize the risk that the latter may incur in self-injurious behavior.

The Office of the Secretary of State for Security reported that a working group had been constituted to draft a protocol for guarding persons under arrest in police facilities that will implement the modification of Instruction 12/2007.

Complaints continued to be received from citizens in connection with the difficulties involved in the **identification of police agents** and with the small number of disciplinary procedures carried out due

to non-compliance with the obligation of wearing the personal identification number.

The Institution made a Recommendation to the Directorate General of the National Police to modify the criterion to penalize non-compliance by police agents of the obligation to wear their uniform garments, in a visible spot, in particular when the circumstances enable classifying the behavior as serious. Said Recommendation was accepted.

On noting that some Civil Guard agents did not comply with the obligation of properly identifying themselves, a Recommendation was made to the General Directorate of the Civil Guard to adopt appropriate measures in that respect. Said Recommendation was accepted.

## Alcohol consumption in outdoor public areas

Many citizens complained to the Ombudsman Institution for being fined by the Madrid City Council for consuming alcohol in outdoor public areas without having been informed of the initiation of the fine-charging procedure. The Municipal Police agents had identified the citizens that were fined but had not given them a copy of the inspection report, so they had not been able to file allegations or exercise the option of having a reduction of the fine.

It was noted that in all 73 cases analyzed the signature of the persons against whom reports had been filed had not signed the inspection report, had not submitted allegations and none had exercised the right to a reduction of 40 % of the fine. It was thus inferred that the copies of the inspection reports were not given to the persons who were fined.

This conclusion is reinforced by the fact that of the 29 citizens who appealed the fine resolutions, none declared having received the report and 24 of them expressly claimed that they had not been notified thereof.

Irrespective of the disciplinary liability in which the agents may incur if they do not give a copy of the inspection reports to the citizens against whom reports are filed, it is essential to modify the procedure followed in processing the fines in order to safeguard the rights and guarantees expressly provided in the rules that regulate said procedures, in other

words the possibility of submitting allegations and of exercising the right to a reduction of 40 % of the amount of the fine.

For this reason, a Recommendation was made to the Madrid City Council to serve notice at the home of the interested party at the beginning of the fine-charging process due to consumption of alcohol in outdoor public areas, and a suggestion to revoke the fine resolutions issued in the procedures analyzed, given that none of them contained evidence that the inspection report had been notified to the interested parties.

The Madrid City Council has communicated that the administrative services of Madrid Healthcare, in collaboration with other municipal computing services, were going to take, in the near future, the necessary measures to notify at the home of interested parties the beginning of fine-charging procedures as a result of alcohol consumption in outdoor public areas.

## Traffic

Complaints in connection with the traffic fine procedure have decreased noticeably with respect to the previous year (24.4 %). In 2015 there were 421 complaints about this matter, as compared to 557 in 2014.

One of the problems, which the largest number of complaints is made, has to do with notifications made as part of the fine procedure.

With all members of a family employed, notifications, which are made within these working hours, are often rejected (due to absence, expiry...). In a large percentage of cases, the notification cannot take place, and as of that moment the general systems for publicity become effective (and present additional problems).

In respect to notifications, it must be recalled that the percentage of citizens who make use of the Electronic Traffic Directorate (*Dirección Electrónica Vial*) is very low. One of the reasons is that citizens are probably unaware of the existence of said instrument.

For this reason, the Directorate General for Traffic was asked to consider the possibility of carrying out an advertisement campaign of the Electronic Traffic Directorate geared at its dissemination and fomenting its use by a larger percentage of the population which for the time being is unaware of its existence.

Another problem that provokes a great deal of contesting by citizens is the failure by the bodies that levy fines to respond to appeals for reversal submitted.

The Administration has the obligation to adopt a resolution in all cases, irrespective of the other legal effects that mere passage of time can produce (as for example expiry, positive or negative silence, etcetera).

Once again, it is necessary to insist on the idea that fine-charging bodies must strictly respect citizens' guarantees in the fine-charging process.

According to the last Global Status Report on Road Safety (*Informe Mundial sobre Seguridad Vial*), prepared by the World Health Organization (WHO), every year 1,250,000 die all over the world as a result of traffic accidents. In Spain, in 2015 the figures in respect to **road accidents** are similar to last year's. They thus do not seem to reflect the downward trend of statistics of previous

years, and continue to be unacceptable, despite the praiseworthy and commendable efforts of the competent administrations.

New regulations establish the obligation to use economic fines to finance road security, the prevention of road accidents and assistance for victims. In addition, the law to modify the system for the assessment of injuries and detriment caused to persons in traffic accidents (in force since 1 January 2016), improves the treatment of remedy for persons injured in traffic accidents, and establishes a compensation system adapted to the current reality.

There is no doubt that all of this entails very significant progress, bearing in mind that up to now the compensatory scales that were applied did not correspond to reality. In spite of this, Spain continues to be far behind European standards. The vulnerability of traffic accident victims requires that much greater efforts be made in this matter. Road safety must be a political priority.

## Migration

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### The Ombudsman Institution favors a common and coordinated EU response to deal with the refugee crisis

**The refugee crisis affecting Europe has marked the Institution's work in the field of migration. The Ombudsman has demanded that the European Union respond in a common and coordinated manner to deal with this crisis. The Institution has also presented a study on the situation of Spanish prisoners abroad.**

#### Spanish prisoners abroad

In 2015 a study on the situation of Spanish prisoners abroad was presented. The study analyzes the complaints of this group and their families, and explains in detail the situation in Peru, Columbia, Morocco, Venezuela, Bolivia, Ecuador, Panama, Brazil and Greece. It also reports the deficiencies at many of the prisons, economic aid to Spanish detainees abroad, and the difficulties encountered in processing the transfer dossiers in order to serve a sentence in Spain.

In order to carry out the study, process the complaints and visit the prisons overseas, the Ombudsman Institution has had the collaboration of Spanish consular services and Ombudsman Institutions in the countries in which there are Spanish prisoners.

At the end of 2015 there were 1,549 Spanish citizens who were prisoners abroad. The largest number consisted of 302 Spaniards deprived of liberty in Peru, most of whom faced considerable delays in the execution of their transfer dossiers.

In those cases in which special vulnerability was detected, our consular representatives were asked to personally monitor the situation of each affected

prisoner in order to ensure that their basic needs were covered.

During 2015, on occasion of the international trips taken to participate in symposiums of interest for the Institution, the Ombudsman, first deputy and personnel of the Institution took advantage to visit Spanish prisoners at penitentiary centers in Portugal, Columbia, Brazil, Argentina and Albania. Following each one of these visits, meetings were held with the Spanish consular services and the Ombudsman Institutions of each country in order to coordinate actions that could improve the living conditions in prisons or speed up the processing of the transfer dossiers.

The Institution continued to collaborate with the Foundation of the General Council of Spanish Lawyers (*Fundación de la Abogacía Española*) to promote in Ecuador the application to Spanish prisoners of the reduction of sentences for drug trafficking approved in that country's Criminal Code.

#### Entry to national territory

In 2015 the facilities prepared at the **Beni Enzar Border Post** (Melilla) for the presentation and pro-

cessing of asylum petitions were visited again on two occasions. In the course of the first visit note was made of the work performed by the civil servants of the National Police Corps, which enabled handling 2,082 asylum petitions during the first four months of 2015. Likewise, note was made, with concern, of the large number of families with children and of the growing number of **unaccompanied minors** arriving at the border post to request asylum and the inadequate facilities for applicants who had to wait while their applications were formalized.

The Ombudsman reported the situation to the Office of the Secretary General for Immigration and Migration (*Secretaría General de Inmigración y Emigración*) and proposed that the presence of a humanitarian organization be arranged urgently to provide support to the work of the police from the first moment. The Office answered that the attention given to applicants was considered sufficient. It also informed that the Temporary Accommodation Center for Immigrants (*Centro de Estancia Temporal de Inmigrantes-CETI*) provided food for applicants while their asylum applications were being processed and formalized, and that toiletries, personal necessities and medicines were provided at the Temporary Accommodation Center for Immigrants to which applicants were referred.

These facilities were visited again in the month of September, when note was made that the presence of minors was not exceptional. After examining the records, it was verified that **applications by women and children comprised 55 % of the ones presented** in 2015. A first visit was made in the morning and the second one at night. On both occasions note was made that the waiting room refrigerator was empty and that the children in the room at that time were not accompanied by an adult while their parents were formalizing the application for asylum.

This Institution confirmed that the applicants needed the specialized assistance of social services, considering the large number of minors arriving at the border post, the situation of anguish of persons arriving after such a long journey, the large number of persons with medical needs, and the frequent presence of unaccompanied minors. In consequence, a Recommendation was made to **provide social services assistance to asylum-seekers** at the border post. The Office of the Secretary General for Immi-

gration and Migration has rejected this Recommendation. The Ombudsman Institution will reiterate the content of this Recommendation.

It was also considered necessary to inform the Directorate General for Domestic Policy (*Dirección General de Política Interior*) of the need to **speed up the formalization and processing of applications for asylum** at the Beni Enzar Border Post (Melilla). In the course of the first visit the agency was asked to assess the possibility of temporarily transferring personnel from the Office of Refuge and Asylum (*Oficina de Asilo y Refugio-OAR*) to Melilla, but the answer was negative. During the second visit, we learned that on arriving at the border post, applicants were given an appointment to formalize the petition a few days later, and in the meantime were expected to go to the Temporary Accommodation Center for Immigrants and return to the border post the day of the appointment. The reason for this procedure was lack of sufficient personnel and because the border post was not prepared for overnight stays.

A Recommendation was made to temporarily assign personnel from the Office of Refuge and Asylum to directly manage the formalization and processing of international protection applications. The Directorate General for Domestic Policy responded that said transfer was not possible, that the Office of Refuge and Asylum itself needed reinforcements and that efforts were being made to resolve petitions made within the established deadlines. The Institution will continue to monitor the situation.

## Entry of foreigners through unauthorized border posts

Several citizens and social entities addressed the Ombudsman Institution requesting that an appeal for unconstitutionality be lodged against the First Final Provision of Law 4/2015, of 30 March, for the Protection of Citizen Security. The new regulation modified Organic Law 4/2000, of 11 January, on the Rights and Freedoms of Foreigners in Spain and their Social Integration (*Ley Orgánica, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*) by adding a provision that established a special regime for Ceuta and Melilla.

The Ombudsman Institution did not lodge an appeal

of unconstitutionality but instead made two Recommendations.

The first referred to the need to urgently develop the new procedure, pursuant to this regulatory provision. It was recommended that the said procedure should contemplate the need to issue an administrative resolution, with the assistance of a lawyer and an interpreter, and the indication of the appeals that could be lodged against said resolution.

The second Recommendation focused on the need to have in the procedure a record in writing that the foreigner was given information regarding international protection and that the needs for international protection were verified -by means of an appropriate mechanism of identification and referral-, that the applicant is not a minor and regarding the concurrence of indications that the applicant could be the victim of trafficking in human beings.

The Recommendations were rejected. This Institution does not share the Ministry of the Interior's position, as a result of which the actions concluded with differences of criteria.

## Temporary Accommodation Center for Immigrants (CETI) of Melilla

In 2015 the Office of the Secretary General for Immigration and Migration reported that due to the volume of occupancy of the Temporary Accommodation Centers for Immigrants, efforts were being made to increase the number of transfers and that the center's conditions of habitability were being improved, with reinforcement of personnel and material resources. The Office also informed that the childcare service had been suspended due to lack of personnel, that minors of school age were enrolled in schools, to the extent that this was possible, and that children who were not of school age were in the care of their parents.

In 2015 the Temporary Accommodation Center for Immigrants was visited on two occasions. In the course of the first visit the efforts to speed up the transfers of residents of the Temporary Accommodation Center for Immigrants to the mainland were taken into account. Note was made that the **overcrowding** of the center did not appear to have a short-term solution.

On the day of this visit, there were 1,509 persons accommodated at the facilities. In consequence, the Office of the Secretary General for Immigration and Migration was reminded of the need to urgently carry out enlargement works to increase the center's capacity.

A change was noted in the profile of residents at the center, which passed from that of young men from Sub-Saharan Africa to family groups from Syria with international protection needs. The number of minors residing at the center on the day of the visit (530) was in itself greater than the center's theoretical capacity, which is for 480 persons. The **need to implement the announced reinforcement of personnel** was reiterated. In addition, note was made that the flexibility of transfers to the mainland of family groups made effective schooling of children difficult, as a result of which the Office of the Secretary General for Immigration and Migration was informed of the need to urgently prepare, in collaboration with the Ministry of Education, a specific plan of activities for these minors.

In September the center was visited again. The day of that visit there were 1,700 persons, including more than 500 minors. Note was made that even though **weekly transfers were made to the mainland**, these were insufficient, bearing in mind the rate of occupancy and the large number of persons requesting international protection, minors and particularly vulnerable persons. It was verified that persons with severe physical disabilities resided at the center and that it was impossible to give them specialized attention due to overcrowding at the center. A Recommendation was made of the Office of the Secretary General for Immigration and Migration to urgently transfer to the mainland, in collaboration with entities specialized in humanitarian aid, all families with minors as well as persons with disabilities.

The Ministry of Education was also informed of the situation of minors, in particular in respect to the deficiencies regarding activities and the lack of safe areas for these minors. Reference was also made to the fact that the profile of these minors, the majority of whom are Syrian nationals who do not know Spanish and have serious traumas and deficiencies as a result of the experiences they have had since leaving their country, makes their normal schooling

quite difficult. For this reason, it was recommended that a plan be designed to program and attend to their specific educational needs.

## Unaccompanied underage foreign nationals

In respect to **the age assessment** of foreigners whose status as minors cannot be established with certainty, the Institution has continued to monitor with different Administrations compliance of the 41 Recommendations made by the Ombudsman in the monographic report entitled *Children or Adults? Age Assessment Procedures*, following publication of the Framework Protocol for Unaccompanied Underage Foreign Nationals (*Protocolo Marco de Menores Extranjeros No Acompañados*) which contains most of the recommendations.

In last year's annual report mention was made of the Supreme Court doctrine which states that an immigrant whose passport or identity document verifies their status as being underage cannot be considered an undocumented foreigner and subjected to additional age assessment tests, as it is not appropriate to question -without reasonable justification- the validity of the passport. In 2015 nine other resolutions were issued by the Supreme Court along the same lines.

Despite this doctrine based on jurisprudence, complaints continue to be filed regarding initiation of age assessment proceedings of minors who have a passport or other documents that substantiate they are underage.

In connection with termination of custody and residency authorization for underage unaccompanied foreign nationals, as of the effective date of the new wording of article 172 of the Civil Code, actions by juvenile protection entities that had traditionally been reported by this Institution are now legally acknowledged. The next annual report will contain an assessment of the impact this new regulation may have on the protection of underage unaccompanied foreign nationals.

## Visits to juvenile centers

In September a visit was made to the **Center for Minors Fuerte de la Purísima in Melilla**. The Institu-

tion sent its conclusions to the Regional Department for Social Welfare of the Autonomous City (*Consejería de Bienestar Social de la Ciudad Autónoma*), to the Government Delegation (*Delegación del Gobierno*) and to the Office of the Attorney General (*Fiscalía General*). The Ombudsman highlights the high level of occupancy of the center, way above its maximum level and the delays in the age assessment of minors in the event they have no documents, as well as the need to improve the facilities (showers, bathrooms, bad odors of the sewer network), the requirement that caretakers and educators must not have criminal records, the need to implement social intervention programs with the minors who stay overnight in the area of the Ciudadela to take them back to the center, and the difficulties detected for normal schooling of the minors.

## Immigrant detention centers (CIE)

In 2015, the Ombudsman Institution, in its capacity as the National Preventive Mechanism against Torture (NPM) visited the immigrant detention center (*Centro de internamiento de extranjeros-CIE*) of Algeciras and its facilities in Tarifa on two occasions. The multidisciplinary visit (with a specialist in legal and forensic medicine) to the latter concluded the visits to all the immigrant detention centers.

The structural and operational changes that affect the immigrant detention centers following the date on which the Operational and Internal System Regulations became effective in these centers are currently being monitored.

The conclusions from these visits as well as the resolutions drawn up afterwards may be consulted in the 2015 NPM annual report.

## Victims of human trafficking

The 2014 report provided information regarding the Recommendation made to the Department for Social Affairs of the Community of Madrid (*Consejería de Asuntos Sociales de la Comunidad de Madrid*) and the Central Department of Immigration and Border (*Comisaría General de Fronteras*) to foment, in coordination with the Office of the Attorney General, a **Protocol for Specific Action** in the event signs of human trafficking involving minors are detected.

The Directorate General for Services for Families and Children (*Dirección General de Servicios para la Familia y la Infancia*) of the Ministry of Health, Social Services and Equality (*Ministerio de Sanidad, Servicios Sociales e Igualdad*) plans to create a working group to draft a framework Protocol for the **detection, identification, assistance and protection of minors victims of human trafficking**, a Recommendation made by the Ombudsman Institution in its study devoted to the trafficking of human beings in Spain (2012).

Actions for the correct identification of minors of a young age who arrive in rubber boats accompanied by adults, and who show indications of trafficking in human beings, continue to be monitored. It has been observed that after being referred to a humanitarian aid center, the majority abandon the center several days later, and the current whereabouts of a large number of these minors is not known.

The Ombudsman has recommended that the Directorate General of the Police should implement appropriate actions to enable sharing with foreign police authorities information regarding minors who could be victims of human trafficking for the purpose of finding them and to avoid the situations of risk and exploitation in which they may find themselves.

## Consular offices

Once again, this year mention must be made of the number of complaints lodged due to refusal of visas for family reunification requested by spouses of foreign residents, because consular bodies considered that the marriages were not legitimate.

Multiple actions have been carried out in connection with the limited human and material resources of some of these consular bodies to perform the functions with which they have been entrusted.

## Residence permit procedures

There are constant complaints by non-EU citizens, spouses, ascendants and descendants of Spanish nationals regarding the difficulties to obtain or renew their residence permits. Recommendations were made to the Office of the Secretary General for Immigration and Migration to issue instructions to **eliminate the requirements of economic re-**

**quirements and health insurance** for spouses and ascendants of Spaniards. The Recommendations were not accepted.

There were also numerous interventions as a result of the refusal of residence applications for under-age children of legal residents, for not reducing the amount required in order to consider that there existed enough economic resources for the family reunification. In these cases, most of the suggestions made were accepted.

## Asylum

Last year's report expressed the Ombudsman's concern regarding the functioning of the asylum system in Spain and announced that a study would be carried out on the matter, focusing both on access to the procedure and the processing of the applications as well as the assistance and accommodation provided to the persons requesting international protection. This Institution has had to postpone presentation of the study in view of the existing refugee crisis, which has deeply affected the functioning of the asylum system in Spain.

In 2015 an **improvement in access to the procedure** was noted after applications for international protection started to be formalized at the Beni Enzar Border Post (Melilla). This measure, which is very positively valued, was not accompanied by sufficient effective improvements in material and personnel resources.

The statistics on the profile of applicants who have formalized their application at the border post in Melilla reveal that Syrians are the group that has benefited the most from this initiative, although it was also sporadically used by citizens of other countries. Applicants of Syrian nationality have stated that there are many difficulties in accessing Spanish territory and that they have to remain on the other side of the border longer than they would like. There are many families who have had to separate in order to reach the Spanish border post. However, in spite of this, persons of Sub-Saharan origin are the ones that face the greatest difficulties of access, since they cannot enter through the border posts of Ceuta and Melilla and thus cannot apply for asylum.

Difficulties of access have also been detected in the procedure at the immigrant detention center of Ma-

drid. In November 2015, the Central Department of Immigration and Borders was reminded of their legal obligation to enable detained immigrants to exercise the right to apply for international protection, after having detected that a citizen had been expelled without processing his asylum application, claiming that the petition had not reached the immigrant detention center.

A significant part of the complaints received reported the considerable delays in the appointments to present the application for international protections, at the Office of Asylum and Refuge (*Oficina de Asilo y Refugio*) in Madrid as well as in other cities, in particular Valencia and Malaga. The persons who went to these institutions reported delays of at least four months, delays that were confirmed by the Administration itself, which justified the delays on the basis of the increase of applications as compared to previous years, and announced measures to reinforce personnel to solve the problem.

The presentation of the application grants the applicant essential rights, including the right to not be expelled, taken back or returned until their status has been resolved, as well as access to social benefits. In consequence, delays in the presentation of the application leaves the applicant without these rights and places him/her in a situation of extreme vulnerability, since he/she risks being detained and even expelled for not having valid documentation as an applicant.

The situation of **delays in appointments** given, and therefore the delays in presentation of the application, was the cause for the Recommendation made to the Central Department of Immigration and Borders and the Directorate General for Domestic Policy to urgently put in place an immediate recording system in all police registers of all appointments given to formalize applications. It was also recommended that instructions be given to police civil servants to consult said registers and thus avoid opening a disciplinary process entailing violation of the principle of non-refoulement and placing the applicants in a situation of risk.

Last year reference was made to the delays in the resolution of applications for extending asylum to the family and for family reunification. Complaints received highlighted the difficulties to reunite families.

The Administration justified its actions in these cases on the grounds that the Asylum Regulation

(*Reglamento de Asilo*) is needed, but which have not yet been published even though six years have passed since enactment of the Asylum Law (*Ley de Asilo*), which established a six-month deadline for implementation of said regulation. At present, asylum legislation suffers from many deficiencies: in addition to not having regulations implementing the law, incorporation of the Directives that comprise the so-called European “asylum package” is pending.

At the end of 2015, a Recommendation was made to the Directorate General for Spaniards Abroad and Consular and Migratory Affairs (*Dirección General de Españoles en el Exterior y Asuntos Consulares y Migratorios*) to urgently draft, in coordination with the Ministry of the Interior, a protocol of actions to facilitate access to Spain for families of citizens who already benefit from international protection, without having to wait for the resolution of the process to extend asylum to the family.

The increase of applicants for international protection has caused a collapse of the resources allocated to the Spanish reception system. During a good part of 2015, the system lacked the capacity to respond in the rapid and flexible manner required by the situation, which resulted in some refugees having to spend days in the street or accommodated in places that were not adequate in view of their conditions.

Some complaints received highlighted that once the applications of some asylum-seekers arriving through the Adolfo Suárez Madrid-Barajas airport had been accepted, they were referred to the *Samur Social* services for allocation of **accommodations**. These resources, which were not intended for asylum-seekers, were full, and applicants were informed that they could stay one night, even though beds were not always available.

Some of the complaints indicated that after spending days trying to find a place to stay, without success, and having to sleep in the street, the asylum-seekers had been accepted in a hostel where, amongst other conditions, they could only access during night since it was a center for the homeless. In these cases the interested parties had nowhere to go during the day, did not have any food allowance, or health card since they did not have accommodations and thus could not register in the municipal census.

The Office of the Secretary General for Immigration and Migration responded that in view of the unexpect-

ed and urgent need to attend to the large number of asylum-seekers and refugees, a Royal Decree had been approved regulating the direct award of a grant to three non-governmental organizations for **the extraordinary increase of the resources of the system of accommodation** and integration of applicants for and beneficiaries of international protection. It also pointed out that the Government was making efforts to enhance and adapt the system, as indicated by the increase of the budget for 2015 and 2016.

The characteristics of the flow of asylum-seekers have led to difficulties regarding reception at different levels. The decision of asylum-seekers to continue their voyage to the north of Europe, even though they originally entered through Spain, resulted in their being returned to Spain from other countries, in application of the Dublin Convention. However, management of accommodation and reception of asylum-seekers in these cases also suffered from deficiencies. Complaints received highlighted that

on arriving to Spanish territory, the interested parties were not taken to reception centers. This lack of protection has led this Institution to initiate actions to request information from the Office of the Secretary General for Immigration and Migration and the Directorate General for Domestic Policy regarding the mechanisms of coordination that currently exist to provide assistance to these asylum-seekers.

In connection with underage foreign nationals requesting international protection actions were taken to check whether they were properly documented in respect to their double condition as minors subject to guardianship and asylum-seekers.

Actions initiated on occasion of a complaint mentioned in last year's report, regarding compatibility of human trafficking and international protection procedures have also finalized. In this case, the right of asylum was granted to the interested party, thus becoming one of the **six cases of asylum granted to victims of trafficking since 2009**.

## Equal treatment

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### The RAE modifies the definitions of “gypsy” and “gypsy trick” after accepting a Recommendation made by the Institution

The **RAE** [abbreviation in Spanish for the Spanish Royal Academy] accepted a Recommendation and incorporated a usage note pointing out the “offensive or discriminatory” sense of the definitions “swindler” and “racket” for the words “gypsy” (“*gitano*”) and “gypsy trick” (“*gitanada*”). In addition, the Ombudsman Institution detected discrimination of underage foreign and non-native born Spanish football players as a result of a newsletter of the Spanish Football Federation, and forwarded its contents to the Office of the Public Prosecutor.

The Ombudsman Institution has continued with the actions taken to learn what measures were adopted in respect to the **concentration of Roma students** in certain educational centers. The Office of the Secretary of State for Social Services and Equality reported the launch of a study on the possible segregation of Roma students.

Ex officio action was taken to request from the Directorate General for Territorial Assessment and Cooperation (*Dirección General de Evaluación y Cooperación Territorial*) information regarding the measures planned for the early detection of difficulties that lead young Roma students to drop out of school.

The Ombudsman Institution also continued actions taken with the **Royal Academy of the Spanish Language** geared at the modification of the definitions of the terms “gypsy trick” and “gypsy” in the 23<sup>rd</sup> edition of the Dictionary of the Royal Academy (*Diccionario de la Real Academia*). Two Recommendations were made to eliminate the term “racket” (“*trapacería*”) from the definition of “gypsy trick” (“*gitanada*”), as well as the fifth definition of “swindler” (“*trapacero*”) from the definition of “gypsy” (“*gitano*”).

In case the Recommendation was not accepted, a second Recommendation was made to include the abbreviations “negat.” and/or “derog.” (“despect.”) in the terms “racket” and “swindler” used to define the words “gypsy trick” and “gypsy”, respectively.

The last Recommendation was accepted, and in October 2015 the Royal Academy of the Spanish Language added a usage note to the electronic version of the Dictionary of the Royal Academy highlighting the “offensive and discriminatory” meaning of the definitions “swindler” and “racket” for the words “gypsy” and “gypsy trick”.

Following the death of a citizen in Madrid in a confrontation of groups of fans of two different football clubs, the Ombudsman Institution intervened ex officio before the State Commission against **Violence, Racism, Xenophobia and Intolerance in Sport** (*Comisión Estatal contra la violencia, el racismo, la xenofobia y la intolerancia en el deporte*) requesting information regarding the proposals for investigations regarding disciplinary dossiers arising from the incident and the measures that might have been adopted by the State Commission and the Observatory against Violence, Racism, Xenophobia

and Intolerance in Sport to prevent violent behavior and acts of incitement to hatred during the last year.

The State Commission proposed disciplinary action against the 88 persons identified as participants in the fight and an economic fine against one of the football clubs involved due to the deficient handling of the book of register of fans and for having provided support to the group of fans who participated in the fight.

In respect to the measures adopted by the State Commission to prevent violent behavior, recommendations and warnings were made to the clubs in respect to allowing groups of fans to have independent loud speakers, which was considered irregular; to the Professional Football League in respect to the separation of fans when tickets are bought online, and the Royal Spanish Football Federation (*Real Federación Española de Fútbol*), so that teams show up and access stadiums as early as possible before a game to avoid coinciding with crowds of fans.

In addition, the National Sports Council (*Consejo Superior de Deportes-CSD*) has launched the email address '[noalracismo@csd.gob.es](mailto:noalracismo@csd.gob.es)' for citizens who wish to report racist, xenophobic or violent incidents in the field of sport for which they have evidence.

In 2015 the Ministry of Justice accepted two Recommendations to eliminate the obstacles that affect legal foreign residents with mental disabilities who apply for Spanish nationality through residence.

On 25 June the modification of the General Law on the Rights of Persons with Disabilities (*Ley General de derechos de las personas con discapacidad*) was published in the State Gazette (*Boletín Oficial del Estado-BOE*), which consisted of the addition of another provision stating that “**persons with disabilities shall have access to the Spanish nationality in equal conditions**”. It highlights that “any rule that causes direct or indirect discrimination to the access of persons to nationality through residence due to their disabilities shall be null and void”. Furthermore, it points out that in proceedings to acquire Spanish nationality, persons with disabilities will benefit from the necessary support and adjustments, should they need them, to ensure the effective exercise of this guarantee of equality.

