

Resumen
Informe Anual
2016



DEFENSOR
DEL PUEBLO



SPANISH OMBUDSMAN

Annual Report Summary 2016

Madrid, 2017

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Text edited by the Ombudsman Institution

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SUMMARY

Presentation.....	5
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STATISTICS AND MANAGEMENT OVERVIEW.....	9
---	---

SUPERVISION OF PUBLIC ADMINISTRATIONS.....	37
--	----

Administration of Justice	39
Prisons.....	44
Civic Responsibility and Public Safety	49
Migration.....	55
Equal Treatment.....	68
Gender Violence.....	70
Education.....	73
Health Services	81
Social Policy	89
Housing	99
Security and Public Employment.....	103
Public Finance	112
Financial Activities.....	120
Communications and Transport	129
Environment	134
Town Planning.....	142
Local Government.....	147
Public Duty and Employment	150
Transparency, Financial Liability and Expropriation.....	158
National Preventive Mechanism Against Torture (NPM).....	161

INSTITUTIONAL REPRESENTATION ACTIVITIES.....	165
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PRESENTATION

The Ombudsman Institution presented its 2016 annual report to the Spanish Parliament, in accordance with *Ley Orgánica 3/1981, de 6 de abril* [Organic Law 3/1981 of 6 April]. This document provides a summarized version of the same.

The main objective of all activities carried out by the institution is to reach the greatest number of citizens possible in order to provide the necessary aid and assistance, and at the same time ensure that all individuals who so desire are able to communicate easily with the Institution in order to express their complaints, problems, concerns and the circumstances of their lives, based on which the Institution proceeds with the most appropriate actions before the competent administrations.

For all of these reasons, 2016 saw a considerable increase in the number of ex officio investigations and suggestions put forth to the administrations, along with the preparation of the following documented reports:

- ***El asilo en España. La protección internacional y los recursos del sistema de acogida*** [Asylum in Spain. International protection and reception system resources];
- ***Los derechos de las víctimas de ETA. Su situación actual*** [The rights of ETA victims. Their situation today];
- **Report in [the Institution's] capacity as the *Mecanismo Nacional de Prevención de la Tortura* [National Preventive Mechanism against Torture - abbreviated in Spanish as MNP and hereinafter, NPM].**

As confirmed by the number of visits, searches and complaints received, **the Institution's website and social networks** have been highly useful resources for gaining an understanding of citizens' opinions, providing an account of all activities carried out, showing how the budget approved by the Spanish Parliament (*Cortes Generales*) is spent and facilitating access to all of the Institution's documents which may be useful for research, inspections or simply for expanding the knowledge of those making use of them.

Moreover, in keeping with its aim to reach the greatest number of people possible, the Institution intensified its presence at all type of facilities in a wide variety of cities and autonomous communities, including centers of education, minor detention centers and centers of deprivation of liberty; visits were also made to reception centers for immigrants both in and beyond the national territory.

For the purpose of understanding the opinions held by a large number of citizens with respect to certain issues, the Ombudsman Institution carried out the following surveys and consultations via its website: **problems with architectural barriers in public roads and spaces; the beginning of the school year; needs for individuals with celiac disease, and the granting of loans.** The responses and results of these surveys have been evaluated, and the findings have enabled the preparation of recommendations for administrations based on a high degree of understanding of the real situation, since the responses are indicative of the daily problems facing or faced by people lacking a clear understanding of where they could take their problems or to whom they could express their points of view.

As the consequences of a long economic crisis persist for many, several recommendations have been put forth for assisting both minors and those individuals facing economic hardship. For this reason, the Institution has reiterated the need for municipalities having more than 100,000 inhabitants to establish or reinforce a **food guarantee system** for families with minors in a situation of greater vulnerability, especially outside the school year.

Given that the provision of electricity is essential for a decent quality of life and a necessary condition for the development and protection of other fundamental rights, the cost of electric power has been the cause of ongoing concern, in light of which various inspections were carried out concerning the **social electricity allowance**, the high proportion of fixed charges for electricity bills, the possibility of making the contracted level of power capacity more flexible, and the prevention of power cuts for citizens in situations of particular vulnerability, with the cooperation of the city councils.

The Institution has also continued to insist on **banking entities** providing their clients with as much information as possible in a clear and simple manner concerning banking products and the granting of loans that may have been carried out with other entities. Transparency and accurate information form part of the code of best practices to which the majority of entities have committed and with which they have the obligation to comply.

The Institution has again insisted on refunds related to mortgage **floor clauses**, which have already been the object of a detailed study in previous years, with the subsequent issuing of several recommendations. Owing to the fact that the sentence from the European Court of Justice of 21 December 2016 compels entities to return the entirety of that charged, the Ombudsman Institution recommended the creation of an extrajudicial system in order to avoid long, costly and complex legal proceedings. A recent royal decree of urgent measures foresees the creation of a system having the aforementioned characteristics.

Issues regarding **air pollution** have proven to be of concern to many citizens, such that city councils were asked about their short-term plans of action for fighting pollution and were requested to inform citizens as to the same. **Noise** is an ongoing concern and is considered a great nuisance by the many people attesting to the same. The Ombudsman Institution and the autonomous community Ombudsmen held a working meeting on 22 and 23 September 2016 in Pamplona for the purpose of studying ways to approach these complaints and the recommendations to be made to municipalities. The right to rest and the right to family and

personal privacy may not be infringed upon in an abrupt and intolerable manner by noise from a nearby location. This has been made clear by the existing judgments on this topic.

The Institution has continued its inspections of the various health authorities concerning malfunctions in the implementation of the **electronic prescription** and its compatibility with the entire *Sistema Nacional de Salud* [National Health System].

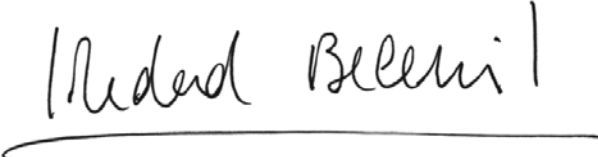
Very particular attention has been given to the actions perpetrated against adult women, adolescent girls and young girls, as well as the homicides, violence, abuse and degrading actions to which they have been subjected and which were brought to the attention of the Ombudsman Institution. The problem constituted by **violence against women** — to which the Ombudsman Institution has devoted particular attention for many years — warranted its own chapter in the current annual report.

The exercise of the right to vote by all citizens is an issue to which attention must always be given. Various recommendations were put forth to the Government for the purpose of, on the one hand, streamlining the process for voting by mail from abroad (a recommendation which was accepted); and on the other, facilitate, in every instance, participation in elections by individuals with disabilities.

The **compatibility of receiving a retirement pension** with paid work for creators has produced several recommendations to the Government, which has expressed its intention to carry out regulatory modifications to make this possible.

In bringing this summary of work carried out to a close, it is worth noting that during part of 2016 the nation had a caretaker Government (from 21 December 2015 to 31 October 2016), such that recommendations or inspections prepared by the Ombudsman Institution were prevented from being implemented in spite of their having been accepted, since they required regulatory modifications which were not feasible owing to the limitation of the Government's functions. However, the Institution has continued to perform its activities in full.

Madrid, March 2017

A handwritten signature in black ink that reads "Soledad Becerril". The signature is written in a cursive style and is underlined with a single horizontal line.

Soledad Becerril
SPANISH OMBUDSMAN

STATISTICS AND MANAGEMENT OVERVIEW

STATISTICS

The Ombudsman presented 1,771 resolutions before administrations

In 2016, the Ombudsman received 16,485 letters of complaint and 39 written requests for appeal of unconstitutionality and protection. The ex officio proceedings reached 872. In total 17,396 files were processed. The Ombudsman presented 1,771 resolutions before administrations. The issues that most concerned citizens were those related to civil service and public employment, the administration of justice and economic activity.

In 2016, the Ombudsman received 16,485 letters of complaint from citizens and 39 written pleadings of unconstitutionality and protection. Added to this figure is the number of citizens who have been personally assisted by the Institution: 16,178; of which 3,475 were in-person and 12,703 were assisted by telephone.

The website of the Institution was visited 945,242 times, in its different sections (pages visited within the site).

Throughout the year, the Institution conducted **872 ex officio investigations**; this is to say, opened on the initiative of the institution.

As a result of complaints and investigations, the Ombudsman drew up **708 Recommendations** and **807 Suggestions** before various administrations. Those resolutions were resolved as followings:

- **228 Recommendations have been accepted, 54 were rejected** and 426 are pending or unanswered by the administration concerned, at the time this report was completed;
- **389 Recommendations have been accepted, 86 were rejected** and 332 are pending or unanswered by the administration concerned, at the time this report was completed;

Complaints, ex officio investigations and requests for appeal on the grounds of unconstitutionality

In 2016, the Institution processed a total of 17,396 cases corresponding to the following three categories: complaints, ex officio investigations and requests for filing of appeal before the Constitutional Court.

TABLE 1 shows the totals for each year of these categories and its comparison with the data corresponding to the previous year.

Table 1

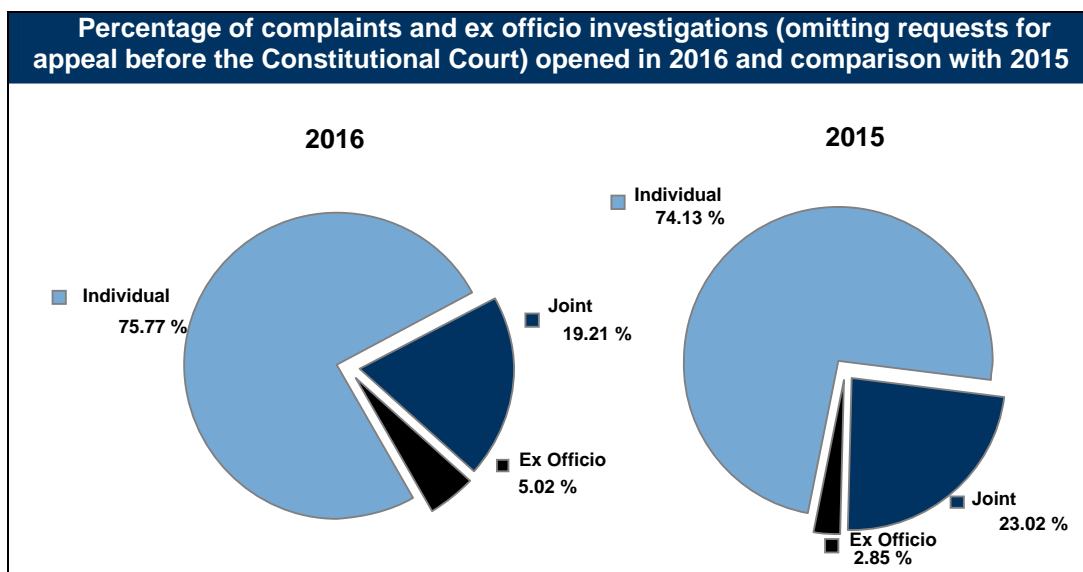
Number of complaints, ex officio investigations and requests for filing of appeals opened in 2016 and comparison with 2015			
		2016	2015
Complaints	Individual	13,151	13,599
	Joint (*)	3,334	4,223
	Total	16,485	17,822
Ex officio investigations	Ex Officio	872	522
	Total	872	522
Requests for filing of appeals before the Constitutional Court	Individual	39	49
	Joint (*)		74
	Total	39	123
TOTAL		17,396	18,467

* Complaints and requests for the same content or purpose grouped for joint processing.

Case Processing

FIGURE 1 provides data on the overall processing of cases, distributed proportionally into complaints and ex officio investigations (requests for appeal before the Constitutional Court have been omitted 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



Average case response times

The following tables show the Ombudsman's average time in responding to citizens, the first time that the notification of acceptance or rejection of the case is given, and the time taken for the Institution to respond with a resolution after having received a response from the Administration (TABLE 2); and the average times for the administration to respond to the Ombudsman (TABLE 3).

Table 2

Ombudsman average response times to citizens and administrations in 2016			
AVERAGE RESPONSE TIME	DAYS		
	2016	2015	2014
Initial response to citizen notifying acceptance, non-acceptance or request for information	28	29	36
Ombudsman Resolution after receiving response from the Administration	48	47	57

Table 3

Administration average response times (in days) to requests for information concerning files processed in 2016 and comparison with 2015		
ADMINISTRATION	DAYS	
	2016	2015
General State Administration	70	77
Autonomous Community Administration	96	97
Local Government	105	95
Office of the Attorney General (*)	89	84
Other public entities	74	81
Judiciary	88	76
Universities	60	62
Total Average	83	85

(*) The Office of the Attorney General keeps the Ombudsman informed regarding cases in process, periodically every three or four months.

Distribution of complaints

According to method of receipt. 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 2016 distributed by means of receipt and comparison with 2015				
COMPLAINT RECEIVED BY:	2016		2015	
	Number	%	Number	%
Post	4,716	28.61	5,595	31.39
Fax	236	1.43	265	1.49
Telegram	1	0.01		
Email	1,757	10.66	4,582	25.71
In person	2,751	16.69	1,089	6.11
Website form	6,990	42.40	6,291	35.30
E-Government (*)	34	0.21		
TOTAL	16,485	100.00	17,822	100.00

(*) Administrative Registry Interconnection System.

Table 5

Number de requests for filing of appeals before the Constitutional Court in 2016 distributed by means of receipt and comparison with 2015				
REQUEST RECEIVED BY:	2016		2015	
	Number	%	Number	%
Post	7	17.95	80	65.04
Fax	1	2.56	4	3.25
Email	15	38.46	14	11.38
In person	4	10.26	9	7.32
Website form	12	30.77	16	13.01
TOTAL	39	100.00	123	100.00

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 agencies.

Table 6

Complaints according to method of submission in 2016 and comparison with 2015				
COMPLAINTS SUBMISSION	Number		%	
	2016	2015	2016	2015
Submitted directly by citizens	14,905	16,047	90.42	90.04
Autonomous parliamentary commissioners	1,557	1,740	9.44	9.68
Various entities and agencies	23	35	0.14	0.28
TOTAL	16,485	17,822	100.00	100.00

Table 7

Requests for filing of appeal on the grounds of unconstitutionality before the Constitutional Court by method of submission in 2016 and comparison with 2015				
SUBMISSION OF REQUESTS FOR APPEAL	Number		%	
	2016	2015	2016	2015
Submitted directly by citizens	35	121	89.74	98.37
Autonomous parliamentary commissioners	4	2	10.26	1.63
TOTAL	39	123	100.00	100.00

Table 8

Complaints received by autonomous parliamentary commissioners in 2016 and comparison with 2015				
ORIGIN	Number		%	
	2016	2015	2016	2015
<i>Ararteko</i> [Ombudsman of the Basque Country]	71	47	4.56	2.72
<i>Diputado del Común de Canarias</i> [Canary Island Ombudsman]	188	199	12.07	11.54
<i>Síndic de Greuges de Catalunya</i> [Catalonian Ombudsman]	253	268	16.25	15.54
<i>Valedor do Pobo de Galicia</i> [Galician Ombudsman]	57	83	3.66	4.81
<i>Defensor del Pueblo Andaluz</i> [Ombudsman of Andalusia]	387	468	24.86	27.13
<i>Justicia de Aragón</i> [Ombudsman of Aragon]	199	218	12.78	12.64
<i>Síndic de Greuges de la Comunitat Valenciana</i> [Valencian Ombudsman]	148	199	9.51	11.54
<i>Procurador del Común de Castilla y León</i> [Ombudsman of Castile and Leon]	173	165	11.11	9.57
<i>Defensor del Pueblo de Navarra</i> [Ombudsman of Navarre]	81	78	5.20	4.52
TOTAL	1,557	1,725	100.00	100.00

Table 9

Complaints originating from various entities and agencies in 2016 and comparison with 2015				
ORIGIN	Number		%	
	2016	2015	2016	2015
Autonomous agencies	2	3	8.70	36.00
Spanish Parliament	19	28	82.61	56.00
Office of the Attorney General	.	1	.	2.00
Foreign ombudsmen	2	3	8.70	6.00
TOTAL	23	35	100.00	100.00

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 2016. 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.

The demographic factor determines, in large part, the numerical results in this geographic distribution of cases, the most densely populated autonomous communities being those with the most submissions addressed to the Ombudsman Institution.

Figure 2

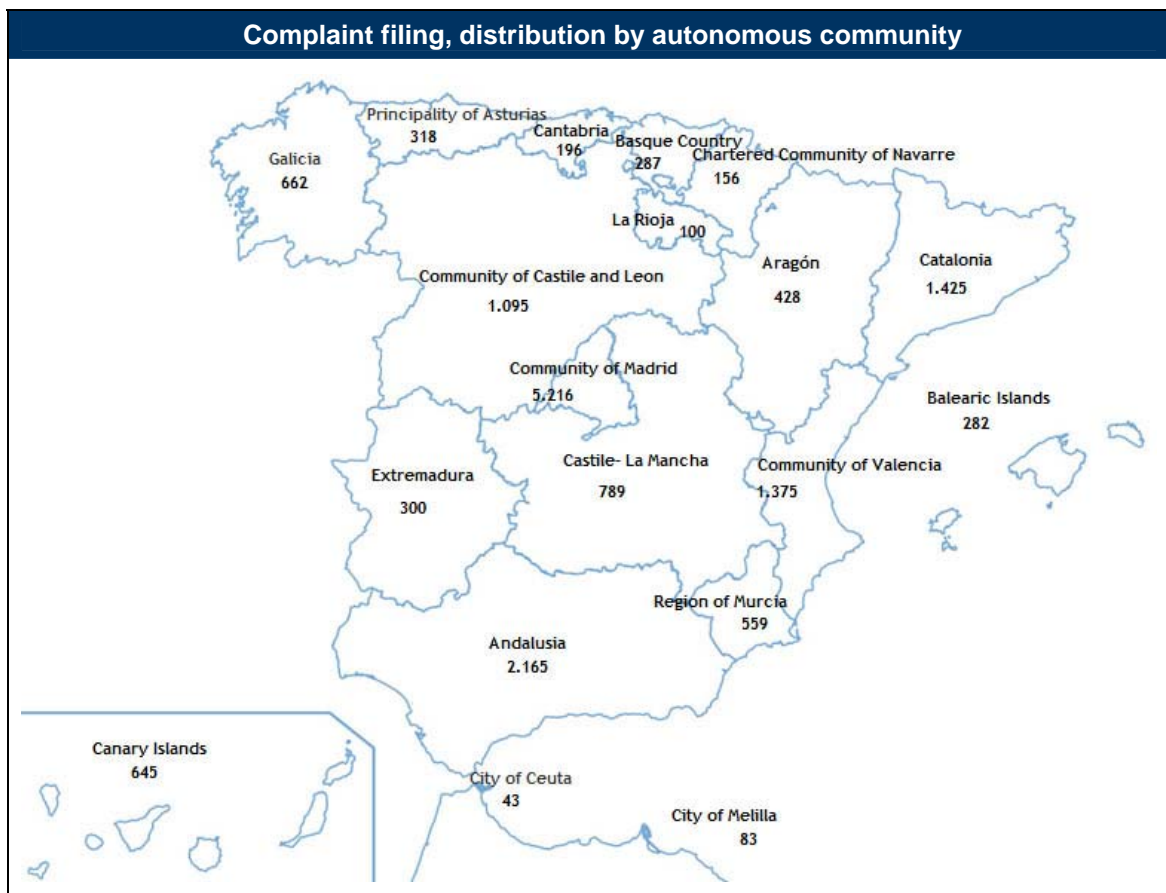
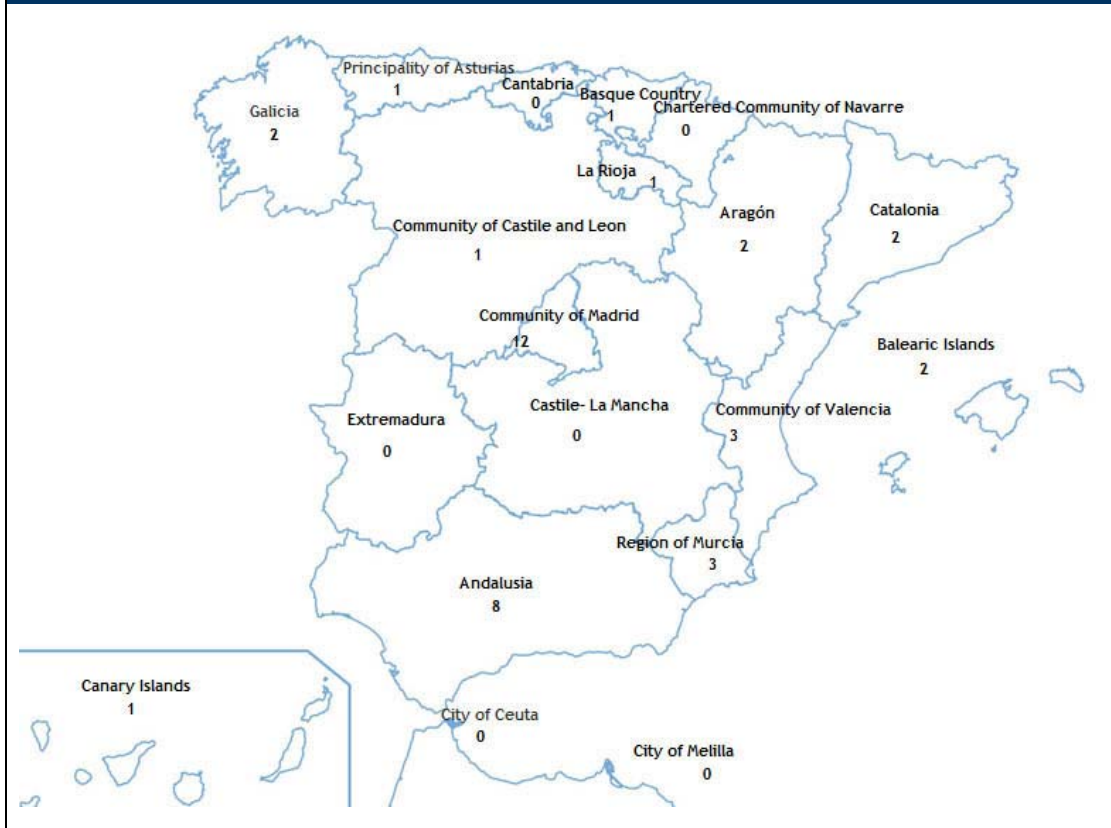


Figure 3

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



Distribution of cases by sector of administrative activity

In this figure, complaints, ex officio investigations and requests for appeal are classified thematically, differentiating between individual and joint cases accordingly.