One of the most noteworthy actions was carried out in respect to the Central Department of Immigration

and Borders, which was asked to substitute the full proper name of citizens of the European Union with their initials on the reverse of the residence cards of spouses of **same sex couples**.

Note had been made that homosexual spouses of European Union citizens suffered degrading treatment and discriminatory attitudes in their countries of origin, where homosexuality was not socially accepted or legally permitted, when they showed their national authorities the residence card as a family member of an EU citizen.

The Central Department of Immigration accepted the request and instructed that the identification cards of foreigners should only contain the Foreigner Identification Number (*NIE*) or National Identity Document (*DNI*) of the person with whom he or she has family ties, is married or has some other emotional relationship.

In respect to violent physical aggressions suffered by persons due to their **sexual orientation**, an ex officio action was launched to obtain information regarding the physical aggressions suffered by a homosexual person in Alcala de Henares (Madrid). The Office of the Attorney General was asked for information regarding the proceedings and investigation formalities in connection with the homophobic events and the Directorate General of the Police was asked for the police reports.

Family Associations of **Transsexual Minors** addressed the Ombudsman Institution to highlight the disparity of criteria upheld by civil registries in resolving applications for the rectification in registers of the proper name habitually used by the minor in cases of transsexual minors.

These minors request a **change of the name** with which they were registered in the Civil Registry, which does not correspond to the sexual identity that they feel personally and show socially. The public identification with the name that is registered in discrepancy with the name that reflects their identity provokes in minors uneasiness, which can be detrimental for their personal development.

The Office of the Secretary of State for Justice (*Secretaría de Estado de Justicia*) was asked to assess the suitability of issuing instructions to facilitate the rectification of the proper name of minors so that it was not discordant with their gender identity and to guarantee the superior interest of minors, legal requirements and those of general interest.

Another issue of relevance was the possible discrimination suffered by foreign minors to access to different **regional football federations**. One of the complaints received explained the limitations imposed on foreign minors to access registration in the Football Federation of Castile and Leon (*Federacion de Castilla y León de Fútbol*). Actions were taken at the Royal Spanish Federation of Football and before the National Sports Council. At present, actions are still underway at the Regional Department for Culture and Tourism of the Autonomous Community Government of Castile and Leon (*Consejería de Cultura y Turismo Junta de Castilla y León*), to which the Football Federation of Castile and Leon is accountable.

The discrimination suffered by underage foreign and non-native born Spanish football players was also detected in other autonomous communities. On occasion of several complaints regarding the contents of Newsletter number 37 of the Royal Spanish Football Federation, which approves registration of foreign and non-native born Spanish football players under the age of 10, the Ombudsman Institution forwarded the newsletter to the Office of the Attorney General to be assessed, on noting that the minimum required documentation to register players under the age of 10 in football clubs could be detrimental to the rights of the minors, both Spanish and foreign, which are guaranteed in our legal system.

## Education

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### The Institution calls for a broad educational agreement in order to achieve a stable and flexible system

**The Ombudsman considers to be necessary a broad agreement providing the education system with stability and flexibility. The said agreement would need to be drawn up concerning the basic structural characteristics of the system, so as to facilitate the adjustment and training of teachers, adaptation of facilities, updating of didactic and pedagogic material, launching of new training and learning processes and access to the necessary economic resources.**

#### Non-university education

Although on the whole there is sufficient supply of school places, shortages continue to arise at certain levels of education or in certain towns. The Institution undertook action after complaints were received concerning the **insufficient number of places** for second-year pre-school education in the neighborhood of Arcosur de Zaragoza and the considerable distance from the closest schools. The Department of Education, Universities, Culture and Sport of the Provincial Government of Aragon has confirmed construction projects for two new public schools in the neighborhood. The Institution foresees the continuation of its actions in order to find out about the existing plans with respect to the construction and availability of the second of the planned centers, about which the Department of Education has not provided precise information.

Another intervention undertaken concerned the sole existing public school in the town of Rafelbunyol (Valencia), whose facilities are currently found to hold a number of students far greater than that existing at the time of construction. The Department of Education, Research, Culture and Sports of the

Autonomous Government of Valencia has been informed of the discomfort that has arisen in the school community concerning overcrowding suffered by the school, due to the problems this causes and the noncompliance with regulations governing minimum requirements in schools. The Department has not submitted the information requested for the verification of the existing situation, which appears to worsen year after year, nor has it provided information concerning existing plans for the construction of the new school. The execution of the said action does not appear to be foreseen in the short term, such that the installation of prefabricated classrooms in the school area has not been ruled out. For this reason, at the time of writing this report requests were made to the Department for the provision of new information on these issues.

The insufficient supply of school places in certain areas compels educational institutions to turn down admission requests made by a significant number of parents. This has been confirmed by families who have spoken to this Institution as regards six public and private state-subsidized schools in the area of Hortaleza-Sanchinarro-Valdefuentes, in Madrid.

Each of these schools has been compelled to turn down an average of 20 and 30 applications for the 2015-16 school year submitted for students residing in the area, due to their being authorized for a lower number of school places than that requested.

After the inspection carried out by the Ombudsman Institution, the Madrid educational Public Administration confirmed the adoption of measures in line with that suggested by the claimants, which has allowed for the assignation of places for all students participating in the standard admissions process for the area or neighborhood where their families reside.

The Institution also carried out inspections with the Autonomous Government of Andalucía Department of Education (*Consejería de Educación de la Junta de Andalucía*) due to the inadequate state of **facilities** at the high school in the town of Retamar (Almería), such as the installation of classrooms in prefabricated buildings and the lack of required facilities such as a gymnasium and a library.

It is the opinion of the Ombudsman Institution that the provisional nature of those facilities meant for educational use, or the fact that their use responds to demands put forth by the parents of students, does not exempt the competent educational administration from complying with the requirements established for the regulation of conditions that school buildings and facilities must meet.

The insufficient capacity of facilities at the El Quiñón Center of Preschool and Primary Education (*Centro de Educación Infantil y Primaria-CEIP*) in Seseña (Toledo) and the teaching of a considerable part of its students in prefabricated classrooms has been the object of inspections with the Autonomous Community Government of Castile-La Manche (*Junta de Comunidades de Castilla-La Mancha*) Department of Education, Culture and Sports (*Consejería de Educación, Cultura y Deportes*), which has been requested to provide information for ascertainment of the school's condition and the initiatives adopted to expand, if necessary, the capacity of its facilities. The Ombudsman Institution holds the opinion that it is imperative to design and construct facilities for the school as required by the volume of demand in the neighborhood.

The delay experienced in the execution of construction work for public elementary and secondary

schools in a significant number of cases has been the cause for an ex officio investigation with the Department of Education, Youth and Sports for the Autonomous Community of Madrid. At the beginning of the 2015-16 school year, construction work had still not been completed for facilities at 5 of the 13 schools in the region for which, according to information provided by the Department itself, school activities were scheduled to begin at that time.

The ex officio investigation centered on the confirmation of information according to which the completion of the construction work has been delayed, in some cases, until the 2016-17 school year. If confirmed, this would signify the prolongation, at least for the duration of the current school year, of the inadequate learning conditions presently experienced by children at these schools.

The budgetary restrictions of recent years have given rise to a reduction in the **assistance** provided to families for coping with the costs generated by education. It is desirable that the constitutional provision of free basic education be extended to other educational levels and not only to schooling in itself but also to all of the means and services inherent to education. Textbooks, teaching material and services such as school dining halls and transport, among others, have been the focus of complaints concerning absent or limited funding. To the extent to which budgetary possibilities allow, and with preferential status, additional efforts to guarantee full and effective access to education for everyone in true conditions of equality must be called for.

As for the recipients of funding, the Department of Education for the Autonomous Community Government of Castile and Leon (*Junta de Castilla y León*) has been requested to provide information with respect to its decision to circumscribe the scope of beneficiaries of funding for school dining to those students educated at public learning facilities in the community. The Department of Education has confirmed that it has the intention of maintaining the current definition of the scope of school dining funding beneficiaries with the argument that charter schools are provided with free education but not complementary services.

The Department of Education, Youth and Sports for the Autonomous Community of Madrid establishes as a requirement for the granting of nursery school vouchers that the students for which they are re-

requested must have been born before the first of June of the year in which the corresponding school year begins. The Madrid educational administration was urged to study the modification of the procedure and time periods established for the granting of nursery school vouchers, with the objective of ensuring that all children, regardless of their date of birth, have the same possibilities of access. In its response, the Department has committed to study this formula before deciding on the terms in which these subsidies will be offered for the 2016-17 school year, once the General Budgets for the Autonomous Community of Madrid for the 2016 tax year are approved.

An ex officio investigation was opened with the Valencia City Council (*Ayuntamiento de Valencia*) on learning that payment of dining subsidies granted to students at municipal public schools was being conditioned on families not having incurred debt with local administrations. The measure has, in principle, legal support as per the provisions set out in the General Law on Subsidies. Nevertheless, the Ombudsman Institution decided to request information as to whether, before adopting the aforementioned decision, the greater interest of the minors whose dining subsidies had not been paid had been taken into account and whether the possible negative repercussions of the decision on ensuring that students' needs were adequately met had been evaluated.

The Institution is of the opinion that this funding is provided based on a family's income, such that it might benefit those students belonging to families with financial difficulties or at risk of social exclusion. These are therefore families who are often unable to meet their tax obligations or payments for services charged by the City Council and at the same time cover the costs of supporting their children.

The Valencia City Council has confirmed that the decisions on the granting of dining subsidies have been made in an attempt to cover basic care for minors affected by situations of financial insecurity or family and social difficulties.

## Inclusive education

According to the United Nations Human Rights Office of the High Commissioner's *Thematic study on the Right of Persons with Disabilities to Education*,

the most important barriers to participation in school life for individuals with disabilities arise from prejudices and erroneous beliefs that lead to deliberate exclusion and segregation.

This gives rise to educational systems in which individuals with disabilities are denied the right to inclusive education as set out in Article 24 of the Convention on the Rights of Persons with Disabilities, which establishes that children with disabilities have the right to inclusive, quality and free primary and secondary education under the same conditions as others and in the community where they reside.

All administrations formally accepted the recommendations put forth by the Ombudsman Institution on the implementation of an inclusive education system. In these recommendations autonomous education administrations were requested to take regulatory and budgetary actions and measures ensuring educational services to individuals with disabilities under terms in accordance with the right of students to an inclusive education.

In spite of formal acceptance, the complaints submitted by students with disabilities or by their parents or tutors and the results of their processing have made it possible to verify that, frequently, the education administrations continue to make decisions outside of the prescriptions set out in the Convention.

Several complaints submitted in 2015 provide clear evidence of the positive evolution of positions initially maintained by education administrations which, at the request of the Ombudsman Institution, modified their decisions on schooling which had denied parents their right to choose their children's centers of learning.

These decisions had been made by the Department of Education and Culture for the Principality of Asturias (*Principado de Asturias*), the Department of Education, Culture and Sports for the Autonomous Community Government of Castile-La Mancha (*Junta de Comunidades de Castilla-La Mancha*) and the Department of Education, Youth and Sports for the Autonomous Community Government of Madrid and were modified in accordance with parents' petitions after the intervention of this Institution.

All educational legislation emphasizes the importance of identifying, evaluating and providing **adequate educational services as early as possible** for special educational needs required by students,

since in many cases early detection and care significantly increase the efficiency of the adopted educational measures.

The plan of action followed for a specific case, in which the delay in providing a diagnosis by the competent team from the Autonomous Community of Madrid only allowed for the implementation of specific measures of assistance for a pre-school student once two school years had elapsed since the beginning of the student's schooling, led this Institution to put forth recommendations to the Department of Education, Youth and Sports, focused on the correction of situations such as that described.

The Ombudsman Institution understands that results such as that described are not consistent with the legal mandate deduced from that which is established in Article 74.2 of the Organic Law 2/2006 of 3 May for Education (*Ley Orgánica de Educación-LOE*), which states in imperative terms that "the identification and evaluation of educational necessities of this student body will be carried out as soon as possible by duly qualified personnel and on the terms dictated by the educational administrations".

The public administrations must act by constitutional imperative in full compliance of the law, without it being possible to justify possible deviations in the fulfillment of regulations due to limitations or peculiarities in the configuration of the means at their disposal.

In order to rectify this situation, two recommendations were addressed to the Department of Education, Youth and Sports for the Autonomous Community Government of Madrid, which urge the expansion of the personnel resources available to the evaluating bodies and the simplification of diagnostic processes. The Department has provided no response at this time.

The Ombudsman Institution considers that the approval of a legal and regulatory framework that sets the standards to which the changes requiring the implementation of inclusive education must be adjusted is essential. Decisions such as the creation of new training programs for teaching personnel, the availability of learning materials accessible to all, the creation of inclusive educational environments, the promoting of the transfer of students at special education centers to ordinary schools and the arrangement of adequate support for students, among others, must be included in the process de-

signed to promote values reinforcing the capacity of all individuals and present diversity as an opportunity for learning.

## University education

### Access to university

There were frequent complaints concerning the problems caused by the fact that some universities hold their make-up exam session during the month of September, an issue that has led to repeated investigations carried out by the Ombudsman Institution.

The main problem is the impossibility of obtaining the required academic information on time for participation in university access processes or in any process held on an open competitive basis, in which aspiring candidates must provide academic records during the month of September.

A Recommendation was made to the office of the Secretary General of Universities (*Secretaría General de Universidades*) of the Ministry of Education, Culture and Sports for the establishment of general criteria aimed at **harmonizing the academic calendars** of all universities to be included in the agenda of the next sessions of the General University Policy Conference (*Conferencia General de Política Universitaria*) and the Council of Universities (*Consejo de Universidades*), such that the exams corresponding to make-up sessions be held for all universities in the months of June/July.

The Ministry of Education accepted the Recommendation, such that universities have a clear understanding of the obligatory inclusion in the make-up session of reserved quota places not covered by **individuals with disabilities** in the regular session.

The Directorate-General of University Policy (*Dirección General de Política Universitaria*) for the Ministry of Education was informed of the difficulties experienced by students with permanent special educational needs in demonstrating their right of university access through the quota reserved for students with disabilities. A request was made for the regulatory establishment of the criteria that the various universities must adhere to in order to make this measure effective, as well as the procedure that affected students must follow in order to demonstrate

that they meet the requirements for special needs students.

In May 2015, the Directorate-General of University Policy declared that the inclusion of the considerations brought forth by the Ombudsman Institution would be proposed in the agenda of the next session of the General University Policy Conference. At the time this report was written, a new plenary session of the aforementioned entity had not yet been constituted since that date, such that this investigation remained pending the outcome of the deliberations carried out.

### University qualifications

The Ombudsman Institution had already taken action in 2014 in response to the difficulties alleged by universities in issuing the European supplement for Degree and Master qualifications. The Ministry of Education accepted the Recommendation for the creation of new regulations to clarify and simplify the process. In 2015, the submission of certain complaints clearly demonstrated that, despite the new clarifying regulations, certain universities had still not issued this document, such that ex officio investigations were opened with those universities.

Other inspections carried out by the Ombudsman Institution were related to the delay in the regulation of study plans for the Degree in Psychology and the delay in the processing of official recognition of foreign health sciences qualifications for professional purposes.

### Grants

After receiving a complaint from a university student whose scholarship amount had been deposited by the Ministry of Education in a bank account held by a different individual, who had been designated by error on the grant application form, two suggestions were made. One, for the applicant's grant file to be reviewed, as well as the file for returning the amount; and another, for the evaluation of the procedure for reviewing the decision to return the amount in order to rule out those amounts that the applicant did not receive.

In addition, a general ex officio investigation was opened for the purpose of inquiring about the procedure followed by administrative bodies in similar

cases, and especially the monitoring activities for the verification of ownership for accounts in which grant amounts are deposited, as well as the corrective capacity assigned to grant offices when they are notified by applicants that their bank details are incorrectly stated.

An investigation is likewise underway with the Ministry of Education as to the anomalous situation produced when a university student, who has already paid the enrolment fees for second-year enrolments or beyond, is awarded a scholarship including the exemption of enrolment fees for that same school year and informed that the amount of enrolment will be returned directly by the university, only to subsequently have the refund denied because he or she has enrolled as a second or third year student.

In January 2015 a Recommendation was made to the Ministry of Education's Directorate-General of University Policy for the express inclusion of evaluation formulas for the calculation of family income for legal-age applicants under the care of shelters or guardianship in the rules governing these scholarships, and that these circumstances be considered in the forms for the formalization of scholarship applications. The first Recommendation was rejected by the Directorate-General, who nonetheless agreed to incorporate the process of demonstrating financial need eligibility for legal-age students under guardianship in grant application forms.

Likewise in January a Recommendation was put forth to the Ministry of Education's Directorate-General of University Policy for the express mention that subsidies for habitual residence rentals are excluded from the calculation of sources of income and earnings for applicants' families and that this exclusion is duly reflected in general grant announcements for the 2015-16 academic year and beyond. This Recommendation was turned down by the Ministry of Education, which considers that these subsidies for habitual residence rentals cannot be automatically verified.

Such criteria cannot be shared by the Ombudsman Institution, since one should not invariably need to resort to the complaints or appeals process in order to recognize a student's right to obtain a grant due to the simple fact that the financial situation that has already been duly demonstrated in his or her application must be carefully analyzed.

A second Recommendation was made to the same entity that it convey instructions to the authority in charge of evaluating scholarship applications, with respect to the correct interpretive criterion which must be made of the precept regulating subsidies that are excluded from the calculation of sources of income and earnings for applicants' families, which was accepted by the Directorate-General of University Policy of the Ministry of Education in February 2015.

As has already been indicated in previous reports, various investigations were carried out with the Directorate-General of University Policy of the Ministry of Education due to numerous complaints submitted by borrowers of University Income Loans concerning the financial difficulties affecting certain beneficiaries of these loans.

The aforementioned Directorate-General declared itself aware of the complicated situation experienced by many young Spaniards affected by the high unemployment rate, and particularly those who had applied for a loan for postgraduate studies, motivated by diverse expectations that subsequently were not met and which made it essential to adopt some kind of measure that would permit the extension of grace and repayment periods for loans, all of which had given rise to a search for solutions.

Finally, this situation was resolved with the publication of the Law 22/2013 of 23 December for General State Budgets for 2014, whose forty first additional provision stated the possibility of requesting the extension of grace and repayment periods for these loans, if a situation preventing compliance with the corresponding payment obligations could be demonstrated or if repayment period had expired, and where certain expressly established conditions had been met.

Many borrowers were able to take advantage of this possibility, extending their grace and repayment

periods. However, some borrowers again sought assistance from this Institution, declaring that they continued to be unemployed yet in the near future would have to begin to meet the installments foreseen in their repayment plans.

This issue again having been conveyed to the Ministry of Education, the Directorate-General of University Policy submitted a report in which all the measures adopted concerning the different loan programs were mentioned. In the report it was declared that any proposal supposing an unexpected alteration to the conditions that had been taken into account by possible applicants for the purpose of applying or not applying for loans regulated in Order EDU/3248/2010 would mean a substantial improvement in the said conditions for borrowers. This would be detrimental to those individuals who had elected not to apply for a loan, since if the said conditions had been the same as those now required, the number of loan applicants would have been greater.

The Ministry stated that, in view of the report from the Attorney General's Office (*Abogacía del Estado*), the modification of granted loan conditions proposed would not be in accordance with the principles of competition, equality and non-discrimination, such that the possible complaints that may be submitted by potential applicants who claiming prejudice to their legitimate rights or interests should be taken into account.

This Institution has conveyed this opinion to the affected individuals. However, the Ombudsman Institution calls for the competent public authorities to adopt, as soon as possible, any measure which, respecting such principles, may reduce the impact that this situation may suppose for people who have difficulty coping with payment of the installments foreseen in their repayment plan.

## Health Services

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### The Institution presents a study on hospital emergency services carried out in conjunction with the Ombudsmen Institutions of the Autonomous Communities

**Complaints regarding specialized medical care were the most numerous in the field of health matters. There were also frequent complaints regarding pharmaceutical assistance, patient safety and the right to health care. In 2015, the Institution presented a report on hospital emergency services in conjunction with the Ombudsmen Institutions of the Autonomous Communities.**

### Healthcare services

#### Immigrants without residence authorization in Spain

In cases of special vulnerability, as in the case of **immigrants without residence authorization** in Spain and suffering from serious health issues, the right to health protection should be available to all persons, irrespective of their administrative situation. This reasoning has been accepted by the Health Service of Castile and La Mancha (*Servicio de Salud de Castilla-La Mancha-SESCAM*), in connection with two patients who had initially been denied the continued healthcare they needed because they lacked a healthcare card.

Releasing patients with chronic illnesses and severe conditions after they receive emergency healthcare does not seem to correspond to a sensible interpretation of Law 16/2003, of 28 May, on the Cohesion and Quality of the National Healthcare System (*Ley 16/2003, de 28 de mayo, de cohesión y calidad del*

*Sistema Nacional de Salud*). Following the information received from the Madrid Health Services (*Servicio Madrileño de Salud*) confirming that invoices had been issued for the care received following the emergency care, a Recommendation was made to the Regional Department of Healthcare of the Community of Madrid (*Consejería de Sanidad de la Comunidad de Madrid*) to eliminate said practice. This resolution was accepted and implemented.

Another problem detected in this field has to do with exclusion of the **children of immigrants in an irregular situation** from the primary care computer system of the Madrid Health Services once 90 days have passed after their birth, if their situation has not been regularized in respect to healthcare. According to the interested parties, this measure is giving rise to the elimination of programmed medical appointments and is making it impossible for the healthcare professionals to have access to the medical records and guarantee the continuity of healthcare for affected minors. Actions ended when the Health Services indicated that the measure was no longer in force.

## Patient autonomy, health information and documentation

In respect to reconciling the **training of healthcare personnel** with respect for the dignity and privacy of patients, the Ministry of Health, Social Services and Equality pointed out that it had asked the competent Regional Departments for information regarding this matter, and that said information had revealed a disparate situation. For this reason, the Commission for Human Resources of the National Health System (*Comisión de Recursos Humanos del Sistema Nacional de Salud*) resolved to create a working group, which was constituted on 28 October 2015, to establish a common protocol for the aspects arising from **respect for the privacy and dignity of persons** and from aspects regarding access and use of medical records by healthcare personnel in training.

Regarding to the access to clinical information and documentation, several cases were solved in a satisfactory manner. Thus, specialist physicians of the Doce de Octubre Hospital in Madrid went to the La Paz Hospital to provide a second clinical opinion regarding a hospitalized minor who could not be moved. Solutions were also found for the problems of patients who wanted to access to their clinical records at the Doctor Negrín Hospital in Las Palmas de Gran Canaria; Infanta Cristina Hospital in Badajoz, and the Marqués de Valdecilla Hospital in Santander.

## Regulation of medical services

Equity in the access to healthcare benefits, the effectiveness of the benefits and the establishment of a comprehensive and quality assistance model for patients with chronic illnesses are three major aspects of citizens' complaints in this field.

In last year's report note was made that genomic tests for the prognosis of patients with breast cancer are applied in some autonomous communities, but not in the entire National Health System. Accepting the Ombudsman Institution's position, the Ministry of Health, Social Services and Equality indicated that this matter would be assessed by the **Commission for Benefits, Assurance and Financing (*Comisión de Prestaciones, Aseguramiento y Financiación*)**. Actions are still underway, pending the Commission's conclusions.

Last year's report highlighted the insufficient allocation of specific rehabilitation units in the Madrid

Health Service to attend to **minors with traumatic brain injury**. It also mentioned the Suggestion made to the said Health Service to reimburse the expenses for a treatment established by public health medical specialists and provided, on recommendation of these professionals, in a private center. The Suggestion was not accepted, considering that care had not been refused.

In respect to this matter and after noting difficulties in several other parts of Spain regarding rapid and effective access to rehabilitation treatments by child patients, the Institution has initiated an action to examine whether these resources are sufficient in proportion with the population of children under the age of 16.

As detailed in the Ministry of Health's document "Strategy to deal with chronicity in the National Health System" (*"Estrategia para el abordaje de la cronicidad en el Sistema Nacional de Salud"*), the increase of the life span and the improvements in public health have given rise to a situation in which the decisive epidemiological pattern in Spain is linked to chronic diseases.

On occasion of complaints that are linked to the quality of the care provided to patients with chronic diseases in the public healthcare system, the Ministry of Health, Social Services and Equality was asked for information regarding the level of implementation of the recommendations contained in the aforementioned Strategy. This Ministry provided detailed information on the status of the different projects, some of which had ended while others were still in planning and development phases. In order to be effective, some of these projects require significant changes, assessment and follow-up, which will constitute priority action by the Ombudsman Institution.

## Waiting lists

Complaints processed in respect to delays in the provision of healthcare highlight the existence of a large number of patients who are obliged to wait many months, and even years, to receive specialized medical treatment. From these complaints it can be inferred that the main cause of dissatisfaction of citizens with public health services is the delay in obtaining healthcare.

To justify the **delays in providing care**, in some cases the health Administrations have argued that

the patients had refused to be operated in an alternate associated center. The fact that patients decided, in the framework of their right to choose, to be intervened in their hospital of reference and by the professionals who normally take care of them, does not justify, in this Institution's opinion, that they have to wait for long periods of time to undergo programmed procedures.

### Actions in the field of primary care

The freedom to choose health professionals, difficulties in having access to healthcare, delays in receiving healthcare, the pressure placed on professionals to provide healthcare, personnel resources and the dignity of patients are the major aspects of actions carried out in the field of primary care.

In connection with delays in healthcare provision, mention should be made of the delays of nine days in providing care in the Marqués de Valdeavia Health Center (Madrid) and the difficulties to arrange for an appointment and the worsening of the care provided at the Outpatient Clinic of Almedina (Ciudad Real). Both actions ended once the Madrid Health Service and the Health Service of Castile and La Mancha had provided solutions to the issues highlighted.

Problems arising from **insufficient allocation of personnel** were also resolved in a satisfactory manner, including the delay in giving a vaccine to a minor at the Martín Vargas Health Center (Madrid) because the pediatrician was away on holiday, and the inexistence of personnel in the category of hospital attendant in certain work shifts at the Arroyo de la Luz Health Center (Cáceres). The affected Health Services reported the decision to have substitutes whenever a pediatrician was on leave at the Health Center in Madrid and to appoint a hospital attendant for the Arroyo de la Luz Health Center.

### Actions in the field of specialized care

Once again, there have many complaints and ex officio actions regarding different aspects of the structure, organization and operation of specialized healthcare centers, aspects which are difficult to schematize.

The Spanish Society for Palliative Care (*Sociedad Española de Cuidados Paliativos*) has stated that 50 per cent of public health service patients in need of

**palliative care** do not receive this type of care. The Society has also highlighted the existence of notable differences between autonomous communities in the financing of structures and resources.

The situation described motivated taking ex officio action, still underway, in respect to the Ministry of Health, Social Services and Equality. Information was requested on the needs in terms of organization and resources of palliative care, and on the basis of said needs, the forecasts to increase the mechanisms throughout the public health service network to ensure patients with an advanced and terminal state of illness care based on equity, best practices and available scientific evidence. The Ministry reported that it was drafting a document to be presented before the Committee to Monitor and Assess the Palliative Care Strategy (*Comité de Seguimiento y Evaluación de la Estrategia de Cuidados Paliativos*) in the National Health System.

The level of development and implementation of objectives and recommendations contained in the **"Stroke Strategy of the National Health System"** (**"Estrategia en Ictus del Sistema Nacional de Salud"**) led to initiating ex officio actions before the Ministry of Health, Social Services and Equality and before the autonomous communities which, according to information provided by the Ministry, were the most behind in implementing the Stroke Code (*Código Ictus*) (Autonomous Communities of Extremadura and Galicia, and the Chartered Community of Navarre) or had not provided information regarding the constitution of a stroke team or unit of reference in the basic health districts (Andalusian Autonomous Community, Region of Murcia and Chartered Community of Navarre). This information was also requested from the National Institute for Healthcare Management (*Instituto Nacional de Gestión Sanitaria*), given that there was no information regarding the cities of Ceuta and Melilla.

All of the healthcare administrations with the exception of the one in Galicia have provided detailed information on the measures adopted or planned in respect to the effectiveness of the objectives and the recommendations mentioned.