Table 10

Case distribution by management area and sector					
AREA OF ACTIVITY	Complaints		Ex officio investigations	Requests for filing of appeals before the Constitutional Court	Total
	Individual	Joint		Individual	
Administration of justice	1,649		27	18	1,694
Prisons	514		68		582
Home affairs	1,050		34	1	1,085
Equal treatment	92	20	7	5	124
Migration	1,069	46	60		1,175
Healthcare	470		42		512
Social policy	590		101		691
Housing	301		11		312
Employment and social security	1,054		21	2	1,077
Civil service and public employment	1,067	2,325	41	7	3,440
Education	788	45	159	2	994
Taxes	893	72	8		973
Economic activity	757	737	12	1	1,507
Environment	447		59	2	508
Urban planning	325		30	1	356
Local Administration	293		15		308
Culture and other areas	240		9		249
Prevention of torture			131		131
Basic and public services	879	87	34		1,000
Under study (31 Dec.)	673	2	3		678
TOTAL	13,151	3,334	872	39	17,396

Case Processing Status

TABLE 11 shows the course followed by complaint files and ex officio action, once received or initiated by the Institution, and the state in which they were at the time of closing the report.

The percentage of acceptance of complaints for processing helps to assess, among other factors, the degree of citizens' awareness as regards the Ombudsman Institution's competencies and its capacity of intervention in the problems concerning them.

Non-acceptance of a complaint does not in any way suppose a lesser degree of assistance with issues or requests put forth by citizens. All complaints receive the same attention and timely response from the Institution, providing applicants with the most appropriate response to the issue in question, as well as guidance on alternative means of seeking a solution to their problems.

Table 11

Status of complaints and ex officio investigations									
STATUS		Individual		Joint		Ex Officio		Total	
		No.	%	No.	%	No.	%	No.	%
Accepted	In Process	3,104	23.60	2,388	71.63	574	65.83	6,066	34.95
	Concluded	2,534	19.27	108	3.24	203	23.28	2,845	16.39
	Suspended	35	0.27	737	22.11	82	9.40	854	4.92
	Total	5,673	43.14	3,233	96.97	859	98.51	9,765	56.26
Not accepted	Not accepted	6,168	46.90	101	3.03			6,269	36.12
	Total	6,168	46.90	101	3.03			6,269	36.12
Under study (31 Dec.)	Opened	675	5.13			13	1.49	688	3.96
	Pending response from applicant	635	4.83					635	3.66
	Total	1,310	9.96			13	1.49	1,323	7.62
GENERAL TOTAL		13,151	100.00	3,334	100.00	872	100.00	17,357	100.00

Individual Complaints

The following two tables show the procedures carried out for individual complaints that were accepted, the administrations involved in the different investigations and the type of conclusion reached for those cases that were completed in 2016.

Table 12

Accepted individual complaints. Number of cases processed with the Administration				
ADMINISTRATION	In process	Concluded	Suspended	Total
General State Administration	1,489	1,462	8	2,959
Autonomous Community Government	638	462	2	1,102
Local Government	553	333	1	887
Office of the Attorney General	63	36		99
Other public entities	27	46	22	95
Judiciary	20	59	.	79
Various administrations	262	116	1	379
Actions linked to other proceedings	34	7	1	42
Universities	18	13		31
TOTAL	3,104	2,534	35	5,673

Table 13

Individual complaints accepted and concluded. Type of conclusion reached, according to administration					
ADMINISTRATION	Correct action taken	Rectified	Not rectified	Other type of conclusion	Total
General State Administration	671	467	59	265	1,462
Autonomous Community Government	190	118	16	138	462
Local Government	150	119	10	54	333
Office of the Attorney General	20	3	1	12	36
Other public entities	30	6	1	9	46
Judiciary	36	7	6	10	59
Various administrations	38	15	31	32	116
Actions linked to other proceedings	2			5	7
Universities	5	4		4	13
TOTAL	1,142	739	124	529	2,534

Joint Complaints

Similarly with the individual cases, the following tables show the administration affected by the complaints that were admitted.

Table 14

Accepted joint complaints. Number of cases processed with the Administration				
ADMINISTRATION	In process	Concluded	Suspended	Total
General State Administration	1,228	74		1,302
Autonomous Community Government	1,114	34	737	1,885
Various administrations	46			46
Total	2,388	108	737	3,233

Table 15

Joint complaints accepted and concluded: Type of conclusion reached according to the administration			
ADMINISTRATION	Correct action taken	Not rectified	Total
General State Administration		74	74
Autonomous Community Government	34		34
TOTAL	34	74	108

Ex officio investigations

Table 16

Ex officio investigations. Opened and processed with the Administration				
ADMINISTRATION	In process	Concluded	Suspended	Total
General State Administration	122	74	11	207
Autonomous Community Government	279	80	32	391
Local Government	81	16	39	136
Office of the Attorney General	8			8
Other public entities	2	4		6
Judiciary	4	1		5
Various administrations	41	13		54
Actions linked to other proceedings	2	3		5
Universities	35	12		47
TOTAL	574	203	82	859

Table 17

Concluded ex officio investigations. Type of conclusion reached, according to administration					
ADMINISTRATION	Correct action taken	Rectified	Not rectified	Other type of conclusion	Total
General State Administration	15	38	4	17	74
Autonomous Community Government	56	12	1	11	80
Local Government	3	10	1	2	16
Other public entities	1			3	4
Judiciary	1				1
Various administrations	2	9	1	1	13
Actions linked to other proceedings				3	3
Universities	2	8		2	12
TOTAL	80	77	7	39	203

Recommendations, suggestions, reminders of legal obligation 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 administrations shown below, classified as accepted, rejected or pending response.

Table 18

Resolutions drawn up					
Resolutions	Accepted	Rejected	Unanswered	In process*	Total
Recommendations	230	54	238	186	708
Suggestions	389	86	206	126	807
Reminders of legal obligations					256
TOTAL	619	140	444	312	1,771

In process *: Resolutions answered and under study or pending further information.

Table 19

Recommendations by administration					
ADMINISTRATION	Accepted	Rejected	Unanswered	In process*	Total
General State Administration	55	35	90	48	228
Autonomous Community Government	58	12	58	88	216
Local Government	105	5	60	36	206
Office of the Attorney General			3	1	4
Other public entities	1		1	1	3
Judiciary			1	3	4
Universities	9	2	35	1	47
TOTAL	228	54	248	178	708

In process *: Resolutions answered and under study or pending further information.

Table 20

Suggestions by administration					
ADMINISTRATION	Accepted	Rejected	Unanswered	In process*	Total
General State Administration	217	50	71	47	385
Autonomous Community Government	93	7	49	27	176
Local Government	78	29	86	51	244
Other public entities				1	1
Universities	1				1
TOTAL	389	86	206	126	807

In process *: Resolutions answered and under study or pending further information.

Requests for appeal before the Constitutional Court

This year, twenty requests for the filing of appeals on the grounds of unconstitutionality and nineteen 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 two 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;

The Ombudsman website includes a section dedicated to obstructive administrations. Administrations, which have neglected to provide information 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:

- List classifying administrations according the General State Administration, Autonomous Community Government, Local Government, Office of the Attorney General, other public entities, Judiciary and universities;
- Map that 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 2016, regarding the alleged obstruction of the Ombudsman investigation on heads presiding over the municipalities indicated below, the Institution has forwarded records to the Office of the Attorney General, for the exercise by the latter, in the event that it considers that the actions constitute a crime classified under Article 502.2 of the Penal Code. Those *ayuntamientos* [city councils] are the following:

Barruelo de Santullán (Palencia) City Council

Cadaques (Girona) City Council

Colmenar de Oreja (Madrid) City Council

El Viso de San Juan (Toledo) City Council

Gerindote (Toledo) City Council

La Pola de Gordón (León) City Council

La Unión (Murcia) City Council

Macael (Almería) City Council

Mazarrón (Murcia) City Council

Molvizar (Granada) City Council

Nerja (Málaga) City Council

MANAGEMENT OVERVIEW

The Ombudsman commits to digital communication in 2016

In 2016, the digital communication strategy, using the webpage and social networks, reached 456,215 people. The Institution has expanded its communication networks (Facebook, Twitter, Youtube) and has reached out to social reporting platforms such as Change.org.

Budget 2016

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 2016	Amount
CHAPTER I: personnel expenses	11,826,400.00€
CHAPTER II: current expenditure on goods and services	1,935,600.00€
CHAPTER III: financial expenses	3,000.00 €
CHAPTER IV: current transfers	117,900.00€
CHAPTER VI: investments	298,000.00€
TOTAL CHAPTERS I + II + III + IV + VI	14,180,900.00€

Table II

CHAPTER I PERSONNEL EXPENSES		
Article	Description	TOTAL
10	Senior officials	455,700.00€
12	Civil servants	8,665,400.00€
13	Employees on contract	5,000.00€
14	Other personnel	345,000.00€
15	Performance incentives	1,000.00€
16	Employer social security contributions, benefits and social expenses	2,354,300.00€
TOTAL CHAPTER I		11,826,400.00€

CHAPTER II. CURRENT EXPENDITURE ON GOODS AND SERVICES		
Article	Description	TOTAL
20	Rental and leasing fees	122,000.00€
21	Repairs, maintenance and conservation	401,500.00€
22	Material, supplies and other	1,217,100.00€
23	Service-related compensation	104,000.00€
24	Publication expenses	91,000.00€
TOTAL CHAPTER II		1,935,600.00€
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	13,000.00€
48	Families and nonprofit institutions	96,900.00€
49	International transfers	8,000.00€
TOTAL CHAPTER IV		117,900.00€
CHAPTER VI. INVESTMENTS		
Article	Description	TOTAL
61	Investments in replacement of infrastructure and goods for general use	30,000.00€
62	New investment associated with service operations	68,500.00€
63	Investments in replacements associated with service operations	24,000.00€
64	Intangible investment expenses	175,500.00€
TOTAL CHAPTER VI		298,000.00€
TOTAL BUDGET CHAPTERS I + II + III + IV + VI		14,180,900.00€

Year-over-year evolution 2009-16

Table III

YEAR	2009	2010	2011	2012	2013	2014	2015	2016
Amount (€)	15,968,400	15,886,500	15,175,800	14,492,900	14,021,300	13,951,700	13,951,700	14,180,900
Percentage variation over previous year	-	-0.51 %	-4.47 %	-4.50 %	-3.25 %	-0.50 %	0.00 %	1.64 %

Figure I

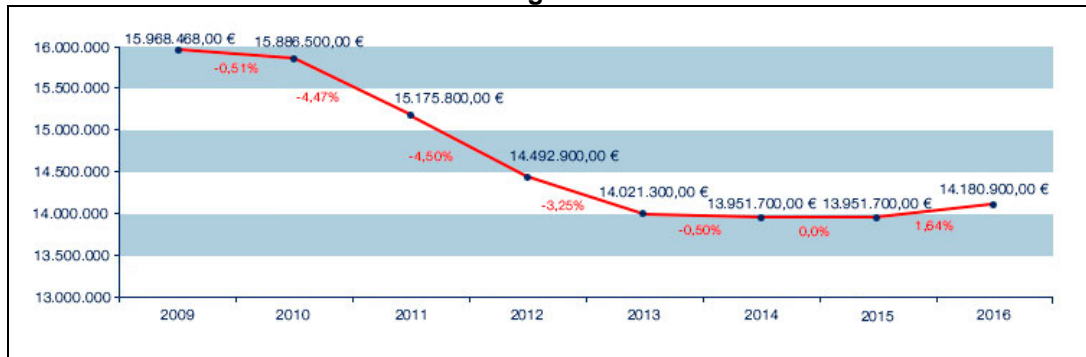
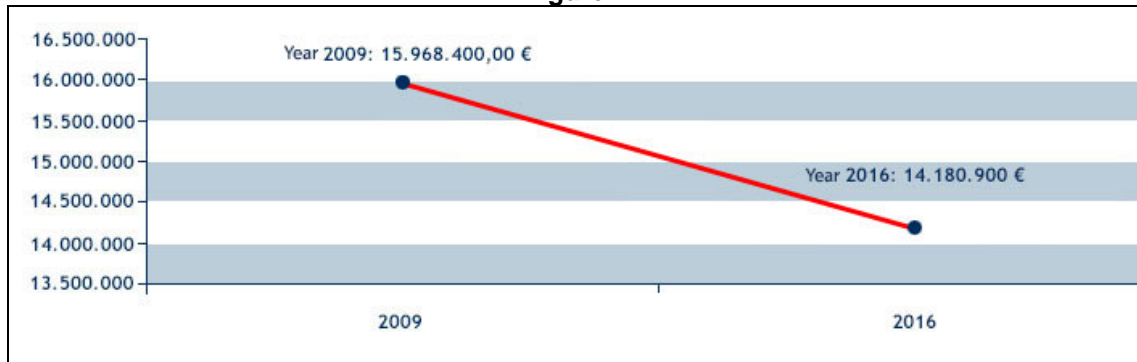


Table IV

2009	2016	% Increase
15,968,400.00 €	14,180,900.00 €	-11.19 %

Figure II



Budgetary execution

Table V

BUDGETARY EXECUTION 2016	Final amount	Payments made	Outstanding payments	Remaining
CHAPTER I: PERSONNEL EXPENSES				
Article 10: senior officials	455,700.00€	453,997.46€	0.00€	1,702.54€
Article 12: civil servants	8,334,037.26€	8,272,157.36€	0.00€	61,879.90€
Article 13: employees on contract	5,000.00€	0.00€	0.00€	5,000.00€
Article 14: other personnel	345,000.00€	326,364.96€	1,500.00€	17,135.04€
Article 15: performance incentives	1,000.00€	0.00€	0.00€	1,000.00€
Article 16: employer social security contributions, benefits and social expenses	2,274,300.00€	1,991,184.12€	182,565.61€	100,550.27€
TOTAL CHAPTER I	11,415,037.26€	11,043,703.90€	184,065.61€	187,267.75€
CHAPTER II: CURRENT EXPENDITURE ON GOODS AND SERVICES				
Article 20: rental and leasing fees	121,000.00€	108,566.75€	950.60€	11,482.65€
Article 21: repairs, maintenance and conservation	438,600.00€	345,427.75€	86,312.59€	6,859.66€
Article 22: office material, supplies and other	1,317,100.00€	987,492.91€	276,232.19€	53,374.90€
Article 23: service-related compensation	84,700.00€	75,433.60€	0.00€	9,266.40€
Article 24: publication fees	55,500.00€	16,452.83€	36,810.40€	2,236.77€
TOTAL CHAPTER II	2,016,900.00€	1,533,373.84€	400,305.78€	83,220.38€
CHAPTER III: FINANCIAL EXPENSES				
Article 34: deposits and guarantees	3,000.00€	1,266.32€	0.00€	1,733.68€
TOTAL CHAPTER III	3,000.00€	1,266.32€	0.00€	1,733.68€

Table V

BUDGETARY EXECUTION 2016	Final amount	Payments made	Outstanding payments	Remaining
CHAPTER IV: CURRENT TRANSFERS				
Article 44: companies, public bodies, foundations and other public sector entities	6,000.00€	6,000.00€	0.00€	0.00€
Article 48: families and nonprofit institutions	21,900.00€	3,674.01€	425.99€	17,800.00€
Article 49: international transfers	33,000.00€	6,114.42€	25,000.00€	1,885.58€
TOTAL CHAPTER IV	60,900.00€	15,788.43€	25,425.99€	19,685.58€
CHAPTER VI: INVESTMENTS				
Article 61: investments in replacement of infrastructure and goods for general use	75,300.00€	3,319.73€	60,163.69€	11,816.58€
Article 62: new investment associated with service operations	170,862.74€	103,965.43€	57,835.13€	9,062.18€
Article 63: investments in replacements associated with service operations	53,400.00€	21,127.84€	28,593.51€	3,678.65€
Article 64: intangible investment expenses	385,500.00€	376,964.83€	7,942.35€	592.82€
TOTAL CHAPTER VI	685,062.74€	505,377.83€	154,534.68€	25,150.23€
TOTAL BUDGET (CHAPTERS I, II, III, IV AND VI)	14,180,900.00€	13,099,510.32€	764,332.06€	317,057.62€

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.

Table VI

Number of citizen service calls and visits received in 2016 in comparison with 2015		
	2016	2015
In-person service	3,475	3,306
Telephone	8,002	8,427
Toll-free 900 number	4,701	5,419
TOTAL	16,178	17,152

Visits to the website. As in previous years, entries of the citizens to the institutional website have continued to grow. The total number of visits to the institutional website is shown below.

Table VII

Visits to the <i>Defensor del Pueblo</i> website (www.defensordelpueblo.es)		
	2016	2015
Pages viewed	945.242	553.358

Table VIII

Breakdown of Ombudsman Institution website visits by section	
Section	Visits
The Ombudsman	80,203
Check the status of your complaint	32,214
Home page of resolutions	9,154
Access to content of the main resolutions	137,799
Transparency	23,450
Access to response times	2,106
Access to obstructing administrations	2,617
Areas of action (most visited)	
Administration of justice	2,224
Education	2,213
Local government	2,149
Civil service and public employment	1,262
Healthcare	1,229
Migration	1,126
Economic activity	1,116
Employment and social security	1,092
Equal treatment	1,030
Housing	925
Social policy	760
Taxes	713

Table VIII

Breakdown of Ombudsman Institution website visits by section	
Section	Visits
Prisons	681
Urban planning	669
Environment	661
Citizenship and public safety	631
Transportation and communication	43
Forced expropriation	30
Basic and public services	17
Social groups	
Minors	6,423
Celiac	3,845
Persons with disability	1,004
Foreigners	668
Victims of gender violence	565
Victims of xenophobia	464
Persons deprived of liberty	337
Mortgage debtors	300
Affected by preferences	276
Victims of terrorism	214
National Preventative Mechanism against Torture (NPM)	6,072
Reports	2,997
Annual	1,577
NPM	1,003
Monographic studies	951
Documentation	30,017
Library	3,156
Press	6,436
Institutional calendar	2,669
School drawing contest	6,962
Human Rights Award	2,113
Ombudsman Institutional Prize	1,075

Transparency

The Institution made its transparency section public on 14 January 2013. Since then, it has been in compliance with all content considered significant for general knowledge, beyond that required by the Act 19/2013. This has resulted in active publication of information in various fields: institutional, organizational, legal, economic, budgetary and statistical, as well as publically accessible information found on the institutional website always related to the Institution's activities and subject to Administrative Law (Article 2.1.f of the Law).

The Institution is transparent with respect to the acts and provisions on personnel, administration and asset management subject to public law, matters of administrative litigation courts, according to the law 29/1998, of 13 July, regulating the litigation-administrative jurisdiction.

Few requests for information have been received in 2016. It should also be noted that suggestions were received from citizens regarding the way information is presented on the screen, on aspects not sufficiently prominent, as well as proposals for possible improvements for the website.

Communication

The task of the Ombudsman Institution's Department of Communications is to convey the Institution's work to citizens. Its mission is to disclose the recommendations, suggestions and investigations of the Institution and show how the work of the Ombudsman affects the day to day of citizens helping them to solve their problems with Administrations.

In order to comply with this task of publicizing the work of the Ombudsman, the Department of Communications maintains fluid, transparent and ongoing relations with the media.

As a result of this contact with the media, the Institution has achieved a powerful and steady presence in newspapers, radio, television and digital media.

Over 35,000 mentions were made in digital media, written press, radio and television in 2016. Many of these appeared as a result of the 100 press releases that were sent to the media as well as the content created for the website.

Among the content prepared for the website are "success stories" which are brief and simple news pieces that reflect actions by the Ombudsman that have solved a citizen's concrete problem with the Administration.

The Institution made a strong impact on the media with the publication of its annual report and the presentation of monographic studies: *El asilo en España. La protección internacional y los recursos del sistema de acogida* [Asylum in Spain. International protection and reception system resources] and *Los derechos de las víctimas de ETA. Su situación actual* [The rights of ETA victims. Their situation today].

Institutional website

In 2016, the Institution's digital communication strategy reached 456,215 people using the webpage and social networks. New services have been developed on the website and the strategy for digital communication with citizens has allowed the digital register to collect more than 8,808 complaints and a very significant number of surveys which include relevant information for conducting monographic studies. In some cases this information has prompted ex officio investigations with the Administration. In all cases, the surveys have given testimony to citizen perceptions of the consulted issues.

The website of the Institution records the number of people served, regardless of the communication channel chosen by them for contacting the Ombudsman, either contact related

to citizen service procedures connected to the processing or resolution of complaints, in response to requests for information, or in participation of questionnaires or studies set forth by the Institution.

Of particular note are the questionnaires given to people affected by **celiac disease**, which constituted high participation and allowed this Institution to reach out to this group, resulting in a monographic study on the subject, which will be reported in next year's report. Also noteworthy are the surveys on **Satisfaction of parents with students starting the school year** and on **Architectural barriers affecting persons with reduced psychomotor skills or other types of disability**, that have prompted or generated several ex officio investigations with several administrations to further the study of both subjects. Finally, the last of these questionnaires (not completed on 31/12/2016) deals with the granting of mortgages and / or personal loans by financial institutions.

Participation in studies and questionnaires in 2016	
Coeliac questionnaire	12,059
Architectural barriers questionnaire	2,542
Back to school satisfaction questionnaire	8,018
Granting of loans questionnaire (*)	307
TOTAL	22,926

(*) Still open. Persons consulted as of 31/12/2016.

There has also been an effort to make the experience of citizens who visit the web much more enjoyable, enhancing graphic design and supporting all content with the use of images, videos and infographics that, in many cases, also help in the understanding of texts.

Continuing the importance given to digital communication in 2016 it is also worth mentioning the expansion of channels of contact with citizens, through the institutional presence in new social networks such as Facebook and Youtube, in addition to the traditional Twitter. It is also worth mentioning the outreach to social platforms, such as "*Hazte oír*" and "Change.org", which in some cases have allowed the Institution to legitimize or take an interest in the substance of citizen demands and, in many other cases, to show solidarity with the problems of the citizens, informing them about their rights or who they should go to. Through its outreach and attention to Change.org the Institution has been able to study 280 petitions.

An effort has also been made to categorize and classify all information on the institutional website with a directory of keywords recognizable by its users, avoiding the legal terminology in which it may fall on some occasions and which makes it difficult to understand the competencies of the Ombudsman Institution. In the new website, each area of action is constituted by a set of keywords that are represented as a tag cloud, which allows, at a glance,

a better understanding of what is done in each field of action, as well as access to its offshoot content.

All aspects related to information security have also been developed and improved in the telematics and communication of the Institution with citizens and administrations.

In 2016 the telecommunication system has evolved towards the use of a system of certified e-mails addressed to citizens, in order to guarantee the integrity and confidentiality of these communications.