Some autonomous communities have established the **"Healthcare card for students from other regions"** (**"Tarjeta de asistencia sanitaria para estudiantes de otras regiones"**), a document that is valid during the academic year and that fulfils the

same functions as the individual healthcare card, allowing its holder access to healthcare benefits by being assigned to a healthcare center and general practitioners. In Catalonia persons must be registered in a municipal census of the region in order to be assigned a healthcare center. The Ombudsman Institution made a Recommendation to the Department of Health of the Autonomous Community of Catalonia to implement this measure without the requirement of registration in a municipal census. The Department did not accept the Recommendation.

Complaints made regarding **emergency hospital services** continue to highlight situations of saturation of these services and the violation of the privacy and dignity of patients.

In 2015, the study **Hospital Emergencies in the National Healthcare System: Rights and guarantees of patients** (*Las urgencias hospitalarias en el Sistema Nacional de Salud: derechos y garantías de los pacientes*) was presented, having been carried out jointly by the Ombudsman Institution and all of the autonomous commissioners. The study examines the practical application of the rights and guarantees of patients in emergency hospital services and analyzes the problems that are common to all emergency services.

### Security of patients and professionals

One of the causes of patient dissatisfaction is directly related to the lack of sufficient information regarding healthcare procedures. This is expressed in a good number of complaints, which, even though they focus on issues of security and professional practices, are geared at obtaining sufficient and comprehensible information regarding the suitability of the care provided. In these cases the actions taken by the Ombudsman Institution focus on urging the healthcare administrations to carry out investigations of the circumstances in which the care was provided in order to determine whether the interested parties suffered damages for which they should provide support.

In respect to the **security of healthcare personnel**, the General Council of Official Colleges of Physicians (*Consejo General de Colegios Oficiales de Médicos*) in Spain pointed out that given the situation, mechanisms of protection, care and support for healthcare professionals must be articulated to

deal with possible situations of risk to their physical integrity. The Ministry of Health, Social Services and Equality reported that the Inter-territorial Council of the National Health System (*Consejo Interterritorial del Sistema Nacional de Salud*), after assessing the true dimension of the problem and the most appropriate solutions to resolve it, had drafted a report with twelve recommendations regarding measures for the **detection and prevention of situations of risk** in the daily practice of healthcare professionals.

### Public health

Complaints are received, on a rather regular basis, from parents requesting the inclusion of a specific vaccine in the official vaccination schedules for children, and in consequence that they be financed by the National Health Service. In some cases these complaints are based on the different schedules applied by the autonomous communities, despite the existence of a schedule that was agreed by the Inter-territorial Council of the National Health System.

In 2015, the Council agreed to include the pneumococcal vaccine in the common vaccination schedule before the end of 2016. Following the agreement, some autonomous community governments decided to immediately incorporate this vaccine in their own schedules.

### Mental health

Complaints connected to care provided for mental health issues are often made by the patients themselves, due to what they consider improper treatment by their caregivers or by healthcare professionals. On occasions, complaints include a petition for review of a situation of psychiatric admission or court measures limiting a patient's legal capacity, matters which initially do not correspond to the Institution's competences. If on the basis of the circumstances and documents submitted questions are inferred regarding the protection and care provided to this type of patient, actions are taken to obtain information from the corresponding health administration, and if necessary, from the public body in charge of the guardianship.

In other cases, complaints presented by relatives of these patients highlight the **difficulties to find appropriate residential care facilities**, when this is

the most appropriate or sole measure possible, in the opinion of the intervening specialists.

Involuntary treatment for persons with mental illnesses is a matter that is raised in a recurring manner before the healthcare administrations in regard to situations in which families lack the resources to ensure that adult patients follow their doctors' therapeutic indications, which causes their illnesses, and their family and social environment, to worsen.

### Pharmaceutical benefits and medication

On a fairly regular basis, and more frequently during holiday periods, complaints are received from citizens who have had problems to acquire medicines they need when they are in an autonomous community other than the one in which they habitually live. In some cases patients are given **incorrect information** regarding the lack of agreements between autonomous communities to accept prescriptions issued in another territory.

Pharmaceutical professionals face operational problems to fill the prescriptions and apply the type of pharmaceutical co-payment that corresponds to each user when the latter is from another autonomous community, although this should not impede the correct dispensing of medication. The Institution has initiated ex officio actions before the Ministry of Health, Social Services and Equality requesting information on the state of implementation of a territorially inter-operational system of **electronic prescriptions**. The generalized start up is expected to be in 2016, although not in the same manner in all the territories. For this reason, actions taken with the affected Administration will continue.

### Access to medicines

The emergence of new antiviral drugs that act directly on **hepatitis C** and offer high levels of effectiveness, but that are difficult to incorporate directly to pharmaceutical benefits because of their cost, has found a solution in the approval by the Inter-territorial Council of the National Health System of the so-called "National Strategic Plan to Deal with Hepatitis C" ("*Plan estratégico nacional para el abordaje de la hepatitis C*"), regarding which this Institution has received information from the Ministry of Health, Social Services and Equality, in respect

to the strategy to prioritize cases and the additional financing agreements the Plan requires.

Actions taken in some autonomous communities in respect to situations reported by patients who experienced delays to begin their treatments, even though their therapeutic needs were allegedly urgent, have highlighted that in general terms the strategic plan is being complied with.

However, there continue to be complaints from patients whose illness has not yet reached the degree of development established for the prioritization strategy, and who point out that access to the treatment would prevent their illness to worsen. The Institution will continue its actions geared at obtaining information regarding mid and long-term plans, once the current financing formula expires.

In the case of **rare diseases**, the incorporation of new drugs to the therapeutic arsenal entails specific aspects, given the different cost/profit relationship which these drugs habitually have in comparison with medicines produced to treat more common illnesses. Following initial authorization endorsed by the European Medicines Agency, the process of including the so-called "**orphan or ultra-orphan medicines**" in the pharmaceutical benefits of the National Health System may be delayed several months until a financing agreement is reached. During this intermediate period, demand increases, making it impossible, in most cases, for patients to have access to these medicines with their own resources.

### Gluten intolerant persons

This Institution has continued with the actions it started in 2007 in respect to the difficulties and high expenses that affect **gluten intolerant persons**. It requested information from the Ministry of Health, Social Services and Equality regarding the impact of awareness-raising campaigns that focus on this illness, in particular amongst health professionals, with the objective of facilitating early diagnosis, as well as the possibility of drafting an official list of suitable foods.

In European countries the special needs of this group are dealt with through different types of aid. Ex officio actions have been initiated in all autonomous communities and cities, including social and social-healthcare bodies as well as the Tax Agen-

cies in order to determine the content and scope of the programs that might exist to deal with the **extra expense of a gluten-free diet**, the epidemiological data and other supplementary support measures

that exist or that could be considered. This action will remain ongoing until all the information has been obtained to enable establishing a general picture of the situation in all of Spain.

## Social Policy

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### The Child Protection Act includes numerous recommendations of the Ombudsman Institution

**The Child Protection Act introduced numerous recommendations of the Ombudsman Institution. Regarding social policy, the most frequent complaints and inspections have been associated with situations of need and struggle against social exclusion. The Ombudsman Institution has continued receiving complaints related to copayments for care in social resources of persons with disabilities, elderly persons and persons in situations of dependency.**

#### Contribution of users for stays in centers or other services

The Ombudsman Institution continues to receive numerous complaints in relation to copayments for care in social resources of persons with disabilities, elderly persons and persons in situations of dependency.

In March 2015, it was decided not to lodge the requested appeal against article 35 of the Act of the Autonomous Community of Valencia 7/2014, of 22 December, amending the regulations on fee rates to introduce three fees for social services for residential care, day or night centers and sheltered housing accommodation for elderly people and persons with disabilities.

No arguments of unconstitutionality were found, but in some cases, it was noted that spouses are in a disadvantage. In addition, it was also alerted that the calculation of income is too broad and includes economic benefits, of other family unit members, that are of a targeted manner and linked to dependency or disability of these persons. Therefore, three Recommendations were made to the autonomic Admin-

istration who agreed to them stating that proceedings had been initiated to **repeal and modify the fees.**

Such a decision has been effective under the Act of the Autonomous Community of Valencia 10/2015, of 29 December, on fiscal measures, administrative and financial management, and organization of the Autonomous Regional Government, which annuls the fees for provision of day and night centers' services and reduces the fees for residential care and the service for sheltered housing accommodation, among other factors, due to the increase of the minimum amount estimated for personal expenses. The regulation also modifies the criteria to fix the **contributions of users** to the System of Autonomy and Care for Dependency.

#### Minors

The approval of the Organic Act 8/2015 of 22 July and of the Act 26/2015 of 28 June, both related to the **modification of the Child and Adolescent Protection System** has resulted in a large number of changes, many of them of a major significance.

The Institution made, at the request of the Ministry of Health, Social Services and Equality, a number of remarks in relation to the bill whose summary is included in the report of 2014. Some of them have been reported in the final text. Some progress has been noted in aspects such as the conceptualization of the minors' best interest, the minors' right to be heard and for their point of view to be taken into account, as well as the legitimacy accorded to them to object decisions affecting them and their right to be informed in an appropriate manner according to their age and be assisted by a lawyer, even freely, if it is required for the effective exercise of their rights. These aspects included in the new legislation adopt, although partially, the postulates of the study of this Institution on ***The Process of Hearing and the Best Interest of the Child: Judicial review of family processes and protection measures.***

The regulation supports the administrative action in protection cases. The timeframe to lodge an opposition by court means on administrative decisions has been reduced and it has been set that rulings against the decisions of the administrations on protection may not be subject to provisional execution if an appeal is submitted, making it mandatory to take special care to avoid the decisions of the Administration to become unassailable in practical terms. This is due to the fact that the provincial courts will be required to ensure the best interest of the child and in many cases they will have to take into consideration the elapsed time and the incidence for the development of the child of a new change.

Most of the claims affecting **minors in a situation of risk or distress** are from parents or relatives who do not agree with the Administration action, which has led to the separation of the children from their family setting. The action of this Institution is aimed at verifying the compliance of the rights of all the parties affected. When a court ruling on the matter is in place, or when the family does agree with the action of the Administration, the inspections are concluded.

When a child should be separated from his or her family, it is advisable that he or she be placed under the care of another family before placed in a Center, especially if the child is younger than six years old. The mentioned Act 26/2015, of 28 July, does undertake this criterion. This measure refers to the existence of **host families** taking temporary care of

those children who do not have a suitable extended family for this purpose.

Several of these host families have pointed out to this Institution that, after voluntarily caring for children, a few months old, during a long period of time, they have noted that the Administration carried out the change to the new family as a mere formality, without ensuring the progressive adaptation of the child -usually babies- to their new environment and the exchange of experiences among the caretakers. The Administrations shall be urged to pay maximum attention to these situations on which there are no consolidated criteria, at the moment.

The report of **suitability to adopt** developed by the Child Protection public entities for international adoptions has a major significance beyond the formal determination of suitability. When the stakeholders are not satisfied with the refusal of suitability, they can address the judicial authority, which issues a declaratory judgment of compliance or non-compliance along with the resolution of the Administration. However, when sending the documentation to the country of origin of the minor, the mentioned technical report, the non-suitability and the reference to the judicial judgment are sent, making the assignment of a minor difficult.

On the other hand, in relation to the **qualification of audiovisual works**, the Institute of Cinematography and Audiovisual Arts has indicated that it shares the criterion of the Ombudsman Institution regarding the suitability to harmonize an age rating system to the public within the various display windows and to **seek a unification of guidelines** included in the Audiovisual Communication Act and the legislation on cinematography.

The Institute also refers to the developments introduced by the Royal Decree-Law 6/2015 of 14 May, modifying act 55/2007 of 28 December, on cinema in relation to the qualification of audiovisual works. It indicates a Royal Decree is being developed to establish a detailed regulation regarding the qualification and audiovisual works by age groups, pending on a report by the Council of State. Once the Royal Decree is approved, the regulation on the above-mentioned criteria will be addressed and the works related to the development of a "User Guide for the Criteria on Age Ratings" will be completed, in collaboration with the State Commission on Marketplaces and Competition and the television operators.

## Persons with disabilities

The general Law on rights of persons with disabilities and their social inclusion requires the Government to elaborate a national plan for prevention of deficiencies and intensification of disabilities at four-year intervals.

At the request of the Spanish Committee of Disabled Persons' Representatives (*Comité Español de Representantes de Personas con Discapacidad-CERMI*), inspections were initiated to learn about the developments on this commitment. By the end of 2015, the Secretary of State for Social Services and Equality informed about the start of the preparatory meetings, in which the autonomous communities and other stakeholders would participate.

Last year's report referred to the Recommendation made to the Migration and Social Services Institute (*Instituto de Mayores y Servicios Sociales-IMERSO*) to streamline the modification plans for the **recognition, declaration and rating Scale** of the degree of disability to adjust it to the International Classification of Functioning, Disability and Health, on which no progress has been registered.

Due to the demand of certain groups at risk of social stigmatization regarding the inclusion of data on their illness in the disability assessment of (for example, HIV or severe mental disorder), information was requested from the Migration and Social Services Institute about decisions taken at the State Commission for Coordination and Monitoring of the Evaluation of the Degree of Disability. This Committee agreed to proceed progressively to remove the diagnostics from the Professional Technical Assessment, in particular those that can generate a social stigma. At the request of stakeholders, this information will be kept exclusively in the file.

In 2015, the inspections in relation to the regulation on the accompaniment by **assistance dogs** has been completed with the Department of Healthcare and Consumption of the Autonomous City of Ceuta and the Provincial Council of Alava, upon approval of the corresponding regulations. Once laws on this subject have been published in the Community of Navarre, in the Region and community of Murcia, this Institution is awaiting the developing regulation of the indicated laws. In Castile and Leon, the period legally established to undertake the regulatory

development has already elapsed, and hence, an ex officio action has been initiated with the relevant Department of Balearic Islands.

Furthermore, recommendations have been made to the Department of Rights and Social Services of the Principality of Asturias and to the Department of Employment, Social Policy and Housing of Canary Islands with the aim to develop the appropriate regulations governing the accompaniment of these animals.

The delay to comply with the conditions of **accessibility and non-discrimination** of persons with disabilities in their relationship with the General Administration of the State, also denounced by the Spanish Committee of Disabled Persons' Representatives, led to the undertaking of inspections with the Secretary of State for Public Administration.

The mentioned Secretary of State reported that 70 % of headquarters and around 50 % of the 060 offices of the Delegations and Subdelegations of the Government meet the conditions of accessibility, albeit the ongoing inspections to fully comply with the regulation. Some partial breakthroughs were communicated, throughout 2015, culminating in the official publication of the Secretary of State's Resolution laying down these conditions.

Various inspections on **discrimination of citizens with disabilities** continued in 2015. The following inspections, among others, can be indicated: the denial of accommodation to a group of persons with intellectual disabilities in two hotels of the same corporate group, located in Andalusia and in the Community of Valencia; the refusal to a person with a disability who uses a wheelchair to have access to a building of cultural interest, located in Galicia, and failure to anticipate assistance on spa trips for persons who require the assistance of a third person.

In these and in other similar inspections, difficulties are found in indicating discrimination in legal terms.

**Early care** is considered an essential action for the integrated approach and the prevention of disabilities, thus, it shall be provided from the earliest possible moment, as indicated by the General Law of Rights of Persons with Disabilities and their Social Inclusion.

In some cases, the specific circumstances of some persons with disabilities hinder their admission to a

particular residential care center as the Administration or the center's management considers that it is not possible to provide adequate care based on the available means or professionals. Nevertheless, the Administration shall be required to apply the maximum diligence to find the most suitable place for each person.

## Care for elderly persons

The inspections related to the care for elderly persons in residential centers vary widely: ranging from problems of coexistence or transient differences with the staff, to allegations of poor quality of laundry service and replacement of clothing.

In July 2015, **eight inmates died** at the residence Santa Fe of Zaragoza, in a fire apparently caused by a resident who may be disabled. According to the requested information from the competent Department of the Government of Aragon and to the City Council of Zaragoza, it was found that the situation of the center was irregular and in lack of suitability, but remained open due to the inaction of the public administrations involved.

Given that the specific topic was linked to legal proceeding, two Recommendations were made to both Administrations to intensify **the inspections of surveillance and punishment** of these kinds of situations and to settle an agreement between agencies with concurrent inspection functions to improve agility and effectiveness of these inspections on residential centers. The latest information provided indicates that a joint inspection Plan involving both Administrations has been in place.

## Situation of dependency

Inspections having impact on the comprehensive configuration of the System for Autonomy and Care for Dependency (*Sistema para la Autonomía y Atención a la Dependencia-SAAD*) were initiated in 2015, in addition to examining the adequacy of the administrative activity regarding the legal system and the guarantee of the exercise of the fundamental rights or freedoms.

Among the complaints filed those recurrent are related to provisions included in the Royal Decree-

Law 20/2012 of 13 July, on measures to Ensure the Budgetary Stability and Promotion of Competitiveness, affecting the economic **benefit for care in the family setting** and support to non-professional caretakers. As the resolution of an appeal of unconstitutionality on this matter is still pending, the intervention of this Institution has been limited to cases where signs of a misapplication of the effective rules are noted.

The Territorial Council of Social Services and of the System for Autonomy and Care for Dependency agreed, in October 2015, to create a working group to evaluate the results of the application of the scale of dependency. Inspections have been initiated with the Ministry of Health, Social Services and Equality, so that this group studies the suitability of modifying the obligation of regular reviews of minors at the beginning of each distinct period according to the chronological table of the application, in case of diseases or illnesses without positive evaluation perspectives, as well as the opportunity to extend the application of the Specific Assessment Scale (*Escala de Valoración Específica-EVE*), which applies exclusively up until three years only to assessments procedures for the age range understood between 3 to 7 years.

In addition to the delays in the procedure of assessment of the situation of dependency and the elaboration of the Individual Care Program (*Programas Individuales de Atención-PIA*), in Andalusia, the Regional Community of Madrid, Regional Community of Valencia and the Region of Murcia, numerous cases were paralyzed, without reasons attributable to the interested party, even if the proposal of the Individual Care Program had already been made and accepted by the beneficiary person. This has resulted, at times, in the death of the applicant before the recognition of their right or before the resolution on their individual care program, closing their file without the issuance of the corresponding decision, while the heirs of the deceased are still waiting for the resolution of application.

The Ombudsman Institution, when it has been possible in such cases, has requested the compliance of the provisions of section 15 of the Royal Decree 1051/2013 of 27 December, which determine the possible condition of a beneficiary to persons who died within the 6 months following the submission of the application without proceeding to judgment of recognition of the benefit. Furthermore, the compliance with the provisions in the regulation of the

procedures of the public administrations on asset liability has been requested.

A large number of complaints has been received, mostly originating from the action of the competent bodies in Catalonia, Regional Autonomous Community of Madrid, Valencia and the Region of Murcia, in relation to the implementation of measures affecting the economic benefit for care in the family setting and support for non-professional caretakers, regarding the temporary suppression of the retroactive effects as well as splitting and deferment of the amounts generated by the delays resulting from the retroactive effects produced.

This Ombudsman Institution has intervened in the following cases: 1) when the standstill period has been applied to applications in which the situation of dependency was recognized by 15 July 2012 but not the economic benefit, on the understanding that such a case is not expressly referred to in the Royal Decree-Law; (2) when the regional autonomic authorities have exceeded in the application of provisions in the state rule; (3) in cases in which the recognition of retroactive effect from the date indicated was removed; (4) before the extensive application as provided in the seventh additional provision of the Royal Decree-Law, which refers only to economic benefits for care, recognized and not perceived, in the family setting and support to non-professional caretakers.

Changes in the requirements to access economic benefits for care in the family setting and support to non-professional caretakers have led to a large number of complaints. Inspections have been undertaken when the autonomic regulation has gone beyond the agreed by the Territorial Council and the provisions of the Royal Decree 1051 / 2013 of 27 December. Thus, a Recommendation was addressed to the Ministry for Equality and Social Policies of the Andalusia Council to modify the provisions set in its autonomic regulation, in order to adjust to the State Decree the requirements for access to the indicated benefit in rural areas where there is more difficulty accessing resources.

## Large families

Citizens have sent letters requesting the amendment of the law on protection of large families to include

different cases of families who currently do not have access to the status and corresponding subsidies.

The “Comprehensive Plan on the Support for the family 2015-17” includes, among its provisions, the analysis, review and update of the aforementioned law. The plan considers the creation of an inter-regional working group to analyze its implementation, process that will include the so-called protected cases, according to the information provided by the Secretary of State for Social Services and Equality, i.e. the conditions of the household unit and its members to be **beneficiaries of the Large Family Status**.

This Institution had requested to accommodate the legal mandates of the laws of the State general budgets for the years 2008, 2009 and 2010, to extend the coverage of large family protection to single-parent families with two dependent children, families with a spouse with disabilities and two dependent children or the inclusion under this status of the two parents even when there is no marital relationship.

The Law on the Modification of the Child and Adolescent Protection System does not deal with these reforms, but it is rather expected, in its fifth final provision, that the Government send to the Spanish Parliament the required plan of reform as soon as possible.

## Persons experiencing poverty and social exclusion

In 2015, the complaints related to **minimum incomes** have declined from previous years. The Ombudsman Institution addressed two Recommendations to the Department of Social Policies and Family in the Regional Community of Madrid so as to provide the required instructions addressing the competent agency to resolve within the three months laid down in the law for the Minimum Income for Integration procedures, and, to that end, it would be appropriate to increase the required material resources and staffing.

The Department accepted the two Recommendations and reported the entry into force of the new regulation, the increase of budget and the incorporation of new staff, achieving an **average reduction of resolution time from** eighteen to four months.

Several reminders have been made on the legal obligation to **resolve in a timely manner applications**

**or appeals lodged** by citizens in relation to the corresponding minimum incomes and, in any case, due to the delay in the resolution of appeals for reconsideration addressed to the Departments of Andalusia, Castile and Leon, Regional Community of Valencia, Extremadura and the Principality of Asturias.

Several reports referred to the lack of budgetary credit of the Regional Community of Catalonia to deal with the payment of the Minimum Income for Integration and the arrears generated, in some cases related to files of 2012. The Department of Enterprise and Employment of the Autonomous Regional Government indicated that the payment would be made in the early days of 2016.

### Child nutrition

Following the inspections carried out in relation to **school canteens** during the summer periods of previous years, Recommendations were made in June 2015 to all regional communities and autonomous cities to promote setting up food security plans for children and adolescents that include inspections during school breaks. This measure results from the observations that the systems of minimum income are cumbersome, insufficient for the potential beneficiaries and, furthermore, do not ensure its use for child nutrition.

The second Recommendation made to all regional autonomous administrations except the Basque Country and Navarre, endorsed to make the information on the breakdown of the financing of these programs publicly available, indicating which part are financed by State or European funds and which parts are funded with private resources, in accordance to Remarks 16 and 18 of the concluding Remarks on Spain of the Committee on Child Rights, on greater **budget visibility and**

**improvement of statistical data** available in the field of childhood.

Despite of the lack of some responses to the Recommendations made, it is concluded that, although not all Administrations open school canteens during the summer and other break periods, **the existence of programs or plans is widespread** to address cases of risk. However, in most cases these programs are not based on a vision of comprehensive guarantee, on which the Recommendation of this Institution has put more emphasis.

Because this affects children, in some cases of early age, the Administrations' interventions must be comprehensive and proactive, since the model is based on the detection of signs of risk or on the need of families to access certain benefits, whose processing in many cases are not streamlined. Otherwise, the harmful effects linked to nutritional deficiency would have already taken place while seeking to find out a solution. Hence, this Institution has a special interest to act in ways that ensure the most comprehensive and global coverage as possible.

A fundamental element, though certainly not the only potential one, for the fulfillment of this objective is the **network of school canteens** and therefore the promoting of the broader use of them, albeit other formulas with alternative or complementary nature can be undertaken, provided they similarly ensure the general coverage of the population in potential situation of risk and do not involve greater management needs.

In relation to funding, most administrations have support plans for individuals and families at risk, but in general, there is a lack of a breakdown of data, which would offer information on the amounts specifically intended to ensure child nutrition. There is a **deficit of transparency** regarding the destination of public expenditure, which would be good to take on as an objective of all public Administrations.

## Housing

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### The Ombudsman Institution organized coordination sessions of the Ombudsmen Institutions to analyze public housing

**In addition to the complaints addressed by the citizens and the ex officio inspections undertaken by the Institution on housing, it should be stressed the activity undertaken, in close cooperation with all the Regional Autonomous Parliamentary Commissioners, on the occasion of the 30<sup>th</sup> session of coordination of the Ombudsmen Institutions, aiming at analyzing the situation of “public housing in Spain”.**

#### Housing plans

**Public housing subsidies**, their suppression and non-payment are among the main issues discussed during the current year. The impact resulting from the change of the criterion of the Ministry of Public Works and Transportation on the interpretation of article 35 of the Royal Decree-Law 20/2012 of 13 July, (on suppression of loans subsidies for the acquisition of subsidized housing (*Viviendas de Protección Oficial-VPO*) required a wider dissemination by the authorities, in the Ombudsman Institution opinion. The number of persons affected urged the opening of a 6-month exceptional period to request the extension of subsidies, so as stakeholders (beneficiaries of housing plans prior to the 2009-12 Plan complying with the requirements on 15 July 2012) who could not apply for it because they did not receive adequate information, could do so within such a period, and to disseminate it at the national level to avoid different treatment depending on the regional autonomous community of residence.

The Ombudsman Institution considered appropriate the initiation of ex officio inspections with the regional autonomous communities to transfer the information provided by the Ministry and know the

opinion of each regional autonomous administration. As per the information received, it is concluded that administrations have taken into consideration the instructions of the Ministry, and they have adopted measures in order to make effective the change of the initial interpretative criterion.

One of the significant changes that have occurred in housing during the year 2015 is that the **regional autonomous governments** have included in their budgets the amounts required to meet recognized housing subsidies. However, some issues have remained unresolved in 2015, such as the case of the Department of Infrastructures, Territory and Environment of the Autonomous Government of Valencia.

#### Allocation of publicly subsidized housing

The problems arising from the allocation of publicly subsidized housing are among the main issues discussed during this year. These procedures, in which the interested parties are unaware of the score obtained in the evaluation of their application and their position among other applicants, generate legal uncertainty for the citizens.

Ongoing complaints are received on the allocation procedure of protected housing undertaken in the Regional Autonomous Community of Madrid. Citizens complain that they are informed by the Administration that their application has been accepted and scaled; but they are unaware of the score obtained, and of their position among the applicants. In addition, the Administration informs them that it is not aware when the allocation would take place in their case. This entails a great legal uncertainty for the stakeholders.

As per the Ombudsman Institution point of view, the evaluation is an administrative act that affects the legitimate interests of applicants, and therefore, must be notified. For this purpose, a Suggestion was made to the Administration to notify applicants of the result of the evaluation of their allocation applications, in accordance with the provisions of the aforementioned article 58 of the Law 30/1992. The Department accepted the resolution.

In addition, the Ombudsman Institution recommended the Regional Autonomous Community of Madrid to establish a system to inform on a regular basis applicants of public housing for special need about the ranking given in the application waiting list, so as they know their position among the rest of the applicants.

Another Recommendation was also made to evaluate the amendment of the rule regulating the process of allocation of housing of the Housing Institute of Madrid, in order to improve the regulation of the process of allocating public housing for special need.

## Sale of publicly subsidized housing to private entities

Complaints about the sale of housing to private entities of the Housing Institute of Madrid (*Instituto de la Vivienda de Madrid-IVIMA*) (currently Social Agency of Housing of the Regional Autonomous Community of Madrid) and of the Municipal Housing and Land Enterprise of Madrid (*Empresa Municipal de la Vivienda y Suelo de Madrid-EVMS*) continue in 2015.

However, this Institution can only investigate the general issues raised in the complaints received after confirming the existence of a judicial proceeding in relation to the sale of the publicly subsidized

housing to a private entity by the Housing Institute of Madrid and in any case, it can ensure the Administration resolves expressly in due time and form the applications and appeals submitted.

In addition, without evaluating the sale of housing issue, this Institution has considered that the allocation resolution grants citizens the right to housing, enforceable before the Administration when the allocation requisites are fulfilled, both within the Autonomous Regional Community of Madrid and the Municipality, and regardless of the specific housing allocated at a specific time. Thus, it was suggested to both bodies the **allocation of housing in replacement of the one sold by the Administration**. In the case of the Municipal Housing and Land Enterprise of Madrid, the City Council has replied that it is not possible to proceed with a new allocation, as this situation is not considered by the municipal rule of allocation, and hence a new application shall be made. The actions are still underway.