The Institution has also improved the security of telecommunications with public administrations since it has incorporated, over the past year, the *Sistema de Interconexión de Registros de las Administraciones Publicas (SIR)*, [Administrative Registry Interconnection System], which allows safe and immediate communications, both inbound and outbound, between the various administrations and the Institution. The percentage of secure communications, with respect to total communications with public administrations, is already close to 60% during the period in which it has been in operation. This percentage will grow as more administrations are integrated into this system.

In 2016 citizen services have been enhanced, incorporating telematics support for web complaint procedures including new utilities, simulations and examples of complaints. Telephone support has also been improved and a new chat service has been implemented, already incorporated in citizen complaint processing, providing an interactive channel of personalized help to solve all doubts or problems that may arise while filing a complaint at the Institution. The chat service caters to approximately 50 citizens daily during working hours, and in only the two months that it has been running (started in November) has served to help 1,685 citizens with their doubts processing complaints.

All these actions share the common goal of making the Institution much more accessible to citizens bringing the content and service of its work closer to the citizens. In 2017 the Institution will continue to explore new ways and channels to develop this objective, as well as to improve existing channels and actions.

SUPERVISION OF PUBLIC ADMINISTRATIONS

ADMINISTRATION OF JUSTICE

The Ombudsman Institution made Recommendations for improving psychosocial teams for family courts

Noteworthy among justice-related matters are complaints concerning delays in family proceedings, frequently related to problems with family court psychosocial teams or family meeting points. Complaints concerning a lack of staff or material resources at many courts also figure prominently.

Unjustified delays

Unjustified delays constitute the justice-related problem area which takes up most of the Ombudsman Institution's time. 79 complaints due to legal delays within the civil jurisdiction were received in 2016, along with 34 (criminal), 11 (administrative disputes), 12 (social) and 5 (commercial).

The majority of the complaints received by the Ombudsman Institution concerning unjustified delays fall under the civil jurisdiction and, specifically, family law proceedings.

In the majority of inspections carried out by the Ombudsman Institution, it is clear that the delays in the processing of family cases are not necessarily attributable to a lack of action on the part of the head of the judicial authority but due to other causes, such as a lack of court staff, poor infrastructure preventing optimal case processing, a delay in the preparation of reports by psychosocial teams appointed to the courts or a delay in issuing reports from family meeting points.

Judicial authorities

The large volume of pending issues, excessive workloads, an underequipped team and poor infrastructure has led, in many cases, to the court civil servants themselves being those contacting the Ombudsman Institution to request its intervention, given the conditions under which they are obliged to work.

Moreover, structural problems have been identified, such as those in the courts of Estepona (Malaga), the Murcia commercial courts or the Alicante criminal courts. This type of situations calls for what is often a considerable investment, preferably as soon as possible.

Public legal services

The Ombudsman Institution initiated an inspection of the Office of the Secretary of State for Justice and of those autonomous communities with competency in matters of justice (Andalusia, Asturias, the Canary Islands, Cantabria, Catalonia, Valencia, Madrid, the Basque Country, Navarre, La Rioja and Aragon) in order to determine the applicable legal framework for the activities of psychosocial teams appointed to family courts. The following Recommendations were made:

- **Creation of a working group between the Ministry and the autonomous communities for the drafting of a common protocol.** Adopt action protocols for psychosocial teams and evaluate the creation of a working group between the Ministry of Justice and those autonomous communities with competency in matters of justice for the coordination of criteria and the drafting of equivalent protocols.
- **Definition of characteristics and procedures for psychosocial teams.** Protocols should include the minimum number of people making up each psychosocial team, the necessary theoretical training and report contributions, as well as the criteria and methodology for the expert psychosocial evaluation and preparation of the final report. Details must be provided as to the number and duration of interviews, the time frames for preparing the expert report, the legally binding nature of the signatures provided by the professionals involved, the structure of the report and the description of tests carried out, the documents used and the foundations on which the report is based, among other issues.
- **Facilitation of report appeal where protocols are not followed.** Facilitate the possibility of appealing psychosocial team reports for parties and affected minors, as established in the Law on Civil Procedure for the appeal of expert rulings.
- **Ongoing training for members of psychosocial teams.** Annual programming of ongoing training for members of psychosocial teams in order to promote knowledge of minors' rights, adapting the exam given to the protocols adopted.

The Institution also initiated an inspection of the Canary Island *Consejería de Presidencia, Justicia e Igualdad* [Regional Government Department of the President's Office, Justice and Equality] concerning the status of the *puntos de encuentro familiar* [family meeting points, abbreviated as PEF in Spanish] for the autonomous community, recommending the creation of a family meeting point on each of the islands, which currently do not have this resource. The Recommendation was accepted, with plans made for the immediate installation of these facilities on each island.

Another complaint processed this year expressed the need for installing a waiting room for victims — both women and minors — in the Madrid **domestic violence courts**. A Recommendation was made for studying the possibility of installing such a space, where victims can wait until entering the courtroom without needing to have visual or verbal contact with their aggressor. A response is currently pending.

Civil Registry

The postponed entry into force of the *Ley del Registro Civil* [Civil Registry Law] until 30 June 2017 is the main cause of the collapse experienced by the autonomous communities, who currently have the competency for providing civil registries with material and human resources. In the responses received concerning Civil Registry cases, it has been argued that decisions are being postponed until there is clarification on who will be the competent authority once the new regulations enter into force.

According to the information provided by the *Secretaría de Estado de Justicia* [Office of the Secretary of State for Justice], no cases opened either in 2015 or in 2016 were resolved this year. The computer application for nationality planned for case processing is not operational. Only part of the cases received in 2015 have been digitized, with the rest neither scanned nor recorded.

The maximum time for processing with respect to 2015 has not been reduced, yet the minimum time has increased due to the paralysis of case processing which occurred in 2016.

The Suggestions put forth by the Ombudsman Institution for the urgent and preferential processing of those cases suffering delays of over five years have not been followed. The Office of the Secretary of State for Justice argues that it is not possible to comply with these Suggestions, since the majority of files are either pending scanning and digitizing or pending resolution by the *Colegio de Registradores de la Propiedad, Mercantiles y de Bienes Muebles* [Association of Property, Commercial and Personal Property Registrars].

As in previous years, the most numerous complaints continue to be concentrated in the civil registries of Madrid, Valencia, Andalusia, the Canary Islands and Catalonia, all those communities which have assumed competency as regards the provision of material and human resources for civil registries.

Intensive processing plan for nationality cases (abbreviated as PIN in Spanish)

Complaints continue to be received concerning case processing delays for Spanish nationality based on residence submitted between 2010 and 2013.

In June 2016, the Office of the Secretary of State for Justice confirmed that 18,000 cases from 2010 to 2013 were pending resolution. The information received was updated in December 2016 and the resolution of 4,508 cases was confirmed; 7,842 were dependent on third party

requests and were pending a response, while another 5,650 were in various phases of review and processing.

The main cause for complaint as regards **nationality** is the delay in each one of the proceedings and in the resolution of appeals, to which must be added complaints due to nonconformity with the reasons for denial [of nationality]; [complaints concerning] delays of several years and even the omission of the duty of express resolution and the misplacement of cases, whose urgent reconstruction and processing — which has been suggested — is paralyzed in the scanning phase. Another cause for complaint are the delays in the resolution of appeals brought before the *Dirección General de los Registros y el Notariado* [Directorate General for Registries and Notaries Public]. In 2016 the Office of the Secretary of State for Justice acknowledged an average of two years' delay in the resolution of appeals.

Adding to these recurring causes for complaint have been those in 2016 concerning the difficulty in administering the exams for obtaining the *Diploma de Español como Lengua Extranjera* [Diploma of Spanish as a Foreign Language, abbreviated as DELE in Spanish] and the test confirming knowledge of Spain's historic, constitutional and sociocultural values (abbreviated as CCSE in Spanish). Complaints have also been received regarding the requirement of electronic certification for accessing information available on the *Ministerio de Justicia* [Ministry of Justice] website for the status of each case. This requirement prevents access to information for those not in possession of an electronic identity card since, in many civil registries, an alternative to obtaining information in-person is also not available, except for a limited number of citizens who are served each day.

Consular registries

The Consulate General of Spain in Havana (Cuba) continues to be the source of a greater number of complaints concerning delays in the processing of nationality applications. The Recommendation made in 2015 for increasing staffing for the said consulate was rejected in 2016, due to the current restraints in budgetary expenditure.

After it was discovered that DNA tests were being requested at the Consular Registry for Guayaquil (Ecuador) from children of Spaniards for the registration of their birth, inspections were opened in order to ascertain the reasons. The Administration confirmed that DNA tests were never requested and that the aforementioned activities were being carried out by a criminal network. The problem has already been resolved.

An inspection was opened concerning a change in practices identified in Spanish consulates abroad who refused to carry out the regular procedure for taking an oath or pledge in cases of residence-based nationality. The Office of the Secretary of State for Justice accepted the Recommendation, such that the procedure for taking an oath or pledge which completes the process of residence-based nationality can take place in Consular Civil Registries.

Lawyers and State Attorneys

The Ombudsman Institution does not have the authority to oversee the activities of lawyers and state attorneys in carrying out their professional functions. Client relationships form part of the private sector and, therefore, control over the same lies outside the scope of this Institution. However, the Institution is able to oversee the activities of the respective **professional associations**, ensuring that their actions as corporations under public law conform to the legislation currently in force. As regards the operations of these associations (in particular where they are approached by citizens complaining about the behavior of a lawyer in a professional capacity), 26 complaints have been received, exactly half as many as in 2015. This year the Institution's supervisory activities have been able to confirm the correct functioning of the associations in general terms.

As regards the functioning of **legal aid**, 39 complaints have been received, 11 less than the previous year. Many of the complaints received concern slowness in the processing of applications for **free legal assistance**. It has been possible to confirm that the economic crisis has given rise to an increase in the number of unemployed individuals, with a resulting increase in the number of beneficiaries of the right to free legal aid and the high volume of cases that this entails.

PRISONS

Prison health is the focus of Ombudsman Institution inspections

The Ombudsman Institution received 656 complaints from prison inmates in 2016. Noteworthy among these are complaints concerning transfers, hygiene, sanitation and food-related issues, and internal separation. The Ombudsman Institution has opened inspections concerning prison health in order to ensure that inmates receive the same services as the rest of citizens.

At the end of the year, 59,839 people were in a state of deprivation of liberty in 98 prisons throughout Spain, according to official data. If this data from 23 December 2016 is compared with that from the beginning of the year, a 2.87% decrease can be observed, from 61,611 to 59,839 individuals.

The Ombudsman Institution received 656 complaints from inmates in 2016, an increase with respect to the previous year (524). 69 ex officio investigations have been carried out in this area. Chief among these are complaints concerning transfers (183), hygiene, sanitation and food-related issues (97) and internal separation-classification (38).

Deaths

In 2015, 155 inmates died in the prisons overseen by the *Secretaría General de Instituciones Penitenciarias* [General Secretariat for Prisons]. Of these deaths, 147 were male and 8 were female, with an average age of 47.8 years.

The number of deaths due to suicide was 23 (20 males and 3 women), one less than the previous year.

The Ombudsman Institution affirms that, in the internal inspections carried out for investigations into violent deaths (drugs, suicide, accidents, assaults), the possible causes and circumstances surrounding the case must be explained.

In cases of drug overdose and suicide, the Institution deems it necessary to include so-called "psychosocial autopsies", whose purpose is to explain or attempt to reconstruct the psychosocial state of the person deprived of liberty which led to the taking of his or her own life or the use of drugs with fatal results.

The *Administración Penitenciaria* [Department of Correctional Facilities] reviews and documents the activities carried out from the moment it is made aware of an incident, yet there is no investigation as to why an inmate takes the decision and, in particular, in what

psychological state he or she does so. This analytical perspective acquires even greater importance in those cases in which there is no significant data allowing for the identification of failures in the *Programa de Prevención de Suicidios* [Suicide Prevention Program], where applicable.

This year the Department of Correctional Facilities informed the Ombudsman Institution that inmates' personality traits and life situation are being investigated after a suicide, in order to discover the causes and circumstances of their death. The Ombudsman Institution views this approach as positive.

ABUSE

Reports of abuse received from prisons are the focus of ongoing attention on the part of this Institution.

The Department of Correctional Facilities has established a written **protocol** which provides instructions for investigating reports of abuse. In spite of this, this Institution considers that the protocol should be extended to prisons throughout the entire territory. This has been communicated to the General Secretariat for Prisons, which has confirmed that it has issued a prison service order to directors.

For reports of abuse, it is considered necessary that the inmate's testimony be given in an environment fostering trust between the person deprived of liberty and his or her interlocutor, such that the former is able to provide his or her version of the incident. The idea is to receive a testimony rather than perform an interrogation, such that the technique used should vary from case to case.

The Ombudsman Institution has insisted on the need for improving the system identifying the staff who provide prison services. Measures to change the current system for a more functional one have not yet been adopted.

The Institution emphasizes that the fact that regulations for the capture, recording, transmission, conservation, storage and extraction of images from prison video monitoring systems are still pending is unacceptable. This situation must be rectified as soon as possible. It is also necessary to prevent total restriction on the right of access for people deprived of liberty to such material, and to the contents of the recordings from these systems.

Prison health

Healthcare is the focus of particular attention on the part of the Ombudsman Institution. Problems have been identified, such as the high number of people with mental health conditions of various degrees of severity, which involves a large number of psychiatric medication prescriptions, as well as an equally high number of inmates suffering from personality disorders, drug addictions and serious contagious diseases.

Hepatitis C is of particular concern. The arrival on the market of new drugs which effectively cure this disease has generated tension between the Department of Correctional Facilities and the autonomous communities as to who should assume the treatment costs for this disease.

Another problem is the lack of health services personnel, currently insufficient although occasionally reinforced through the offer of temporary contracts, which at times do not yield interested candidates.

Since 2014, the agreements on healthcare services maintained by the Department of Correctional Facilities' *Servicios Centrales* [Central Services] with the autonomous communities have declined. This has become a source of instability, making the case either for the transfer of competencies or for the signing of agreements between the Central Administration and the autonomous community governments, such that healthcare for inmates does not enter a management crisis due to financial and/or competency factors.

The Ombudsman Institution has been concerned about the inmates suffering from hepatitis C. It considers that these patients must receive the best possible treatment, under the same conditions as those for the rest of citizens. The Administration informed the Institution that, as of February 2016, a waiting list for beginning treatment was not in existence.

In December 2016, the General Secretariat for Prisons indicated that it had not received any complaints with respect to the possible time delays that might exist for individuals in confinement between their diagnosis, prescription and the effective treatment start date at designated hospitals using the latest hepatitis drugs. The Department of Correctional Facilities indicated that, in any event, this delay did not exceed the average waiting time experienced by any free citizen.

Concerned about the provision of the drugs necessary for treating the disease in prisons, the *Asociación Pro Derechos Humanos de Andalucía* [Andalusia Association for Human Rights] requested the Ombudsman Institution to intervene in this matter. Legal pronouncements have been issued on this matter which maintain that the necessary costs for covering treatment must be assumed by the Department of Correctional Facilities. The Ombudsman Institution put forth a Recommendation to proceed with the administration of hepatitis C treatment for those individuals deprived of liberty in prisons managed by the General Secretariat for Prisons, both for those with prescriptions and for those who had not yet received these.

The Administration has indicated that the designated hospitals are carrying out clinical studies in order to identify those hepatitis C patients who need to begin treatment with direct-acting antiviral drugs, in accordance with the criteria set out by the *Ministerio de Sanidad, Servicios Sociales e Igualdad* [Ministry of Health, Social Services and Equality] in the *Plan Nacional para el abordaje de la hepatitis C* [National plan for addressing hepatitis C], just as is occurring in the general population. Inmate patients in prisons whose autonomous communities prescribe and dispense these drugs received the same from the pharmacy of their designated hospital. Those inmate patients in prisons whose autonomous communities prescribe but do not dispense these drugs receive the same provided by the General Secretariat for Prisons. The

General Secretariat for Prisons has informed the Ombudsman Institution that all prison inmates who have been prescribed hepatitis C treatment are currently receiving it. This applies to 857 people.

The Ombudsman Institution will closely monitor this situation in order to understand the justification for how the existing disparity between the high number of patients deprived of liberty — derived from the prevalence rate for this disease in prisons — and the relatively lower number of inmates who are actually treated is compatible with the absence of a waiting list for receiving this treatment.

The Institution has also sought to understand the actions taken by the autonomous communities as regards hepatitis C and other health issues, bearing in mind the competencies assigned to these.

Moreover, the Ombudsman Institution encourages the adoption of measures allowing for the gradual implementation of **telemedicine** services serving individuals deprived of liberty, for which it has begun inspections with various autonomous communities.

Inmate rights

On 14 September, two representatives of the Ombudsman Institution and one civil servant from the Spanish Consular Delegation of Sao Paolo, Brazil visited the Madrid V Soto del Real *Centro Penitenciario* [Prison, abbreviated as CP in Spanish] in order to verify conditions for two Spanish prisoners serving sentences in foreign prisons and who have been transferred to Spain to continue doing so.

Confirmation was given as to delays in receiving the certified copy of the judgment from the *Audencia Nacional* [National High Court], which in turn delays the process for assigning custody level. It was therefore deemed appropriate to transfer this issue to the *Consejo General del Poder Judicial* [General Council of the Judiciary, abbreviated as CGPJ in Spanish] in order to verify the reason for the delays and seek a solution for streamlining this procedure.

The General Council of the Judiciary's response to the Ombudsman Institution has been positive: from now on, for the purpose of ensuring that the Department of Correctional Facilities is in possession of a copy of the foreign judgment from the very moment that the prisoner is transferred to Spain and admitted into the corresponding prison, a copy of the foreign judgment will be attached to the information summarizing the sentence issued by the Ministry of Justice to the prison admission order received by Interpol officials (when the transfer is carried out via the Madrid airport) or to the formal request issued to the judge on duty in Algeciras (when the Spanish prisoner to be transferred is travelling from Morocco) or in Badajoz (when the prisoner is travelling from Portugal).

As soon as they arrive at the Soto del Real Prison, the transferred inmates may receive visits from family and friends in visiting rooms, yet such a possibility encounters bureaucratic delays, with the resulting emotional cost which — for humanitarian purposes — must be

avoided, allowing for greater intimacy of contact. Prison stays in other countries entail a deeply painful experience for Spanish families of inmates, since they frequently remain unable to express their affection for a large number of years, no longer embracing their family members or even speaking by telephone, as telephone calls are not permitted in many cases. If this is exacerbated by the well-known and lamentable conditions under which sentences are served out and which, although chiefly affecting the person deprived of liberty, are frequently traumatic for family members as well, it appears necessary that family contact in Spanish prisons take place with the same immediacy as that currently occurring with visiting room communication, save where specific and proven security issues exist that would render this inadvisable.

In light of this, and to which must be added sanitary problems and the lower frequency of journeys made for transferring women, it was considered appropriate to make Recommendations that the General Secretariat of Prisons proceed to:

1. Establish a normalized procedure so that the Department of Correctional Facilities' Central Services provide notification to the Spanish consular authorities of the country of origin for those cases in which infectious diseases have been detected in inmates recently transferred from other countries, such that an assessment might be made whether to communicate this information to the authorities of the country of origin in order for sanitary measures to be taken.
2. Take the appropriate measures so that women transferred from other countries to serve out their sentences in Spain do not experience delays in transfer to other establishments with respect to men in their same situation, once they have arrive at the Soto del Real Prison.
3. Establish measures which, for humanitarian purposes, allow for immediate family contact not limited to visiting room communication and subject to identification and the absence of co-existing and justifiable security issues for people deprived of liberty transferring from a foreign prison to the Soto del Real Prison.

The Ombudsman Institution presents a study on the rights of ETA victims

The Institution has presented the study *Los derechos de las víctimas de ETA. Su situación actual* [*The rights of ETA victims. Their situation today*] in order to provide a contribution to the memory of those killed by this terrorist organization. Moreover, actions have been taken to improve voting by mail from abroad and to strengthen the right to vote for people with disabilities.

Victims of terrorism

The Ombudsman Institution has presented the study entitled "The rights of ETA victims: their situation today", prepared at the request of the Spanish Congress. This study aims to contribute to the memory, dignity and justice of those who were killed by the ETA terrorist organization, as well as their families and those who were injured.

As a prior step to the study's creation, a group of experts was consulted and victims associations were convened. Representatives from the Administration were also received [by the Institution] and reports were requested from the *Ministerio del Interior* [Ministry of the Interior] and from the *Fiscalía de la Audiencia Nacional* [Public Prosecutor's Office of the Spanish High Court].

The conclusions included in the study are, among others, that there is still a high number of unresolved crimes; that the legal concept of a "*lesa humanidad*" [crime against humanity] applied to ETA's crimes strengthens victims' right to justice and contributes to the creation of a true account; and that there is still insufficient international cooperation in the fight against terrorism, or that it has proven necessary to reinforce the presence of victims at international political and academic forums and improve young people's education on terrorism.

The right to vote

The repetition of the general elections on 26 June 2016 again revealed the problems with voting by mail for **Spaniards residing abroad**. The extremely low participation of this group which occurs repeatedly in elections is not due to a lack of voter willingness but rather to difficulties encountered in voting. It is to be hoped that this problem will finally be addressed in the new legislative term.

Two additional and relevant interventions are also worth noting as regards electoral matters. The first gave rise to Instruction 3/2016 of 14 September from the *Junta Electoral Central* [General Electoral Council] concerning the interpretation of Article 27.3 of the *Ley*

Orgánica de Régimen Electoral General [Organic Law on General Electoral Rules] and the reasons given by **people with disabilities** for not forming part of an electoral polling station. The second was concerned with the **right to vote** for people with disabilities.

The Ombudsman Institution's proposal for reinforcing the right to vote for these individuals, such that this right is limited only in highly exceptional circumstances, appears to have been substantially included in the political program for the Ministry of Health, Social Services and Equality, such that there are well-founded hopes that it will be addressed in this legislative term. In both cases, the aim is to provide backing for people with disabilities and effectively defend their electoral rights, both in the positive sense (voting) and in the negative sense (not forming part of a polling station if they do not wish to do so).

Citizen Security Law

Recommendations were made by the Ombudsman Institution in 2015 concerning *Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana* [Organic Law 4/2015 of 30 March on the protection of citizen security] in force since 1 July of the same year.

The way in which the law is interpreted by Government Delegations is being monitored. In addition, the Ombudsman Institution has put forth Suggestions for repealing specific sanctions, particularly where there is a connection between the Organic Law on Citizen Security, the **freedom of information** and the fundamental rights to assembly and protest.

The *Plataforma en Defensa de la Libertad de Información* [Platform in Defense of the Freedom of Information, abbreviated as PDLI in Spanish] contacted this Institution in order to state its concern for the disciplinary proceedings initiated, in the application of this law, towards journalists carrying out news activities.

One journalist from the *Catalunya Ràdio* [Radio Catalonia] news services was charged with disobeying the authorities in the name of professional activities on 10 February 2016 in the vicinity of the Spanish High Court. In this case, the definitive resolution to be adopted in the disciplinary proceedings initiated is pending from the *Delegación del Gobierno* [Government Delegation] in the Community of Madrid.

A photojournalist from the Burgos daily newspaper (*Diario de Burgos*) was charged with resisting authority on refusing to delete photographs taken of a labor accident in which the worker had died. In this case, the Government Delegation in the Autonomous Community of Castile and Leon informed this Institution that a stay and closing of the case without penalty had been agreed, owing to the opinion that the photojournalist had been exercising the right to freedom of the press and information.

Security forces and citizens' rights

Instruction 12/2009 from the Office of the Secretary of State for Security regulates the establishment of a "*Libro-custodia*" [Guard-book] of detainees at National Police Force and

Civil Guard stations where arrests may be made and which would allow for an understanding of the incidents arising between the arrest of a citizen and his or her being brought before a judge or released from arrest. All of the above for the purpose of guaranteeing the rights of the detainee and facilitating subsequent monitoring of police activities.

The form on the guard-sheet does not provide for the possibility that a detainee is not brought to a police station immediately, from which it can be derived that in some cases the chain of custody and any incidents that may have arisen during the time elapsed between the arrest and arrival at the police station.

A Recommendation has been made to the Office of the Secretary of State for Security that Instruction 12/2009 and the "detainee guard-sheet" form be modified in order to ensure that a record is maintained of the chain of custody and any incidents taking place prior to a detainee's arrival at a police station.

8 complaints concerning suspected **police abuse** were received in 2016 (there were 12 in 2015; 9 in 2014; 21 in 2013, and 32 in 2012), as well as 46 complaints concerning wrongful treatment (there were 45 in the previous year; 67 in 2014; 56 in 2013 and 58 in 2012). The decrease in complaints of abuse has been consolidated and the number of complaints of wrongful treatment remains the same.

The Ombudsman Institution has issued resolutions concerning the rights of detainees, police identification badges, Civil Guard and National Police Force disciplinary rules, the capturing of images of police officers or the critical evaluation phase in police activities.

Constitutional Court sentence number 72/2007 of 16 April indicates that the provisions established in Article 8.2 Section a) of the *Ley sobre protección civil del derecho al honor* [Law on civil protection of the right to honor] is of application where police activities in a public place are concerned. In these cases, the publication of **a police officer's image** does not violate his or her right to one's own image, due to it not being a case where anonymity is required.

The Constitutional Court considers that there are no security reasons in existence to justify hiding the face of a police officer due to the mere fact of participating in the legitimate exercise of his or her professional functions.

Except in exceptional cases, police officers do not hide their identity when carrying out their activities. What is more, they are obliged to wear their personal identification number in a visible place on their uniform and identify themselves at the request of any citizen.

In the case of a National Police officer requesting identification from two citizens, alleging that they had been using their cellular phones during a police activity, Recommendations were made to the *Dirección General de la Policía* [Directorate General of the Police] for notification to be provided to the various National Police headquarters and precincts for the sharing among police officers assigned to these of the *Tribunal Constitucional* [Constitutional Court] doctrine relative to the capture and, where applicable, publication of a police officer's image when carrying out his or her professional duties and activities in a public place.

The Recommendation was not accepted on the grounds that it might create confusion among the members of the National Police Force.

The Directorate General of the Police was reminded that Constitutional Court sentences are binding, as constitutional doctrine, for all state entities and that the binding effect is produced both by the ruling and by the motive behind the sentencing, such that sharing the Constitutional Court's interpretation of that established in Article 8.2 of Organic Law 1/1982 of 5 May cannot create confusion among the members of the National Police Force but rather, to the contrary, must allow for the correct interpretation of the law in accordance with constitutional precepts.

The reiteration of the aforementioned Recommendation was also rejected on the grounds that the Constitutional Court's sentence is widely shared, thanks to courses provided by the *Escuela Nacional de Policía* [National Police Academy] in Avila and the *Centro de Altos Estudios Policiales* [Center for Higher Police Education].

An agent from the Zaragoza Local Police Force, believing that a citizen was capturing images of police activity by cellular phone, reprimanded the citizen for this action and, when it was understood that the citizen's claims of innocence were unfounded, reported him or her for inciting serious public disorder.

Regardless of whether the interested party confirmed taking pictures or recording by cellular phone, it must be considered that the said activity is not illegal, and that the police officer did not act appropriately.

The claim made by the interested citizen and the act of asking for the officer's identification number are also legal activities which should not have given rise to the filing of any report.

Once the corresponding disciplinary case had been processed, the resolution from the Government delegation held that the interested citizen had incited serious public disorder and punishment was ordered. However, it is this Institution's opinion that the disciplinary resolution did not respect the principle of typification or that of proportionality, according to which due adjustment must be observed between the seriousness of the action constituting an infraction and the punishment applied.

The Aragon Autonomous Community Government Delegation has accepted the Suggestion to revoke the disciplinary resolution dictated in the said proceedings.

Consumption of alcohol in public places

On 7 April 2015 a Recommendation was made to the Madrid *Ayuntamiento* [City Council] that notification be sent to interested parties' home addresses as to the initiation of disciplinary proceedings for the consumption of alcoholic drinks in public places. The City Council has confirmed that, in order to obtain more rights-based proceedings allowing interested parties to

prepare statements, provide evidence or request a 40% reduction in the fine, the Madrid Health administrative services have modified the procedure as of 1 January 2016.

This modification means that the fine for consuming alcohol in public place, which the municipal Police must submit to the infracting party at the time of the infraction, ceases to constitute the notification confirming the initiation of disciplinary proceedings for the consumption of alcoholic drinks in public places. The said confirmation, once approved by the director of Madrid Health, will be communicated to the interested party at his or her home address by the *Correos* [Spanish post] services.

Lack of citizen security

In matters concerning a lack of public safety, an inspection has been carried out regarding the **illegal occupation** of housing in Spain.

This Institution receives citizens who have been illegally deprived of the use of their own private property, as well as others residing in buildings where the aforementioned squatting occurs and who become the indirect victims of this criminal act. The owners and neighbors require the intervention of the *Fuerzas de Seguridad* [Security Forces] who, within the current legal framework, are not able to intervene save in cases of flagrant crime.

This squatting activity may be carried out by mafias or organized gangs who, aware of the legal loopholes, occupy the houses, converting the said occupation into a business as they demand money in exchange for abandoning the illegally occupied housing.

Faced with this type of situation, the owner of the occupied building must immediately initiate possessory recovery of the residence which culminates, after a long legal process, in eviction of the occupants, with hardly any fine, which in the majority of cases is not even paid.

Therefore, collecting the experience of the complaints, the *Fiscalía General del Estado* [Spanish Attorney General's Office] has been requested to provide a report on the existing statistics as to the legal diligence currently in process for this type of crime. Moreover, the Attorney General's Office has been asked to provide its opinion as to how to improve the legal framework regulating the crime of illegal building occupation under the Criminal Code. For the moment, the Attorney General's Office has informed the Ombudsman Institution that 19,336 prior due diligence procedures and 632 urgent procedures were opened in 2014; prior due diligence procedures rose substantially in 2015, to 22,461, whilst urgent procedures numbered 536.

The Ministry of the Interior has also been requested to provide information as to the number of reports filed for these actions, the activities carried out by the State Security Forces and the difficulties faced by the police authorities in the due pursuit of this conduct.

Traffic

Complaints concerning disciplinary procedures for traffic have decreased significantly. There were 294 complaints in this area for 2016, compared to 421 in 2015.

In January 2016, the Institution was made aware of complaints lodged by the residents of Madrid's Las Letras neighborhood, concerning the notices received as to disciplinary traffic sanctions for driving in the *Área de Prioridad Residencial* [Residential Priority Area, abbreviated as APR in Spanish], in place since 2005. In January 2015 the Madrid City Council sent a notice by post to all of the residents authorized to drive in the said zone, urging them to update their contact details at the municipal office. Many residents were under the impression that if their status had not changed it was not necessary to attend the appointment. The residents began to accumulate notices warning of the initiation of disciplinary proceedings for driving in their zone of residence, with some families accumulating fines greater than 22,000 Euros (one sanction per day until they realized that they were being sanctioned).

An ex officio investigation was opened in order to confirm the solutions foreseen by the city council to resolve the numerous complaints lodged at municipal offices.

The Madrid City Council Plenary Session unanimously approved an emergency motion urging the legal nullification of the sanctions imposed on all those in possession of authorization to drive in the said zone granted prior to the new regulations entering into force.

MIGRATION

The Ombudsman has analyzed the Spanish system of asylum in a study

In 2016, the applications for international protection have increased in Spain. The Ombudsman has analyzed its impact on the Spanish asylum system in the study *El asilo en España. La protección internacional y los recursos del sistema de acogida* [Asylum in Spain. International protection and reception system resources]. The Institution has also monitored the conditions of temporary accommodation centers and immigrant detention centers.

Spanish prisoners abroad

Once again this year, the Institution has put special attention on the situation of Spanish prisoners abroad and monitored the consular performance to ensure that due attention and protection is given both to persons deprived of their liberty abroad, and their families. According to information provided by the Administration on December 30 2016, 1,328 Spanish citizens were deprived of liberty abroad.

Through complaints received, it is noted that 90% of Spanish citizens currently detained and deprived of liberty abroad, are for crimes related to drug trafficking. Also, it has been found that the Spanish consular services are aware of important information about the place of residence of the detainees previous to their travel as well as their routes and commonly used air carriers. However, this information does not appear in general to be shared with the competent authorities of the Ministry of the Interior. The information known by the consular authorities in the exercise of its functions, in relation to crimes committed by Spanish citizens abroad, could be useful for the departments of the Ministry of the Interior responsible for the fight against drug trafficking.

Therefore, this Institution initiated an ex officio investigation with the *Dirección General de Españoles en el Exterior y de Asuntos Consulares y Migratorios* [Directorate General for Spaniards Abroad and Migration and Consular Affairs]. In March 2016, a Recommendation was made to initiate a procedure for the exchange of information and data between the consular and police authorities. In addition, it was suggested the creation of a specific protocol for consular officers, in direct contact with Spanish citizens in criminal situations related to the traffic of toxic drugs, narcotics or psychotropic substances. The Institution will report on the outcome of this investigation in the next annual report.

Peru (with 243 Spanish citizens deprived of liberty as of 30 December 2016) is the country with the largest number of Spaniards deprived of liberty who have approached the

Ombudsman. The Ombudsman has carried out action regarding the situation of 18 Spaniards, of which 2 were released this year.

Transfer of cases to Spain of convicted persons in Peru, remained suspended for nearly three years, a circumstance, which suffered further delay due to the Peruvian judiciary strike. However, at the end of the year processes began again, and at the end of 2016 seven transfer files are being processed. This Institution collaborated with the Peruvian Ombudsman during the entire procedure.

Morocco (95 Spanish citizens deprived of liberty in this country as of 30 December 2016) is the second country from which complaints were received from those deprived of liberty in 2016. Specifically, the Institution carried out actions on 11 cases. The complaints were related to the quality of healthcare provided in prisons and requests for streamlining transfers to Spain.

In Thailand (4 Spanish citizens in prison as of 30 December 2016), a Spanish citizen serving a sentence of life imprisonment is still in prison and was been denied transfer to Spain, requested on humanitarian grounds, claiming that the eight-year period called for in the agreement signed between the two countries had not passed. The Embassy of Spain in Thailand attempted the granting of a partial pardon, but despite intense diplomatic work, it was not granted. Since 2013 there has been simultaneous efforts with the Thai Ombudsman in this case. This Institution continues to monitor the case and remains in contact with family members, given the delicate situation of the concerned person.

In the United States of America (44 Spaniards in prison as of 31 December 2016), this Institution has monitored proceedings on the cases of 4 Spaniards: 3 serve a life sentence and the fourth, was released from 'death row' after a retrial was ordered.

In Ecuador (25 Spaniards in prison as of 31 December 2016), this Institution has monitored actions related to the situation of 4 Spanish citizens in prison. Also the Ombudsman continues to follow up on consular negotiations with the Ministry of Justice and the Ombudsman of Ecuador to address the pending cases for the application of what is referred to in Ecuadorian legislation as "favorability principle", which could lead to the release of some mentioned Spaniards.

In Colombia (58 Spaniards in prison as of 31 December 2016), there are actions opened from 2013 concerning the situation of 7 Spaniards. In the course of 2016 two were transferred to a prison in Spain and another is pending approval by local authorities. In another case, despite an order passed for extradition to Spain, the Colombian Ministry of Justice and Law has informed the Consulate General of Spain in Bogotá that the concerned person must complete the seven year sentence that was imposed in full and will later be extradited. Another Spanish citizen suffers from major health problems which are being treated. Another Spanish woman, who was under house arrest, with 4 minor dependent children, was finally transferred to Spain thanks to the collaboration of the Consulate, the Ombudsman's Office in Colombia and INTERPOL Spain.

Entry into national territory

The opening of border crossings at Ceuta and Melilla has been an improvement in access to the process. The study, *El asilo en España [Asylum in Spain]*, presented by the Ombudsman in June 2016, collects data on applications made at the border posts of Tarajal (Ceuta) and Beni Enzar (Melilla). No requests were presented in the former since the day of its inauguration, while 6,047 applications in 2015 and 2,563 in 2016 were presented in the latter.

In June, officers of the Institution visited terminals 1 and 4 of Adolfo Suarez Madrid-Barajas airport. Suggestions were made to the Directorate General of the Police to move asylum seekers and non-admitted persons, whose stay was anticipated for more than 72 hours, to terminal 1. The purpose of moving these persons is so they have access to sunlight and natural ventilation. It was also suggested that persons whose applications were not accepted for processing and who were located in either terminal, be provided with access to these areas and access to agents trained in the field of human trafficking to obtain a more effective detection and treatment of such cases.

There have been several interventions in 2016 regarding the situation of the persons entering national territory after the sinking of a boat.

It is considered that, in cases in which deaths occur during voyages, and in the situations of physical and psychological vulnerability that the survivors find themselves in, their condition of victim should prevail and they should receive proper treatment, without it being considered appropriate that they remain for long periods of time on police premises or detained in immigrant detention centers. These centers do not meet the conditions for survivors of these tragedies to receive the care needed to improve their psychological situation.

Entry of foreigners through unauthorized border posts

On the other hand, there have been continued attempts to access national territory irregularly through the Ceuta and Melilla border fences. Most of the received complaints refer to so-called "hot returns" that do not allow authorities to assess if the persons affected are minors or in need of international protection. Also there have been a reoccurrence of complaints related to the delay in the arrival of emergency services, which is a risk for people who are perched on the fence.

The Ombudsman shares the concern of individuals who have addressed this Institution and have reiterated its position against automatic returns of foreigners and the Recommendations put forth to this effect.

While the undertaking of the study *El asilo en Spain [Asylum in Spain]*, complaints regarding returns of foreigners at sea have been revealed. Both individuals as well as non-governmental organizations have addressed the Ombudsman Institution providing audiovisual material showing recordings of these practices. This Institution has stated on several occasions that the Spanish authorities must ensure that foreigners can lodge requests for international

protection when they are intercepted by Spanish officials, regardless of whether they are located outside or within Spanish territorial waters.

Expediting the return of rescued individuals from the sea does not follow the regulations on asylum, as pointed out by the Ombudsman in previous annual reports.

Temporary Accommodation Center for Immigrants (CETI)

A radical change in the profile of residents occurred in Temporary Accommodation Centers for Immigrants (abbreviated as CETI in Spanish), which hosted mostly asylum seekers in 2015. The Administration has argued that the Temporary Accommodation Center for Immigrants were facilities similar to the Reception Centers for Refugees (abbreviated as CAR in Spanish) and has stated that the care provided in these centers is the same.

However, residents of Reception Centers for Refugees and those residing in facilities managed by non-governmental organizations receive specialized attention, are more likely to find work since they are on the peninsula and family groups stay together, as opposed to the Temporary Accommodation Centers for Immigrants, where mothers with children are on one side and parents on the another.

The Ombudsman has reiterated that the conditions at these centers are not suitable resources to accommodate and care for asylum seekers. The lack of specialized assistance for asylum seekers and persons who are particularly vulnerable must be highlighted. The Institution also recalls that police authorities maintain restrictions on the freedom of movement of asylum seekers whose asylum request has been admitted for processing. They cannot leave the autonomous city, unless it is authorized by the *Comisaría General de Extranjería y Fronteras* [Central Department of Immigration and Borders].

The Ombudsman Institution has received complaints in which asylum seekers, whose asylum application is admitted for processing, are opposed to the ban on access to the peninsula. The Ombudsman has also received complaints from applicants of international protection who belong to the lesbian, gay, bisexual and transgender group (LGBT). All of them demand more clarity on the procedure for transfer to the peninsula. This Institution has requested information to know whether, in general, priority is given to the transfer of people of this profile. The Administration pointed out that the situation of vulnerability of the person is taken into account to authorize the transfer.

This Institution has shown its concern about the problems that may occur in the centers, taking into account the large number of persons residing together of different ages and nationalities. In June 2016, a Recommendation was made to the *Secretaría General de Inmigración y Emigración* [Office of the Secretary General for Immigration and Migration] for the urgent formulation of a protocol for the prevention and response to sexual and gender-based violence. The aforementioned body has informed that work on the implementation of a protocol of those characteristics is carried out at the national level. The Recommendation formulated has been reiterated since its purpose was the urgent implementation in the Temporary

Accommodation Center for Immigrants Center in Melilla, coinciding with the UNHCR (United Nations High Commissioner for Refugees – abbreviated as ACNUR in Spanish) who had made the same proposal.

Unaccompanied foreign minors

Age assessment of unaccompanied foreign minors continues to be the subject to a significant number of complaints.

Regarding subjecting foreign children, with documentation proving that they are minors, to age assessment procedures, the Protocol on unaccompanied foreign minors establishes the possibility to initiate these procedures with documented children under specific circumstances. This issue and others regarding the mentioned Protocol are pending court ruling.

In the monographic report *¿Menores o adultos?: Procedimientos para la determinación de la edad* [¿Minors or adults?: Age assessment procedures], the Ombudsman understood the inappropriateness of subjecting these children to such procedures, pursuant to the *Ley de Extranjería* [Foreign Nationals Law]. In the same way the Ruling on 29 September 2014 by the Civil Chamber of the Supreme Court, established as case law that immigrants whose passport or identity documents states that they are underage, cannot be considered undocumented and subject to age assessment complementary test, since it is not open to question without reasonable justification why such tests are carried out when a valid passport is available.

Despite the former case law doctrine, there has been an increase in the number of complaints received for age assessment procedures being initiated on children with a passport or other supporting documentation. The Office of the Attorney General considers that the new wording of article 12.4 of the *Ley Orgánica de Protección Jurídica del Menor* [Organic Law on Legal Protection for Minors], grants the Public Prosecutor's Office the authority to carry out a judgment of proportionality to examine the validity of a passport or identity document.

The investigation was concluded by communicating to the Public Prosecutor's Office that, in addition to the irregularities found by the agency in the delay in issuing decrees and the repetition of radiological tests, in all cases examined it was revealed that only a carpus X-ray was practiced on the persons concerned, without other complementary tests. In addition, the Institution expressed to the Public Prosecutor's Office its concern that different radiological reports carried out will deliver very mixed results, given that the test results should be reproducible, even if they are made in different hospitals.

The Ombudsman Institution considers that the immediate recording of data of unaccompanied foreign minors, after being detected by State Security Forces, constitutes a fundamental tool for their protection. Important advances have been noted in the effectiveness of the *Registro Central de Menores Extranjeros No Acompañados* [Central Registry of Foreign Unaccompanied Minors] and in the streamlining of procedures for consulting it. Despite this, there continues to be cases in which a lack of coordination between the child protection

institutions and the police responsible for the registry has delayed registration, which allows for duplicates in the identification of minors and hinders access to up-to-date information.

The Ombudsman Institution has opened ex officio investigations with child protection authorities to know the current situation throughout national territory and to detect procedures that are necessary to make improvements.

Visits to centers for minors

In September 2015, the Institution visited **The Fuerte de la Purísima Center for Minors** in Melilla. The Institution initiated investigations into the child protection services of the Autonomous City of Melilla and sent the conclusions reached to the Public Prosecutor's Office. Both entities provided information regarding measures adopted to correct the deficiencies detected.

Different associations have addressed the Ombudsman reporting the situation of a group of unaccompanied foreign minors who were spending the night in the Isabel Clara Eugenia Park in Madrid, adjacent to the **Isabel Clara Eugenia Center for Minors**.

Given the complaints received, on 3 November 2016, personnel from the Institution carried out a visit to the mentioned center and nearby park, where it was confirmed that approximately 12 minors, stating that they were under the guardianship of child protection services of Madrid, were spending the night in the park, together with other youth, under poor health conditions. It also noted that a significant number of them consumed toxic substances. The minors who were in the park were at serious risk. Urgent investigations were initiated with the Ministry of Social Policy and Family of the Autonomous Community of Madrid to receive information on the foreseen actions for their admission to a facility tailored to their needs, forwarding the matter to the Office of the Attorney General. Outcomes will be reported in subsequent reports.

Immigrant Detention Centers (CIE)

In 2016, the Ombudsman, in its capacity as National Preventive Mechanism against Torture (NPM), has made visits to Immigrant Detention Centers (abbreviated as CIE in Spanish) in Madrid, Barcelona, Valencia and Murcia. The findings of these visits can be consulted in the 2016 NPM annual report.

Once again reference must be made to the lack of a health referral mechanism for transfers of residents from Temporary Accommodation Centers for Immigrants (CETI) to Immigrant Detention Centers (CIE).

In May 2016, the Ombudsman, accompanied by specialists from the Institution, paid a visit to the Immigrant Detention Center of Valencia. The conclusions of this visit were forwarded to the Administration and the Suggestions and Recommendations can be consulted on the website of the NPM.

Complaints were received from associations and individuals for the shortcomings at the Sangonera la Verde Immigrant Detention Center in Murcia, where there are claims of overcrowding and other deficiencies. These claims have been forwarded to the Court of Supervision of Immigrant Detention Centers.

Witnesses complain about the obstacles presented in performing their tasks related to inmate assistance, with cutbacks in hours, difficulties to carry out requested visits and their concern about the presence of National Police Force special units within the premises of the Immigrant Detention Centers.

The Ombudsman visited the Immigrant Detention Center of Murcia in April and December. During the last visit, carried out after several violent incidents and a fight, the Institution discovered that several of the inmates had been sent to prison, after assaults suffered by police officers. It has been requested that the Office of the Attorney General keep the Institution informed regarding the course of the proceedings.