## Basic Emancipation Income

Ongoing complaints about this issue are on the decrease. In general, citizens denounce that the Administration has discontinued subsidies payments albeit the requirements to be beneficiary of the Basic Income of Emancipation for Youth have been met. In most of the cases, the Ministry of Public Works and Transportation reports that there is an incidence in the interested parties' files and that they have been informed of the circumstance, as well as the way to resolve the problem.

The problems of management of the Regional Autonomous Government of Valencia stand out. The Administration has informed, for organizational reasons, that it was not possible to send the issued judgments at that time to the Ministry of Public Works and Transportation in a computer readable form, within the timeframe agreed by the Ministry, thus, the applicants, who have been considered eligible to receive the public aid, cannot receive the subsidies.

The Ombudsman Institution recommended the Regional Autonomous Administration to initiate ex officio two separate proceedings of patrimonial liability for each resolution for subsidies recognition, with the aim that the citizens receive the corresponding

amounts of the acquired rights. The Department has reported the Recommendation made is taken into consideration, which has urged this Institution to be interested in the efforts carried out to execute this resolution. The actions are still underway.

## Empty publicly subsidized housing

The Ombudsman Institution newly consulted the Administrations on the publicly subsidized housing and its occupation, continuing with the study initiated in 2011 on empty publicly subsidized housing in Spain. The Institution concludes from the information provided by the Administrations that:

- It is necessary to legally define the concept of empty or unoccupied housing.
- The proportion of unoccupied public housing of private development is much greater than of government development housing.
- The main reasons of non-occupied housing is resignation and death, rather than non-payment of fees or rentals.
- There are still deficiencies in the records of subsidized housing, since not all the regional autonomous communities have created this registry, despite the recommendations made at that time by this Institution.
- All regional autonomous communities have adopted one or other type of measures to improve the efficiency of the administrative activity.
- Most of the regional autonomous communities have an inspection plan and many have specific inspection units, although they vary amongst each other.
- Control of effective occupation: there is a consensus on the documentation required to evidence it, albeit the big difference of the periods of these controls within the regional autonomous communities. At the local level, the control of the occupation is insufficient (the verification of housing occupation by the bidder him or herself), because in general terms, inspection is undertaken once a year. The verification of the compliance of requirements is usually undertaken during the agreement renewal, along with the concurrence of the conditions of housing need (insufficient income and lack of housing on property).

## Social Housing Fund

The importance of the Management Company for Assets Arising from the Banking Sector Reorganization (*Sociedad de Activos de Reestructuración del Sector Bancario-SAREB*) in the real estate market prompted addressing a Suggestion to the Ministry of Economy and Competitiveness aiming at modifying the Social Housing Fund Agreement, with the purpose to enable the Management Company for Assets Arising from the Banking Sector Reorganization to contribute with a part of its real estate stock to social housing. The Ministry rejected the suggestion claiming that the Management Company for Assets Arising from the Banking Sector Reorganization was not a housing policy instrument, but a financial instrument, and that its inclusion in the Fund is not considered suitable.

## Forced evictions for illegal occupations

The main problems related to this subject encompass both urban and social issues. A coordinated action of the relevant bodies in these areas is essential.

The Ombudsman Institution is concerned about cases of extreme need faced by citizens who occupy **substandard housing or slums**. The slum areas are outside of any regulation and its occupants are often defenseless in case of public action.

The Institution intervened after the eviction of the slum population of “*Los Castros*” in Santander (Cantabria), run by the City Council of Santander and made a resolution so that the City Council inform about the judicial authorization of domicile entry to demolish the slums, and about the reasons according to which the Action Protocol was not carried out in this special case nor were the affected people rehoused. The Administration, however, did not consider the slums as domicile of the persons affected.

Another case that was subject of action during the year 2015 has been the slum settlement of “*El Gallinero*” in the municipal area of Madrid. More than 400 persons with a high number of children, all of them being Romanian Roma, most of them in an irregular situation, live in this settlement. Municipal inspections have been undertaken simultaneously with the evictions and social care, which has led the

Ombudsman Institution to remind the Administration the need to **respect at all times the guarantees and rights of the person affected by the eviction**, in line with the General Remark number seven of the United Nations Human Rights Committee. Furthermore, the City Council has been suggested to reconsider the Action Plan being carried out, establishing indicators and measurable targets allowing to measure its effectiveness. The actions are still underway.

## Public housing situation

The Ombudsman of Spain, the Ombudsman of Andalusia, the Ombudsman of Catalonia (*Síndic de Greuges de Catalunya*), the Ombudsman of the Autonomous Community of Galicia (*Valedor do Pobo de Galicia*), the Ombudsman of the Autonomous Community of the Canary Islands (*Diputado del Común de Canarias*), the Basque Ombudsman (*Ararteko del País Vasco*), the Ombudsman of the Autonomous Community of Aragon (*el Justicia de Aragón*), the Ombudsman of the Autonomous Community of Valencia (*Síndic de Greuges de Valencia*), the People's Representative of Castile and Leon (*Procurador del Común de Castilla y León*) and the Ombudsman of Navarre, met in Santander in Sep-

tember 2015 at the 30<sup>th</sup> session of coordination of the Ombudsmen Institutions whose subject was "Public housing in Spain".

The Ombudsmen requested the State and the regional autonomous communities to promote adequate legislation that guarantees the constitutional right to housing and to provide resources to the competent Administrations to make it effective in favor of the citizens who need it.

Furthermore, the Ombudsmen asked Public Administrations to increase and strengthen the public rented housing stock; to reinforce the advertisement, transparency, promptness and efficiency of the procedures of housing allocation; to define and regulate the concept of empty housing and to impulse its correct inventory using the implementation -or improvement- of the registries of subsidized housing.

In relation to housing subsidies, the Ombudsmen suggested to review and improve their management to avoid the delay in the resolution of the convened subsidies and of the payment of those already recognized, and they pointed out the need to extend the cases and make flexible the requirements so that individuals and families who have lost their housing can have access to the Social Fund for housing.

## Social Security and Employment

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### Most of the complaints to the Ombudsman in the field of Social Security are related to benefits

**Complaints about benefits to the Ombudsman Institution represent 78 % in terms of social security and employment. The second group in quantitative terms relates to contributions and collections, representing almost 11 % of the complaints, many of them related to foreclosures.**

#### Social security

Complaints received on benefits represent 78.05 %. The processing of complaints has resulted in the issuance of eleven Recommendations and seven Suggestions.

The Institution has sent to the Congress of Deputies and to the Senate the petition supported by many citizens calling for a referendum, with the aim to carry out a constitutional reform establishing the public nature of pensions and its automatic revaluation. New signatures on this same subject have been received in 2015, quantified by the stakeholders as 170,000, which also have been addressed to the Presidency of the Congress of Deputies, as well as the request of the interested parties to be received by the Commission of the “*Pacto de Toledo*” agreement.

#### Affiliations, registration and deregistration

The Ombudsman Institution initiated inspections with the General Treasury of Social Security (*Tesorería General de la Seguridad Social-TGSS*) due to the lack of notice of the existence of notifications on the Social Security web site. The difficulty is getting worse due to the limited period of ten days for access to the notifications. This agency has been in-

formed that actions by this Institution have allowed to resolve a similar problem, regarding the website of the electronic notifications of the Ministry of Finance and Public Administration, which has included a double warning system of expiration of notifications through e-mail.

#### Contribution and Collection

In recent years, new incentives of contributions have been recognized to self-employed workers under 30 years of age, more beneficial than the previously existing ones. The General Treasury of Social Security applies a strict criterion and it indicates the possibility to allocate only one bonus per person, despite the fact that the applicant meets the requirements set out.

In the opinion of the Ombudsman Institution, given that the regulation expressly establishes a time limit of five years after which a new bonus can be applied for, the Administration goes beyond what the regulation calls for. This leads to the penalization of young entrepreneurs seeking a second chance in the business field. For this reason, two Suggestions and a Recommendation have been made, requesting for a less restrictive interpretation, in accordance with the law. Previous arguments have not been accepted,

thus, the inspections have concluded with a difference in criteria.

The Ministry of Employment and Social Security and the Ministry of Health, Social Services and Equality have been requested the possibility to review the situation of the workers who are providing services under an open-ended contract and that, during its validity, are granted a degree of disability lower than 65 per cent in the bonus of Social Security fees. The General Directorate of Policies in Support to Disability has expressed its support to the measure and is pending on the report of the General Directorate of Employment.

### Disability benefits

The lack of payment of the temporary disability benefit, by relapse, to an unemployed recipient of unemployment benefit, by the Mutual Insurance Company for work accidents and professional diseases (*Mutua de Accidentes de Trabajo y Enfermedades Profesionales-ASEPEYO*), raised the need to determine the organism responsible for the benefit payment, since the Mutual Insurance Company considered it should be paid by the Public State Employment Service (*Servicio Público de Empleo Estatal-SEPE*).

This institution considered that, in such event, the payment of the benefits corresponds to the Mutual Insurance Company, thus requesting information from the General Directorate for the Management of Social Security, which considered that the mutual insurance company acted in accordance with the regulations to deny the temporary disability benefit. However, the Public State Employment Service communicated after reviewing the file, it considered that the Mutual Insurance Company had made a mistake and it should recognize the right of the citizen to perceive the temporary disability benefit, although they were not registered with Social Security.

In parallel, the General Directorate for Management of Social Security varied its criterion, when esteeming that the analyzed situation was derived from a work-related accident, and assuming the position of the National Institute of Social Security (*Instituto Nacional de la Seguridad Social-INSS*), according to which the temporary disability support in case of a relapse shall be recognized, even when the person, on the date of the new discharge, is not registered with a Social Security scheme or in an equivalent

situation. The Mutual Insurance Company shall recognize the right to economic benefit to the interested person and has been ordered to provide a certificate of the Public State Employment Service on the amounts paid during the claimed period of temporary disability, to avoid duplication in the payment of Social Security benefits.

At the request of the Ombudsman of the Regional Autonomous Community of the Canary Islands, information was sought from the National Social Security Institute (*Instituto Nacional de la Seguridad Social-INSS*), on the reasons according to which, in this Autonomous Community, people suffering from Fibromyalgia, chronic fatigue and multiple chemical sensitivities -whose permanent disability is recognized by court means, without setting a deadline for their medical review- are promptly called for review, one year after the binding court resolution. The persons affected argued that this entails testing and updated medical report expenses and obliged them to engage in new legal proceedings.

The management entity has denied any unfair treatment regarding this type of diseases, in relation to the rest of pathologies; hence, the proceedings have been concluded without prejudice to point out the possibility to refer specific cases it can be aware of for study.

It is to be highlighted the action initiated due to the lack of regulatory development of the General Act for Social Security, which would elaborate a list of diseases that allows for the determining of the different degrees of disability and their regime of incompatibilities. In particular, the applicant seeks such an assessment to determine permanent disability in people suffering carcinoma. These provisions had to be approved by the Government during the fiscal year 1999. The Secretary of State of Social Security has argued the technical complexity in providing objective data and establishing in a regulatory text a question linked to the exercise of a profession, along with the reduction for that particular profession when suffering a particular disease at a particular stage. Despite the fact that this action had been completed, it has motivated the initiation of inspections to develop a study on the social coverage of cancer patients.

### Unemployment

Inspections carried out with the Public State Employment Service due to issues in the management of

notifications through the post operator *UNIPOST* and subsequent claims for lack of notification, which resulted in the change of the company responsible for this task, were indicated in the report of 2014.

The complaints on this matter have been reactivated in 2015. The recipients of benefits or unemployment benefits raise that they have been sanctioned for not meeting the requirements of appearance and that they have not had knowledge of the notifications sent by the provincial directorates requiring their appearance. After requesting the information from the Public State Employment Service, it reported that the service was again attributed to the entity that initially carried it out, applying the criteria of evaluation of public tendering and in view of the considerations made by the Central Administrative Court of Contractual Resources on the appeal submitted by the company in question.

The Ombudsman Institution requested information from the Public State Employment Service on the applied criterion undertaken with respect to the established doctrine in judgments of the Supreme Court, issued in the unification of doctrine in the year 2014, and according to which it has been established that the lack of communication of a foreign national's departure carries the suspension of unemployment benefits, the no-termination and the loss of the benefit during the period of absence.

The Public State Employment Service considers that in such judgments there is no mention that this situation is typified as very serious misconduct and thus sanctioned with the termination of the benefit or allowance for unemployment, in accordance with the Act on Labor Infringements and Penalties. The Ombudsman Institution has reiterated the need to adjust the information provided to unemployed people regarding their particular situations.

On the other hand, the Public State Employment Service has also started reviewing the files and recognizing the third parties' claims (to recognize some rights retroactively, to annul sanctions for failure to appear or to reactivate the payment of suspended benefits) once this Institution initiated inspections upon acceptance of the corresponding complaints.

The Public State Employment Service has been informed of the need to improve systems of computer support to the verification of the requirements for access to unemployment benefits to develop the pro-

cessing functions, in order to avoid possible errors resulting from partial or erroneous information.

As per the request for information of a complaint made to this Institution, the Public State Employment Service has undertaken the review of the actions carried out and has left without effect the repeal of the allowance and the amount estimated as undue collection. In addition, a satisfactory resolution has been achieved in other individual cases revealing errors in the assessment of the requirements for each type of allowance, which many times shall be considered on case by case basis and not easily understood by stakeholders.

The Administration maintains the amount of public grants for academic studies received by any member of the family unit has to be included when determining the compliance with the requirements of lack of income. This Institution believes that such scholarships cannot be considered as income but as a compensation of expenses involving family dedication to study of any of its members, since the amount has a didactic material-specific destination, travelling expenses, residence, schooling and tuition, which are not accountable for the calculation of the income of the family unit. Such an interpretation has resulted in a Recommendation made to the Public State Employment Service to issue instructions aiming at not considering as income of the family unit scholarships for studies granted to the children of the allowances' applicants.

Furthermore, a Suggestion has been made to reverse the resolutions suspending the allowance, in particular, when the scholarship is granted based on the condition of persons with disabilities. The Public State Employment Service has indicated that it does not accept the Recommendation made, admitting however the Suggestion and reversing the resolution on suspension of the allowance. Therefore, the Recommendation has been addressed to the Secretary of State for Employment, with the intention to promote a change of position on this issue.

Complaints have been received throughout 2015 due to the rigidity citizens find in the requirements of access to the Activation Program for Employment (*Programa de Activación para el Empleo-PAE*). The complaints make emphasis on the need to have received the three programs for active insertion income, the Temporary Program of Protection for Unemployment and Insertion or the Professional

Requalification Program of persons who exhausted their unemployment coverage. Furthermore, unemployed persons who do not evidence family responsibility, living alone and due to their age have difficulties to rejoin the labor market have contacted this Institution. The unemployed persons who have been affiliated to the Scheme of Self-Employed Workers are in similar situations and, because of the crisis, they have given up the activity and they claim to have some formula to improve their chances of access to employment.

The Secretary of State for Employment was requested information on the provisions that may be adopted to facilitate the labor reinsertion of the long-term unemployed persons. This Department has informed that a new program is under development, which is being studied together with the social partners, for long term unemployed persons between 30 and 55 years and which expects a provision of 129 million euros in the General State Budget for 2016. The Ombudsman Institution will follow-up on this initiative.

### Right to healthcare

It should be noted that this Institution is against the rejection of the Recommendation made to the National Institute of Social Security in 2014 and reaffirmed in 2015 to the Secretary of State of Social Security, to recognize the right to healthcare under the National Healthcare System, to returning migrants to Spain who receive a pension from Switzerland. These agencies consider that by applying the Communitarian regulations, these citizens have covered assistance by Switzerland and they are eligible to it.

At the rejection of the request of the Ombudsman Institution to allow health coverage to this group, mostly elderly women, due to the income limit set at 100,000 euros a year, or as beneficiaries of their spouses, information was requested from the Deputy Consulate General of Switzerland in Barcelona and to the Department of Employment and Social Security of the Embassy of Spain in Berne to learn about the nature and extent of these benefits. According to the information received, it is inferred that the insurance for the elderly and survival of the Switzerland Confederation may be granted even to women who did not work in that country, if the spouse undertook an economic activity for more than one year, and the amount can be less than 40 euros a month.

Unlike the Spanish Social Security system, being a Swiss pensioner does not entail the right to healthcare, but that said pensioners must be insured through private insurance, mandatory for residents in Switzerland, whether they are under age, active or retired workers.

The Ombudsman Institution informed the Secretary of State for Social Security, in accordance with annex II regarding the agreement on free movement of persons between the European Community and its Member States on the one hand, and Switzerland on the other, that the Swiss pension recipients are not required to be affiliated to the health insurance scheme of Switzerland, without being subject to the system of protection of that country, in relation to healthcare. The fact that they may opt, voluntarily and individually, to pay for an expensive insurance to the Swiss mutual provident societies, or sign a special agreement with the General Treasury of the Social Security of Spain -in most of the cases with an amount greater than the low pensions they receive-, does not imply that they may be considered eligible for healthcare, nor can it present a hurdle or prevention of recognition, in accordance with the Spanish legislation.

According to this same criterion, various high courts of justice have ruled in favor of the stakeholders, despite the ongoing position of the indicated agencies, which is contrary to the solution pointed out by this Institution.

### Employment

Active employment policies are the essential instruments that the public authorities have to promote employability. It is necessary to examine these policies and undertake rigorous evaluations of their results and efficiency of each line or program.

At the end of 2013, the Government approved an Implementation Plan on the Juvenile Guarantee, a European initiative to allow easy access of young people to the labor market. To benefit from the measures of the National System of Youth Guarantee, it is necessary to be registered in a database. Complaints were received in relation to the damages entailing the delay in the inclusion in the database of some young people, which has prevented them from accessing public employment or from being hired.

The Ombudsman Institution requested the Secretary of State of Employment to consider the possibility of

taking measures that will streamline the notification or communication of the registration and that the delay in registration shall not affect the interested person when the application meets the requirements.

The data indicate that so far a low percentage of potential beneficiaries has registered in the database. The overall population being the aim of the measures of the Entrepreneurship Strategy and Youth Employment consists of 6,559,200 young people, 4,186,500 constitute the active population between 16 and 29 years (National Statistical Institute-Labor Force Survey (*Instituto Nacional de Estadística-Encuesta de Población Activa-INE-EPA*) of the 2012 fourth quarter) and 2,372,700 are young students within the same age range, potential participants in Training and Education actions. However, the number of registrations of potential beneficiaries was 179,161 as per the updated figures as of 31 December 2015. It is necessary to determine the reasons for the low number of registrations and introduce the accurate corrections, either improving the information at the offices of employment, administrative management of the database or simplifying the requirements and procedures for registration, where appropriate.

Compliance with the requirements for access to Incentives to hiring employees and the establishment as self-employed worker involves taking on some expenses and acquiring obligations (hiring workers or the establishment as self-employed, among others), often undertaken taking into account the amount of subsidies expected to be received. However, the fulfillment of all the requirements does only give the right to granting the public aid as long as there is sufficient budget provision, in such a way that those who have covered expenses or taken on

obligations can easily see his or her request denied despite meeting all requirements to receive it.

When the refusal of public aid makes it impossible to continue activity, the applicant's expectations are destroyed, and even more the applicant can be in a worse economic situation than before filing the application. According to the Ombudsman Institution point of view, it is essential that applicants are fully aware that the concession is subject to the existence of sufficient budget, and better yet, they could know its development, which could be suitable to reflect in an explicit manner on the application form. This Institution has reported this criterion to the Regional Autonomous Community of Madrid, which has considered that this would not be an additional advantage and that it would complicate management and make the subsidies process cumbersome.

During the ex officio actions undertaken last year due to delays in processing and payment of back pay accrued during the dismissal proceedings, the Ministry of Justice stated as a fundamental reason of the three-year delay in the claims to the State of back pay accrued during the dismissal proceedings in severance hearings, the procedure applicable, as pointed out, which led to a "freezing" of budget provisions.

This situation was to be overcome through the adoption of a new procedure for these claims. However, the complaints seem to indicate that this new procedure has not met the expectations.

The Ministry of Justice has recognized the situation and has adopted as an emergency solution an amendment of the management to perform the mechanical tasks involved in the processing proceedings. This Institution will be attentive to verify the effectiveness of this measure.

## Tax Authorities

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### The Ombudsman Institution made Recommendations to the Tax Agency to be more clear, flexible and familiar to taxpayers

**The lack of flexibility of the Tax Administration and its rigid action make the fulfillment of tax obligations difficult for taxpayers in many cases. For this reason, the Ombudsman Institution made resolutions to help make the relationship between Tax authorities and citizens closer, easy and intelligible.**

#### State taxes

##### Personal Income Tax (*Impuesto sobre la Renta de las Personas Físicas-IRPF*)

Regulation and enforcement of the Personal Income Tax should be as clear and accessible as possible since it affects the majority of the population. The action of the State Agency for Tax Administration (*Agencia Tributaria-AEAT*) in managing taxes does not always guarantee the right to information of the parties liable to tax payment, and the interpretation made of the rules often affects the interests of the taxpayers, who feel powerless against the Administration.

**Language and wording of tax notices.** This institution has determined, through numerous complaints, the problems resulting from the language used in tax notices to recipients and the use of standardized models.

A clear example is the **credit attachment order**. The Ombudsman Institution has pointed out in different occasions that the wording and language of the attachment orders are not intelligible to their recipients. This situation would be avoided with the delivery of a clear, reasoned, and simple letter. It is necessary to

clarify, from the initiation of the attachment order, that the person who receives it has no outstanding liability with the Tax Administration. An ex officio action has been initiated on a possible amendment of the wording and content of these proceedings issued by the State Agency for Tax Administration.

**Information and assessment.** As per to the complaints, many of the settlements issued in concept of income tax result from an inaccurate assessment from the Tax Administration and the taxpayers are forced to pay interests on overdue payments and even sanctions.

The Administration must adopt measures ensuring the information taxpayers receive is appropriate and it should assist them so that they can comply with their tax obligations in the best suitable manner, as stipulated in the General Taxation Law.

Inaccuracies in the information can have important consequences when it affects the field corresponding to an economic activity. The Tax Agency was recommended to indicate taxpayers requesting assessment that the information provided has no binding nature, and that it does not impede a verification procedure to be undertaken subsequently in relation to the field indicated, and that they can make a tax inquiry to the Directorate-General for Taxation if they

require a binding reply. The Recommendation has been accepted.

**Temporary allocation of income.** The obligation to pay taxes on subsidies received in the Personal Income Tax is not generally known by the beneficiaries. The Recommendation to the Secretary of State for Public Administrations to include taxation obligations both in the calls of **subsidies or aid** as well as in the concession agreements was laid out in the 2014 annual report. The Secretary of State is not competent in this regard, but it shares with this Institution the positive effect the incorporation of such information may have among the beneficiaries of subsidies and public aid. Therefore, it has transferred the Recommendation to all the ministerial Departments of the Central State Administration, as well as the Autonomous Communities and the Spanish Federation of Municipal areas to take it into consideration in calls and concession of subsidies and aid in the exercise of their competences.

**Domestic partners.** The fact of not applying equal treatment in tax matters to domestic partners does affect the application of taxes. The state is competent to regulate the legal effects of a stable partnership and there is a **legal gap** being filled in a sectorial manner and it compels citizens to request daily the recognition of rights enjoyed by other people who are in identical economic circumstances, just because they opt for a marriage relationship.

The Secretary of State for Taxes was recommended to undertake a reform of the General Taxation Law 58/2003, of 17 December, **to equal the tax treatment of married couples to that of domestic partners**, and to adjust the rule of each tax for equal treatment. The Recommendation has been rejected.

**Deferments and payments in installments.** The Ombudsman Institution has initiated an ex officio action with the Secretary of State for Taxes with the purpose of making the fulfillment of obligations easier for taxpayers.

**Primary Residence for tax purposes.** The concept of primary residence for the purpose of the investment deduction is still the origin of many of the complaints. It is a question of fact that must be evidenced by the taxpayer before the management and inspection bodies of the Tax Administration, to evaluate the evidence, which entails that tax deductions and exemptions are disorderly.

The Tax Agency is issuing settlements of Personal Tax based on the low consumption of electric power, which, in its view, does not justify that the housing has been inhabited in a permanent and effective manner. The Institution has initiated an ex officio action with the Secretary of State for Taxes so that the means of evidence that citizens can provide to prove that housing has the primary-residence status are determined and so that it releases publically the amount of consumption considered by the State Agency for Tax Administration as minimum to determine a housing can be classified as such, so that the decision is not at the discretion of the staff of the Agency.

Regulation on the deduction for the renting of a primary residence and the obligation of a security deposit in the corresponding autonomous body has been subject of several inspections carried out by the Ombudsman Institution in different autonomous communities. It has been recommended that the regulatory legislation of autonomic deduction be amended, in such a way that the right of landlords to apply for it is ensured, regardless of the action of the tenants, either eliminating the requirement to prove the establishment of the required security deposit, or allowing tenants to carry out the said deposit on their own.

The Regional Community of Madrid has accepted the Recommendations made, allowing tenants to provide copy of the complaint submitted in cases in which the landlord has not delivered copy of the receipt of the security deposit in the Housing Institute of the Regional Community of Madrid. In the Community of Valencia, systems to allow solving this situation are under study.

### Value added tax (VAT) (*Impuesto sobre el valor añadido-IVA*)

The **online submission of the tax forms** is still generating problems to the taxpayers, especially with the VAT. At the beginning of the year 2015, the website of the State Agency of Tax Administration did not operate correctly, hampering the fulfillment of the tax obligations. In addition, the telephone assistance service was not available and when the contact was finally established, it was indicated that the department had no concern about the problems arising from the online submission of the tax forms. The

Agency was requested to divulgate the appropriate channels to raise electronic queries and instructions have been given to the Basic Tax Information Service in this regard.

The Order of Finance and Public Administration (*HAP*) 2373/2014, of 9 December, does establish the exemption from the annual summary statement on VAT, form 390, which implies an improvement in this area.

## Tax on transmission

The main problems that were raised this year are related to verifying the value declared by the taxpayers and the method used by Public Administrations.

**The application of coefficients.** When a taxpayer acquires real estate, he or she formalizes its acquisition in an official deed and declares the price of the transaction as the tax assessment base.

The Tax Administration issues a provisional settlement when it considers that the value declared by the taxpayer is less than the actual value, and it calculates it based on the estimation made in a value verification procedure. The problem lies in the method used by the Administration to determine the verified value, as the General Taxation Law (*Ley General Tributaria-LGT*) allows the application of multiplier coefficients to the value of the acquired property that appears in the **Real Estate Cadastre**. The result of the application of the referred coefficients leads to a real estate value generally superior to the one declared by the taxpayer. Thus, the Administration allocates an unreal or non-existent wealth, which it has to unfairly tax, hence violating the principle of economic capacity.

Such property value estimation, used on a preferential basis for tax services, is flexible, easy and cheap to collect, -in comparison to other systems in which the Administration has to allocate resources and invest time to determine the value of the property-, and forces the taxpayer to defend that the declared value of the property matches the actual value as, in many cases, already recorded in public documents such as the purchase and/or commitment deed and the mortgage loan deed. The **burden of proof is reversed** and the Administration seldom accepts the evidence provided by the taxpayer.

Complaints in relation to this method have been received from the Autonomous Community of Andalu-

sia, Valencia, Principality of Asturias and Extremadura, to which this Institution has recommended to approve policy changes so that the method set out in the General Taxation Law is in accordance with the law provisions, in reference to the schemes of determination of the tax base; to respect the principles that govern the tax system according to article 31 of the Constitution; to be adapted to the current market in which the taxable transactions take place, and not to set estimations which do not reflect reality. These Recommendations have not been well received.

## Local taxes

### Real estate tax (*Impuesto sobre bienes inmuebles-IBI*)

After the decrease of real estate values in the market, there has been a substantial difference in many localities between the value the real estate reaches for sale and the current report of values attributed thereof in each municipal area. Albeit the possibility to apply reduction coefficients of the indicated cadastral value has been approved, it is the City Council that must request it, so in many cases this tax implies a burden the citizens consider excessive in the socio-economic context.

### Tax on the increase in the value of urban land (*Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana-IIVTNU*)

This tax, known as the "local capital gain", is the local tax, which generates greater disagreement amongst taxpayers, together with the real estate tax. The calculation system of the intended capital gain, as well as the high tax rate that reaches 30 % of the tax base, entails that the tax is especially burdensome in a scenario of real estate prices on the downfall. In addition, and as it is not a compulsory tax, citizens consider it as especially unfair, and frequently request the intervention of the Ombudsman Institution in relation to the ordinances approving it to be repealed.