An ex officio investigation has been initiated after discovering the lack of undergarments and hygiene products for women admitted to the Barranco Seco Immigrant Detention Center in Las Palmas. Problems have also been detected related to a lack of interpreters. The Central Department of Immigration and Borders has announced the adoption of necessary measures to ensure hygienic conditions in the mentioned establishment. It has also reported the intention of signing an agreement in 2017 to ensure psychosocial care in the center, subject to budgetary availability. The proceedings remain open.

The Immigrant Detention Center of Barcelona was visited in February and September. The findings of the visits were forwarded to the Administration. The Suggestions and Recommendations drawn up can be consulted on the website of the NPM.

Human trafficking victims

At the end of 2015 information was requested from Office of the Secretary General for Immigration and Migration on the implementation of the Protocol for the detection and action in possible cases of trafficking in human beings for the purposes of sexual exploitation. 93 minors, accompanied by adults mostly being their mothers, were detected. These children are considered to be potential victims of trafficking. In addition, 589 cases of persons with signs of being victims of human trafficking (adults and accompanied minors) were detected, of which 229 were formally identified as victims by the State Security Forces.

Regarding identified human trafficking victims who were directed to submit applications for international protection, the Central Department of Immigration and Borders has announced that, between June 2015 and June 2016, 77 persons that have been identified as potential victims of human trafficking applied for or expressed their desire to apply for international protection.

This Institution recognizes the progress that is being made in the prevention and prosecution of the crime of trafficking. However, it is necessary to improve communication

amongst the State Security Forces in order to improve the protection of trafficking victims, in addition to optimizing the personal information provided by the National Police Force to courts when the detention of a foreigner is requested.

The Ombudsman has reiterated the need to promote a specific protocol for the immediate action whenever signs of human trafficking are detected in minors, or whenever other professionals warn of such signs, detected as a result of their direct contact with the child.

The Office of the Secretary of State for Social Services and Equality announced that it accepts the Recommendation and that is pushing forward the development of a national protocol for the detection and care of child victims of trafficking.

Among other issues, it expressly states the need to include organizations and specialized institutions of civil society in the process of detection and identification of victims of trafficking. It also details that, when these specialized institutions, have relevant information about a potential victim, they shall inform State Security Forces through the channels established with the corresponding social contact person, by the most rapid and efficient means, so that the information be evaluated in the identification process of the victim and in other protective measures.

Actions have also continued in an attempt to improve the identification of young children arriving by boat, accompanied by adults, and that show evidence of human trafficking. In 2015, 58 minors accompanied by adults reached the coasts of Andalusia without supporting documentation of their kinship. DNA evidence testing was practiced on all of them, both minors and adults. Since the practice of DNA testing was introduced for those minors and so-called family members involved in an attempted entry or illegal border crossing, there has been a drastic decline in the number of cases detected in that alleged family relationships were false. A total of 21 women, mothers of these children met the profile of potential victims of trafficking. 15 of them rejected the reflection and recovery period offered and 6 accepted it.

Consular offices

Actions have continued with the General Directorate for Spaniards Abroad and Consular and Migration Affairs in relation to the human and material resources available for consular agencies to perform the duties they are assigned. In this respect, information was received regarding the provision of human resources for the Embassy of Spain in Islamabad and the Consulate General of Spain in Santo Domingo.

As in previous years, complaints continue to be received regarding the refusal of visas for family reunification requested by spouses of resident foreign nationals, deeming that their marriage is one of convenience.

Asylum

In June 2016 the Institution presented the study *El asilo en España. La protección internacional y los recursos del sistema de acogida [Asylum in Spain. International protection and reception system resources]*.

The study analyzes the administrative procedures followed in Spain, from the moment that a person expresses his or her desire to apply for international protection and lodges a request until the issuing of a resolution by the competent government agency which grants or denies refugee status or subsidiary protection. It also details the organization and workings of the current reception system for applicants of international protection.

The necessary information for the compilation of the report comes from the Administration itself, processing of complaints, ex officio complaints and visits carried out both to the *Oficina de Asilo y Refugio* [Office of Asylum and Refugees] (which is the competent government body processing the applications) as well as to the facilities that house the asylum seekers while their requests are being processed. Resulting from this study, 26 Recommendations have been drawn up, 23 of them to government agencies of the State Administration, which holds most authority in matters of international protection. The remaining three have been addressed to each of the autonomous communities and cities since they affect aspects of their area of competence.

The study also makes reference to the system's funding and highlights the budget increase that has been carried out to manage the growing number of requests for international protection. It also includes measures adopted for staff and accommodation resources to deal with the crisis situation.

One factor that adds complexity to the functioning of the asylum system is the fact that, it involves many different administrative bodies under two different ministerial departments: Ministry of the Interior and the Ministry of Labor and Social Security. The first has the competence to resolve requests and the second manages the resources of accommodation for these persons, as well as benefits and aid provided by the reception system. Better coordination is essential for greater quality and efficiency of the system and, essentially, to avoid that any individuals are left without access to the procedure.

The 2015 report documented the Suggestions made so that the disciplinary proceedings be canceled for those persons waiting to formalize their request for international protection due to delays in appointments for carrying out this procedure. The Suggestions were accepted.

The problem of delays in appointments for lodging asylum applications has been nearly resolved in 2016. In the majority of the facilities where requests are lodged, there was reinforcement of staff, who did not always have the necessary expertise, nor did the appropriated space have the necessary characteristics to carry out interviews.

At the end of the study on Asylum (June 2016) statistics on international protection for the year 2015 had not yet been published. The Office of Asylum and Refugees (OAR) has recognized that their electronic system does not adequately respond to the needs of managing

the applications. This situation was the motive for a Recommendation to be put forth to the *Subsecretaría del Ministerio del Interior* [Undersecretary of the Interior] for the renewal of the Office of Asylum and Refugees computer system, which has been reiterated recently, since the response received subjects this renewal to budgetary funding but does not mention actions put in place to obtain the necessary funding.

Throughout 2016, actions continued with issues related to persons admitted to Immigrant Detention Centers waiting to be expelled or returned and their access to the procedure. Last year's report mentioned that one of the investigations carried out revealed that the Office for Asylum and Refugees found out about a asylum request from a citizen the day after he was deported. The Administration has acknowledged that there is no specific protocol for processing asylum applications when they affect Immigrant Detention Center inmates and do not arise through the channels implemented in these centers. The Ombudsman considers it essential to take the necessary measures so that all persons have the possibility of exercising their right to international protection, and therefore requested that the *Dirección General de Política Interior* [Directorate General of Interior Policy] establish, in the future Asylum Regulation, a procedure favoring the detection of applications that may require immediate action.

The visit made at the end of the year to the Immigrant Detention Center of Madrid revealed again the need to modify the system that these centers use to collect requests and initiate the necessary actions for their processing. Until now the procedure foresees that the inmate leaves his or her request in a mailbox and therefore there is no acknowledgement of receipt of the application.

The study has revealed that there are structural problems of functioning and processing in the Office of Asylum and Refugees. For this reasons 14 Recommendations were put forth to the Undersecretary of the Interior.

It was also recommended that the Office of the Secretary General for Immigration and Migration, adopt the necessary measures to adapt the reception system to the provisions of Directive 2013/32/EU. In its response, the Department communicated that it is the Ministry of the Interior that should expedite the processing of applications, given that accommodation is lasting up to 18 months and the Asylum Law provides for 6 and, in exceptional cases, an extension of 3 months, for the resolution of the application. The Recommendation has been reiterated, because regardless of the responsibilities of the Ministry of the Interior, the Administration is obliged to protect the applicant throughout the entire period, and the applicant cannot be responsible for the delay in the resolution of their application.

The asylum study, in addition to assessing the Spanish reception system, also reviewed the structure, which relies on specific publicly managed resources such as Refugee Reception Centers (abbreviated as CAR in Spanish) and facilities managed by non-governmental organizations. Thanks to state subsidies, these resources have been reinforced to open new places and increase attention to applicants, in order to fulfill the obligations imposed by the autonomous community and internal regulations. The publically managed resources which are used for the reception of asylum seekers include the Temporary Accommodation Center for

Immigrants in Ceuta and Melilla, although their purpose is not to attend to applicants for international protection.

The asylum seeker integration program consists of three phases: reception, integration and autonomy, and although the sum of the three phases can have an overall duration of 18 months, the Administration affirms that the duration differs according to the case and the profile of the applicant.

In 2016, there have been numerous complaints related to the reception system, on one hand for the inadequate conditions of the assigned resources and on the other hand, for the withdrawal of financial aid.

With respect to the inadequacy of some of the resources allocated to the applicants, the Institution is awaiting information requested from the Office of the Secretary General for Immigration and Migration in August about the conditions at a center in the Autonomous Community of Madrid. The person interested, victim of domestic violence with minor dependent children, expressed her dissatisfaction with the conditions at the center. She affirmed that there were not a sufficient number of workers to provide the necessary service to applicants and also noted that the center provided accommodation to individuals of different programs: international protection, humanitarian protection, drug addiction and alcoholism. This situation could lead to serious problems while living together.

There were complaints about the poor conditions in a reception center for asylum seekers in Barcelona. Information was requested from the Office of the Secretary General for Immigration and Migration in April 2016. In November the mentioned body reported that a hostel was used because of a delay in construction work for remodeling. However, the Administration did not agree with the complaints of the applicants in terms of the lack of adequate conditions of the resource assigned temporarily.

The Ombudsman, within the framework of the study of asylum, has recommended that instructions be given for situations of saturation of the system in order to avoid vulnerability of applicants. It has also recommended the development of action protocols to channel the support of administrations and individuals. Recently additional information has been requested regarding this Recommendation so that the same financial aid is provided to refugees regardless of whether the resource in which they are housed is of public or private management.

It has been considered equally necessary to recommend to the Office of the Secretary General for Immigration and Migration and to the Ministry of the Interior that they formulate a protocol that includes steps to take in cases of reception and transfer of asylum seekers in application of the Dublin Regulation. The goal of these Recommendations is to avoid the lack of administrative foresight that negatively affects applicants, and which was demonstrated in complaints received.

Regarding the withdrawal of aid, individuals who have approached the Ombudsman revealed that aid was withdrawn before their programs were complete or that an applicant has

been sanctioned for having breached a rule, such as the abandonment of a facility without authorization or not entering an assigned facility.

Investigations carried out as a result of these complaints have led the Institution to recommend the review of the Asylum Fund Management Manual in order to modify requirements such as conditioning aid for refugees on entering a particular center, if the applicant proves to have suitable housing resources. It is imperative that, in addition to adapting the manual, decisions to deny aid or withdraw aid should be adequately studied. In one of the cases brought to this Institution, the applicant had sufficiently demonstrated reasons as to why it was not considered appropriate the admittance of the recommended center and this is how it was considered in the resolution of the appeal that was filed and which has been partly examined. In other cases, proceedings are still pending since the interested persons have explained the reasons that motivated their departure from Temporary Accommodation Center for Immigrants where they were, trying to reunite with their families in other countries in the European Union. These situations, which are becoming increasingly frequent, result in applicants being returned to Spain, in application of the Dublin Regulation.

Taking into account the complexity of the care for asylum seekers, this Institution has recommended the establishment of evaluation procedures for the reception system and the monitoring of the performance of non-governmental organizations.

Within the framework of the Asylum Study three Recommendations have been forwarded to the autonomous communities and cities. One of them is that the personnel dealing with unaccompanied foreign minors must explain in simple terms the rights of asylum seekers and the situations in which these rights apply. The objective is to detect if any children within the child welfare system needs international protection, given the difficulty that they would recognize themselves as asylum seekers, except mature minors or in cases of conflicts, as has been the case with Syrian nationals. The majority of responses received at the time of the study accepted this Recommendation and it has been announced that instructions will be provided in this regard.

The second Recommendation referred to the removal of a detected obstacle for the collection of public aid, which is made by bank transfer, and beneficiaries may not always be able to open a bank account. In some cases, the responses received state that alternative measures will be taken to ensure that applicants can receive the benefits.

The third Recommendation is to avoid that asylum seekers are left without specialized medical attention, since it has been advised that this happens when an assigned doctor's appointment is outside the validity period of the temporary documentation which accredits the person as an asylum seeker and which should be renewed while the application is being processed. This Recommendation has also been accepted favorably.

Finally, reference is made to the difficulties for applicants for international protection or with refugee status in accessing scholarship programs. In one of the cases, the person interested, a Syrian-Palestinian citizen with refugee status, was enrolled in a higher degree of professional training and was denied the scholarship requested although he only had an income

of only 375 Euros from the government aid program *Renta Mínima de Inserción* [Basic Guaranteed Income]. The Regional Department for Education, Youth and Sport of the Autonomous Community of Madrid reported that the refusal had been rectified. It has also authorized compensation for the expenses of students with refugee status in private centers. In addition, the government body communicated that, in general, it had eliminated in its next call for scholarships the requirement referring to the participation in the previous year in a course of vocational training or high school in the Autonomous Community of Madrid.

EQUAL TREATMENT

The Ombudsman requests the improvement of protection from hate crimes for persons with disabilities

The Institution has opened an ex officio investigation as a result of the harassment suffered by a group of Roma women by a group of Dutch football team fans. Approval has also been requested for an action protocol for State Security Forces against hate crimes against people with disabilities.

The Ombudsman has wanted to highlight the importance of early intervention in preventing any kind of discrimination and alleged criminal acts classified as hate crimes.

The Institution has continued its actions to avoid the concentration of **Roma pupils** in certain education centers. In addition, more information was requested regarding the programs initiated in the autonomous communities to decrease absenteeism and abandonment of these pupils.

The Ombudsman addressed the Office of the Attorney General for information on proceedings initiated regarding the harassment suffered by a group of Roma women, who were begging in Madrid's Plaza Mayor, by fans of a Dutch football team. The Institution is waiting for the results of the rogatory commission addressed to the Dutch authorities and the negotiations carried out through the international cooperation delegate prosecutor.

Disability ranks third in types of hate crimes, according to the *Informe de delitos de odio 2015* [2015 Report on hate crimes] by State Security Forces. For this reason, the Office of the Secretary of State for Security has been requested to assess the approval of a specific protocol for the State Security Forces action against hate crimes toward people with disabilities.

Discrimination and violent physical attacks suffered by people because of their **sexual orientation** continue to be subject to individual complaints and ex officio investigations by the Ombudsman.

The Institution initiated an ex officio investigation for insults and harassment of a football referee motivated by his sexual orientation. Information was requested from the High Commission for Sports on measures for the elimination of violence and intolerance towards LGBT, as well as the possibility that the State Commission against violence, racism, xenophobia and intolerance in sports establish a protocol for action comprising of measures to combat and prevent homophobia in sports.

Actions were continued with the Secretary of State for Justice on the disparity of criteria upheld by civil registers in the resolutions of requests for registering name rectification recorded as commonly used in cases of **transgender minors**.

The above-mentioned Secretariat upholds that the possibility of a name change must be linked to certain conditions, including that the request for a neutral name must not lead to misconceptions of sex. These arguments are being assessed and the Institution has notified this agency that many processes by judges responsible for civil registries have authorized "non neutral" name change requests according to the preservation of sexual orientation guaranteed in the new *Ley de Protección a la Infancia* [Child Protection Law].

A proceeding was initiated before the Secretary of State of Social Security to eliminate **sexist language** in the birth of a child benefit forms. The benefit form had the name "paternity leave benefits". The form has been modified to introduce the expressions "parent A" and "parent B".

The Office of the Secretary of State for Social Services and Equality announced that it is preparing a user manual for non-sexist language in the framework of the II Plan for Equality between women and men in the General State Administration and its public agencies.

The Ombudsman has initiated an ex officio investigation before the Office of the Secretary of State for Security on the distribution of **female-specific** personal protective **vests** to Civil Guard officers, after finding out about a fine for disobedience given to an officer who used her own female bulletproof vest in the absence of an official one. It appeared from the information received that there are no external protective vests specific to the agents. The Office of the Secretary of State for Security has indicated that it has commissioned 5,250 bulletproof vests (1,750 male and 3,500 female) for the first few months of 2017.

Proceedings continue on the possible discrimination suffered by foreign minors in accessing various autonomous federations of football. Actions were initiated before the Office of the Attorney General for information regarding the assessment of the memorandum of the Royal Spanish Football Federation (abbreviated as RFEF in Spanish) approving the registration of foreign players or Spaniards not born in Spanish territory, under 10 years.

The Public Prosecutor's Office reported that the regulation on administrative requirements is most exhaustive in terms of formal requirements for foreign minor football players from abroad because of the Royal Spanish Football Federation's obligation to control the transfers of underage football players to avoid personal, family, educational and socio-cultural uprooting. It has also been reported that, to rectify any discrimination, the distinction between Spanish players "of origin" and those Spaniards who are "not of origin" has been changed in the memorandum that regulates the registration of these minors.

GENDER VIOLENCE

The Ombudsman has made Recommendations to protect women and their children

The fight for total eradication of gender-based violence has remained one of the priorities of the Ombudsman. The Institution has put forth Recommendations to administrations in order to advance the detection of risk and the protection of women and their children.

The Ombudsman has continued its work with the Directorate General of the Police regarding the preparation of an instruction to implement Family Assistance Services in police stations. It also monitors the results of the development of the Protocol for coordination, collaboration and referral between professionals dealing with domestic and gender violence, for prevention and early detection.

The Institution has requested information on the reasons why the draft **municipal protocol for national implementation** regarding **victims of gender and domestic violence** has not yet been completed. Similarly, it has also requested information on the progress made in the preparation of the new version of the Procedural Manual for Family and Women Units.

The Ombudsman has continued its ex officio investigation with the Directorate General of the Police regarding the Protocol for **Police Risk Assessment** and police assessment of risk development. The analysis of the new protocol shows that the system of comprehensive monitoring of cases of gender violence will incorporate new forms to deal with gender violence that include a preventive and anticipatory approach.

The protocol improves coordination with judicial and prosecutorial authorities, and includes a guide with safety advice for victims and new questionnaires that police should use to assess the level of risk of women reporting threats, ill treatment or aggression. At the close of this report, the Institution was monitoring the progressive introduction of the new forms and their application with all police teams that participate in the System of Comprehensive Monitoring of Cases of Gender Violence (abbreviated as VioGén in Spanish). In addition, the Institution has requested that the Directorate General of the Police study the possibility that the VioGén System receive information from the autonomous communities' equal treatment and social services.

With regard to **underage victims**, in 2015 a number of laws were adopted that had a notable impact on the protection of minors in situations of gender-based violence. In 2016 the Ombudsman Institution initiated proceedings before the Government Delegation for Gender Violence to learn about the measures taken to better support minors, children of victims of gender violence, in the framework of the development of the new Child Protection Law.

In 2015 a Protocol was also published for the referral between **accommodation centers** for women victims of gender-based violence and their children. The Institution opened an investigation to gather information on the results of the implementation of the protocol signed between all the autonomous communities (except Catalonia, Basque Country and Melilla) with the Ministry of Health, Social Services and Equality. The Secretary of State for Social Services reported that no incidences have been detected in its application and that it continues its work of collecting suggestions and proposals for improvement from the autonomous communities. The Ombudsman requested that it provide a concrete evaluation of suggestions submitted by the autonomous communities.

This year the Institution has continued to follow up on the Recommendations made by the **Comité para la Eliminación de la Discriminación contra la Mujer [Committee on the Elimination of Discrimination against Women]** in the case of "*González Carreño v. Spain*". The Ombudsman requested information regarding the actions carried out by Spanish institutions to comply with these Recommendations. The Office of the Secretary of State for Justice stated that the *Gonzalez Carreño v. Spain*, of the aforementioned United Nations committee, is a legal recommendation that does not bind the Spanish State in terms of its compliance.

The Ombudsman considers that article 2 of the Convention on the Elimination of All Forms of Discrimination against Women expresses the general obligation of State parties to ensure that all rights enshrined in the Convention are fully respected. For this reason, it initiated proceedings before the *Dirección General de las Naciones Unidas y Derechos Humanos* [General Directorate of the United Nations and Human Rights] of the Office of the Secretary of State for Foreign Affairs on the obligatory compliance with the international obligations contracted by the Spanish State in accordance with the Committee's Opinion.

The Directorate General of the United Nations and Human Rights responded that it is not competent to express its opinion on the judgment of the United Nations Committee recognizing the responsibility of the Spanish State for non-compliance with the Convention on the Elimination of All Forms of Discrimination against Women, for lack of remedial measures. It also reported that this issue could be addressed in the **Human Rights Plan** that Spain has undertaken to complete in the framework of the recent Universal Periodic Review. Therefore, the Institution requested that it report on the progress made in the drafting of the Human Rights Plan of Spain.

On the occasion of the visit to the **Temporary Accommodation Center for Immigrants in Melilla**, difficulties were encountered amongst foreigners of different ages and backgrounds living together. The Ombudsman considers that situations of sexual and gender-based violence may occur. For this reason, the Institution recommended that the Office of the Secretary General for Immigration and Migration establish and implement in the Temporary Accommodation Center for Immigrants a protocol for the prevention and response to sexual and gender-based violence.

In the framework of visits made by this Institution, the Ombudsman personally visited the **Luz Casanova Emergency Center** in Madrid, protected housing for women and children who are victims of gender-based violence and women in situations of social exclusion.

EDUCATION

State of school facilities and problems obtaining a school place figure prominently among the complaints made to the Ombudsman Institution

Complaints were received concerning the difficulties obtaining school places, the poor state of facilities and problems accessing schools. Moreover, Recommendations were put forth for facilitating access to scholarships and improving university access for people with disabilities.

Non-university education

Parents of students in the second year of preschool (from three to six years of age) have indicated **difficulties in obtaining a place** in their areas of residence. The problem arises in areas of recent urbanization where the preschool population increases considerably from one year to the next.

The Madrid school board responded to the surplus in demand for second year preschool places in the Las Tablas neighborhood, admitting applicants to the Josep Tarradellas Primary and Preschool Center of Education (abbreviated as CEIP in Spanish), leading to serious crowding in the school and the use of spaces designed for other school uses as classrooms.

The *Consejería de Educación, Juventud y Deporte* [Regional Department of Education, Youth and Sports] of the Community of Madrid has assured the Ombudsman Institution that it has been able to organize the space for the 2016-17 school year, such that the various school activities are carried out in appropriate areas, at the same time as the anticipated level of admission into preschool education in the coming years does not exceed that corresponding to a school with three classrooms per grade.

A quality education requires schools to be equipped with all necessary resources and to have the **appropriate school facilities** meeting the minimum requirements established in the current regulations. Furthermore, the regulations anticipate the need for facilities to meet specific conditions of habitability, accessibility and safety.

Complaints were raised in 2016 due to the lack of certain obligatory spaces in schools or the poor state of facilities. The conditions of accessibility have also given rise to complaints, which have laid bare the deficiencies which occasionally appear.

Complaints lodged with this Institution by the parents of **premature children** have revealed the problems arising from the fact that, for educational purposes, school boards do not take the concept of corrected age used by professionals specialized in evaluating the

development of these children into account, which takes not the date of their actual birth as a reference but rather the date on which they would have been born given a normal gestation.

The parents making the aforementioned complaints affirm that the circumstances under which these children are born affect their learning and development, pointing out that these problems become more acute for cases in which a premature birth occurs in the year prior to that foreseen for the term birth.

This Institution has begun an ex officio investigation of all school boards in order to gather complete information concerning regulatory practices for the education of premature children.

Andalusia, Catalonia and the Basque Country have expressed their view that the application of corrected age for education purposes in the corresponding school year would prove contrary to the regulatory framework for admitting students.

Only Aragon is considering the possibility, provided a student's parents so request, of admitting older premature children into school for the year corresponding to their corrected age.

Other administrations, such as the *Ministerio de Educación, Cultura y Deporte* [Ministry of Education, Culture and Sports] and the communities of the Balearic Islands, the Canary Islands, Castile and Leon, Extremadura and the Region of Murcia have stated their intention to study and implement regulatory solutions such as those already applied in Aragon.

The complaints which reported the refusal of schools to provide parents with **copies of exams** taken by their children led to an ex officio investigation of the *Ministerio de Educación* [Ministry of Education] and the autonomous community departments of education.

The ministry and the departments of education of Asturias, the Balearic Islands, Extremadura, Madrid, the Community of Valencia and the Basque Country have already approved regulations which expressly acknowledge the right of parents and students to obtain copies of exams and evaluation tests taken.

Cantabria, Castile-La Mancha, Castile and Leon, La Rioja and the Region of Murcia have stated that, as a result of this Institution's intervention, they have already issued, or are planning to issue instructions to schools reminding them of the need to respond to requests for copies of exams submitted by parents and students under protection of the regulations on administrative procedure currently in place.

The rest of the autonomous community governments which have responded (Andalusia, Extremadura and Navarre) are considering the right to obtain copies of exams in terms which this Institution considers to be restrictive, according to the regulations in force. The Ombudsman Institution is studying Recommendations for modifying their rules.

Inclusive education

The processing of a complaint revealed the excessive prolongation of evaluation procedures for the specific educational needs of each student. For this reason the Madrid Regional Department of Education, Youth and Sports was requested to provide information as to the provision of human resources for evaluation teams and their average processing times. The information provided warranted Recommendations to the Madrid school board for increasing staffing resources for evaluation teams and simplifying the diagnostic process.

Both Recommendations have been accepted, the staff of these teams has been increased and measures have been adopted which have notably reduced the time elapsing between a student's admission to school and his or her teachers' requests for resources designed for the evaluation of his or her educational needs, and between the latter and their effective implementation.

Furthermore, a Recommendation was made to the Autonomous Government of Andalusia Regional Department of Education for the adoption of the necessary initiatives for equipping all schools with experts in social integration essential for meeting students' needs.

In June 2016 the Ombudsman Institution organized a **course entitled “Los derechos de las personas con discapacidad: la educación inclusiva” [The rights of people with disabilities: inclusive education]** (which analyzed the concept, guarantee and realization of this right from different perspectives, both theoretical and practical. With this course, the Institution aimed to join the efforts to raise awareness of respect for the rights of people with disabilities in the school community and society in general.

The program, its various talks and the conclusions drawn may be consulted on the Institution's website. Among the conclusions the following are noteworthy:

- The implementation of an inclusive education model requires the public authorities to launch and sustain over time processes of innovation and improvement for schools and the education system allowing for the identification and removal of the physical, cognitive, communicative and curricular barriers caused by the current configuration.
- It also requires making all necessary resources (reasonably adapted) available to students with disabilities so that they receive appropriate and personalized educational support in any school to which they are admitted and at which they have the right to the same conditions as the rest of students.
- General accessibility, personalized attention, appropriate support and reasonable adaptations are the core requirements of an inclusive education.

University education

The Institution was made aware of the difficulty posed for certain students in adequately demonstrating permanent **special education needs** related to personal disability

circumstances, for the purpose of being able to exercise their right of normal access to university through the quota reserved for students suffering from disabilities.

Royal Decree 412/2014 of 6 June establishes — among other admission criteria — the reservation of a percentage of admissions offers allocated to students having a recognized degree of disability equal to or greater than 33%, as well as those students with permanent special education needs related to personal disability circumstances who have required resources and support for their full educational normalization at their previous school. It is also foreseen that school boards adopt the pertinent decisions for applying the measures contained in the aforementioned Royal Decree.

This order specifies that students with disabilities must present a certificate of eligibility and accreditation of the degree of disability issued by each autonomous community, yet mention is not made of the procedure for demonstrating the circumstances affecting students with permanent special education needs, for which this percentage of university admission offers is also reserved.

The procedure is also not provided for in the majority of the autonomous community regulations, which results in the students, affected by these circumstances, facing ongoing difficulties in providing documented proof of eligibility for the universities to which they are seeking admission.

The problem was thought to be due to the absence of a general legislative framework which could be applied to all universities and which sets out the criteria by which they should be guided in order to provide full effectiveness to the right of students suffering from disabilities and which would make them aware of which documents and procedures should be followed to demonstrate the circumstances giving rise to such a right. An inspection of the Ministry of Education, Culture and Sports was initiated in 2015 for the regulatory and fundamental establishment of these criteria.

After a year and a half of inspections the only achievement was the inclusion of this issue in the agenda for the final session of the *Comisión Delegada de la Conferencia General de Política Universitaria* [Executive Commission for the General Conference on University Policy] without any practical outcome. Therefore **ex officio investigations of the various autonomous communities were initiated** in 2016 in order to ascertain if public universities had a procedure in place for demonstrating eligibility for students with permanent special education needs so as to be able to exercise their right to university access through the corresponding quota of reserved places.

At the time this report was being prepared, responses had been received from 13 of the 15 communities consulted. From the information provided it was derived that in only two autonomous communities — Catalonia and Castile-La Mancha — do the universities already have a specific procedure permitting these students to demonstrate their circumstances of disability so as to be admitted through this quota of reserved places.

The majority of the responses explained that the universities neither have the internal regulations indicating the procedure to which the student affected by these circumstances may

have recourse to demonstrate them, nor do they plan to develop these, such that the protocol for reserved places is only extended to students demonstrating a degree of disability equal to or greater than 33% yet not students affected by personal disability circumstances.

Real Decree 412/2014 of 6 June, which sets out the basic regulations for admissions procedures for official university degree studies, stipulates the obligation for universities to apply diverse measures of adaptation for students suffering from a disability and, specifically, the reservation for these students of at least 5% of admissions offers for accessing degree studies.

For admission to masters and doctoral studies the basic regulations do not carry the obligation to reserve a percentage of places but rather only to include support and advising services adapted to assess the need for possible curricular adaptations, timetables or alternative studies within the systems and access procedures.

Ex officio investigations were opened with the *Secretaría de Estado de Educación, Formación Profesional y Universidades* [Office of the Secretary of State for Education, Professional Training and Universities] of the Ministry of Education, Culture and Sports, aimed at discovering the possible regulatory modifications which could be undertaken so that the basic regulations, applicable to all universities, would expressly stipulate the obligation to reserve a quota of admissions offers for access to postgraduate university studies (masters and doctorate) in favor of students suffering from disabilities.

Ex officio investigations were opened with 47 public universities, with information requested as to whether their internal rules for admission to master and doctoral studies included any kind of measure for the priority allocation of a percentage of offers for students suffering from disabilities.

At the time of opening the admissions process for the 2016-17 school year, just six public universities of the 47 consulted were reserving this quota of offers for access to all levels of study (Rey Juan Carlos (Madrid), Vigo, Huelva, Alicante, Granada and Valencia universities). While nine were maintaining the percentage of reserved offers only for access to masters studies (Autonomous and Complutense Universities of Madrid, the University of Extremadura and all Andalusian universities except for the University of Almeria, which had no reserve in place for either of the two levels of study, and the University of Huelva, which had reserves in place for both levels).

The rest of the universities confirmed that, in keeping with state legislation, the reserved offers were only applicable to students with disabilities for access to degree studies but not for access to masters and doctoral studies, with the exception of Madrid Polytechnic University, which did not include the 5% reserve for access to any of the three levels of study.

Of the total number of universities not applying the reserved quota for access to these postgraduate studies, only two confirmed that, up to this time and owing to scarce demand, all students with disabilities who had requested a place for these two levels of study were admitted and they therefore viewed the establishment of these quotas of reserved offers as unnecessary (the University of Barcelona for access to masters and doctoral studies and the University of Cordoba for access to doctoral studies).

It should be pointed out that the majority of the universities consulted expressly stated their willingness to establish a percentage of reserved offers for all levels of study if so required. Some of the universities stated that, prior to the adoption of any measure in this sense, it would be advisable for the Ministry of Education, Culture and Sports to establish the basic rules for regulating these percentages of reserved offers for access to masters and doctoral studies.

For its part, the Ministry of Education, Culture and Sports confined itself to affirming that the existence of an obligatory 5% quota of reserved offers for access to degree studies guaranteed access to masters and doctoral studies due to their always being the successive levels to the former.

This is an erroneous conclusion since, although students with disabilities have been able to access degree studies through the quota of reserved offers and on completing these obtain the academic requirements for access to higher levels, this does not guarantee access to such levels if a limited number of places are offered and they must compete with the rest of students.

As a result, a Recommendation was made to the Office of the Secretary of State for Education, Professional Training and Universities with the objective of addressing the necessary regulatory modifications such that the basic regulations, applicable to all Spanish universities, establish the obligation to reserve a minimum percentage of admissions offers for postgraduate university studies (masters and doctorate) in favor of students suffering from disabilities, under terms and conditions similar to the reserve of offers which is foreseen in the rules governing admission to degree studies. The aforementioned Office of the Secretary responded that the contents of the Recommendation had been included in the agenda for the next meeting of the *Consejo de Universidades* [Council of Universities].

Various Recommendations were also made to the Spanish public universities not applying this percentage, for the inclusion of a reserve of at least 5% of offers for students suffering from disabilities masters and doctorate studies in their internal admissions rules for the 2017-18 school year and beyond, under the terms and conditions similar to the reserve of offers foreseen in the rules governing admission to degree studies, with indications provided as to the method of providing documentation demonstrating the various circumstances of disability.

At the time this report was being prepared responses had been received from the Universities of Cordoba, the Balearic Islands, La Rioja, Valladolid, Lleida, the Cartagena Polytechnic (Murcia) and the Autonomous University of Madrid, in which the Ombudsman Institution's Recommendations were expressly accepted and which confirmed that the university regulations governing admission to master and doctoral studies were being modified to comply with the same.

Scholarships

The announcement of general state scholarships for university students for the 2015-16 school year included the **denial of a scholarship in the event of a change in program of study**,

where a student did not demonstrate having earned the same percentage of credits in the new program of studies as had been earned in the old program.

It was confirmed that the application of this precept meant the refusal of a scholarship for students changing their course of studies without academic regression in cases where they earned more credits in their old program than those showing as earned in the new program, due to the former having been officially recognized, which proved illogical and produced the opposite effect to the objective sought by the regulations, that of preventing the use of public funds to finance studies for applicants not making sufficient academic progress, to the detriment of others who were doing so.

The Recommendation addressed to the *Secretaría General de Universidades* [Office of the Secretary General for Universities] of the Ministry of Education, Culture and Sports for the modification of the terms under which this situation was accepted and for modification of the articles regulating the conditions for obtaining a scholarship in the case of a change of program of studies for current scholarship holders, in keeping with the Ombudsman Institution's Recommendation.

Until the 2015-16 school year, the regulations governing scholarships and general financial aid for university studies announced by the Ministry of Education, Culture and Sports established that the **tuition scholarship** "will include the official public fees for the university's academic services corresponding to the credits in which the student has enrolled for the first time for the year for which the scholarship was applied."

One of the core requirements for being able to benefit from the tuition scholarship was insufficiently determined: that it centered on the credits formalized at the initial round of registration, excluding the credits from second and further rounds of registrations for the same academic year, therefore creating false expectations for students receiving notice of their award and which are considered scholarship holders on public listings yet do not receive any benefit for having formalized all of their subjects in second or third round of registrations.

A Recommendation was therefore addressed to the Office of the Secretary of State for Education, Professional Training and Universities so that, in successive announcements, express mention is made that the tuition scholarship for university studies covers only fees for credits in the first round of registration. This Recommendation was accepted.

In January 2016 a general inspection was opened with the then *Dirección General de Política Universitaria* [Directorate General of University Policy] of the Ministry of Education, Culture and Sports in order to verify the measures that might be adopted for including the possibility of **making the set requirements flexible** in the next general call for scholarships, in the event that, once the call was over, budgetary availability allowed for an increase in the number of scholarship holders.

In its response, the Ministry of Education, Culture and Sports indicated that the latest calls for scholarships saw an increase in the financial resources destined for scholarship payment and an expansion in the number of post-compulsory education scholarship holders, and that the system established as of the 2013-14 school year in which the amount of the

scholarships is the result of the sum of two different amounts (fixed amount and variable amount) included the option of increasing the initially-established budget with an additional sum of 450 million Euros in the event that an increase in available credit occurred before the definitive resolution of the awarding process.

The Ministry of Education, Culture and Sports added that it had not foreseen the application of recalculation formulas for set requirements, on the understanding that increasing the number of scholarship holders to include those not meeting the requirements stipulated in the call for scholarships diminished the amount of the scholarships for applicants who did meet these, an option that it did not consider to be viable.

HEALTH SERVICES

Oncology patients, celiac sufferers and interoperability of electronic prescriptions led ex officio investigations

Inspections of specialized care, pharmaceutical care and medications were the most numerous. Noteworthy are the ex officio investigations related to the development of the system of interoperability of prescriptions among healthcare services; waiting lists for reconstructive plastic surgery for women undergoing mastectomies; healthcare issues for celiac disease; and social protection for oncology patients.

Healthcare

Immigrants without residence permits

Changes to practices for various health services have been detected. The *Consejería de Sanidad* [Regional Department of Health] for the Castile-La Mancha Regional Government confirmed the creation of new regulations applicable to immigrants with irregular documentation, as well as instructions designed to prevent a break in the continuity of care, an issue that gave rise to various Suggestions in the past.

The Madrid Autonomous Community has indicated that it will follow similar criteria. Nevertheless, the Regional Department of Health did not accept a Suggestion that an invoice issued for healthcare services provided to one of these individuals by the emergency services of the Defensa Gomez Ulla General Hospital be nullified, for a matter in which it acted by virtue of an agreement signed with Madrid Health Services.

Patient autonomy, information and healthcare documentation

The *Comisión de Recursos Humanos del Sistema Nacional de Salud* [Commission on Human Resources for the National Healthcare System] approved the "Protocol by which the basic guidelines aimed at ensuring and protecting a patient's right to privacy for students and residents in health sciences" such that the inspections highlighted in the previous Ombudsman Institution report, regarding harmonization of training for healthcare personnel with respect to patient dignity and privacy, have been concluded. The application of the contents of the said document has been planned for the healthcare centers of the *Sistema Nacional de Salud* [National Health System, abbreviated as SNS in Spanish], in private healthcare centers and

institutions which, through agreement or under any form of indirect management, collaborate with the National Health System in assistance, training or research, as well as in those private healthcare entities accredited to provide training in Health Sciences.

Waiting lists

Waiting lists constitute the main cause of citizen complaints, such that an important number of resolutions have been drawn up.

Inspections were carried out concerning delays in services for surgical procedures and diagnostic testing for inmates of the Ocaña II Prison (Toledo); the waiting time for *in vitro* fertilization at the Virgen del Rocío Hospital Assisted Reproduction Unit in Seville and at the Virgen de la Arrixaca University Hospital in Murcia.

Recommendations and Suggestions were made as regards **surgery waiting lists**. Chief among these are those concerning the excessive waiting time for mammoplasty at the Zaragoza University Hospital Clinic; the delay in the performance of surgical procedures classified as urgent at the Canary Islands University Hospital General Surgery Service; the delay in the Toledo Virgen de la Salud Hospital Surgical and Orthopedics Services; and the delays in the Palma de Mallorca Hospital Son Espases Orthopedics Service.

The Institution likewise opened *ex officio* investigations with all of the state healthcare services on confirmation of **delays in breast implant and reconstruction surgery** for women undergoing a **mastectomy** after breast cancer. Recommendations were made to the competent regional departments of Castile-La Mancha, Castile and Leon, Extremadura and Galicia for the inclusion of these procedures in the regulations guaranteeing surgical response times, as well as the adoption of measures for reducing existing delays.

As regards **waiting lists for outpatients and diagnostic techniques or testing**, the most significant inspections were carried out with the Andalusia Health Service concerning the limitations of magnetic resonance devices at the Marbella Costa del Sol Hospital (Malaga); with the Regional Department of Health for the Canary Island Government concerning the delay of over one year for CAT scans at the Lanzarote Hospital Radiology Service (Las Palmas) and with the Regional Department of Health for the Castile-La Mancha concerning delays of over seven months at the Guadalajara University Hospital for performing magnetic resonance imaging.

Inspections into the organization and functioning of specialized assistance

As regards the provision of palliative care, this Institution is pending the submission of information from the Sub secretary of the Ministry of Health, Social Services and Equality concerning the conclusions and measures for improvement derived from the evaluation of the “*Estrategia en Cuidados Paliativos del Sistema Nacional de Salud*” [Strategy for Palliative Care in the National Health System]. It is the Ombudsman Institution's view that such an evaluation must allow for the review of overall needs and the adaptation of devices to these needs, seeking greater homogeneity in the provision of these resources and equity for the whole of the National Health System.

Three inspections have an impact on the assistance provided to a population in one autonomous community by the healthcare services of another adjacent to it: the inspection concerning services at the Calahorra Hospital (La Rioja) for the population residing in the Navarre municipality of San Adrian, due to its being closer to this locality than the hospital in Estella (Navarre), which has an influence on the lack of assistance for hospitals forming part of the Osakidetza (Basque Country Health Service); the inspection concerning the residents of the *Zona Básica de Salud* [Basic Health Area] in Valle de Losa who must now travel to Burgos; and the inspection concerning the interruption of assistance from the Madrid Autonomous Community hospitals for the population residing in the north of the province of Toledo.

Responses to Recommendations for a joint Ombudsmen study on hospital emergencies

As a result of the study presented in 2015, entitled “*Las urgencias hospitalarias en el Sistema Nacional de Salud: derechos y garantías de los pacientes*” [Hospital emergency services in the National Health System: patient rights and guarantees] this Institution had made Recommendations to the Ministry of Health, Social Services and Equality, the *Instituto Nacional de Gestión Sanitaria* [National Institute of Health Management, abbreviated as INGESA in Spanish] and the eight autonomous communities not having an equivalent figure to the Ombudsman.

The monitoring of the effectiveness of measures foreseen by the Administration with regard to the Recommendations put forth must be extended over time, since many of these measures require regulatory and organizational modifications as well as an essential breaking-in period, such that this Institution will continue with its supervisory actions.

Patient safety

After the death of a little girl who was attended by emergency services in Teruel — the province in which she was travelling — and transferred to the Miguel Servet Hospital in Zaragoza after delays in receiving approval for transfer to the La Fe Hospital in Valencia, a Recommendation was made to the *Subsecretaría de Sanidad Universal y Salud Pública* [Office of the Sub secretary for Universal Healthcare and Public Health] of the Autonomous Regional Government of Valencia for improving the coordination and response between the La Fe Hospital in Valencia and other hospitals in the National Health System as regards patient referrals. This Recommendation has been accepted, and the Institution is waiting for details on the measures implemented for putting it into practice.

Inspections were likewise concluded with the *Agencia Española de Medicamentos y Productos Sanitarios* [Spanish Agency for Medication and Sanitary Products] once confirmation was provided as to provisions for the review and improvement of the section on instructions for use of the "Essure" device, a permanent contraceptive method that caused adverse effects in certain users. According to the information received, the checks carried out indicate that the number of problematic cases is very limited and does not exceed that of other methods of birth control. It has also been confirmed that the inclusion of a group of patients in the follow-up studies to be carried out by the distributing company is being considered.

Public health

The changes to the official calendar for child vaccinations are the frequent object of controversy, as evinced by the complaints received. The decisions on updates adopted by practically all of the autonomous healthcare services in the last two years has captured the consensus in this regard at the core of the National Health System's *Consejo Interterritorial* [Inter-territorial Council]. It has also revealed the acceptance of one part of the scientific community as to the suitability of including, for example, the pneumococcus vaccine in early childhood or systematically providing vaccines against chicken pox at four years of age (as opposed to previous criteria advocating autoimmunization and vaccination, where applicable, at 12 years old).

The inclusion of the pneumococcus vaccine took place between January 2015 and December 2016, in keeping with the agreement reached by the Inter-territorial Council, although each administration has adopted its own criteria for temporary application, such that agreement was reached as to the vaccination of children born after a certain date. The fact that this specific vaccine has already been authorized and widely commercialized for years and was habitually recommended by pediatricians meant that many children between 0 and 18 months were in the

process of being vaccinated at the time when the measure for inclusion in the official calendar was approved. The temporary restriction agreed to by each administration led to children in identical circumstances being excluded, by reason of age, from financing from the National Health System for the vaccines they needed. During 2016 this situation has been raised in the autonomous communities of Andalusia and Castile-La Mancha.

In its response, the *Consejería de Sanidad* [Regional Department of Health] for Castile-La Mancha acknowledged that it had studied the possibility of extending invasive pneumococcal disease vaccinations to children born before 1 January 2016 in order to complete the vaccination guidelines already initiated for them. However, considering the incidence of the disease in children under five years old, the rates of hospital admissions per 1,000 inhabitants in the same age group, as well as the previous years' vaccine coverage, the price of the vaccine and the budgetary availability, adopting this measure was not considered justifiable. Information is currently pending from the Government of Andalusia as to this issue.

Another group of complaints received in 2016 expressed concern for the agreed suspension on the administration of the vaccine booster shot for whooping cough for children six years of age. In these cases, the Institution has provided the interested parties with the available information, which points to a problem of global scope as regards the production and distribution of units of this vaccine, also associated with a change in recommendations for vaccinations, such that the vaccine is administered in pregnant women precisely to prevent the appearance of serious cases of this disease in a child's first weeks of life. The delay in administering the booster shot at six years of age was agreed to by the National Health System Inter-territorial Council's *Comisión de Salud Pública* [Commission on Public Health], in line with the position of the European Center for Disease Prevention and Control consulted by the European Commission on this issue, in order to prioritize the initial vaccination (2, 4 and 6 months of age) and the booster at 18 months, taking into account the lower degree of seriousness of the disease for school age children.