The law establishes that **the real estate cadastral value shall not exceed the market value**. In addition, there is a coefficient in relation to the market of 0.5, which is applied to the individual value resulting of the presentation by the municipal area values.

As a result of the corrections the real estate values suffered since 2008, many reports do reflect values that do not match the value that could be obtained for these properties in the market.

Since the tax base does not charge a real capital gain, but an estimation depending on the value of the land assigned by the Administration, the taxpayer does not have the possibility to prove that he or she has not obtained any benefit for the possession of the property, nor for its disposal, which can collide with the principle of economic capacity. Such capacity is the limit the Constitution provides for the levying of the tax, which cannot be met if it is constrained to **pay tax for a non-produced value increase**, as it refers to a fixed element, which is the cadastral value and that may have been established in a time it was higher than what was obtained in the market.

The depreciation in the value of real estate has been recognized in the consolidated text of the law on the Real Estate Cadastre, when it included the possibility of updating cadastral values of urban real estate of a municipal area by applying coefficients depending on the year of entry into force of the corresponding report of values of the municipal area. However, this procedure has a voluntary basis for the municipal areas which request it; thus, it does not apply in general as a means of correction of the tax base.

Many complaints indicate that the entry into force of recent cadastral reports has increased the **tax base beyond the market value**, exceeding the amount of the purchase value in many cases. This results in the rejection of the taxpayers who consider the tax unfair and violating their rights, as they are attributed to a non-existent wealth. It should be reminded that this tax only considers the property value, and not the building, so the impact of these situations get worse.

On the other hand, different recommendations have been made to amend the tax before the Secretary of State for Finance, with an emphasis on groups that were in **situations of a particular difficulty** as persons of old age, with disabilities or economically disadvantaged due to the current crisis.

The Secretary has also reiterated its view that it is a tax calculated objectively, without dealing with the capital gain actually obtained, since the Administration has to recover, for the common interest, the ef-

fort made by the municipal areas, communities and by the State in the investments improving lands, infrastructure and urbanization, and thereby revert these improvements to Tax Authorities.

## Local taxes

Citizens have conveyed that the settlements of taxes do not respect the principle of limitation on the service cost or profit, and that the agreements adopting taxes do not offer the transparency and advertising required for parties concerned to have knowledge about the Administration's grounds for the calculation of the individual tax rate. They also consider the services the City Councils have decreased while more taxes are required and in greater amounts than the applicable when services were of a higher quality and frequency.

The **rate for urban solid waste collection fee** has been approved in many municipal areas which previously provided this service, which is general and compulsory, free of charge, or subsuming its cost in another tax collection. Its application involves aspects generating complaints, such as the collection of taxes for unoccupied housing, occupied on a temporary basis, or considering storage areas, garages or stores that do not generate waste.

The simple fact of making available the waste collection service justifies the levying of tax rates and payments for housing as well as for parking spaces, storage areas, unoccupied housing, empty stores, and any property that is within the area in which the service is provided. This interpretation is endorsed by case law of the higher courts of justice and the Supreme Court.

In spite of this, the unused real estate owners consider abusive this imposition. Those who have storage areas linked to their housing in the same building, estimate that the service provided is on housing and not on the storage areas that do not generate separate waste. Those who possess local or empty warehouses also allege that **the tax is required per a non-existent tax base and a service that cannot be provided**. The owners of a real estate intended for private parking spaces argue that the tax rate exceeds the foreseeable cost of the service provided in this kind of real estate, since they generate less waste than, for example, housing.

## Tax procedures

Complaints about the absence or error in the **notifications** of tax settlements and compulsory collection procedures of tax liabilities are constant. The law establishes the places where notifications should be carried out, but when notification attempts are fruitless, a notice to appear is undertaken, which implies that most of the time taxpayers do not have knowledge of the contents of such a notice and, therefore, cannot lodge the appropriate appeals in a timely manner, being unprotected in the defense of their rights.

Citizens who subscribe to the web portal [notificaciones.060.es](http://notificaciones.060.es) will receive a notice two days prior to the expiration of the notice period when this service detects that they have not accessed their mailbox for notifications, as requested by the Ombudsman Institution.

## Cadastral

Most of the complaints of 2015 have referred to the evaluation of real estate, in the differences in the attribution of ownership or the date of their resolutions.

The differences between the physical reality and the reality reflected in the database of the Directorate-General of the cadastre has been the focus of attention this year, both in urban and rustic real estates, but very especially in this latter case, since they are classified as land that may be urbanized in many municipal areas which have neither been subject to development nor does there exist the possibility of becoming urbanized in the coming years. In some cases, more than a decade has passed since the land was classified as land that may be urbanized by the City Council, which entails the consideration of urban nature by the cadastre. In addition, and this is one of the reasons for the exponential increase of the cadastral value, this consideration entails the allocation of the maximum potential suitability of the land, as per the intended uses in the rules, which implies that a rustic plot, which may have an agricultural use, is evaluated as a residential building, a hotel or a commercial area.

The **cadastral value is an indicator of wealth** for the purposes of subsidies and public aid, used in the tax on personal income, successions and do-

nations, property transfer and certified legal documents, real estate and the tax on the increase in the value of urban land, etc., and this tax use is precisely the ground of the complaints. As a result of successive recommendations made on the subject, instruments which modulate these problems have been approved.

Complaints about disagreement with the cadastral reports have referred, in large numbers, to those municipal areas whose planning reclassified **rustic lands to urban**, and whose housing estate has not been carried out during a long period of time. The consolidated text of the Land Law defines two kinds of land: urbanized and rural, while lands that can be urbanized are not included in this rule, thus, land that can be urbanized can be considered as urbanized, for cadastral purposes, and are subject to taxes.

This problem affected especially the lands being included in municipal management plans in real estate growth phase, but that had not been developed subsequently, due to the emergence of the crisis affecting the sector and the economy since 2008. Different inspections related to this cadastral classification had been undertaken.

This was the motivation for two Recommendations that have been made to the Secretary of State of Finance to reform the rules of assessment of those lands not attaining the features of urban land, so that the value of these properties is adjusted to its real value and not the future urban expectations, as well as the modification of the wording of article 7.2. b of the Royal Legislative Decree 1/2004, of 5 March, approving the consolidated text of the Law of the Real Estate Cadastre to comply with the basic rules of the land.

These Recommendations resulted in the approval of the Law 13/2015, of 24 June, on the mortgage law reform and the consolidated text of the law of the real Estate Cadastre, approved by the Royal Legislative Decree 1/2004, which amended the indicated article, and established the need to adjust the lands to their true nature. Then the Royal Legislative Decree 7/2015, of 30 October, approving the consolidated text of the Law of the land and urban rehabilitation which maintains and reinforces the kinds of land in its article 21, was promulgated, as it will be only possible to qualify as urban property those of which planning has already been executed and those which have the services of an urban land.

However, the situations alleged in many of the complaints have not yet been adjusted, since municipal collaboration is required to carry out new reports,

which in some cases is delayed, resulting in maintaining the qualification of these lands as urban in the cadastral registry and hence in the registry of taxes.

## Economic Activity

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### The Ombudsman Institution took action in order to protect citizens who make use of non official credit

**In 2015, the Institution took action to protect citizens who cannot benefit from official credit institutions and end up turning to alternative credit sources. This type of credit, without any guarantees or institutional backing, entails situations of abuse often causing the economic situation of borrowers to worsen.**

#### Actions arising from economic circumstances

**Usurious interest.** In contrast with other countries, Spain does not have an official interest rate level as of which interest is considered usurious.

The Azcarate Law (on the suppression of usury, enacted in 1908) punishes loan agreements that apply **usurious interest** and declares them null and void. However, it does not establish a specific interest rate and leaves it up to judges to determine what is considered usury. In other countries a limit to interest rates is regularly approved.

In respect to usury, the courts resolve each case on the basis of their own criteria. The Judgment of the Civil Division of the Supreme Court 4810/2015, of 25 November, establishes jurisprudence which affects the so-called rapid loans. The Division considered that these loans are granted with fewer guarantees, and in consequence the lenders can charge more interest than traditional banks, but they cannot double said interest. The Judgment states that an interest rate that is higher than one that is considered normal or average for the market, as happens with transactions for consumer credit,

cannot be justified when the increase of the interest rate is disproportionate.

The Ombudsman Institution believes that **remunerative and default interest rates** must be limited to twice the amount of legal interest, in accordance with the criterion of jurisprudence, as suggested to the Office of the Secretary of State for Economic Affairs and Support for Business (*Secretaría de Estado de Economía y Apoyo a la Empresa*).

**Private capital non-financial companies.** Given the difficulties to obtain credits or loans they need to meet their financial obligations, many citizens turn to private capital non-financial companies. These companies make it easier for them to obtain loans, even in the case of persons who appear in lists of debtors, such as RAI and Asnef. As they do not have to present pay slips or guarantees, borrowers may be unemployed, but have to submit to these companies a mortgage guarantee. Specifically, in order to formalize the loan before a Notary, the companies demand, as guarantee, the public deed of real property completely free of encumbrances.

The term for repayment is usually short, from 6 to 12 months. If the borrower is unable to repay the amount formalized before the Notary within this pe-

riod, the loan is enforced and the borrower loses the property. Late payment interest and penalties are added to the amount of the loan, plus enforcement expenses, so that the properties respond for an amount which can be three times greater than the amount the client originally received.

Law 2/2009, of 31 March, which regulates consumer contracts for loans and mortgage credits and intermediation services to enter into loan and credit contracts, is geared at protecting consumers in transactions carried out with persons or entities that are not banks. For persons lending money in a professional manner, the law establishes requirements that are similar to those of a bank, including having to register in a consumer registry, provide guarantees, prior information and a binding offer.

But some lenders present themselves as private individuals lending to someone else as if they were partners or friends. In this case, they do not have to comply with any requirements, and the consumer is left without any protection.

The Ombudsman Institution has recommended that Law 2/2009, of 31 March, be modified in the terms proposed by Spain's College of Property and Trade Registrars (*Colegio de Registradores de la Propiedad y Mercantil*). The Institution has asked that situations of need on the part of the borrower be defined, that it be specified who should be considered as a person professionally devoted to granting loans or mortgage credits, and that the effective creation by the autonomous communities of registers of companies devoted to the activity of granting or intermediating in loans and mortgage credits be fostered.

**Debt recovery companies.** The Institution made a Recommendation to regulate the debt recovery activity, which was rejected by the Office of the Secretary of State for Economic Affairs and Support for Business. Nonetheless, after receiving a letter from a debt recovery association, the Institution has insisted on the need to regulate the activity of these recovery companies, taking into account the point of view of the companies devoted to this activity.

The regulation of the sector is advisable, not only to align these companies with their counterparts in other European countries and avoid the use of unethical methods in their collection management activities, but also in order to establish a legal framework in which the activity is to be carried out, thus protecting the position of both the debtor and creditor.

## Financial entities and the security market

Year after year, the Ombudsman Institution has denounced that the system established to resolve conflicts between citizens and financial institutions lacks essence, and that the resolutions are not binding and are not fulfilled by the entities, which are rarely penalized for their bad practices.

The lack of effectiveness of the Claims Services of the Bank of Spain (*Servicios de Reclamaciones del Banco de España*) and of the Investor Office of the National Securities and Exchange Commission (*Oficina del Inversor de la Comisión Nacional del Mercado de Valores-CNMV*) which even though they have resolved complaints in favor of clients, the latter see no rectification of the actions which caused them detriment. In consequence, a Recommendation was made to the Office of the Secretary of State for Economic Affairs and Support to Business to mediate **a truly effective extrajudicial complaint system** and to oblige Banks to correct their actions so that consumers are really protected by the Administration.

On the basis of the information received, it is inferred that the Recommendation was partially accepted, specifically in respect to the possibilities of **improving the current institutional system of client protection**, as well as the alternatives to foster the effectiveness of the current complaint services, internal ombudsmen and customer services in view of including them in the draft bill to incorporate the European Directive on credit contracts entered into with consumers of real property for residential use. Given that the modification of the law is still being processed, new information has been requested regarding progress made in that respect.

**Basic account without fees.** In a modern society, citizens need to have a current account for deposits and payments, irrespective of their level of income. In 2014, the Ombudsman advocated the need to create a basic bank account without fees. The Ministry of Economy sent a letter indicating that there are no legal maximum limits to the fees that credit entities can charge their clients, given that article 3.1 of Order EHA2899/2011, of 28 October, on transparency and protection of clients of banking services, states that fees "shall be the ones freely established between said entities and the clients".

Nonetheless, the Order focuses particularly on the transparency of the fees through different channels, which will be reinforced following the effective date of Directive 2014/92/EU of the European Parliament and the Council, of 23 July 2014, on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

In consequence, after completing the transposition of the Directive, all consumers will be entitled to have a bank account with which to carry out a series of basic services (deposit and withdrawal of cash, purchases with credit cards, standing orders for direct credits and debits, for example) at a minimal cost established by law.

**Hours for payment of invoices.** Ex officio action was taken after learning that an elderly woman who lived alone spent five days without electricity and without heat in her house because the bank did not allow her to pay her receipt on Friday at the cashier's window, having to wait until Tuesday because of the limited hours and days banks have established for these transactions.

The Bank of Spain and the Office of the Secretary of State for Economic Affairs and Support for Business indicated that since there were no legal provisions establishing an obligatory timetable during which credit institutions had to accept the **payment of invoices that are not directly debited**, the criteria of the Bank of Spain was that adoption of a more or less ample timetable should be a decision taken freely by each entity for its operations and internal organization.

**Preferred shares and subordinated debt.** Actions that were initiated on occasion of the sale of preferred shares and subordinated debt without proper information have ended, given that the CNMV and the Office of the Secretary of State for Economic Affairs and Support for Business communicated that Order ECC/2316/2015, regarding the obligation of information and classification of financial products, had been approved. The Order incorporated the recommendations made by the Ombudsman in the study on irregular marketing of preferred shares to mitigate the situation of the persons affected and avoid a repetition of the situation.

The institutional and social concern in respect to the deficient marketing of these hybrid products made

it necessary to find formulas for the adequate resolution of the conflicts caused. For this reason, the Spanish Bank Restructuring Fund (*Fondo de Reestructuración Ordenada Bancaria-FROB*) gave instructions to the banks in which it had shares (NCG, CX and Bankia) to establish an arbitration procedure for holders of preferred shares and subordinated debt.

The consumer arbitration system is an extrajudicial and voluntary solution which is binding and enforceable for the parties. The arbitration procedure is free, simpler than judicial proceedings and faster. It is a specialized procedure in which the arbitrator is chosen by the National Consumer Board (*Junta Nacional de Consumo*). The system's special feature was the appointment of an independent expert to carry out a prior selection of clients entitled to arbitration on the basis of documents submitted by the latter.

Under the system, a company would analyze and select the arbitration applications, appraising all criteria together, and issue an opinion against arbitration when it did not detect any deficiencies which could potentially invalidate the consent given in the subscription or acquisition of the products. However, in case an applicant was not selected for arbitration, the reason for refusal was not given, which is essential since consumers have to know the reasons in order to better defend their interests. The Ombudsman Institution's main objection to that system is based on three fundamental aspects: 1) arbitration was not universal; 2) the expert to whom the client had to submit his or her documentation was not truly independent, since he or she defended the entity's interests; 3) the reasons for non acceptance of arbitration were not given.

The Recommendation was rejected. For the Office of the Secretary of State, not communicating the expert's specific assessment did not generate any defenselessness for the client, since the former's intervention was only intended for the interested party for guidance purposes, so that the voluntary decision to accept or not arbitration was not adopted solely pursuant to the expert's criterion. Moreover, the expert's opinion was not binding for the interested party or if fitting for the arbitrator to whom the issue was submitted.

## Insurance

The main problem faced by citizens on taking out an insurance policy is the scarce and incorrect information some companies provide regarding the policy's features. If the contracts are not drafted in a sufficiently clean and precise manner, there may be doubts as to the rights and obligations assumed by each party. This lack of information is evidenced when there is a claim and the insured party tries to exercise his/her rights of coverage and the latter are rejected. On filing a complaint with the insurance company's Customer Service or with the Ombudsman Institution is when the insured becomes aware of the real coverage of the insurance contracted. Even if the client files a complaint with the Complaint Service of the Directorate General for Insurance and Pension Funds (*Servicio de Reclamaciones de la Dirección General de Seguros y Fondos de Pensiones*) and obtains a favorable resolution for his or her petition, the insurance companies are not obliged to comply with the resolution, so that in order to enforce his or her right the insured has to go to court. This situation reveals the lack of effectiveness of this Complaint Service in an unbalanced market.

**Linked insurance policies.** The ex officio actions involving a Recommendation regarding the possibility of establishing restrictions on the practice of banking entities to impose, on clients' insurance, policies linked to mortgages is still ongoing.

**Pension plans.** During 2015 an ex officio action launched in 2013 on the need to foment private savings to complete future State pensions and the review of the regulation of pension schemes came to an end. The action was taken up with the Directorate General for Insurance and Pension Funds (*Dirección General de Seguros y Fondos de Pensiones*) and the Office of the Secretary of State for the Treasury (*Secretaría de Estado de Hacienda*), which did not consider it appropriate to establish greater tax benefits in respect to the taxation of pension plans.

Royal Decree 681/2014, of 1 August, introduced modifications to improve and clarify the regulations on pension schemes and pension funds. In respect to the right to cash-out a pension plan, the rules regarding its valuation and transfer to other social benefit instruments in the event of termination of the employment relationship of the insured worker were modified, and in respect to the information system,

new rules were established regarding the incorporation of the insured parties to the collective insurance contract, as well as information to the insured parties and the beneficiaries in these collective insurance policies, with special reference to the company social benefit schemes.

All of the proposals made by this Institution were taken into account, with the exception of two: modification of taxation of pension schemes as income from capital instead of as income from work was not accepted, nor was reinstatement of the reduction of 40 % on the full amount of the benefit at the time it is collected either.

## Power supply

Throughout 2015 complaints continued to be filed regarding the matter of power supply and ex officio actions were also initiated. Furthermore, recommendations pending from 2014 were monitored. The key to many of the problems detected lies in the need to improve the regulation to make power supply more balanced.

**Power cuts.** Given the delays in the approval of the Royal Decree to regulate the marketing, contracting and supply conditions of electric power, in 2015 the Institution followed up on several recommendations made in 2014 to the Office of the Secretary of State for Energy.

Specifically, the Ombudsman Institution recommended, as a prior requirement of any actions that could lead to the suspension of the power supply, establishing a procedure to guarantee the rights of consumers to submit allegations in their defense, the presumption of innocence and reasonable deadlines that do not discriminate between alleged defrauders and people who do not pay. It also recommended to make the intervention of the competent Administration obligatory, subject to a report of the social services, before interrupting the electricity supply, and to require that the companies offer consumers the possibility of financing or fractioning payment of their debt before cutting the supply, in cases of non-payment and also of fraud.

**Fee Rates.** In 2014, the Ombudsman Institution recommended that the Office of the Secretary of State for Energy should review the distribution of the concepts of fixed costs and variable costs of the electric-

ity bill, which is set up in a manner that does not incentivize savings, given that the fixed costs are very high. The Institution is still waiting for a reply from the Office of the Secretary of State for Energy.

**Self-consumption.** The Ombudsman Institution recommended that the production of electric power under a self-consumption system in cases in which no excess energy is discharged into the grid should not be subject to any charge at all, or to the obligation to register with the administration, given that self-consumption entails an energy saving measure that should not be discouraged. Complaints denouncing this problem continued to be received in 2015.

These recommendations were conclusively rejected through Royal Decree 900/2015, of 9 October, regulating the administrative, technical and economic conditions of the different types of energy supply and production with self-consumption.

**Need for guarantees in electricity fraud inspections.** The Ombudsman Institution has received numerous complaints in which the interested party highlighted that the supply company demanded payment of an amount of money as penalty for fraud, which is usually about 2000 euros, and which also entails a power cut. Citizens denounce violation of their fundamental right to the presumption of innocence, since the supply company does not substantiate in an authoritative manner the existence of fraud, nor that the fraud is attributed to the holder of the contract. In some cases, the inspection activity is not even carried out by the supply companies, but instead by companies subcontracted on the basis of a variable remuneration. A serious problem arises when the employee of the supply or sub-contracted company states it has corrected the alleged irregularity. In such cases, the citizen is absolutely defenseless, since there is no evidence or record of the alleged irregularity.

The common denominator of all these complaints is the **violation of the fundamental rights of all penalization procedures** and, in particular of the rights of not being condemned without incriminating evidence, of presumption of innocence and of the right to the independence and impartiality of whoever imposes this type of penalization.

In July 2015, the National Commission for Markets and Competitiveness (*Comisión Nacional de los Mercados y la Competencia*) proposed establishing a procedure to detect electricity fraud in which

inspections and establishment of the penalizations would be on account of the supply companies.

For the Ombudsman Institution, the penalizations due to fraud are intended as material punishments whose objectives are of general interest: to avoid that normal citizens have to pay the cost of the fraud and prevent situations of risk for the life and integrity of persons. Hence, the exercise of this power cannot be attributed to a company, as that would undermine the rights to the independence and impartiality of the adjudicator. In addition, the functions involved in the exercise of the authority inherent to the public authority are reserved by law to civil servants, so that citizens are entitled **to have penalization procedures processed by independent persons** who serve the law and the general interest in an objective manner. This is the only manner the fundamental rights of citizens can be protected.

The Institution has recommended that the Office of the Secretary of State for Energy should preserve the public character of the processes to pursue electricity fraud, entrusting the investigation and resolution of the dossiers to civil servants who satisfy the requirement of independence.

Although a modification of the regulations is needed to safeguard the independence of the inspectors of electricity fraud (the competence of the state legislator), in the meantime the issue of how to deal with the complaints procedures, for which the autonomous communities are competent, must be addressed.

The Ombudsman Institution considers that the autonomous communities must properly protect the rights of the parties affected by these bills, given that the principle of **presumption of innocence**, established in the Constitution, has directly applicable legislative value. For this purpose, a Recommendation was made to the Department for Public Works (*Consejería de Fomento*) of the Autonomous Community of Castile-La Mancha to stop attributing the presumption of validity to the inspections made by persons who are not civil servants.

In respect to cases in which the Administración has already issued an unfavorable resolution, after having accepted as valid a new bill without evidence, a Recommendation was made to review ex officio the corresponding resolution in order to issue a new one which properly assesses the incriminating evidence against the affected party.

**Payment of the debt in installments or deferment of payment.** Many citizens have difficulties in paying their electricity supply debts, and request paying in installments. However, the companies do not always accept.

In view of the possibility of a power cut due to non payment, citizens are left in a weak position to deal with the power companies. Whereas the other companies with which citizens may have contracted debts are subject to the legal obligation to respect the procedures established in those cases, the companies that supply electricity, which are legally entitled to cut the supply, are in a privileged position.

There exists the need to reflect on the importance of establishing a fair legal framework that enables consumers to defer these debts without suspending the power supply. For this purpose, ex officio actions were initiated and are still ongoing.

The Ombudsman Institution does not have any power to mediate between citizens and these private companies, given that its function is limited to supervising actions of the Administration. However, this legal impediment has not prevented the Institution from trying to achieve the mediation of the competent bodies of the autonomous communities in order to have these debts deferred.

The immediate cut of power supply due to nonpayment of a bill, the legality of which is subject to the power of review of the Administration, is a measure of pressure that weakens the citizen's legal position and can leave without effect his or her legitimate possibilities of defense. Since the Administration can declare that the bill is improper, and in consequence, that the power cut associated to nonpayment thereof should not have happened, it is necessary that the Administration exercise this power to adopt, as a provisional measure, suspension of power cuts, or in the event that the latter was performed, order that the supply be reestablished while the claim is being resolved and until the latter becomes final and enforceable. This possibility was suggested to the competent bodies of the autonomous communities, but was not accepted by any of them.

## Freedom of business and trade

**Transport.** The 2014 report contained a Recommendation to the Office of the Secretary of State

for Transport to eliminate the requirement to have three trucks in order to exercise the activity of heavy road freight transport. The Recommendation was not accepted by the Office of the Secretary of State for Transport. The National Commission for Markets and Competitiveness, on the basis of the same criterion upheld by this Institution, has filed a contentious administrative appeal against Order FOM/734/2007, and currently proceedings are underway in the Contentious Division of the National High Court.

A Recommendation was also made to the Office of the Secretary of State for Transport to abolish the requirement to have five vehicles in order to render discretionary passenger transport service, as this entails a requirement contrary to the freedom of enterprise and is not duly justified. This Recommendation is currently being monitored.

Similarly, a Recommendation was also made to abolish the requirement to have 8 ambulances and 15 drivers to render medical transport services.

**Cost of uniforms in schools financed with public funds.** Another issue raised by citizens is the practice of some schools financed with public funds consisting of increasing the price of school uniforms on the basis of exclusive designs and/or agreements that limit the free market. According to a study of the Galician Council for Competitiveness (*Consejo Gallego de Competencia*), exclusive uniforms cost from 342 to 391 euros, up to three times more than the cost of basic uniforms (around 128 €).

In the opinion of the Ombudsman Institution, the educational Administration must intervene in respect to the practices of schools that required uniforms that are sold in restricted circumstances, as this deprives families of the possibility of acquiring uniforms in the establishments of their choice.

Thus, the Department of Education of the Community of Madrid was recommended to take measures to reduce the excess cost of uniforms of schools financed with public funds. This Recommendation is currently being monitored.

**Rental of tourist accommodations.** The Ombudsman Institution believes that there are no reasons of general interest whereby citizens should have to assign to a company the rental of their apartments to tourists, instead of handling the rental themselves. It

was recommended that in cases in which both residential and tourist uses coexist, citizens be allowed to offer their dwellings without any restrictions other than the ones established for companies.

## Consumption

In 2015, the Ombudsman Institution's activity in the matter of consumption did not vary significantly, either in respect to the amount of complaints filed or in respect to their contents. The subject matter of the complaints continue to reflect controversies regarding customer services, the activities of non-official academic centers, repairs of vehicles and small household appliances, and to a greater extent discrepancies arising from online transactions.

The Institution is monitoring transposition of Directive 2013/11/EU (ADR), of 21 May, on the alternative resolution of disputes regarding consumption matters, and the implementation of the measures provided in Regulation (EU) 524/2013 on the resolution of online (Internet) disputes regarding consumption, the objective of which is to establish a **European platform for the extrajudicial resolution of disputes** between consumers and traders.

The Office of the Secretary of State for Health and Consumer Affairs (*Secretaría General de Sanidad y Consumo*), which was asked for information regarding plans to transpose the ADR Directive and actions planned to publicize this channel for conflict resolution, clarified that they are currently working on the preliminary phases, not yet being able to issue an assessment of the Directive's impact. It also announced that it intended to have the European Customer Service Center provide the assistance contemplated in the Directive, which requires formal designation of the Center and communication of this designation to the European Commission.

In addition to providing advisory services to citizens regarding the mechanisms available for the defense of their rights and interests as consumers, the Institution also continued with its habitual activity of supervision of the operations of the Administration, as well as administrative procedures followed to resolve complaints.

On occasion of the incident in an amusement park ride in the town of Las Rozas in Madrid, this Institu-

tion looked into **the safety of rides** that are set up in this type of fairground. It was noted that although there are strict controls for the manufacturing and maintenance of specific parts of these rides, multiple procedures and parts of the structure are not subject to inspections, neither regular inspections nor when the rides are assembled.

For this reason a Recommendation was sent to the Official College of Technical Industrial Engineers of Madrid (*Colegio Oficial de Ingenieros Técnicos Industriales*) to establish a protocol for the inspection of the rides every time they are assembled, in which the review of critical points, verification of material fatigue and other matters of interest are standardized. The said corporation has expressed its willingness to attend to the Recommendation, although it believes that for that purpose, consensus must be sought to draft a regulatory document with the support of the public Administration. The resolution is being monitored.

## Administrative contracting processes

**Lack of payment.** The difficulties of contractors to collect the amounts owed to them by municipal governments for work, services and supplies performed or rendered by the former has been constant in recent years, and continued in 2015.

On multiple occasions several requests have had to be made to the corresponding Administration to obtain information regarding the situation mentioned above. In other cases payments are delayed for long periods of time.

At the time the 2014 report was drafted, a claim regarding the public tender for management of a service, without any information being provided by the Administration of the possible debts of the company or entity managing the service, was being processed. In such a case it is the successful bidder who must assume the debt. Following actions taken with the State Administrative Contracting Advisory Board (*Junta Consultiva de Contratación Administrativa del Estado*), the Institution became aware of the transposition of a package of EU Directives that focus on ensuring the aspects that facilitate public contracting for those companies.

**Investigation of the penalization procedure.** One of the problems that the Ombudsman Institution is

often asked to resolve is when functions entailing the exercise of authority are entrusted to persons who lack the necessary condition of independence. This situation was raised in connection with externalization of the radar service to a private company by the Town Council of Parla, which it pays with a percentage of the amount collected from fines.

The Ombudsman Institution disagrees with the Town Council's explanation, whereby under the said contract exercise of the functions of authority are reserved for civil servants, because the only person that ap-

pears to be in charge of investigating all the dossiers is a civil servant. However, the Institution believes that it is difficult to believe that a single person can assume the workload of investigating 14,614 dossiers.

The citizens are entitled to having penalization procedures investigated by independent persons who serve the law and the general interest in an objective manner, which is why a Recommendation was made to the Parla Town Council to entrust investigation of the penalization dossiers directly to public servants. This Recommendation was not accepted.

## Communications and Transport

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### The Ombudsman Institution worked to improve the accessibility of transport

**In 2015 the Institution worked to improve the accessibility of transport in buses and trains. It recommended that the periodic revisions of access ramps of buses be improved, and that a taxi be paid for persons with disabilities in the event the ramp was not functioning. Resolutions were also adopted to improve the accessibility of train stations and to improve the information offered to users with disabilities.**

### Communications

Communication services have undergone rapid technological evolution that has not been accompanied with the necessary regulatory development to solve new problems. On the basis of this Institution's experience, the conclusion is that when specific rules are approved to regulated specific matters, fewer problems are detected.

In 2014 a study entitled Telecommunications: Demands and Needs of Citizens (*Telecomunicaciones: demandas y necesidades de los ciudadanos*) and carried out from the point of view of citizens, was published with the objective of making visible the problems and difficulties they encounter, to achieve equality and better operation of the market by means of more active actions on behalf of the public authorities.

In 2015, actions arising from the study continued. The information obtained provided a real and global vision of the matter and the sector, and enabled reaching conclusion to improve the situation. One aspect which attracted the Institution's attention is the lack of sufficient information by consumer entities regarding the problems that affect the citizens

of their community. This circumstance creates obstacles to adopting necessary measures for the resolution of problems. The computer programs that are used as a channel to collect data do not contemplate fundamental aspects to learn about the market situation in the autonomous community. It would be very beneficial that the programs be adapted and give visibility to the complaints submitted by citizens.

Given the existence of different competent bodies, some belonging to the Central State Administration and others dependent on the Administration of autonomous communities, the coordination and collaboration of all of them is essential. Bodies responsible for consumer affairs have shown **problems of coordination** with competent bodies of the central Administration.

Another conclusion reached on the basis of the study is the fact that operators have been able to benefit from non-regulated situations to give coverage to ethically questionable practices. The strict application of regulations and the rapid imposition of penalties on illegal behaviors are the instruments that are needed to provide protection to citizens in certain situations.

In connection with **landline phone** services there have been complaints regarding delays in the installation of telephone lines, in repairing breakdowns, line transfers and processing portabilities.

Most of the complaints in the field of **mobile telephone** services are the consequence of subscriber discrepancies with the bills issued by the operators.

The 'roaming' service, which enables a subscriber's mobile telephone line to continue operating outside the country where the service is contracted, continues to generate many complaints due to the surcharges it entails on the bills. Starting on 15 June 2017, this service will be eliminated in countries of the European Union, and as of 30 April 2016, surcharges will be reduced. Information on this matter was requested from the Office of the Secretary of State for Telecommunications and Information Society (*Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información*) and the National Commission for Markets and Competitiveness.

Another matter of concern has to do with reception and billing of the SMS PREMIUM service. For the Office of the Secretary of State of Telecommunications, the problem is one of non-consented contracting. The new legislation enacted regarding this matter is geared at increasing the information that SMS PREMIUM service users receive, prior to contracting the service and during the term of the contract, in order to ensure that these services are contracted in a conscious, informed and voluntary manner.

## Transport

The reduction of services and frequencies, which mainly affects rural areas, was also cause for complaints in 2015. Another group of complaints refers to accessibility of persons with disabilities. In Spain, **public passenger transport** is considered a public service, which means that it cannot solely be provided on the basis of profitability criteria, as a private company would do.

In Madrid, the incompatibility between the Blue Card (*Tarjeta Azul*) and the new contactless Transport Card (*Tarjeta de Transporte*) led to withdrawal of the Blue Card issued by the City Council to persons with

disabilities, giving rise to many complaints. These actions are ongoing.

There are frequent complaints about **persons with disabilities** not being able to get onto buses because the access ramps are not functioning properly. In 2015, a Recommendation was made to improve periodic revisions and to pay for the cost of a taxi for persons with disabilities in case a bus ramp was not working. The Transport Consortium (*Consortio de Transportes*) has rejected the Recommendation that it should pay for a taxi and the Institution is waiting for the Municipal Transport Company (*Empresa Municipal de Transportes*) to respond whether it accepts the Recommendation or not.

**Accessibility in train stations**, as well as the maintenance and improvement of **railway infrastructures**, has also been a cause of complaints in 2015.

RENFE accepted the Recommendation made by the Ombudsman Institution to publicize its accessibility plan, which will enable persons with disabilities to adopt daily life decisions on the basis of availability of transport. The actions were initiated on occasion of a complaint submitted by the Spanish Committee of Representatives of Persons with Disabilities (*Comité Español de Representantes de Personas con Discapacidad-CERMI*).

In 2015, RENFE refused to compensate passengers for delays it considered were due to theft of cable. According to the company, the theft of cable can be included as a cause of Force Majeure that is not indemnified in accordance with the Civil Code and the railway sector regulations. In the Ombudsman Institution's opinion, this public entity's criterion must be reviewed and passengers must be compensated when this type of delay occurs, even where liability for the delays corresponds to the manager of the infrastructures.

The economic situation has had an impact on the **state of the road network**, given that new projects or improvement works are not carried out, and any underway are not executed in appropriate conditions. Many of the complaints regarding roads refer to their upkeep, and thus affect the State's obligation to prevent dangerous situations.

## Environment

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### Nuisance caused by noise and lack of restoration of damaged areas were the focus of the work carried out by the Ombudsman Institution

There were complaints regarding the nuisance caused by environmental urban noise and the noise generated by large infrastructures. Complaints regarding the lack of restoration of damaged spaces and the repair of damages caused by companies that finished their activities decades ago were also processed. Citizens also filed complaints with the Institution regarding issues of determining who was competent in matters of defense of the territory against flooding and cleaning riverbeds, especially in the case of rivers going through urban centers.

### Assessment of impacts. Municipal licenses

#### Environmental assessment of projects

In respect to actions regarding the **impacts of the use of hydraulic infrastructures** for the exploration, research and exploitation of hydrocarbons, the Ombudsman Institution pointed out to the Ministry of Industry, Energy and Tourism (*Ministerio de Industria, Energía y Turismo*) that since the use of techniques with very significant specific risks had not been forbidden by law, it required that the Administrations ensure that no project be authorized without a complete environmental assessment.

In the opinion of the Institution, said environmental assessment must include appropriate evaluation of the state of the environment before the operations begin, in particular the aquifers, a precise definition of the environmental impacts and risks, corrective and compensatory measures that must be implemented, without disregarding those which are nec-

essary but may entail a high cost; a plan of action in the event of pollution and a plan for the periodic follow-up of execution of the project and its effects.

Avoiding bad practices should be a priority, given the difficulties that are usually faced in the effective restoration of the environment and natural resources, such as closing down the exploiting company, insolvency, lapsing of penalization procedures, impossibility to determine the origin of the pollution, budgetary restrictions to proceed with subsidiary execution on account of the entity liable for the pollution, etcetera. In addition to these difficulties, there are also technical difficulties or the impossibility of carrying out the restoration of certain elements of the environment once they have been damaged.

The Ministry considers that the dissemination of the information is an important measure to explain to citizens that the technique is not hazardous, although its website does not yet provide clear information. The Ministry insists that it has planned to provide said information.

## Impact of infrastructures: airports, roads and railways

The aeronautical noise easements and plans of action of **airports** such as Bilbao, Ibiza, Malaga, Seville and Valencia have not yet been approved. This Institution has submitted a resolution to the Directorate General of Civil Aviation (*Dirección General de Aviación Civil*) to speed up the process to approve said easements and their plans of action, in order to safeguard the rights of parties affected by the acoustic impact of airports.

The Institution also took action in connection with problems of noise generated by military installations, requesting the Defense Administration to implement control of compliance with the law in the field of noise pollution in this type of installation. This is the case of the air base of Zaragoza and of Armilla, in Granada.

In respect to roads, in general terms the road Administration has not adopted, or has postponed adopting measures to prevent or correct noise, in particular the installation of noise barriers, even after acknowledging that they should be installed. The reasons given are the usual ones: in addition to the lack of budget allocations, lack of approval or review of noise maps (SE-30 highway in Seville) or of the action plans (S-10 highway in Camargo, Cantabria); delays in processing projects (connection of the M-40 highway with the A-6 in Madrid), urbanizations built after the infrastructure, etcetera.

For the Institution, the lack of a noise map or plan of action does not impede adopting provisional measures to comply with the noise levels imposed by regulations. Furthermore, it is irrelevant that houses are built before or after the infrastructure, given that the latter is what has to adapt to the new situation since it generates the pollution.

In respect to railroads, the Institution has dealt with the noise generated by the North Station in Valencia, which affects the dwellings nearby; the nuisance caused by noise as explained in 2013 by the Sant Celoni Town Council (Barcelona) to Adif, due to the passing of the high speed line Madrid-Zaragoza-Barcelona-French border, and the noise generated by construction works and future start-up of the new Paco de Lucía transport interchange (train and commuter trains), located between the neighborhoods of Mirasierra and Montecarmelo in the Community of Madrid.

## Natural resources

The Department of Agriculture, Environment, Climate Change and Rural Development of the Autonomous Community of Valencia (*Conselleria de Agricultura, Medio Ambiente, Cambio Climático y Desarrollo Rural de la Generalitat Valenciana*) is going to promote modification of the regulation for the **protection of natural areas**, which includes the requirement to classify a wetland as a condition prior to being declared a protected area for its protection. There are wetlands in that Autonomous Community that have not yet been classified, and are thus not protected.

Complaints were received regarding the construction of a **coastal pathway in Cantabria**. The works have been halted and the Directorate General for the Sustainability of the Coast and the Sea (*Dirección General de Sostenibilidad de la Costa y del Mar*) are studying possible modifications of the construction project. This Institution has pointed out to the Administration that the decision to be adopted regarding modifications of the project must take into consideration the criteria based on a rational use of the coast and the conservation and maintenance of its natural values and landscape. This principle is contemplated in the Special Plan for Pathways and Trails along the Coast (*Plan Especial de Sendas y Caminos del Litoral*), and also stems from legislation regarding coasts and the protection of natural areas, including the European Landscape Convention. Ensuring that the works cause minimum impact on the landscape entails adopting the necessary measures to guarantee the safe use of the pathway and that for this purpose alternatives be chosen that involve the lesser impact.

## Fauna and flora

Spanish authorities did not consider it necessary to apply the principle of precaution in connection with the **use of diclofenac in veterinary drugs** and refer to the decision to be adopted by the European Commission on prohibitions or restrictions of the use or sale of said product. The European Committee for Medicinal Products for Veterinary Use has highlighted the need to adopt additional management measures in certain fields to avoid that sub-products of animals treated with diclofenac enter into the food chain of **necrophagous birds**, depending on the risks

identified for each situation (animal sub-products from a slaughterhouse, animals that die due to natural causes or diseases on farms and are directly taken to the rubbish tip and animals from extensive stock breeding).

In 2014 the Ministry of Agriculture, Food and the Environment (*Ministerio de Agricultura, Alimentación y Medio Ambiente*) and the Spanish Agency for Drugs and Health Care Products (*Agencia Española de Medicamentos y Productos Sanitarios-AEMPS*) approved some recommendations. They also announced the implementation of a program of samples of necrophagous birds that enter fauna recovery centers. However, the information provided was not conclusive in respect to the measures effectively applied and the results obtained, reason why the Ombudsman Institution has requested new data regarding this matter. Spain has 90 % of the vulture populations of Europe; some of the species in the country are in an unfavorable state of conservation and others are at-risk.

The Institution also processed complaints related to **associations that defend the interests of animals**. The most common cases are usually due to lack of replies to written letters submitted to the Administration or due to problems in appearing as interested parties in penalization procedures in which an infraction of animal wellbeing regulations is reported (such as some popular festivities in which animals intervene). In the cases analyzed, the association reports the facts and expresses its intention to appear in the proceedings as an interested party. The response of some administrations is to only consider the associations as the reporting party. The Ombudsman Institution considers that in some cases, these associations are qualified stakeholders, as they are interested in having the Administration resolve the matter in a specific manner and wish to present allegations to the resolution proposal as organizations that defend animal protection.

## Mines

Last year actions continued with the Department of Economy, Employment and Industry of the Autonomous Government of Galicia (*Consejería de Economía, Empleo e Industria de la Junta de Galicia*) regarding the impacts of mining activity in Carballeda de Valdeorras (Ourense) and a copper and gold mine in Touro (Coruña).

In Madrid, the autonomous administration and the Tajo River Basin Authority (*Confederación Hidrográfica del Tajo*) accepted the suggestions made and initiated a joint report on the situation of mining operations in the Regional Park in the surroundings of the lower water flows of the Manzanares and Jarama Rivers and restoration work.

The Ombudsman Institution also promoted an ex officio action regarding the activity of a quarry in Llera, in the locality of Grado (Asturias), and the legalization of works carried out in that same place, subject to compliance with the environmental indications and requirements contained in sectorial resolutions and reports.

## Sea, coasts and ports

The extension of the concessions for the occupation of the public coastline prior to Law 2/2013 on the Protection and Sustainable Use of the Coast (*Ley 2/2013 de protección y uso sostenible del litoral*) for a period of up to 75 years entails problems in the concessions that involve the provision of services. An automatic and generalized extension contradicts the provision for competitive tenders that must govern the granting of new concessions once the term provided in the initial concession has expired. The requirement for competitive tenders stems from transposition of the Directive regarding internal market services which required, amongst other legislative measures, the modification of the Coastal Law (*Ley de Costas*). This matter was raised in connection with the extension of the concessions on the Paseo Marítimo of Malvarrosa, in Valencia, and is pending clarification by the Ministry of Agriculture, Food and the Environment.

The Institution's main actions in connection with beaches had to do with access to the beach of Toralla, Vigo (Pontevedra); with the compensatory measures as a result of the destruction of the beach of Nazaret, in Valencia; with the bay of Portman (Murcia), and with the beach of Albir in l'Alfàs del Pi (Alicante).

## Continental waters

Actions continue with the Guadalquivir River Basin Authority (*Confederación Hidrográfica del Guadalquivir*) in connection with the reduction of the water volumes granted to an irrigation community due to

new water soundings established. A similar problem motivated the actions with the Tajo River Basin Authority in Pozancos (Guadalajara) due to the right of use granted for recreational purposes to a limited liability company.

The Principality of Asturias submitted a report on the emissions of three large industrial facilities in order to determine the origin of the mercury pollution of the fountains of La Piquera and El Muselín, currently being studied by the Institution. The actions in connection with the pollution of a spring in Porto do Son (A Coruña) are also ongoing, as the Town Council has not yet submitted conclusive information or taken action to resolve the problem.

On occasions, water treatment problems have to do with a lack of control in urban planning processes. Following the actions taken with the Jucar River Basin Authority in connection with complaints from residents and associations of the region Campo de Elche regarding the treatment of sewage and the conditions required to authorize discharges from isolated dwellings, this Institution addressed the Department of Agriculture, Environment, Climate Change and Rural Development of the Autonomous Community of Valencia.

The construction and start-up of new treatment plants on the Costa del Sol, planned for 2015 in accordance with the Integrated Water Treatment Plan (*Plan de Saneamiento Integral*) for said coast, and geared at achieving zero discharges and achieving an adequate quality of the water, is still in the processing phase. The matter is being handled jointly with the Andalusian Ombudsman Institution. In fact, the information provided by the autonomous Institution was used to continue with the actions in connection with the Ministry of Agriculture, Food and Environment, as it has become evident that there are delays in the execution of the wastewater treatment system by both the Autonomous and the State Administration. The Institution has made a Suggestion to the Ministry to speed up approval of the protocol to promote and execute the treatment and filtering infrastructures in order to comply with the objective of zero discharges in the province of Malaga.

Another case that was dealt with had to do with flooding in the urbanization Mar de Cristal in Playa Honda (Cartagena), which occurs every year due to episodes of torrential rain as a result of lack of water channeling or drainage systems.

## Pollution

### Waste prevention and management

Citizens of Madrid continue to complain about the filth in their neighborhoods and recycling containers that are full, as a result of which people leave their rubbish on the ground around these containers or on the street. The Madrid City Council usually responds to this Institution that inspections are made, cleaning in the areas reported is intensified and that awareness raising campaigns are even carried out regarding recycling, and the times and days to deposit the rubbish. In spite of these efforts by the City Council, citizens continue to insist that the situation has hardly improved, or is the same. In consequence this Institution continues to process these dossiers, and the City Council has expressed its intention to attend to citizens' petitions with new actions and measures.

The Institution received complaints describing the situation in **Parla** during the days of the **rubbish collection strike**. In consequence, an action was initiated with the Town Council, which responded with information containing photographs showing the disproportionate accumulation of waste during the strikes of 2014 and 2015, entailing health hazards for persons.

This Institution pointed out to the **Parla Town Council** that what happened was not simply the typical nuisance due to a strike, as it seemed to pass the limit of the minimum levels of service needed for the population. The Town Council provided abundant documentation with numerical data regarding the days of the strike (counting the employees and waste collected). However, there were matters that continued to be unanswered, such as: the current relationship between the Town Council and the rubbish collection company, the responses received from the Ministries and the Community of Madrid to the petition for collaboration during the strike, as well as the actions proposed or suggested by these bodies; their opinion on the situation of cleaning in the town during the days of the strikes, or whether it can be reasonably foreseen that the causes that led to the previous strikes will appear again, and how it plans to act.

The Institution is pending receipt of the new response from the Town Council.

A citizen addressed the Ombudsman Institution to highlight the nuisance caused by the **fire in an illegal dumping ground near Valdemingómez** (Madrid), given that the smoke inhaled could be toxic. The appearing party stated that said dump had been reported several times to the Service for the Protection of Nature (*Servicio de Protección de la Naturaleza-Seprona*), although he was unaware of the why it had not been closed. In consequence, this Institution asked the Madrid City Council for information.

In its reply, the City stated that in the past few years actions had been taken in that area by the City Council and the Community of Madrid, and even reported some of the actions that had been taken by the Public Prosecutor's Office. It pointed out that at the end of July 2015, a court resolution ordered that the illegal activity be halted. This Institution, before finalizing the actions with the City Council, pointed out to the administration that given the large number of abandoned plots in the area and in order to avoid irregular situations, regular inspection visits should be made to impede the creation of new illegal dumping grounds and if fitting, that they be closed or halted.

Complaints were also received regarding the existence of an **unauthorized dumping ground in La Murada in Abanilla (Murcia)**. This area had been used for many years to bury rubbish without authorization and later the area was covered with a layer of topsoil and fruit trees were planted. The buried rubbish has caused leaching which allegedly has polluted aquifers and ground water.

The Department for Water, Agriculture and the Environment of the Region of Murcia was asked for information regarding said dumping ground and the controls that were applied. After checking the situation of the dumping ground the company's integrated environmental authorization was suspended and the guarantees deposited by the company were seized.

Likewise, obligatory alternative environmental restoration of the dump was ordered, including removal and management of the leachate.

## Atmospheric Pollution

In 2015 actions continued in connection with **air pollution due to tropospheric ozone in Lorca (Murcia)**. In accordance with the information sent by the Department of Water, Agriculture and the Environment of the Autonomous Community (*Consejería de Agua, Agricultura y Medio Ambiente*), the Plan for the improvement of air quality in the Region of Murcia 2015-18 has not yet been approved, but is currently in the public information phase.

On reviewing the content of the Plan, note was made that the Region of Murcia was adopting measures and plans to carry out new actions so as not to exceed the tropospheric ozone levels, and also to raise awareness amongst the population regarding the magnitude of the problem.

Action also continued in respect to complaints about the **bad odors coming from the Valdemingómez complex (Madrid)**. According to the information sent by the City Council, on 7 May 2015 a Collaboration Agreement was signed between the Valdecarros Compensation Board and the Madrid City Council for the financing of studies for the diagnosis, definition of preventive and corrective actions, and determination of their economic scope. The maximum estimated deadline to present the study is 24 months (May 2017). The City Council has expressed its intention to close the gasification plant of Las Lomas and enable citizen participation in the decisions to be adopted regarding this issue, mainly through the Odourmap platform. It has also informed of the implementation of corrective measures to reduce nuisance caused by odors associated to methane in the degasification and compost system of Las Dehesas, which is the reason the actions have been closed.

## Urban Planning

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### Zoning permits and the safety and accessibility of children playground areas were subject matters that the Institution examined

The Ombudsman Institution presented two monographic studies, one entitled **Safety and Accessibility of Children Playground Areas (*Seguridad y accesibilidad de las áreas de juego infantil*)**, the other on **Processing of Zoning Permits: Procedures and duration of processing (*Tramitación de licencias urbanísticas: procedimientos y duración de los trámites*)**. Both contain recommendations for the Administrations. Another important matter that the Institution dealt with had to do with the elimination of architectural barriers.

### Planning and execution

The Institution took action in regards to **unjustified delays in the processing** of several urban planning dossiers in Madridejos (Toledo). The actions focused on a specific modification to create industrial land for development. It was suggested to the Autonomous Administration to inform the Town Council of the steps required for the final approval of this exceptional modification. Actions finalized when it became apparent that the Autonomous Administration was collaborating with the Town Council.

A similar case occurred in Archena (Murcia), where a Suggestion was made to the Town Council to promote without delay the drafting of a new amended document regarding the exceptional modification, make it available to the public, take into account allegations submitted, and subsequently send it back to the regional Administration for final approval. The Town Council accepted the Suggestion made by the Institution.

Complaints were also processed in respect to serious **delays** in the **execution of urban planning**,

such as, for example, delays in the management of an execution unit in Leganés (Madrid). The Institution made a Suggestion, acceptance of which is pending.

Delays in the planning management of a sector of land for development with illegal occupancy in Llíria (Valencia) caused the Ombudsman Institution to take action and suggest to the Town Council that it adopt the necessary measures to promote the complete planning management of the sector, including direct management, in order to guarantee the transformation of the land in accordance with the urban planning classification, in the terms and deadlines provided in the town's General Urban Plan in force.

The Institution also worked on cases related to the maintenance and conservation of public urbanization services. This was the case of a development in the town of Coin (Malaga). The Ombudsman Institution urged the Town Council to adopt all necessary measures to finalize urbanization works so that they could be accepted by the Town Council, which as of that moment would also assume the obligation to maintain and conserve said works.

Residents of Badajoz have been asking the City Council for years to carry out necessary works of conservation and maintenance of the sidewalks and roadway of two streets in the town which the Town Council claims are privately owned. It was suggested that the Town Council should repair and pave the sidewalks and streets as soon as possible, and then conserve and maintain them. The Suggestion was rejected.

## Protection of unique buildings

In 2014, this Institution initiated ex officio on learning that the former factory of Centrales Lecheras Españolas (CLESA) in Madrid, built in 1961 and considered a work of reference of contemporary industrial architecture, was at risk of being demolished. Its owner had requested a license for its demolition, which had to be granted since the building lacked administrative protection.

For this reason, the City Council and the Department for Employment, Tourism and Culture of the Government of the Community of Madrid (*Consejería de Empleo, Turismo y Cultura de la Comunidad de Madrid*) were asked to provide information regarding measures that could be taken to ensure the protection of the building. Both Administrations concluded that the building should be protected and conserved, given its architectural value.

The Ombudsman Institution processed at one time a complaint regarding the need to restore the racquetball court Beti Jai in Madrid. Although the building had the highest possible urban planning protection, it was in a notable state of abandonment. The actions were completed in 2010 when the City Council and the Regional Department for Culture and Tourism of the Community of Madrid of the time adopted measures to guarantee the rehabilitation and conservation of the building. In 2015 the Institution learned that even though the racquetball court had been declared Property of Cultural Interest (*Bien de Interés Cultural-BIC*) in 2011, the building is currently in the same conditions of abandonment as in 2008, with the additional deterioration due to the time passed. For this reason, ex officio action was taken to ask the City Council regarding the actions taken in the past years. The municipal administration confirmed that the building had been expropriated by the City Council, adding that repair and consolidation work needed to

ensure the safety of the building would be carried out little by little. Since then the City Council has been informing this Institution of the municipal interventions, aimed at ensuring the recovery and consolidation of the building's essential values and characteristics, which were the reasons it was declared a Property of Cultural Interest. The actions are still underway, pending amongst other matters a report from the City Council indicating if it plans to include additional items in the 2016 budget to continue with the building's consolidation and restoration work.

## Zoning permits

As mentioned in the 2014 report, the Institution receives many complaints regarding the delays in the processing of construction work permits by Town Councils, which in many cases can take months. For this reason, in 2014 ex officio actions were initiated in respect to ten municipalities with different numbers of inhabitants, which were asked to provide information regarding the ordinary problems they encountered in processing an application for a construction work permit, the average processing times and the personnel and material resources they had for this purpose. After receiving the information, the Ombudsman Institution assessed the procedures and times to process permits, and made recommendations to said Town Councils and to the Spanish Federation of Municipalities and Provinces (*Federación Española de Municipios y Provincias*). The purpose of all of this was to make it easier for entrepreneurs who begin an activity which can contribute to reactivating the economy and have a positive impact on employment.

The information received by this Institution, the actions it carried out and its conclusions appear in a **study** presented to the Spanish Parliament in September 2015 on **Processing Zoning Permits: Procedures and duration of processing**.

## License of first occupancy

This Institution is constantly involved with cases of dwellings that have the license of first occupancy and yet do not receive adequate public services. Only a few are highlighted in this report.

**License of first occupancy granted by the Seseña Town Council (Toledo) to dwellings without**

**electric power supply.** Lack of this service should have impeded that the license of first occupancy be granted. Furthermore, in the event it is granted, as happened in this case, the license is not effective given that the utility company does not provide the power supply. The Town Council might have incurred a liability by granting a license which is impossible to apply. A Suggestion was made to the Town Council to assume the cost of implementing the necessary installations to enable the effective supply of electric power to the dwellings.

Another similar case of dwellings with power supply that have the license of first occupancy is in **Leganes (Madrid)**. The Town Council was reminded that before granting the licenses, it is obliged to verify that the building complies with the conditions established in the construction work permit, and that it satisfy appropriate conditions of habitability, safety and health standards.

## Urban planning participation and access to urban planning information

This Institution continues to find resistance on the part of the Administration in complying with the public function of providing access to urban planning and environmental information it has and thus facilitate participation in public affairs. This attitude contrasts with efforts by legislators of having citizen participation in urban planning affairs be effective.

The actions taken in respect of the Town Council of Coaleda (Soria) are mentioned as an example of this situation, in which the Town Council refused to give access to the complainant of a building project which the latter had previously denounced, considering that accepting the request would constitute a serious breach of intellectual property regulations. The Institution sent the Town Council a Reminder of its legal duties to provide to citizens the urban planning information they request. Furthermore, the Institution suggested that the Town Council allow the interested party access to all the documentation of the denounced building project, given that it constitutes the basis for works which require municipal authorization and in addition appears in an administrative dossier (articles 2 and 23 of Law 27/2006). The Town Council accepted both resolutions and announced that it would summon the author of the

complaint to examine the requested documentation.

A similar case was filed in respect to the City Council of Toledo, which accepted this Institution's considerations, and in compliance thereof gave the interested party access to the urban planning information the latter had requested.

## Architectural and urban barriers

Actions were initiated and are currently underway in respect to suspension of the activity of the technical work commissions of the Council for the Promotion of Accessibility and Elimination of Barriers of the Community of Madrid (*Consejo para la Promoción de la Accesibilidad y la Supresión de Barreras de la Comunidad de Madrid*), due to lack of personnel and economic resources.