Mental health

Visits were made in 2016 to the psychiatric units of the Puerto Real Hospital (Cadiz) and the Virgen de la Montaña Hospital in Cáceres, in a joint action with the National Preventive Mechanism against Torture (NPM). The overseeing of the protocols for involuntary admission, the established practices for monitoring or restraint for patient safety and the general conditions of operations and organization gave rise to the drafting of several conclusions that will be set out in detail in the NPM report.

In line with constitutional doctrine and scientific consensus and for some time now, the Ombudsman Institution has been calling for the need to undertake integrated regulations with sufficient legal status for procedures for adopting coercive measures for mental health patients and other situations of loss of volitional capacity which guarantee full respect for the fundamental rights of the affected parties without weakening the quality of care received.

Provision of pharmaceutical services and medication

Inspections have continued with the Ministry of Health, Social Services and Equality, the autonomous community departments of health and the National Institute for Healthcare Management concerning the processes for implementing electronic prescriptions and the development of interoperability for use throughout the entire National Health System.

According to the information received from these administrations, electronic prescriptions are already practically operative in all areas, at least for primary health care. As regards interoperability, the information provided to this Institution indicates that the autonomous communities of the Canary Islands, Extremadura and Navarre already began to issue and receive interoperable prescriptions in the month of September, and it was anticipated that the autonomous communities of Castile-La Mancha and Galicia would join their ranks. Other autonomous communities — Andalusia, Aragon, the Principality of Asturias, Catalonia, Castile and Leon, the Autonomous Community of Madrid, the Autonomous Community of Valencia, La Rioja and the Region of Murcia — as well as the National Institute of Healthcare Management, had begun the testing stage or had already provided a calendar for this. The Balearic Islands, Cantabria and the Basque Country were found to be more lagging in the deployment of the system of interoperability. If the estimates of the ministry and the majority of the regional departments are correct, the process should be practically completed in 2017.

Medication copayment

Complaints received in 2016 concerning medication copayment continue to focus on the dysfunctions that have already been the subject of study and Recommendations from the Ombudsman Institution, as included in the latest annual reports. In spite of the fact that the regulations link users' financial capacity with the level of their contributions to outpatient pharmaceutical services, the current rules do not guarantee that certain groups of people with no income or with very low income can access the medication they require.

Some of the complaints received illustrate this problem. Therefore, a citizen requested assistance faced with the impossibility of covering payment of 40% of the price of the

medication required by his or her mother, 78 years of age, without pension or her own source of income, suffering from several chronic medical conditions and with whom the citizen in question was now residing. In other cases, individuals with a degree of disability greater than 65% or their family members have expressed a lack of comprehension as to the failure to acknowledge an exemption for medication copayment and have turned to this Institution after having tried to obtain some kind of assistance from the Administration or from various non-governmental organizations. The autonomous community departments of health tend to confine their response to state regulations, adhering to the assignation of the type of medication contribution provided by the *Instituto Nacional de la Seguridad Social* [National Institute for Social Security].

2016 marked the conclusion of an inspection pursued in order to determine the administrative competency as regards the assignation of types of medication copayment and the resolution of patient claims in this respect. The *Ministerio de Empleo y Seguridad Social* [Ministry of Employment and Social Security] submitted the report that it had requested from the *Abogacía General del Estado* [State Lawyers' Office] in response to the Recommendation and actions drawn up by the Ombudsman Institution.

The report concludes that, the determination of the level of medication copayment being the competency of the corresponding autonomous community department of health, it might be possible to consider some type of formula for effective cooperation among the these departments and *Seguridad Social* [Social Security] in order to provide a better response to citizens' requests and claims as regards medication copayments. The result of this state of affairs is the absence of legal guarantees for citizens as to who is responsible for determining the percentage of copayment corresponding to them and to whom they may have recourse for claims. Moreover, it is worth mentioning a lack of coordination among the various autonomous community departments of health involved.

In the view of this Institution, the constitutional guarantee of legal security requires that the law provide for the competent body and the basic procedural characteristics in order to confirm the type of medication copayment assigned to each patient. Only in this way will the rights of users in their personal and proprietary domain be guaranteed, and with a clear definition of the channels for challenging administrative acts and with these, the eventual jurisdictional control over administrative action, as occurs with the rest of social services and Social Security services.

Access to medication and financing

An association of pharmaceutical professionals, various groups and affected citizens brought a variety of problems related to the system for selecting medication for the Autonomous

Community of Andalusia before the Institution, in keeping with that foreseen in Decree-law 3/2011 of 13 December. In the final days of 2016 the response to the request for information submitted to the Andalusia Regional Department of Health was received, which at the time this report was being completed was currently under study.

Other healthcare services

Incidents concerning the management of ortho-prosthetic services covered by the autonomous community departments of health are the subject of certain complaints brought to the Institution, due either to the difficulty experienced by patients covering the cost of advance payment for the products for which this such payment has been stipulated or the delays in processing the corresponding reimbursement. In relation to this issue, the review of the general catalog of ortho-prosthetic products remains pending.

Over 100 ex officio investigations and 174 Recommendations on social policy

Situations of need and social exclusion are still the most frequent causes for complaint. The number of complaints concerning protection of dependents decreased, while those relating to minors and family increased slightly. 101 ex officio investigations were undertaken, with 174 Recommendations, 59 Reminders of legal obligations and 15 Suggestions issued.

Minor protection system

As in previous years, there have been numerous inspections carried out in response to complaints from parents, foster caregivers or boys and girls who are themselves in a **situation of risk or neglect**, in response to which the competent public authority has taken certain protective measures. The circumstances in which the Administration has intervened are diverse. The monitoring of these complaints tends to be prolonged with the Ombudsman Institution's inspections seeking to verify that the rights of minors and adults affected are respected throughout the entire process. The final resolution is affected by changes produced in a family, the lodging of a legal complaint or the return of a minor to his or her family.

Two minors drop-in centers were visited in 2016: the Isabel Clara Eugenia Center in the Autonomous Community of Madrid, which accepts children aged 0 to 14 years old; and the Hortaleza Center for youth aged 15 to 18. Both inspections are currently underway and information has been requested from the Autonomous Community of Madrid Regional Department of Social Policies and Family concerning various issues: protocol for assault and restraint; protocol for complaints and claims; training for center security guards; protocol for runaways and the information provided in such cases to the *Grupo de Menores de la Policía Nacional* [National Police Minor Protection Squad, abbreviated in Spanish as GRUME]. The Directorate General of the Police was also requested to provide information on specific training for security personnel as regards the treatment of minors in situations of vulnerability, as well as indications as to the information required and received from caregiver authorities in runaway cases.

Information was likewise requested as to the capacity of all centers in the protection system, as it was observed that minors' stays at the youth center were at times being extended longer than advisable for a facility which is the first point of care, due to its lack of space and

appropriate resources. At the time of this report's completion, the information received was currently the focus of a study.

As regards adoptions, *Ley 26/2015, de 28 de julio, de modificación del sistema de protección a la infancia y a la adolescencia* [Law 26/2015 of 28 July on changes to the system protecting children and adolescents] establishes a maximum age difference of 45 years between adopter and adoptee. The purpose is to prevent existing discrepancies in autonomous community regulations on maximum ages for adoption from causing undesirable misrepresentations. The Autonomous Community of Extremadura (which has a fixed maximum age limit of 40 years old) has argued that state regulations set capacity requirements, while autonomous community regulations should prevail when it comes to assessing suitability. The Ombudsman Institution issued a Recommendation to the Extremadura Regional Department for Health and Social Policies with the understanding that state regulation adapts to the evolution of Spanish society, in which there is an increasing number of parents over the age of 40 years, and that no special justification for maintaining a lower age has been demonstrated for the population of Extremadura. The Recommendation was accepted.

People with disabilities

The **range of criteria for rating disability of minors with tumors** led to inspections with the *Instituto de Mayores y Servicios Sociales* [Institute for Seniors and Social Services, abbreviated as IMSERSO in Spanish]. The said institute held a meeting of the *Pleno de la Comisión Nacional de Valoración del Grado de Discapacidad* [Plenary Session of the National Commission for the Evaluating Degree of Disability] in order to coordinate criteria on this subject. The following criteria were agreed: 1) in general, the evaluation of degree of disability must be performed after six months; this evaluation will always be provisional; 2) exceptionally, evaluation will take place beforehand in cases of metastasis, provided the effects of the disease are permanent and that the prognosis is poor from the moment of diagnosis. In the Canary Islands, the origin of the complaint behind this inspection, special training measures have been planned in this regard.

Individuals granted a permanent disability pension for total, absolute or major incapacity, as well as pensioners from beneficiary groups for retirement or permanent disability work leave are legally equivalent to people with a recognized disability rating of 33%. Nevertheless, the lack of accrediting documentation complicates the exercise of the rights derived from this equivalency. Moreover, in order to obtain such documentation, individuals are obliged by the competent autonomous community authorities to undergo a disability rating process and are denied the right to a [disabled persons identification] card when the indicated rating is not

granted. Certain autonomous community authorities, such as Castile and Leon or Andalusia, are beginning to offer a more unifying interpretation of this precept. For this reason, and based on specific complaints, inspections have been opened to determine the criteria used by other autonomous communities.

Accessibility

The Comité Español de Representantes de Personas con Discapacidad [Spanish Committee of Representatives of Persons with Disabilities, abbreviated as CERMI in Spanish] confirmed a failure to approve the royal decree regulating basic conditions of **universal accessibility** of public good and services for people with disabilities. The *Subsecretaría del Ministerio de Sanidad, Políticas Sociales e Igualdad* [Office of the Sub secretary of the Ministry of Health, Social Policies and Equality] linked the delay in approval to the political situation, given the difficulty regulating different areas which afflicts the majority of economic and social sectors. That being said, the Office of the Sub secretary also mentioned that the work has been in progress for several years. Adding to this situation are the competence-based relations between the State and the autonomous communities when it comes to legislating, with approval also delayed between the State and the European Union. Since 2012, work has been undertaken for the enactment of a European Directive for accessibility of certain products and services. This inspection remains open.

With respect to **guide dogs**, ex officio investigations have concluded with the *Consejería de Servicios Sociales y Cooperación* [Regional Department of Social Services and Cooperation for the Autonomous Community of the Balearic Islands] and with the *Departamento de Derechos Sociales* [Department of Social Rights] of the Government of Navarre concerning the regulation of guide dog accompaniment for individuals suffering from a non-visual impairment, further to the publication of the Decree and *Orden Foral* [Regional Edict] stemming from the law regulating each of these communities. The City Council for the Autonomous City of Melilla has proceeded to the preliminary approval of regulations which also govern this issue.

The laws regulating guide dog accompaniment are the subject of legislative process in the autonomous communities of the Canary Islands and Cantabria. Reminders of legal obligations have been issued to the competent autonomous community governments of Castile and Leon, Extremadura and the Region of Murcia. Recommendations have likewise been made to the *Departamento de Presidencia de la Diputación General de Aragón* [Department of the President's Office of the Aragon General Council] and to the *Consejería de Igualdad y Políticas Sociales* [Regional Department of Equality and Social Policies] of the Government of Andalusia for the drafting of a regulation governing accompaniment by these animals.

Resources for persons with disabilities

It is the Ombudsman Institution's view that facilitating **early assistance** for individuals of a young age with a disability rating of under 33% could, in certain cases, prevent this disability from progressing further. The Extremadura Regional Department for Health and Social Policies is studying this possibility, albeit with an assigned age limit of 9 years. For this purpose, various working groups have been formed, with the collaboration of the Extremadura branch of the Spanish Committee of Representatives of Persons with Disabilities for the modification of various aspects of the *Marco de Atención a la Discapacidad de Extremadura* [Framework for Disability Assistance in Extremadura, abbreviated as MADEX in Spanish].

The *Consejería de Igualdad y Políticas Inclusivas* [Regional Department of Equality and Inclusive Policies] of the Autonomous Community of Valencia has confirmed the adoption of measures for preventing a return to problems accessing early assistance services due to a lack of coordination among the competent administrations, as occurring in a case mentioned in the 2015 report.

On similar terms, the Madrid Autonomous Community has also taken on organizational changes which have had an impact on early assistance. The information received in 2016 provides a record of the improvements introduced into the system, such as the centralized management of available places and a budgetary increase of three million Euros.

Within the framework of general supervisory activities, and in order to ascertain the situation of minors with **cerebral palsy**, three special education centers assisting these minors were visited, all located in Madrid: AENILCE Foundation, the DATO II Center and the BOBATH Foundation. The conclusions drawn were positive.

Assistance for the elderly

The following **seniors facilities** were visited in 2016: the *Residencia Solyvida* ["Sun and Life" Seniors Living Facility] in Parla; the *Residencia Reina Sofía* [Queen Sophia Seniors Living Facility] in Las Rozas, and the *Residencia y Moscatelares* Seniors Living and Day Care Facility in San Sebastián de los Reyes, all three in the Autonomous Community of Madrid; and the Novo Sancti Petri Seniors Living Facility in Chiclana de la Frontera (Cadiz).

A relevant aspect concerning this type of facility is the examination made of residents' legal situations and the external oversight carried out of the same. There are two basic legal terms relating to individuals losing their cognitive faculties: disability (or "the legal change in ability") and involuntary commitment. These facilities are responsible for individuals deprived of

ambulatory freedom and who, in practice, are frequently unaware of their legal capacity or without power of legal capacity.

The practice that has been observed in the facilities visited is that, when residents' cognitive faculties are affected and they are unable to decide for themselves, notification is given of involuntary commitment by virtue of Article 763.1 of the Law on Civil Procedure. However, unforeseen circumstances and the broad casuistry which may arise calls for the establishment of a more rigorous path of legal control for this issue.

The *Consejería de Igualdad y Política Inclusivas* [Regional Department for Equality and Inclusive Policies] of the Government of Valencia has accepted the existence of social situations requiring assistance from living and day care facilities and which affect elderly individuals who, having no recognized dependent status, find themselves in personal or social circumstances which prevent or complicate their remaining in their habitual surroundings. The case reviewed concerned an 85-year-old citizen who was taking care of his wife, who suffered from Alzheimer's Disease. To handle these situations, the regional department prepared Instructions for criteria in the admission and assignation of a place in living and day care facilities for non-dependent seniors at facilities in the Community of Valencia which considers the need for maintaining family unity, for which admission to the residential service for a spouse accompanying the main applicant is foreseen.

Dependent status

As in previous years, the issue producing the highest number of complaints are the **excessive delays in administrative procedures for matters of dependency in all of its aspects**. The failure to comply with deadlines for passing a resolution persists all the same, although it has been noted that certain autonomous communities have strengthened their resources in order to reduce processing times, and in particular to include people recognized as moderate dependents in the *Sistema para la Autonomía y la Atención a la Dependencia* [System for Autonomy and for Dependency Care, abbreviated as SAAD in Spanish]. Other autonomous communities insist that a lack of state financing is preventing the resolution of administrative procedures, and therefore administrative procedures for the *Programas Individuales de Atención* [Individual Assistance Programs, abbreviated as PIA in Spanish] will not be resolved until there are available resources. Reminders of legal obligations regarding this matter were issued to the autonomous communities of Andalusia, Extremadura, the Community of Valencia and the Region of Murcia.

In 2015 the Autonomous Community of Madrid approved regulatory standards which apparently reduced processing times. Nevertheless, it has been observed that, in reality, the

administrative procedure approving an Individual Assistance Program does not always complete the process, since when an economic benefit is recognized everything becomes dependent on approval of the associated costs. As recognition for this benefit includes neither a monetary amount nor a fixed effective date including the time already elapsed, numerous complaints have been processed in this regard and a Recommendation has already been made to the *Consejería de Familia e Igualdad de Oportunidades* [Regional Department for Family and Equal Opportunities] for the inclusion of the Individual Assistance Program in the amount awarded for the recognized economic benefit, as well as its effective date.

In a matter related to delays in processing and resolution, the Autonomous Community of Madrid has also considered the need to provide more information to interested parties as to the progress of their cases, as well as more thorough access to the documentation involved in the same.

The failure to comply with deadlines for transfers among autonomous communities and cities occurs both in the community of origin sending the case and in the destination community approving the Individual Assistance Program. The inspections carried out appear to confirm that the difficulties in resolving definitive transfer cases do not only concern the administrations involved but that it is also necessary for the Institute for Seniors and Social Services to make changes and technical adjustments to the *Sistema de Información del Sistema para la Autonomía y Atención a la Dependencia* [Information System for the System for Autonomy and for Dependency Care, abbreviated as SISAAD in Spanish]. Resolutions have been put forth concerning this issue: specifically, two Reminders of legal obligations to the Regional Department of Equality and Social Policies of the Government of Andalucía and one Suggestion submitted to the Autonomous Community of Madrid Regional Department of Social Policies and Family.

The unjustified delays in passing resolutions affected numerous people who had applied for recognition as dependents and the right to benefits from the System for Autonomy and for Dependency Care yet passed away, the deadline for the resolution of their applications having elapsed and their right going unrecognized. In the majority of the cases reviewed, the competent autonomous community departments have filed cases away without passing a resolution on the right applied for. In this respect, Reminders of legal obligations have been issued to the *Consejería de Bienestar Social* [Regional Department of Social Wellbeing] and the Regional Department of Social Services and Cooperation for the Autonomous Community of the Balearic Islands.

On 1 July 2015, the **right of access to the benefits provided by the System for Autonomy and for Dependency Care for individuals recognized as moderate dependents** came into effect. Inspections were therefore opened with all responsible authorities to review

the general functioning of the process and the effective dates for the economic benefits recognized for this status for individuals submitting the corresponding application before 1 January 2015. Only the Autonomous Cities of Ceuta and Melilla and the Autonomous Communities of the Principality of Asturias, Castile and Leon and Navarre have concluded or are about to conclude the process of including the System for Autonomy and for Dependency Care benefits for this group of beneficiaries in 2016.

Access to and content of benefits

Recurring among the complaints processed in 2016 are those concerning the autonomous communities' application of that foreseen in the rulings affecting the economic benefit for family care and support for non-professional caregivers in the *Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad* [Royal Decree-law 20/2012 of 13 July on measures guaranteeing budgetary stability and promotion of competition].

As regards delays in the payment of recognized economic benefits in arrears which had been divided up into smaller payments and postponed, it is worth emphasizing that the *Consejería de Familia e Igualdad de Oportunidades* [Regional Department of Family and Equal Opportunities] for the Region of Murcia has confirmed that it has proceeded to issue payment for benefits corresponding to previous years and that it has made regulatory provisions for the possibility of making payments up to 31 December of each year, such that the Institution suspended the processing of the affected complaints until the expiry of the said deadline.

An issue that continues to be pending is that concerning the reason for postponing and breaking payments down into installments for amounts recognized retroactively for the economic benefit for family care and non-professional caregiver support, where such payments have not been made since the application submission date. For this reason, a Reminder of legal obligation was issued to the aforementioned regional department in order to ensure that the breaking down and staging of payments is only carried out in the event that retroactivity has occurred since the application date, as the Administration considers that a revoked autonomous law had been allowing for the postponement in all instances. As affirmed by the Ombudsman Institution, the wording approved in 2015 for the said autonomous community indicates that the payment of retroactive sums must be postponed and staged exclusively under the terms established by state regulations.

The same issue was considered in the Autonomous Community of Valencia, where the Regional Department of Equality and Inclusive Policies, at the urging of the Ombudsman Institution, recognized the right to receive the full recognized amount that had been delayed.

With respect to the application of the maximum two-year suspension period for this right, it is worth noting that this autonomous community has decided not to apply the said measure.

The **regulations governing compatibility and incompatibility among the different benefits** provided by the System for Autonomy and for Dependency Care — as well as between the said benefits as a whole and those provided by other areas of social protection — has constituted another of the issues responsible for the largest number of inspections, in view of the existing inequality among the autonomous community regulations.

In the Autonomous Community of the Balearic Islands, the benefits provided by other social protection systems in the hands of local authorities are generally complementary to those provided by the System for Autonomy and for Dependency Care. In the Autonomous Community of Catalonia a specific regulation is in place which allows, in certain cases, for the harmonization of the benefits generated under different protection systems. Where applicable, differences in amount or scope are compensated and, moreover, where incompatibility exists the most advantageous benefit is maintained. In the Autonomous Community of Valencia, the benefits of other systems (residence discount) have been harmonized with those of the System for Autonomy and for Dependency Care. No regulations exist in the Madrid Autonomous Community, where the city councils are those determining the system of harmonizing their own benefits with those of the System for Autonomy and for Dependency Care.

In this autonomous community, recognition of moderate dependency, which confers subjective rights on applicants, has in many cases been detrimental to elderly users of municipal services who are granted greater benefits by, for example, the Madrid City Council.

Changes to the requirements for accessing economic benefits for family care and support for non-professional caregivers have also been the subject of numerous complaints, with interventions carried out where autonomous community regulations have gone beyond what was agreed by the *Consejo Territorial* [Territorial Council] and what was established in Royal Decree 1051/2013 of 27 December, or in cases where, had the resolution been passed before the deadline, there would have been no cause to apply more cumbersome conditions.

Interruption of System for Autonomy and for Dependency Care protection during status reviews. In the Autonomous Community of Madrid, in the event that an individual who is already the recipient of a benefit must be admitted to a private living facility, the protective action of the **System for Autonomy and for Dependency Care** is interrupted until a new resolution settling the application for status review and adjustment of the Individual Assistance Program to the new status, or modification of the Program, has been passed. In such cases, the Administration proceeds to the recognition of the benefit linked to the service, after a period of six months from the submission of the application.

The Ombudsman Institution considers this practice to be inadequate and has issued a Recommendation to the Regional Department of Social Policies and Family for ensuring that care is maintained for dependent individuals while changes to the Individual Assistance Program are being carried out, together with a Reminder of legal obligations due to the application of Law 39/2006. The Administration has stated that it does not share this Institution's position, such that resolutions have been reissued in an effort to reach a positive outcome for this matter.

Participation of beneficiaries in the financing of benefits The participation of beneficiaries in the financing of the **System for Autonomy and for Dependency Care** reveals significant differences among territories, and may even be calculated differently — within the same community — depending on which authority is providing the service. This issue has also generated numerous complaints, especially where an individual is admitted to a living facility and has either family responsibilities or a spouse without his or her own means of income, with the contribution made by this recipient to the cost of services leaving the rest of the family members practically without financial resources, as they are not covered under the system. Certain administrations claim the return of amounts unduly received by deceased recipients from their potential heirs, or the amount resulting from insufficient contributions to the cost of the service received, even where there is no evidence that such inheritance has been recognized.