Likewise, note was made that there continue to be significant delays in approval of the Second National Accessibility Plan (*II Plan Nacional de Accesibilidad*). The deadline established by law finalized on 30 November 2014. The Ministry of Health, Social Services and Equality informed from time to time regarding progress, but acknowledged that it is slow.

The Institution also initiated ex officio actions with 15 autonomous communities after noting that only two of them had legislation in the field of safety in children playground areas in public zones. These actions were completed in 2015 with presentation of the **study on Safety and Accessibility of Children Playground Areas** in Spain, presented before the Spanish Parliament that year.

In the course of the study, it was noted that there are few adapted children playgrounds which enable integration of all children with or without disabilities. This deficit, which is often unnoticed by the population that is not affected, entails a problem not only for children, who are unable to access and use the facilities, but also for their parents and caretakers, who do not have recreational areas where the children with disabilities can interact in conditions of equality with other children their age.

From the point of view of safety, the conclusions are the following: the General State Administration (*Administración General del Estado*) lacks minimum safety rules to regulate the installation, conservation and maintenance of existing children playgrounds.

However, the State Administration, as well as that of the autonomous communities and municipalities, have competencies in this area. Because of this omission, in many places there are no guarantees that the facilities were properly executed, or that regular maintenance work is performed. This Institution believes that establishing minimum safety requirements and a protocol for the installation and maintenance of these facilities would certainly contribute to reducing the risk of accidents, would entail a guarantee for users and would facilitate the work of technicians.

The Ombudsman Institution sent recommendations to different territorial Administrations asking that they act within the scope of their competencies to guarantee safety in the use of these public areas.

### Architectural barriers in public buildings and urban surroundings

In 2015, almost all actions initiated following the presentation of 44 complaints by the **Spanish Committee of Representatives of Persons with Disabilities** as part of its campaign “100 complaints 100” (“*100 denuncias 100*”). The results of the campaign were positive and the administrations that were consulted showed a willingness to collaborate. In some cases, barriers that had been detected were eliminated, and in others the problem is being resolved.

### Architectural barriers in private buildings

Some of the complaints presented to this Institution by the Spanish Committee of Representatives of Persons with Disabilities have to do with private buildings, such as movie theaters, a bank branch, a conference center, a theatre and a restaurant.

The Committee reported violation of the Technical Building Code (*Código Técnico de la Edificación*), specifically the Basic Document on Safe Use and Accessibility (*Documento Básico de Seguridad de Utilización y Accesibilidad*), which establishes requirements for buildings with the objective of facilitating non discriminatory, independent and safe access and use for persons with disabilities. However, the deadline established to adapt existing buildings, in respect to everything that can be reasonably adjusted, to the conditions of

accessibility contained in the Basic Document, is in December 2017. In consequence, there is still time to carry out reasonable adjustments in buildings in order to improve their accessibility, although the commencement of these works cannot be delayed for too long. In the meanwhile, the Technical Code is applicable to new construction work and when interventions are carried out in existing buildings.

### Public grants for the elimination of architectural barriers in private buildings

There are more than 1000 complaints regarding delays in the procedure to grant the aid of autonomous communities to finance the installation of elevators in the Autonomous Community of Madrid. In 2015 citizens have continued to complain to the Ombudsman Institution in connection with this matter.

The main complaint was filed on behalf of several property owner associations that had applied for these grants under a regulation that established a line of grants for 70 % of the quote, with a limit of 50,000 euros, which had not been resolved, or had been resolved granting a maximum of 15,000 euros.

Although the initial complaint affected 27 property owner associations, it has been extended to include many other associations, as well as individuals applying for the grant or members of a property owner association who had applied for it. Given the large number of complaints, as well as the economic repercussion involved, it seems reasonable, for reasons of procedural economy, to initiate ex officio actions.

In its last reply (30 July 2015) the Administration reported that the Directorate General for Housing and Rehabilitation (*Dirección General de Vivienda y Rehabilitación*) did not have sufficient appropriate credit to offer grants following the effective date of Decree 88/2009, which regulates economic grants for the rehabilitation of residential buildings and the recovery of urban surroundings, including subsidies to install elevators for the period 2009/2012, or during the entire period it is in force, until December 2012. For this reasons none of the grants applied for under said Decree had been approved.

However, this Institution knows (from information provided by the Administration) that a Collaboration Agreement was signed with the Ministry of Public Works for the execution of the 2013-16 National Plan (*Plan Estatal*). Royal Decree 233/2013, which

approves said plan, states that the installation of elevators is an action which can be subsidized. On the other hand, the draft of the General Budget of the Autonomous Community of Madrid for 2016 contains an expenditure of 37,805,612 € in the field of housing. On the basis of the foregoing, the Madrid

Community Department for Transport, Housing and Infrastructures (*Consejería de Transportes, Vivienda e Infraestructuras*) was asked to inform whether it is going to resolve in 2016 the applications for grants for the installation of elevators that are pending processing and if it plans to offer new grants.

## Local Administration

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### The Ombudsman Institution advocated the recording of municipal plenary sessions

The Institution opened an investigation with the Spanish Federation of Municipalities and Provinces (*Federación Española de Municipios y Provincias-FEMP*) to urge mayors to allow the recording of plenary sessions. In addition, complaints were processed concerning the organization and legal framework of local entities as well as public municipal activities and services.

#### Organization and legal framework of local corporations

The Institution opened an ex officio investigation with the Spanish Federation of Municipalities and Provinces in view of repeated complaints submitted by citizens who, either simply as attendees of city council plenary sessions, or in their capacity as city councilors, expressed **their nonconformity as to mayors' not allowing the recording of the proceedings**. The said organization was requested to assess the appropriateness of sending a memo to mayors and presidents of local member entities in order to obtain permission for recordings.

#### Statute for members of local authorities

Certain city councilors have approached this Institution seeking its protection, owing to the fact that **the mayors of their respective municipalities were not allowing them access to specific information needed for the performance of their roles**. The Ombudsman Institution has maintained the criterion

from which it was derived that they be granted access to specific information concerning matters of municipal competence, as this information is necessary for the optimum exercise of the duties inherent to their roles. The city councilors' right to information is linked to the constitutional right to political participation and stands independent of citizens' right of access.

Certain city councilors have requested the protection of the Ombudsman Institution due to their not having an office where they can meet independently and receive visits from citizens, or a mailbox for correspondence addressed to them, or due to a lack of office supplies, etcetera, whereas other municipal political groups from their same local governing entity do have these material means.

#### Territory and population

Certain citizens have had **difficulties registering with their city council and others have been officially suspended from the register** by their city council without the designated procedure having been followed and without having changed their

place of residence. As for the first group, this was a problem experienced by many foreigners who were requested to provide more documentation than those legally stated or whose physical presence was required at municipal offices, requirements not necessary for Spanish nationals. This has prevented them from using certain social services for health, education transport, etcetera. One city council has acquired the custom of sending documentation presented by foreigners who have applied for registration to the National Police for verification as to the legality of their presence in Spain, when this issue does not have anything to do with the rules governing registration of local residents.

## Municipal public activities and services

Complaints have been submitted in which citizens have expressed their displeasure with the **condition of streets**, due to potholes in their road surfaces or obstacles in their sidewalks compelling pedestrians to walk on the road. Investigations carried out by this Institution have focused on contrasting the versions of these facts expressed by citizens, especially where the evidence submitted has not always been a sufficient reflection of the circumstances reported.

Certain city councils have approved fiscal regulatory ordinances of public prices for the provision of services, in which it is established that citizens re-

siding in that same municipality pay less than non-residents for the use of **municipal sports and cultural facilities** or for participation in courses given in those facilities. This Institution maintains that such a practice is not in accordance with the principle of equality for all users as regards service rates, except for reductions due solely to financial capacity, which is established by law.

If a city council considers that its residents should have preference in the use of municipal services and activities due to their making the greatest contribution to its maintenance, an alternative must be studied in accordance with the law. The solution can be found in the application of discounts, subsidies or funding for those users demonstrating sound financial capacity and other legally established circumstances, or likewise through other alternatives, in accordance with the law and apart from any taxation means.

**Complaints concerning the use of herbicides in public parks and gardens.** The Institution requests information from the local administration in order to verify compliance with regulations for authorized products, levels of training for professional users, requirements for access and hours for product use in public areas, precautions for at-risk groups, protective measures for water, container management requirements, information for the public, etcetera.

## Civil Service and Public Employment

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### The Institution calls for the 2012 bonus payment recovery process to be the same for all public employees

**Last year marked the beginning of the recovery process for the bonus payment eliminated in December 2012, as well as the recovery of certain leave periods which had been reduced after the passing of the Royal Decree-Law 20/2012 for measures to ensure budgetary stability and encourage competition. The Institution requested that the eliminated bonus payment be recovered for all public employees, regardless of the public administration or entity in which they provide their services.**

#### Selection processes

The lack of information concerning the reasons for which selection processes that are initiated become paralyzed for extended periods of time generates uncertainty among candidates as to their correct functioning. From the complaints submitted, it follows that these situations jeopardize applicants' trust that access to the civil service takes place in an objective and impartial manner, in accordance with the constitutional principles of equality, merit and ability, as well as their trust in the requirement of sound management practices to which all public administrations are bound.

The Ombudsman Institution has called for administrations to handle selection processes with greater transparency, informing candidates as to any difficulties arising along the way, and to formally reach a decision on candidates in the shortest possible time.

Moreover, the number of complaints submitted concerning lack of transparency in selection processes and difficulties in accessing information about these processes continues to be high. It is the opinion of the Ombudsman Institution that expert discretion on

the part of the selection board should not be associated with a lack of reasoning behind its decisions, nor with decisions so lacking in cause that even a minimal explanation for the reasons behind them cannot be found.

Likewise, requests for information and access to the same in selection processes as required should be provided in a timely manner, such that candidates have access to information prior to the finalization of these processes. This will avoid unnecessary disputes due to lack of information and a reduction in related litigation.

In 2015 the Ombudsman Institution carried out inspections with the Secretary General for the Administration of Justice, in defense of the right of a candidate for a position with a court services entity to obtain a copy of the answer sheet for examinations he or she had written. The right to obtain a copy of documents forming a part of procedures in which citizens take part should take precedence over the specific provisions of the rules governing a selection process, which may not be interpreted in any way that restricts or limits the exercise of a right recognized by law. The Suggestion was accepted.

Also noteworthy were the inspections carried out before the City Council of Alcorcon (Madrid), concerning the selection tests used for internal promotion within the local police force. Due to the existence of firm indications that test content had been previously leaked, several candidates requested that the Ombudsman Institution be present for the administration of the tests and that it oversee their subsequent development in order to ensure process transparency and full compliance with the principles of equality, merit and ability. As a result of these inspections it was revealed that the selection testing, whose third round had taken place over a year ago, was still under dispute, and that not even the organizing authority was aware if the test in question had been nullified or not. This situation was even affecting the administration of selection testing itself, since the possibility of nullification was being considered by the City Council, according to the opinion held in that regard by the legal advisor for the council -whose highest office was vacant at the time- and that a declaration of expiry should be applied to the case.

It was concluded that, in spite of the time elapsed and persistent and clear indications of irregularities, decisions had not been taken with a view to assigning possible administrative and criminal liability. Recommendations were made for the urgent publication of the relevant pleadings concerning nullification or continuation of the selection process and the testing already administered; for the resulting proceedings be resolved with the same urgency and, accordingly, for the corresponding decisions be adopted in order to finalize the selection process or, if applicable, administer new tests to cover the affected positions; and finally, for appropriate action to be taken to determine liability. These Recommendations are still pending a response.

## Public employee pay

Concerning pay, the number of complaints submitted concerning the **elimination of the 2012 bonus payment** compared to previous years was considerably lower. This is due to the regulations adopted by the different public administrations for returning the aforementioned bonus payment and which came into being fundamentally during 2015 as a result of the improving economic situation.

Nevertheless, the process of recovery for this payment has not affected everyone equally. Pay-related complaints submitted by public sector employees concerned non-payment of the amount corresponding to the aforementioned eliminated bonus. The civil servants of the General State Administration have recovered a percentage of the December 2012 bonus payment, yet other public administrations and entities have not proceeded to return this same percentage, citing budgetary difficulties, which in practice supposes a situation of inequality to be rectified.

The Ombudsman Institution is of the opinion that if all public sector employees have been affected by elimination of the bonus payment, then all should be paid the amount that corresponds to them. For this reason, the Institution calls for all public administrations to carry out the necessary actions so as to avoid inequalities concerning this issue, such that all public employees, regardless of the public administration or entity in which they provide their services, may recover the 2012 bonus payment.

## Public employee working conditions

In 2015 a recovery process was established for certain **leave periods** that had been reduced as a consequence of the approval of the Royal Decree-Law 20/2012 of 13 July for measures ensuring budgetary stability and encouraging competition.

Certain measures were therefore established for the purpose of ensuring employment leave due to maternity, temporary disability, breastfeeding or at-risk pregnancy.

**Paternity leave** was also established, extended from fifteen days to four weeks for the birth, guardianship for adoption purposes, foster care or adoption of a child. This had already been recognized by the Law 9/2009 of 6 October.

However, the measure was never enacted, and the 2016 General State Budgets will again delay enactment to 1 January 2017.

The Institution deems it necessary to avoid new delays of the aforementioned leave, which as of January 2017 will have gone without recognition or real application for eight years. The recognition of a legal right must not remain as a mere declaration of intentions, and even less so when the recognized, yet

unapplied, right has an impact on the reconciliation of family life, on the effectiveness of equality of men and women and on the range of rights granted to public employees.

The Ombudsman Institution has verified that not all public administrations permit employees to accumulate **special breastfeeding hours** and combine these with a childcare leave. This implies the existence of inequality among public employees depending on the administration in which they work, despite the fact that both accumulated special breastfeeding hours and childcare leave forms part of core legislation and, as a result, affects all public administrations equally.

Likewise, as already mentioned in the 2014 report, **leave granted for the care of a minor child suffering from a serious illness** continues to generate problems in its interpretation.

The problem stems from the differences in interpretation concerning the application of article 49.e) of the Law 7/2007 of 12 April, by which the Basic Statute of Public Employees is approved as regards the new leave introduced in the said precept for the care of minors suffering from cancer or another serious illness.

The Institution put forth a Recommendation to the Department of Health for the Autonomous Community Government of Castile and Leon for the integration of continued medical treatment or home care for minors diagnosed with cancer or a serious illness into the definition of long-term hospitalization. The Department accepted the Recommendation.

The Institution also carried out an inspection with the Department of Education, Training and Employment of the Government of La Rioja, after learning about the case of a civil servant who claimed the aforementioned leave in order to take care of her two-year-old child, who was suffering from type 1 diabetes mellitus. The Suggestion was accepted and the said leave was conceded to the child's mother.

The underlying problem is still unresolved, owing to the non-existence of a legal obligation allowing for appropriate application of article 49 of the Basic Statute of Public Employees and ensuring homogeneous interpretation for the entirety of public administrations.

## Protocol concerning harassment in the Armed Forces

In 2015 inspections were carried out with the Ministry of Defense for the purpose of understanding the provisions made by this ministerial department for the creation of appropriate mechanisms for handling allegations of work and sexual harassment arising within the scope of the Armed Forces, and in particular those involving solely military personnel.

The Organic Law 14/2015 of 14 October for reform of the Military Criminal Code classifies sexual harassment, gender-based harassment and professional harassment for the first time in the scope of military criminal law, as well as any attack on sexual freedom or integrity.

Although this regulation signifies an important advance with respect to the previous situation, this Institution understood that the highly hierarchical nature of the military organization and the respect due to chain of command made it a particular necessity to approve a protocol for providing a response to the specific needs in this area including measures of protection for victims and prevention of such conduct.

Therefore, the Ombudsman Institution closely monitored this matter until the definitive approval of the 20 October 2015 Protocol for sexual and gender-based harassment in the Armed Forces, through which the definition of harassment is clarified and measures in response to this type of conduct are considered and both the criteria to which such measures should be adapted as well as the procedural safeguards are determined, paying special attention to the right to information of those individuals involved at each stage of the process and establishing measures for harassment prevention, monitoring and supervision.

## Pensions and benefits

After the publication in December 2014 of the **agreement signed by the General Mutual Society of State Civil Servants** (*Mutualidad General de Funcionarios Civiles del Estado-MUFACE*) with insurers for the provision of healthcare to policyholders and beneficiaries within Spain for 2015, a high number of complaints were received regarding the changes to the means and resources offered and the conse-

quences for long-term treatment, particularly cancer, heart-related and serious illness treatment.

Noteworthy among the problems identified was the fact that medical centers in which treatment was being received were no longer associated, without patients having been previously and adequately informed by either the mutual society or the corresponding insurer on either this change or the new process to be followed.

In many cases, this led to the affected individuals not knowing which centers and specialties they no longer had coverage with. Moreover, due to this lack of information, these individuals had no time to opt for a change in insurer or public healthcare network, where relevant.

The complaints received provided evidence of the anxiety experienced by members who, on visiting the medical center, found their healthcare requests denied by the insurer for diagnostic tests or the continuing of treatment required for their condition. They therefore found themselves dealing with claims before the provincial offices of the General Mutual Society of State Civil Servants, obliged to wait for the corresponding response which, in some cases, was delayed for months (during which time the affected individual suffered the consequences of interrupted medical treatment), from which it was concluded that the members were not being provided with an efficient guarantee of their right to continuity of care as recognized in the signed 2015 agreement.

In light of this, this Institution put forth two Recommendations to the Mutual Society of State Civil Servants. One of these stressed the need to streamline resolutions for claims submitted by members before the joint provincial and national commissions concerning the actions of the entities responsible for assigning insurers, since the elapsed time meant a delay in the medical treatment required

by the affected individual. The other Recommendation called for the bringing together of the necessary instruments for making the member collective aware of fundamental modifications to services covered and available resources with sufficient advance notice in order that they may consider the most appropriate option for the coming year. Both Recommendations were accepted.

The **lowering in the retirement age for people with certain degrees of disability** is based on the greater effort and difficulty that performing a professional activity involves for a disabled worker.

Civil servants belonging to the retired worker pension scheme affected by these types of disability allege before this Institution that the lack of inclusion of provisions for the possibility of accessing early retirement in the retired worker pension scheme implies discrimination for this collective.

The Institution began inspections with the Secretary of State for Public Administrations concerning this matter, on learning that lower quality of life or even lower life expectancy for people suffering from certain disabilities, the difficulty performing their duties even with adapted work stations, and the fact that a considerable portion of public employees, due to their belonging to the general Social Security scheme are eligible for early retirement, are circumstances recommending the application of this possibility to those belonging to the retired worker pension scheme.

The Institution therefore calls for this matter to be addressed and for provisions to be established with respect to the entirety of possible regulatory modifications being carried out in the field of civil service, an issue for which special monitoring will be carried out, without prejudice to the fact that, after a prudent time period, new inspections will again be commenced in this regard.

## Transparency, State Liability and Expropriation

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### The Institution carried out inspections to resolve problems of access to the Government transparency portal

**Since the enactment of the Transparency Act, the Ombudsman Institution has carried out inspections in order to resolve problems of access to the Government transparency portal, as expressed by citizens in their complaints. Concerning state liability, complaints are related to delays in the finalization of procedures and in the timeframes for passing resolutions. The delays in forced expropriation juries and the delays in the setting and payment of a fair price are a constant in complaints concerning expropriation procedures.**

#### Transparency and access to public information

As a result of the complaints received, the Ombudsman Institution has stated its opinion concerning certain questions of access to public information after the enactment of the Transparency Act.

The Institution has indicated that in our legal system anonymous requests are not valid nor do they have legally binding effects, since it is necessary to confirm the name and surname of the natural person or name of the legal entity exercising the right of access.

Given that the Transparency Portal of the Government of Spain contains no information concerning how to submit a request by post or other means, one complaint comes to the conclusion that it is only permitted to send requests electronically, which violates the right of access to public information.

The fact that the Transparency Portal does not contain information with respect to alternatives to electronic requests for information does not mean that one may not exercise the right of access to information through the said means. Irregularities were

therefore not detected in this sense. However, the complaint was referred to the Office for the Execution of Administrative Reform (*Oficina para la Ejecución de la Reforma de la Administración-OPERA*), which acknowledged the complaint and has announced that it will improve the information offered by the Portal.

Registration in the Transparency Portal requires the completion of a request for an information form. This registration must be carried out through the *CI@ve* System, which includes four options for identification. It was observed that the steps in this system were lengthy and complex, such that they might prove dissuasive.

The Ombudsman Institution weighed the appropriateness of reconsidering the use of *CI@ve* and analyzing the possibility of its modification or replacement by a simpler mechanism. A Recommendation was put forth, concerning which the Office for the Execution of Administrative Reform has confirmed that a first final clause has been added to the draft Regulation of the Transparency Act, currently in process, which refers to the development, via Ministerial Order, of the technical requirements concerning identification of

requesting parties. The Office also confirms that, from the technical point of view, it is studying the possibility of allowing access requests via a simple form in the Transparency Portal.

The Spanish Committee of Disabled Person's Representatives expressed the lack of access to the transparency website of the Government of Spain, whose domain (<http://transparencia.gob.es/>) is not be accessible according to the technical information that the said organization requested from a company specializing in access issues. It indicated that the deficiencies detected required rectification in order to make the conditions of the site compatible with the access obligations for official websites.

The Office for the Execution of Administrative Reform declared that it would work on those aspects found in the latest report on accessibility that are not considered to have passed the minimum requirements. Likewise, it provided detail on the actions already initiated for the rectification of problems of accessibility. The Office for the Execution of Administrative Reform concluded that, given the availability of economic resources assigned to the technological development of the Portal, it is necessary to prioritize actions in a plan of continuous improvement, as regards both accessibility and other aspects.

## State liability

The Spanish Constitution consecrates the principle of extra-contractual state liability of Public Administrations due to damage suffered by private parties to any of their possessions or rights, provided that damage is a result of the functioning of public services, except in cases of *force majeure* or damages that the said party has the legal obligation to uphold according to the law. A general period of six months is legally established for the resolution of ordinary procedures, with 30 days for abridged procedures. However, delays in the finalization of procedures of administrative liability are the common denominator for all, regardless of the acting Administration.

The time period foreseen for passing a resolution is six months from initiation of the procedure. Failure to comply with this period is a habitual practice on

the part of the Administrations, according to findings from the complaints received.

As mentioned in the 2014 report, an inspection was initiated due to the delay in resolving several cases of state liability due to the damage caused to growers of rice plots in the 2008 rice harvest, as a result of an increase in salinity and turbidity of the waters of the Guadalquivir River. Due to it being a collective administrative liability for all administrative entities involved -the Ministry of Agriculture and Environment and the Seville Port Authority- the lack of coordination amongst these led to excessive prolongation in resolving the procedure, which was conclusively resolved in May 2015.

## Expropriation

The problems arising concerning the introduction of forced expropriation are recurring, the delays suffered by Forced Expropriation Juries in passing resolutions and the excessive delays in the setting and payment of fair prices, as well as settlement and payment of default interest are a constant in complaints.

The economic difficulties suffered by the various public administrations are a principle reason alleged for non-payment of compensation for expropriation, without taking into account that the majority of expropriations giving rise to citizens' right to their payment date back to years before the economic crisis.

The administration and private parties may agree on the acquisition of possessions and rights by mutual accord, once the same has been settled on and the expropriation case has been concluded, this channel being open during the entire process. From this moment on, the expropriating administration, given that the fair price is firm, has a maximum period of six months to proceed to the payment of compensation. Many citizens reach an agreement on fair price with the expropriating administration with the conviction that payment of the agreed price will be made quickly, even lowering their economic claims in consideration of prompt payment, only to find their aspirations frustrated, as delays also apply to these cases.

## National Preventive Mechanism against Torture (NPM)

### The Ombudsman Institution visited 62 places of deprivation of liberty in its capacity as NPM

**62 visits to places of deprivation of liberty were made in 2015. The Ombudsman Institution participated in 7 of these. The NPM drew up 58 recommendations, 224 suggestions and 2 reminders of legal obligations. 106 ex officio cases were also opened.**

The NPM carried out 62 visits in 2015. The Ombudsman Institution participated in 7 of these. Of the visits made, 17 were multidisciplinary, with the collaboration of external specialists, experts in medicine, forensic medicine, psychiatry and psychology. 5 youth detention centers, 9 prisons, 2 social health-care centers and 1 immigrant detention center were visited.

34 monitoring visits were made for the verification of compliance with recommendations made on previous visits and identification of possible new deficiencies.

Members from the NPM Advisory Council participated in 11 visits, with advisers from Autonomous Parliamentary Commissioners (Ombudsman of Andalusia, Catalanian Ombudsman, Ombudsman of Aragon, Valencian Ombudsman, Ombudsman of Castile and Leon and the Ombudsman of Navarre) participating in 8 visits.

During 10 visits made in 2015 to prisons, information was gathered as to the application of physical restraints and prisoners to whom these were applied were interviewed for the purpose of carrying out an in-depth study of this issue.

As a result of the visits made, 58 recommendations, 224 suggestions and 2 reminders of legal obligations

were made. Likewise, during 2015 the NPM opened investigations in 106 ex officio files.

The Government reformed the **Law of Criminal Procedure (*Ley de Enjuiciamiento Criminal*)**, specifically Article 520, which grants greater rights to detainees, with certain rights coinciding with recommendations made by this Institution, such as informing of the right to request a *habeas corpus* procedure and how to do so; reducing the maximum time period of eight hours within which the right to legal counsel must be made effective; or the possibility for detainees to meet with their lawyer confidentially. Since the legislative reform was enacted, special attention has been made in visits to detention centers in verifying that detainees are informed of all of their rights recognized in Article 520.

In 2015 the Institution participated in various forums such as the conference “30th Anniversary of the United Nations Convention against Torture” (*30º Aniversario de la Convención de Naciones Unidas contra la Tortura*), held by the General Council of the Spanish Legal Profession (*Consejo General de la Abogacía Española*); the “Course I on Immigrant Detention Centers” (*I Curso sobre Centros de Internamiento de Extranjeros*), organized by the Central Unit for Expulsions and Repatriations (*Unidad Cen-*

*tral de Expulsiones y Repatriaciones*) of the National Police Corps, the “European Network of Ombudsmen investigators’ meeting on forced returns”; the colloquium “Monitoring of repatriation flights” (*Monitoreo en los vuelos de repatriación*) of the “10th National Seminar of the European Network of Ombudsmen”, organized by the Polish Ombudsman Institution and the European Ombudsman Institution, and the “IOI Workshop for NPMs Implementing a Preventive Mandate”, organized by the Latvian Ombudsman Institution and the International Institute of the Ombudsman.

The Institution also collaborated with national preventive mechanisms against torture and human

rights institutions from other countries, with the holding of working meetings to present the Spanish NPM methodology and its practical application in visits to places of deprivation of liberty. It therefore collaborated with an inter-ministerial delegation of Human Rights in Morocco, with representatives from the NPM of Paraguay, with specialists from the *Provedor de Justiça* of Mozambique, with a delegation from the Czech Republic Ombudsman Institution and with the Human Rights Commission of the Philippines. Finally, it should be noted that the NPM has participated in Ankara in the European project to support the establishment of a Turkish Ombudsman Institution.

TYPES OF PLACES OF DEPRIVATION OF LIBERTY VISITED	
PLACES	VISITS
Prisons in judicial buildings	1
Immigrant detention centers	4
Military prisons	1
Juvenile offender facilities	7
Prison facilities	10
Social healthcare centers	2
Autonomous community police stations	2
Local police stations	4
Police stations and other short-term places of custody of the National Police Corps	13
Barracks and other places of short-term custody of the Civil Guard	12
Foreign transfer operations (FRONTEX)	4
Rooms for non-admitted travellers and asylum seekers at border crossing points	1
Hospital Care Units	1
<b>TOTAL</b>	<b>62</b>



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Activities  
of Institutional Representation

## Activities of Institutional Representation

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This section discusses the main activities of institutional representation carried out by the Institution. It contains an account of the activities carried out at the legislative level as well as with the Ombudsmen of the autonomous communities. A summary is provided of the working meetings with the Public Administration and citizens' representatives concerning complaints, activities of institutional representation at official events, institutional representation through collaboration, dissemination and communication, as well as for international relations.

It is generally the Ombudsman and her deputies who carry out these activities, although on many occasions they are accompanied by technical experts affiliated with the Ombudsman Institution.

### Appearances before the Spanish Parliament

For the third consecutive year, the Institution presented its annual report to the Spanish Parliament in the first quarter of the year in the aim of providing members of parliament with up-to-date information on its activities.

On 26 February the Ombudsman, accompanied by her Deputies, presented the 2014 Report to the leaders of Congress and the Senate. The Ombudsman appeared on 10 March before the Joint Commission on Relations with the Ombudsman; on 26 March before the Congress plenary session and on 15 April before the Senate plenary session.

In addition to this, the Ombudsman appeared on 9 June to present studies on the situation of Spanish prisoners abroad, on hearing minors, victims or wit-

nesses and on the 2014 annual report on the National Preventive Mechanism against Torture. During her intervention she also presented a preview of activities completed in the first half of 2015 and of the digital transformation project being carried out and which would conclude with the launch of the new institutional website.

The Ombudsman appeared again before the Joint Commission on 29 September to present a preview of the 2015 annual report, the new website and the studies entitled *Hospital Emergencies in the National Healthcare System: Rights and guarantees of patients*, A joint study from the Ombudsman Institutions; *Safety and Accessibility of Children Playground Areas*; and *Processing of Zoning Permits: Procedures and duration of processing*.

In addition to fulfilling its legal mandate for the presentation of reports, the Parliament submits complaints presented by citizens before the Committees on Petitions for both houses to the Institution and presents the Institution's opinions or investigations underway concerning a specific issue, as required by the parliamentary committees.

On 29 April the plenary session of Congress entrusted the Ombudsman Institution with the preparation of a special study on victims of terrorism, due to be published in 2016.

### Relations with autonomous community parliament commissioners

On 26 January the Ombudsman, accompanied by her Deputies, met with the autonomous community parliament commissioners in order to approve

the study on *Hospital Emergencies in the National Healthcare System: Rights and guarantees of patients*. This was the first study jointly prepared by the autonomous community ombudsmen and the national Ombudsman Institution.

This past year The Ombudsman Institution organized the 30<sup>th</sup> Ombudsman Institution Coordination Conference, which was held in the Cantabria Parliament on 17 and 18 September.

On this occasion, the conference focused on analyzing the situation of public housing in Spain, with the presentation of findings from the workshop “Role of Public Housing in Today’s Society”, which took place prior to the conference, on 2 June, and which was organized by the Galician Ombudsman in Santiago de Compostela.

Technical I.T. specialists held working meetings with the Ombudsman of Andalusia to develop a program allowing for communication between the national Ombudsman Institution and the Ombudsman of Andalusia concerning complaints received so as to avoid duplications and improve services to citizens.

In the manner of previous years, activities and institutional events organized by the autonomous community commissioners and various bilateral meetings were held.

A joint meeting was held between the Ombudsman and the autonomous community commissioners with the President of the Latin American Federation of Ombudsmen (*Federación Iberoamericana de Ombudsmen-FIO*). Bilateral meetings were held with the Ombudsman of the Basque Country, with the Ombudsman of Castile and Leon, as well as with the Galician Ombudsman (actg.), the meetings with the latter dealing with matters concerning the workshop which had taken place prior to the 30<sup>th</sup> Annual Coordination Conference. The Secretary General met with the secretaries-general of the autonomous community ombudsmen in order to improve coordination between the institutions.

The Ombudsman attended the inauguration of the Galician Ombudsman and the commemorative ceremony marking the 30<sup>th</sup> anniversary of the creation of the Canary Islands Ombudsman Law. She also participated in the closing ceremony of the 22<sup>nd</sup> Conference of the Spanish Association of Parliamentary Lawyers, organized by the Galician Ombudsman.

## Working meetings

Working meetings dealing with complaints occupy the greatest part of the Institution’s schedule. Meetings are held with citizens, non-governmental organizations, social organizations and public administrations in order to gain firsthand knowledge of their concerns and working reality.

At the same time, interviews and meetings are scheduled with representatives of public administrations and authorities responsible for public services, in order to clarify the criteria of the Ombudsman Institution, streamline activities and attempt to resolve differences of criteria, where appropriate.

## Meetings with authorities from the Public Administration and other public services

In 2015 meetings were held with different authorities from the General State Administration in order to study, among other matters, the Draft Citizen Security Law, the situation of Spanish prisoners abroad, international protection, extortionate contracts and personal data protection.

Institutional interviews were held with the President of the Parliament of the Balearic Islands, the President of the Autonomous Community of Madrid, the President of the Canary Islands Government and the President of the Canary Islands Parliament.

Within the scope of local administration, meetings were held with the city councils of Bilbao, Leon, Madrid, Seville, Tres Cantos (Madrid) and Torrejon de Ardoz (Madrid).

The Institution works very closely with the Spanish Attorney General’s Office, evidence of which can be found in the number of complaints processed with the Public Prosecutor’s Office each year. Two meetings were held in 2015: the first was institutional in nature, further to the appointment of the Attorney General and the second, for the submission of the Attorney General’s Office 2014 annual report.

An interview was held with authorities from the Trade Union Forum (*Forum de Síndicos*) and municipal ombudsmen from Catalonia and the Segovia Ombudsman, who requested the meeting in order to present the work carried out by local ombudsmen.

Among the meetings held with entities responsible for public services the following are noteworthy:

- The Spanish Banking Association (*Asociación Española de Banca-AEB*) and with the General Council of Notaries Public and the Dean of the Madrid Association of Notaries Public, concerning usury.

- AQUALIA [a privately owned municipal water management company], concerning water supply.

- “*Bienvenido Oliver*” Association of Property, Mercantile and Personal Property Registrars, concerning Civil Registry, definitions of loan clauses and mortgage credits.

- Iberdrola, S.A. concerning personal consumption of electricity and other supply-related matters.

Of particular mention this year was the presentation of the new website on 10 September to representatives of the General State Administration, autonomous communities, local governments for large cities and professional associations.

### Meetings with social organizations and citizens

As in previous years, meetings were held with organizations working for the defense and protection of the rights of people with disabilities, in order to understand the problems affecting them. Meetings were held with the Spanish Confederation of Associations of Families with Alzheimer’s (*CEAFA*); with the Spanish Federation of Brain Damage; with parents who highlighted the lack of assistance and educational services provided to children with accidental brain damage; and with the designer of the first “children’s bionic robot exoskeleton” which, when adjusted to the body, makes it possible for tetraplegic children to walk.

As in previous years, meetings were attended that had been organized by the Support Committee for the Spanish Committee of Disabled Person’s Representatives for the monitoring of the International Convention on the Rights of Persons with Disabilities.

Meetings continued this year for issues related to the economic crisis. In matters concerning housing and evictees due to mortgage arrears, meetings were held with the Association of individuals affected by the sale of houses from the Municipal Housing and Land Corporation of Housing (*EMVS*) and with Amnesty International. Concerning extortionate contracts, interviews were held with Juan Antonio Orte-

ga y Díaz Ambrona (Customer Ombudsman for [the Spanish multinational banking group] BBVA from 2002 to 2009), Fernando Zunzunegui, professor of Banking and Financial Law at Carlos III University of Madrid, and with José Ignacio Navas Olóriz, notary public from the town of Fuenlabrada (Madrid). Concerning insolvency proceedings, a meeting was held with the Professional Association of Insolvency Administrators (*ASPAC*). Furthermore, representatives from the Badajoz Association of Social Workers came to speak this year about Basic Guaranteed Income in Extremadura.

The Ombudsman continued with her work supporting the victims of terrorism. Meetings were held with victims and with the presidents and other members of the Foundation for Victims of Terrorism, the Basque Victims of Terrorism Association (*COVITE*) and the Dignity and Justice association.

In the area of healthcare and social assistance, interviews were held for the purpose of understanding the reality faced by people who have suffered from cancer, the status of individuals with celiac disease and access to dietary therapy treatments for people suffering from hereditary metabolic conditions.

Meetings were also held with representatives of different medical associations concerning the Royal Decree by which core curriculum and other aspects of specialized healthcare training are regulated.

In the area of education, meetings were held with the Spanish Confederation of Associations of Parents of Students (*CEAPA*), with the National Association of Teaching Books and Materials (*ANELE*) and the Federation of Professional Associations for Spanish Editors (*FGEE*); in addition, the work carried out by Radio *ECCA* [a nonprofit foundation] in distance professional training was presented.

In matters concerning immigration, asylum and assistance for Spanish prisoners abroad, interviews were held with the Red Cross, Amnesty International and the +34 Foundation [an advocate for Spanish prisoners abroad] among others. Meetings were also held with organizations working for equal rights, such as the Chrysalis Association of Families with transsexual minors and the *Secretariado Gitano* Foundation for the Roma community.

In matters of environment and town planning, noteworthy meetings include those held with Shale Gas Spain concerning fracking, and those held with rep-

representatives of the National Association of Urban amenities and Children's Playgrounds Manufacturers (*AFAMOUR*).

Interviews were held with the Professional Union Association of Civil Guard Officers in order to understand its activities and with members of the *CSI-F*, *AEG* and *SUP* Trade Unions concerning the cuts made to the medical assistance provided to union members and their families.

Meetings were held with representatives from professional associations in order to gain a deep understanding of the problems faced by certain collectives. Specifically, meetings were held with the General Council of Official Spanish Nursing Associations, the Professional Association of Physiotherapists of the Autonomous Community of Madrid, the Association of Technical Engineers of Public Works and Civil Engineers, the General Council of Professional Associations of Computer Engineering and the Official Association of Psychologists of Madrid.

In addition, the Institution hosted the following advocacy groups: Pro-Referendum State Board of Pensions, The Third Sector Platform, The Platform in Defense of the Freedom of Information, The General Patient Alliance Platform, The Truth Commission Platform and The Platform for Responsible Regulation. *Hazteoir.org* and *Maslibres.com*. Institutional interviews were also held with the NGO Plan International, the Loyalty Foundation, Google Spain and Helsinki Spain, among others.

In July the Ombudsman presented the new institutional website to representatives of NGOs, foundations and associations.

### Working meetings and sessions for the elaboration of monographic studies

In response to a request from the Spanish Parliament, a report is being prepared concerning the victims of terrorism. In order that this report be correctly prepared, an Advisory Counsel was appointed, whose inaugural meeting was held on 7 October. Working meetings were subsequently held for information gathering with the president of the Association of State Security Forces, the president of Dignity and Justice; the coordinator for the Office of Assistance for Victims of Terrorism of the National High Court, the expert in terrorism, Florencio Domínguez; the president of the Victims of Terrorism Collective;

the managing director for Prisons; Ana Iribar, the widow of *ETA* victim Gregorio Ordóñez; the president of the Victims of Terrorism Foundation; and the technical secretary for the Victims of Terrorism Observatory.

### Visits to facilities and centers of deprivation of liberty and meetings with the Council of the National Preventive Mechanism against Torture

The Ombudsman personally visited 18 facilities, including places of deprivation of liberty in Spain and care centers.

This year she has supervised an operation for the repatriation of immigrants organized by Spain in coordination with Frontex, bound for Islamabad (Pakistan) through to the finalization of embarkation at the Adolfo Suárez Madrid-Barajas Airport.

In addition, she has visited immigrant detention centers, shelters for people in a situation of social exclusion, hospitals, police stations, socio-educational centers for minors, asylum offices, refugee centers, etc.

The NPM Advisory Council has met on two occasions to present information on the activities carried out by the Agency in 2015.

This year four new members were appointed to the Council. The appointment process was carried out by an open call, published in the State Gazette. The new members of the Council took up their posts in the meeting held on 18 December.

The following figures comprise the Council, presided over by the Ombudsman: First Deputy of the Ombudsman Institution; Second Deputy of the Ombudsman Institution; Milagros Fuentes González, attorney and Dean of the Santa Cruz de La Palma Bar Association (appointed at the proposal of the General Council of the Spanish Legal Profession); Berta M.<sup>a</sup> Uriel Latorre, doctor and Vice President of the Ourense Medical Association, appointed by the General Council of Official Medical Associations of Spain); Vicenta Esteve Biot, clinical psychologist and Vice President of the Official Psychologists' Association for the Autonomous Community of Valencia (appointed by the General Council of Official Psychologists' Associations of Spain) Emilio Ginés Santidrian, member of the UN Subcommittee on Prevention of

Torture; Julián Carlos Ríos, attorney specialized in Prison Law and professor of Criminal Law; Jesús López-Medel Báscones, state attorney and university professor; Lorenzo Martín-Retortillo Baquer, professor of Administrative Law and specialist in jurisprudence for the European Court of Human Rights.

## Institutional awards

### Award ceremony for the Ombudsman's Institutional Award

In 2014, its first year, the Award was given to *Caritas* Spain for its work in the defense of people's rights, especially in the period Spain is experiencing; for its sensitivity in understanding and handling the most pressing problems of society; and for the depth and thoroughness of its reports. The award ceremony took place on 1 June in Congress.

### Award ceremony for the 4th King of Spain Human Rights Award

The ceremony for the 4th King of Spain Human Rights Award took place on 13 April in the Auditorium of the University of Alcalá (Madrid). The award was given to the *Adoratrices* Institution [a religious congregation] for its work with female victims of human trafficking and domestic violence.

### Award Ceremony for Human Rights Drawing Contest

On 4 May the Ombudsman awarded the prizes for the 12th annual competition, organized each year by the Institution in collaboration with the NGO Globalization of Human Rights. The ceremony took place in the Senate.

Prizes in the Elementary School category were awarded to Sara Fayos Oltra, Rafael Altamira Center of Preschool and Primary Education, Quatretonda, Valencia; Eva Abril Manzano, Jorge Juan CEIP, Monforte del Cid, Alicante; and Imanol Cordero Morales, Irabia Elementary School, Pamplona.

The winners in the High School category were: Julen Aramendia Leza, Tierra High School, Estella, Navarre and Laura Cañadilla Infante, Amor de Dios High School, Madridejos, Toledo.

In addition, three second-place prizes were awarded this year: to Pedro Sánchez García, Cruz de Mayo Public school for special education, Hellín, Albacete; Teresa Sampons Liria, Cruz de Mayo Public school for special education, Hellín, Albacete; and M<sup>a</sup> Jesús Sacedo Gómez, Alfonso Quijada High School, Esquivias, Toledo.

## Official ceremonies and meetings

As in previous years, the Ombudsman attended the solemn events held on Spain's National Holiday and Constitution Day, as well as the opening ceremonies for the judicial year, the Royal Academy of Legislation and Jurisprudence academic year, and other events related to the victims of terrorism.

In addition, the Ombudsman attended the commemorative Institutional Ceremony for the 30th Anniversary of the signing of the Treaty of Accession of Spain to the European Community; the solemn ceremony marking the Commemoration of the 70th Anniversary of the enactment of the United Nations Charter; and the 60th Anniversary of Spain's admission into the Organization.

## Collaboration, dissemination and communications activities

For the purpose of disseminating the Institution's work, the Ombudsman, Deputies, Secretary General and technical staff participated in activities organized by public and social entities.

The Institution's Secretary General, delegated by the Ombudsman, forms part of the Committee for Transparency and Good Governance, governing body of the Council on Transparency and Good Governance.

The purpose of the Council on Transparency and Good Governance, an independent public entity, is to promote transparency in public activities, monitor compliance with publication obligations, safeguard the exercise of the right of access to public information and ensure observance of the rules for good governance.

The Committee inauguration ceremony took place on 19 January 2015. Since that time, the Secretary General has been present at all of the ordinary and extraordinary sessions held.

The Ombudsman was the recipient of the Public Institution Prize, awarded by the Spanish Federation of Associations for Spina Bifida and Hydrocephalus. She was a member of the jury for the 3<sup>rd</sup> *Discapnet* Awards for the *Once* Foundation [supporting people with disabilities], the 11th *Abe Solidario* Award and the 24th Professor Manuel Broseta Award for Coexistence.

In addition, she attended the following awards ceremonies: Alberto Jiménez-Becerril Award Against Terrorism, 2014 *Iustitia* Award; 2015 UNICEF Spain Committee Awards; Villacisneros Foundation Second Prize; Victims of Terrorism Foundation Awards; 8th Justice and Disability Forum Awards; *Mariano de Cavia* Awards; *Luca de Tena* Awards and *Mingote* Awards.

The Ombudsman attended the presentation ceremony for the book “Memorial for Transitions (1939-1978). The generation of 1987”; the presentation of the “Madrid Map of Terror”; the photography exhibition “The Other Look of Dependency”, organized by the Messengers of Peace Foundation; and the Comprehensive Plan for the Fight Against Trafficking of Women and Young Girls for Sexual Exploitation 2015-17.

She also participated in the “Pioneers” round table, organized by the *Ortega y Gasset* and *Gregorio Marañón* Foundation; the inaugural ceremony of the “*MasLibres*” 2015 International Congress on religious freedom; the 13th National Conference and Gathering of Families, organized by the Spanish Federation of Spina Bifida and Hydrocephalus (*FEBHI*); and in the 2nd Congress of the Spanish Association of Certified Security and Defense technicians. In addition, she gave a speech on the occasion of the launch of the *Domund* Campaign, organized by the Pontifical Missionary Works and the Archbishopric of Seville.

Representatives of the Institution attended the presentation of the 2014 Immigration Detention Center report by the *Pueblos Unidos* association; the commemorative ceremony for the Centennial of the Armenian Genocide; the 3rd Dialogue of Protection and celebrations for the World Day of the Refugee, organized by the UNHCR; the ceremony in homage to the Memory of the 18th Anniversary of the kidnapping and murder of Miguel Angel Blanco and all victims of terrorism; the annual event held by the Women of Africa Foundation; the awards ceremony for the *Premios solidarios del Seguro* Awards; the presentation of the 2014 Yearbook for Immigration in Spain;

the solemn ceremony and events organized by the Official Barcelona Bar Association; and the awards ceremony for the 2014 *Solidret* Prize, among others.

### Institutional dissemination and communications activities

In addition to their presence at events for institutional collaboration, the Ombudsman, her Deputies, the Secretary General and other technical staff from the Institution gave speeches concerning the Ombudsman Institution and the scope of its work as a guarantee of human rights.

As in previous years, the Institution attended the annual event for the Masters in International Protection for Human Rights of the University of Alcalá, as part of the course on Democracy and Human Rights.

The Ombudsman gave speeches on the work carried out by the Institution as part of the Inauguration Ceremony for Postgraduate Courses for Latin Americans, organized by the University of Castile-La Manche; at the Conference “Women in Sport take on the Challenge of Equality” organized by the Spanish Olympic Committee; at the Juan de la Rosa School in Ronda; at Francisco de Vitoria University; in the Classroom for Experience (*Aula de la Experiencia*) at Hacienda Porzuna in Mairena de Aljarafe; at the conference on corruption, organized by the Fernando Pombo Foundation; in the Las Rozas 1 Institute of Secondary Education); and at the Madrid Royal Economic Society for Friends of the Nation. In addition, she gave a speech at the closing ceremony for the theory and practice Course for the 54<sup>th</sup> promotional event for the prosecutor profession and at open week for the Center for Legal Studies.

Of note among Deputy participation in events are the First Deputy’s inaugural speech at the “Building the Right to Housing” Conference, organized by the Spanish Association of Public Housing and Land Developers, the City Council of Alicante and the Directorate General of Housing, Rehabilitation and Urban Regeneration of the Autonomous Regional Government of Valencia; and the Second Deputy’s participation in celebrations marking the 25th Anniversary of the Association for the Study of Spinal Cord Injury (*Aesleme*).

The Institution has hosted student groups from diverse academic centers and other institutions. Participants in these visits include students from Carlos

III University law school; Madrid Polytechnic University; Jaume I University; the Faculty of Political Science and Sociology of Complutense University and the course on international relations from this same faculty; Juan Carlos I University; the European Law Association of Salamanca; Madrid Autonomous University's Expert in Today's World qualification; the Masters program in Constitutional Law, organized by the Center for Political and Constitutional Studies and Menendez Pelayo University; and the Master's in Access to the Legal Profession and the Master's in Law of the University College of Financial Studies (*CUNEF*) of Madrid.

The working conference "Continued advances in the improvement of the identification and protection of minor immigrants arriving in Spain by irregular means accompanied by adults" organized by the Ombudsman Institution's department of Migration and Equal Rights and held at the Institution's headquarters. The conference was attended by prosecutors and members of the Central Unit for Illegal Immigration Networks and Falsified Documents, the Chief Inspector for the National Police Corps Central Unit for Deportation and Repatriation, Unaccompanied Foreign Minors Unit (*MENAS UCER*), and personnel from the Red Cross Immigrant and Refugee Service.

## Cultural visits to the institution

This year members of 59 associations and cultural centers visited the Institution.

## International activities

The activities carried out by the Ombudsman Institution at an international level have been developed in accordance with the powers granted by the United Nations as a National Institution for Human Rights with "A" status accreditation, as a member of various networks of Ombudsman Institutions or in its role as National Preventive Mechanism against Torture (NPM).

## Bilateral and international collaboration meetings

Collaboration with supranational and international instruments for the protection of human rights is

one of the functions of the Ombudsman Institution as a National Institution for the Protection of Human Rights.

In this context, remarks were made on the sixth periodical report on Spain before the United Nations Committee Against Torture and a note was submitted to the Committee on the Elimination of Racial Discrimination, on the occasion of the Committee's review of the Spanish Nation.

An interview was held with the European Commissioner for Human Rights of the Council of Europe concerning the human rights of migrants, refugees and asylum-seekers, and in particular concerning the situation of Ceuta and Melilla, in the context of the Commissioner's official visit to Spain (Madrid and Melilla) from 13 to 16 January 2015.

A meeting was held with International Monetary Fund concerning insolvency procedures.

A meeting was held with Jorge Cardona, member of the Committee on the Rights of the Child, for the purpose of raising awareness of the challenges faced by the Committee after the enactment in Spain (on 14 April 2014) of the Third Optional Protocol to the Convention on the Rights of the Child relating to a communications procedure which allows for the reception of individual complaints concerning suspected violations of the Convention on the Rights of the Child.

Of particular note as regards cooperation with other institutions for the protection of human rights abroad is the Twinning project for assisting with setting up the office of the new Turkish Ombudsman Institution.

It was adjudicated by the European Commission in 2014 to the Consortium formed by the Spanish Ombudsman Institution and the French Defender of Rights.

This year, three study visits to Spain took place: one in February, another in May and another in November, made by staff from the Turkish Ombudsman to the Institution and to the headquarters of the Ombudsman of Andalusia, the Valencian Ombudsman, the Ombudsman of Aragon and the Ombudsman of Castile and Leon.

Working visits were also held with other related foreign delegations, who visited the Institution in order to gain an *in situ* understanding of how the Ombudsman Institution operates. Working conferences were organized with an Interministerial delegation on Hu-

man Rights from Morocco, with members of the Petitions Committee of the German Bundestag, with the Human Rights Commission of the Philippines, with the Anti-corruption Office of Korea and with the Ombudsmen of Albania, the Czech Republic and Mozambique.

The Institution hosted a group of parliamentary advisers from Latin America and North Africa, who were given a conference on the Ombudsman Institution.

Bilateral meetings were held with the president of the Mexican National Commission on Human Rights, the president of the Latin American Institute of Ombudsmen (*ILO*), the Commissioner for Childhood and Adolescence from the National Minors Service of Chile (*Sename*), the NPM commissioner of the Republic of Paraguay and the Ombudsman of Jordan. The purpose of these meetings is to strengthen collaboration in the management of common interests and exchange experiences and best practices.

Interviews and contacts were also held with other foreign institutions in the process of complaints processing. Examples of meetings held in this regard include representatives from the Association of Guatemalan Women and the Friends of the Earth Association.

The Spanish Ombudsman Institution belongs to the European Network of Ombudsmen (ENO), which coordinates the European Ombudsman. The network has worked closely on issues of migration.

Of particular note in this section is the collaboration, assistance and cooperation work carried out with this Institution by Ombudsmen and National Institutions on Human Rights of foreign countries where Spanish prisoners are held and who are the objects of assistance efforts to improve quality of life or streamline repatriation.

The International Journalism Seminar: Rights and Obligations, organized by the University of Alcalá's Regional Support for the Latin American Ombudsmen Program (*PRADPI*) with the collaboration of the Ombudsman Institution was held at the headquarters of the Institution, as well as the seminar on United Nations Human Rights protection systems, in which the Spanish representatives of the UN treaty entities had an active role.

The Ombudsman participated in the inauguration of the 3rd International Congress of the Regional Support for the Latin American Ombudsmen Program-Latin American Federation of Ombudsmen-Strengthening Project of the Latin American Federation of the Ombudsman (*Proyecto Fortalecimiento de la Federación Iberoamericana del Ombudsman-PROFIO*): "Ombudsmen and collectives in a situation of vulnerability", delivering the inaugural lecture at the Faculty of Law of Alcalá University (Alcalá de Henares).

### International meetings

The Ombudsman attended the 28th Annual meeting of the International Coordinating Committee for National Human Rights Institutions, held in Geneva (Switzerland) and took the opportunity to promote a petition for the pardon of Asia Bibi, the Pakistani Christian sentenced to death in her country for blasphemy.

Within the scope of the EU she participated in the 9th Seminar for the European Network of Ombudsmen, organized by the Irish Ombudsman (currently the European Ombudsman), in which over 40 Ombudsmen from all of Europe met to debate on best practices and citizens' rights. The Ombudsman lectured on the carrying out of supervision work for immigrant repatriation flights.

She also pointed out that the Institution has been a pioneer in activities for the defense of citizens' fundamental right to participate in public affairs. She noted that the Ombudsman Institution is dedicated to ensuring that information published and disseminated by public administrations is accurate, transparent and accessible, and provided information on the transparency portal of the Institution's website.

The Institution participated in the Meeting of the Steering Committee of the Association of Mediterranean Ombudsmen (*AOM*) in her role as first Vice President.

The 20th General Assembly and International Conference of the Latin American Federation of Ombudsmen took place in Montevideo (Uruguay) from 8 to 11 November. The Ombudsman Institution's Chief of Staff and Secretary General attended on behalf of the Ombudsman.

The Conference was dedicated to transparency of access to public information by citizens from their respective countries.

During her speech, the Chief of Staff indicated that countries' realities are very different and that Spain is currently one of the most developed countries in terms of public and transparent information.

In addition, the Chief of Staff participated in meetings of the Latin American Federation of Ombudsmen's thematic networks for Migrants and Human Trafficking, Defense of Women, the Federation's own Communications Network (*Red COM-FIO*) as well as Childhood and Adolescence.

During her time in Montevideo, she took the opportunity to visit Spanish prisoners held at the Republica Oriental prison in Uruguay, as well as those held at Ezeiza prison (Argentina).

The First Deputy attended the Latin American Summit on Human Trafficking and Migration of the Latin American Federation of Ombudsmen, held in Bogota (Colombia).

The Ombudsman attended the solemn ceremony commemorating the 40th Anniversary of Portugal's *Provedor de Justiça*.

Through the Ombudsman's Chief of Staff, the Institution participated in the International Conference for NHRIs on best practices and lessons learned, held in Istanbul (Turkey) for the purpose of explaining the Spanish National Preventive Mechanism against Torture; she also participated in the International Seminar on the democratization of communication, held in Sao Paulo (Brazil).

Finally, the Ombudsman, accompanied by the technical specialist responsible for the Department of Migration and Equal Rights, participated in the Conference on the Defense of Rights for individuals

seeking international protection, organized by the European Union in Tirana (Albania) on 11, 12 and 13 November.

### Official visits and meetings

It is customary for diplomatic representatives to make institutional visits to the Ombudsman Institution. In 2015 the Institution hosted the Ambassador of Armenia and the Deputy Minister of the Embassy of Japan.

### Visits to foreign centers of deprivation of liberty

During their time abroad, the Institution's authorities, visit centers of deprivation of liberty holding Spanish nationals in order to gain a firsthand understanding of the conditions in which they live and, where possible, provide humanitarian assistance, streamline transfers and supervise consular operations.

This year detainees were visited at prisons in Tires and Lisbon (Portugal); at the Picota and Buen Pastor prisons in Bogota (Colombia); at the *Prisión Penitenciaria Feminina da Capital* and *Penitenciaria Feminina de Sant'Ana* in Sao Paulo; at the "*Cabo P.M. Marcelo Pires da Silva*" in Itai (Brazil); the Ezeiza n° 1 Federal Penitentiary complex and U-31 Federal Women's Detention Center (Argentina); and the Tirana prison.

For the purpose of gathering information on the situation of refugees in other countries and encouraging policies of reception and integration of these individuals in Spain, a visit was made to the Zataari refugee camp (Jordan).



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