Individuals living in poverty and social exclusion

Throughout 2016 a certain reduction was generally perceived in processing delays for the **basic guaranteed income benefits**. Through increased budgetary allocations and staffing reinforcements, the efforts made by various autonomous communities in this area seem to have produced results in the processing of both initial applications and renewals. However, processing times still considered unacceptable have been observed in some complaints.

The Institution also made Recommendations in previous years to the autonomous cities and communities for the establishment of **food guarantee programs for minors**. In the responses received, the majority mentions plans for coordination and agreements with local authorities offering assistance for social services that are the first point of contact and offer an integrated, lasting and efficient response to the entire family.

It is the opinion of the Ombudsman Institution that the coordination of all administrations is essential for defining a common strategy and creating public support policies. For this reason, situations of minors who are at risk or living in poverty or social exclusion must be identified, with mechanisms for greater collaboration established among school, health and social

administrations. In 2016 the Ombudsman Institution opened inspections with Spanish towns of over 100,000 inhabitants which, due to the size of their population and their service structures, are viewed as an appropriate segment. This selection was carried out bearing in mind the greater incidence of the problem in an urban setting, due to factors such as the complexity of administrative structures, the greater diversity of needs, the lesser presence of informal family support networks and the frequent saturation of available social support mechanisms.

The Recommendations put forth are designed to establish or reinforce a nutritional guarantee system for families with minors in a situation of greater vulnerability, in particular outside of the school calendar. This support must be provided through the use of those formulas considered most suitable, such as the extraordinary opening of school dining halls, the setting up of holiday camps, the allocation of food vouchers or the provision of pre-paid social benefit cards. Likewise, a Recommendation was made for granting priority to the preparation of social reports for minors or persons with disabilities, as part of the nutritional guarantee system.

Information was requested concerning the scope and content of agreements — either in force or under preparation — with other administrations as regards this issue, as well as a chart summarizing the existing municipal aid for families in a situation of greater vulnerability, including the regulatory references and budgetary endowment for each.

Up to the time that this report was concluded the majority of responses have been received, with responses missing from only 15 local authorities. The majority confirms that assistance is available for families with minors in vulnerable situations not only outside of the school calendar but throughout the entire year as well. Some confirm the opening of school dining halls or summer camps with leisure and free time programs including a lunch or snack, while others mention the establishment of various resources, such as emergency social economic benefits, services for basic nutrition adapted to minors' needs or reinforcements for breakfasts or lunches.

Moreover, practically all of the responses received indicate that municipalities collaborate with their autonomous community governments in the processing and management of social inclusion incomes, benefits that are often considered a fundamental resource for covering the basic needs of a family with minors in its care.

The majority of local authorities also confirm agreements in place with the non-profit sector for the provision of various resources, as well as established lines of action with other local and administrations, such as the preparation of plans and the formation of coordination networks to offer different resources.

HOUSING

The Ombudsman Institution requests clarification on whether regularization of illegal occupants of protected housing conforms to regulations

The Institution carried out an *ex officio* investigation to obtain clarification as to whether the exceptional regularization of illegal occupants conforms to regulations governing the allocation of protected housing. The Ombudsman Institution also intervened in the resolution of complaints concerning evictions, housing aid, allocation of protected public housing and applications for changing or exchanging government-promoted housing due to cohabitation issues or neighbors' antisocial behavior.

Housing plans

These investigations are generally concerned with the **lack of resolution for aid applications and failure to issue payment** for still-pending aid allocated years ago.

In December 2016 the extension of the *Plan estatal de fomento del alquiler de viviendas, la rehabilitación edificatoria, y la regeneración y renovación urbanas 2013-16* [2013-16 State plan for the promotion of housing rentals, building rehabilitation and urban regeneration and renewal]. This plan guarantees ongoing financing for State housing assistance, which has led to a decrease in complaints due to non-payment of the assistance granted with respect to previous years. Nevertheless, approval of the new *Plan Estatal de Vivienda 2018-21* [2018-21 State Housing Plan] would be appropriate, further to the preparation, jointly with the autonomous communities, of a suitable strategy for achieving the objectives in different lines of assistance.

With respect to the assistance suppressed by Article 35 of Royal Decree-law 20/2012, the initial interpretation made by the *Ministerio de Fomento* [Ministry of Public Works and Transport] was that the decree-law affected not only assistance recognized in the framework of the state plan in force at that time (2009-12 Plan) but rather the previously recognized assistance as well. These criteria were subsequently changed. The administrations have generally followed the indications provided by the ministry, adopting measures for carrying out the change in interpretive criteria. One case, however, stands out, in which Andalusia had to be reminded of its obligation to comply with the new criteria from the Ministry of Public Works and Transport.

The Ombudsman Institution also opened an ex officio investigation with the Ministry of Public Works and Transport and with various autonomous communities concerning assistance for rehabilitation included in the 2013-16 State Plan. Although investigations are still underway, the conclusions drawn from the responses received by the administrations indicate that delays in the execution of the plan and its scheduling have had the consequence of producing a budgetary gap, as well as the fact that what has been executed differs considerably from that which was foreseen, although not in the same way for each autonomous community.

Allocation of official protected housing

Inspections have been carried out with different administrations concerning the **legal uncertainty surrounding the procedure for allocating housing for particular cases of need**. The situation described by citizens in their written correspondence is highly precarious. The issue concerns family units, the majority formed by single women with minors in their care, having scarce financial resources and either lacking any type of lodging or sharing a home with help from family or friends.

Despite advances having been made with respect to the previous year, they have not proven sufficient, as evinced by the large number of complaints received from citizens in this regard.

Problems of coexistence in protected public housing

Many interested parties denounce the fact that they have to endure their **neighbors' antisocial behavior** on a daily basis, leading to building unhealthiness, significant financial damages and health risks. Many opt to abandon their homes, which are later occupied, usually, by members of the family units causing these problems.

It is the Ombudsman Institution's opinion that the gravity of the situation requires the execution of specific and effective measures for preventing damage to the rest of the building residents. **A Recommendation was made to the Administration for an increase in periodical inspections** so as to prevent illegal, dangerous and bothersome conduct of inhabitants and —where applicable — carry out detailed monitoring of the affected houses to identify possible acts of vandalism. In addition, a Suggestion has been made for social professionals to meet with those families having problems adapting. In this last instance, where the Administration has evidence that a conflictive family has no interest in collaborating, the Institution suggests that it proceed to the non-renewal of the rental contract on its expiry date, due to disturbances caused to neighborly coexistence, and making use of the faculties available to the Administration in its capacity as landlord.

The importance of these problems calls for the creation of a protocol of action for carrying out preventive measures in coordination with all affected administrations or entities. In cases of unoccupied housing, the owner (generally a municipal housing company) must assess the possibility of adopting preventive measures in order to prevent new occupations, such as boarding up accesses to the said housing.

Change or exchange of public protected housing

Complaints have been received from citizens who have been applying for a change in residence for years. During this time, the only thing obtained is written notification that their application has been accepted and ranked in a subgroup of reserved housing, and that authorization for change is conditional upon the availability of housing assigned for this purpose. This creates a sense of mistrust and legal uncertainty, since the applicant — and even the Administration itself — does not know when availability might arise.

Inspections have continued with the *Consejería de Transportes, Vivienda e Infraestructuras* [Regional Department of Transport, Housing and Infrastructure] for the Autonomous Community of Madrid **for improving services for applications for changing or exchanging housing**. A request was made for confirmation of the total number of applications for housing change or exchange, as well as the number of houses allocated to applicants of this type since 1 January 2016. This regional department was also informed that the high number of applicants received by the Administration makes it necessary to consider the possibility of reserving a minimum of four percent of the housing included in official announcements for the allocation of rental housing.

Further to the passing of Decree 52/2016 of 31 May creating the emergency social housing estate, the regional department was requested to evaluate the possibility of offering temporary housing for families finding themselves in a situation of serious housing difficulty until such time as an official housing change was granted.

Illegal occupation of protected housing

Both citizens suffering from disturbances caused by illegal occupants and applicants for protected public housing currently on waiting lists contact the Ombudsman Institution to express their nonconformity with the fact that certain administrations have deemed it appropriate to grant exceptional housing plans to occupants lacking sufficient eligibility whose rights of ownership or possession correspond to the Administration.

The Institution appreciates the fact that the Administration is considering new ways to offer solutions for individuals and families with difficulties meeting their need for housing.

Nevertheless, it considers it necessary to regulate this issue through a general ruling, of either legal or regulatory standing. In fact, there is an existing autonomous community and municipal regulation for the allocation of public housing.

Inspections have been opened and continue underway for the purpose of understanding the decision on the part of the corresponding administrations **on whether exceptional plans for situations of ineligible housing occupation conform to regulations governing the allocation of protected housing**. Moreover, the Institution seeks to determine whether **any type of discrimination** is believed to exist, as well as how the rights of **applicants for protected housing due to a special situation of need** are affected.

Basic emancipation income

Complaints focused on citizens who ceased to be beneficiaries of this assistance years ago and from whom the Administration is currently claiming the return of undue income paid or of the loan meant to cover the cost of the rental's bank guarantee. The interested parties are of the view that the Administration's right to claim the said amounts has expired.

Evictions

The Institution received a **high number of complaints concerning the emergency social living problems caused by eviction**. In cases where a family unit without means is facing imminent eviction, and in particular where minors are involved, the Institution's inspections seek to supervise the administrative actions, from the point of view of prevention, mediation and protection. **The Institution requests that efforts be made to find living solutions** for families facing this situation and **asks for greater coordination** with the social services or departments of the affected administrations.

In all cases, the Ombudsman Institution informs interested parties as to the appropriate channels for correctly defending their interests, as well as the various options available to them for coping, depending on each case.

The Ombudsman Institution has taken action to make work compatible with a retirement pension

Over 75% of the inspections carried out by the Ombudsman Institution in this regard were related to benefits. Also noteworthy is the Institution's work in promoting the *Estatuto del artista y del creador* [Statute on artists and creators] that provides a legislative response to the peculiarities of this group of people, with implications for work, taxes and Social Security. The Administration has announced reforms to the law so that receiving a retirement pension can be compatible with carrying out paid work.

Social Security

Joining, enrolment and suspensions

Certain citizens complained of prejudice due to their not being informed of the existence of notifications on the Social Security website, of which they could only be made aware via the WINSUITE service, in a state of permanent collapse, and in spite of having a limited time period of ten days for accessing the same. The Institution's intervention concluded with a positive outcome when the Administration changed the aforementioned system. Although not thus established in the regulations, for the sake of offering greater security to companies and citizens, notice is currently given via various media, advising of the website notifications. According to the information received, such incidents have now become occasional and are rapidly resolved.

Contributions and collection

Complaints continued to be received by citizens negatively affected by difficulties in adapting computer programs for calculating discounts in Social Security payments, as a consequence of the multiple legal reforms which in recent years have affected the *Régimen Especial de Trabajadores Autónomos* [Special Plan for Self-employed Workers]. This was the case for several self-employed workers, mothers of children under 7 years of age, who contracted a full time worker to reconcile their personal and family lives. Further to actions taken by the Ombudsman Institution, the adaptations called for by the interested parties were finalized in September 2016 and the corresponding discounts were legally and retroactively applied.

These same difficulties prevented freelance workers initially enrolled in 2015 from benefitting from the reductions and discounts for contributions which were also introduced in the *Estatuto del Trabajo Autónomo* [Statute for Self-employed Workers] by Law 31/2015, aimed at encouraging and promoting self-employment. Between March and June 2016, the *Tesorería General de la Seguridad Social* [General Treasury for Social Security, abbreviated as TGSS in

Spanish] normalized the situation, first by provisionally applying the benefits subsequently regularized with the return of the corresponding payments to the interested parties, by which these inspections were considered finalized.

In 2016 the Institution proceeded with an inspection opened at the urging of the Spanish Committee of Representatives of Persons with Disabilities into the possibility of including workers providing services under indefinite contract with a recognized disability of less than 65% covered by the said contract in the discounts provided for in *Ley 43/2006, para la mejora del crecimiento y del empleo* [Law 43/2006 for improving growth and employment]. The Secretaría de Estado de Servicios Sociales e Igualdad [Office of the Secretary of State for Social Services and Equality] expressed a favorable opinion, while the *Secretaría de Estado de Empleo* [Office of the Secretary of State for Employment] stated that it did not consider the implementation of such a measure to be necessary, since current regulations provide coverage as reinstatement is included in certain cases. The Institution has requested information on the existing measures favoring the maintenance of employment for these workers in the event of a failure to meet the requirements for permanent or partial disability or for recognition of permanent total or absolute disability, as well as employment maintenance for other individuals not included in the subjective scope of application of Royal Decree 1451/1983, as is the case for individuals with dependent status with recognized economic or personal assistance benefits.

Disability benefits

Mention was made in last year's report of an inspection opened with the National Institute for Social Security [abbreviated as INSS in Spanish] concerning recognition of the declaration of disability carried out in other countries of the European Union. A Recommendation was made to the Secretaría de Estado de la Seguridad Social [Office of the Security of State for Social Security] that it undertake the comparative study necessary for establishing equivalences between our internal regulations and those of the rest of the member states of the European Union, ensuring that the decisions on disability affecting Spanish emigrants are binding should they decide to return to Spain. The response from the Office of the Security of State for Social Security was not favorable. As opposed to the criteria presented by the Administration, this Institution believes that the fact that returning emigrants are subject to a new process in Spain implies an obstacle to be overcome for their return.

The Office of the Security of State for Social Security did not accept the Recommendations issued in 2012, 2013 and 2014 for the effects of temporary disability be considered as indefinite until effective notification of the declaration of medical fitness is communicated to the affected individuals, in order to prevent damages caused by the loss of income or benefits, and it being considered that the existence of a single sentence from the Supreme Court following this criteria was insufficient for establishing jurisprudence. This divergent position has been modified further to the issuance by this same court of appeal of a second ruling, of 2 December 2014, of doctrine coinciding with that previously issued. The National Institute for Social Security has confirmed acceptance of the Ombudsman Institution's

criteria for extending the effects of disability status until the affected party is notified of the corresponding resolution, yet solely in cases of medical all-clear or improvement and once the maximum period for temporary disability of 365 days has elapsed.

In the case of a citizen who received recognition in a legal judgment that the review of her absolute permanent disability could not take place until February 2017, this Institution's intervention served as notice for the National Institute for Social Security of the error committed in taking into account the date of the resolution passed by this authority and not agreed to by the judge, thus reinstating the pension received by the interested party.

Pensions

Further to the initiating of penalty proceedings against certain authors who continued to carry out their **creative work after retirement**, to which was added the request from the "*Seguir Creando*" ["Keep creating"] Platform representing diverse artistic disciplines, the Ombudsman Institution opened inspections with the *Secretaría General Técnica* [Office of the General Technical Secretary] of the Ministry of Employment and Social Security.

Article 20.1 b) of the Spanish Constitution recognizes and protects the right to literary, artistic, scientific and technical production and creation. In the same manner, Article 44.1 confers public authorities with the obligation to promote and support access to culture, considered as a right enjoyed by all. These precepts, which align with other provisions of the Universal Declaration of Human Rights or the International Covenant on Economic, Social and Cultural Rights, on the one hand oblige the establishment of a system for protecting authors' rights, yet also the establishment of a regulatory framework encouraging individuals reaching old age to continue contributing to the society in which they live through the sharing of the fruits of their creative work under reasonable circumstances.

For this reason, Recommendations were made in July 2016 to the Ministry of Education, Culture and Sports and to the Ministry of Employment and Social Security for supporting the Statute on artists and creators in the aim of providing a legislative response to the peculiarities of this group of individuals as regards work, taxes and Social Security. Moreover, three specific Recommendations were made to the latter department:

1. Study the passing of legislative modifications declaring the receipt of public Social Security pensions to be compatible with the receipt of authors' rights for creative work or new work completed after retirement;
2. Where the aforementioned is not possible, undertake a regulatory interpretation allowing for the continuity of the creative activity of retired authors, such that they do not suffer a reduction in their level of income due to this creative work;
3. Review the requirements of the *Ley General de la Seguridad Social* [General Law on Social Security] regarding retirement pensions and active ageing so as to allow a greater number of citizens wishing to prolong their working life to have access to an active retirement scheme.

The formal and initial response from the Office of the Security of State for Social Security did not appear to adopt the Recommendations put forth, understanding that the only system for making the receipt of a pension compatible with ongoing creative work was enrolment in an active retirement scheme, implying the loss of 50% of one's pension, and this despite the Institution's having indicated that the said possibility was within the reach of very few pensioners due to the requirements stipulated for the same. In October 2016, the then-acting authority of the Ministry of Employment and Social Security publically announced plans to promote a legislative reform which would allow a retirement pension to be compatible with the carrying out of paid work, either self-employed or employed by others. The Ombudsman Institution requested information about this project and about plans for the creation of the Statute on artists and creators addressing the comprehensive protection and specific needs of this group from both the aforementioned ministry and the Ministry of Education, Culture and Sports.

Unemployment

The Institution confirmed on multiple occasions that the fact that the Servicio Público de Empleo Estatal [National Public Service for Employment, abbreviated as SEPE in Spanish] and the public service for employment of the corresponding autonomous community are located in the same office may create confusion, given that citizens do not always make a clear distinction between the competencies of each authority. The said confusion led to the elimination of an unemployment subsidy when the recipient of the benefit gave notice of his or her departure and return from abroad in the Lanbide (Basque employment service) employment office, located in the same building as the National Public Service for Employment benefits office. Taking this Institution's indications into consideration, the National Public Service for Employment proceeded to review the procedure for removing the unemployment subsidy, reinstating it for the beneficiary and paying out the amounts that were to have been paid earlier.

The National Public Service for Employment has accepted the Ombudsman Institution's Recommendation not to deny **unemployment benefits** applied for by workers who, despite being enrolled as freelance workers, have provided due evidence of having neither carried out self-employed work nor been in a position to do so.

The Ombudsman Institution also processed several cases in which, thanks to its intervention, a **review of cases involving contributory benefits** for unemployment was undertaken, with positive results for citizens.

In 2015 the **refund of undue benefits** in cases where a collective dismissal is annulled made it necessary to put forth a Recommendation and a Suggestion to the National Public Service for Employment, which were both accepted. The entity has adopted the Supreme Court doctrine, according to which workers' rights to unemployment benefits previously recognized will be revoked, regularized or maintained depending on whether the said workers' salaries for processing time are received in their entirety, partially received by the company or the *Fondo de Garantía Salarial* [Fund for Salary Guarantee] or not received at all. This Institution shares the criteria of the said service, due to its being of greater benefit to unemployed individuals.

As a result of the prize won by an interested party in a television contest, the National Public Service for Employment proceeded to remove the assistance provided by the **Renta Activa de Inserción [Active Income for Labor Market Entry, abbreviated as RAI in Spanish]** program and to claim back the sums unduly received, considering that it should have been notified about such an event at the time when the interested party had participated in the contest. However, awarding of the prize was conditional upon confidentiality being maintained concerning all information related to the said contest, with the prize amount being paid several months after participation. For this reason, the managing service was informed that the amount unduly received should have been calculated from the date of the prize being paid, and not from the date when the contest was held. The said entity accepted the Institution's criteria, declaring the payment requirement as null and void and modifying the amount claimed.

As regards the participation of unemployed people in training activities or other initiatives carried out on their own account and the effect on their ability to access the Active Income for Labor Market Entry, it is worth noting that the Institution's intervention led to the *Subdirección General de Prestaciones del Servicio Público de Empleo Estatal* [Subdirector General for National Public Service for Employment Benefits] issuing an official notice to all provincial directorates clarifying that the said periods, considered a suspension in the search for employment, will be calculated as a part of the necessary period of enrollment as an unemployed person in order to be eligible for the Active Income for Labor Market Entry program, which should be a minimum of 12 months. This measure will be applied equally to those individuals in a situation of suspended search for employment due to their attending training courses at the moment of applying for inclusion in the program.

Since 2014, the Institution has carried out monitoring of the activities of the *Subdirección General de Recursos* [Subdirector General for Resources] of the Ministry of Employment and Social Security for overseeing the effect of the measures adopted for normalizing the processing of the resources for appeal brought before the resolutions for economic aid for the **Plan PREPARA** ["PREPARE" Plan]. From the information provided in 2016, the average resolution time continues to be 18 months and is the reason for a Recommendation being issued to the *Secretaría General Técnica* [Office of the Technical Secretary General] of the Ministry of Employment and Social Security for the strengthening of measures for reducing delays in the resolution of these resources for appeal. The aforementioned office of the secretary general announced the adoption of various complementary measures such as reinforcement of the regional department in charge of preparing proposals for resolution, the broadening of authority for personnel assigned to the drafting of resolutions, an increased collaboration from the National Public Service for Employment in the drafting of proposals (although this measure is subject to the availability of civil servants and budget) and the carrying out of training activities.

The Ombudsman Institution's intervention has led to the rectification of certain incidents as regards the processing and management of this assistance. It is worth noting that the inspections carried out due to the situation brought forth by an interested party in 2014 and which had led to the loss of assistance and the claiming of undue income owing to the fact that

she was listed as having left the *Itinerario Personalizado de Inserción* [Personalized Program for Labor Market Entry, abbreviated as IPI in Spanish]. After an exhaustive investigation involving the Andalusia and Catalonia employment services and the National Public Service for Employment, it was confirmed that an error had occurred, exacerbated by the transfer of responsibility between the two autonomous community employment services. Finally, the National Public Service for Employment issued instructions to the Barcelona Provincial Directorate for the legal review of the case and the return of the corresponding amounts to be received by the interested party.

International Social Security and autonomous community regulations

As in previous years, numerous complaints continue to be received from citizens citing significant **delays in the processing of pensions applied for under the protection of the bilateral Social Security agreements**, in particular those concerning Argentina and Venezuela. In all cases, information was requested from the National Public Service for Employment, which provides a timely account of the successive iterations of information carried out with the competent foreign authorities. The affected parties were also referred to the Ombudsman Institution's counterparts in the said countries. The particular cases will remain open until it can be verified that this problem has been overcome.

The Ombudsman Institution sent a letter to its counterpart from the Bolivarian Republic of Venezuela referring to the **issue of the collective group of Venezuelan pensioners residing in Spain** and who, throughout 2016, did not receive their pensions from that country due to payment having been suspended, an event concerning which the Institution also requested information from the Venezuelan Ambassador in Spain. This Institution has highlighted the special situation of vulnerability of this group of individuals, many of them suffering from illness or disability, who subsist thanks to their pension and who are unable to return to the labor market. The Venezuelan Ombudsman Institution has confirmed that it is taking steps for the State to bring itself up to date in its payment commitments, and that it has recommended the prioritization of this group for the payment of foreign currency.

This Institution will continue to insist, both with the Venezuelan authorities and with the liaising Spanish authorities, until the definitive reinstatement of the rights of this group and the resulting execution of late payments is achieved.

Employment

According to information from the *Instituto Nacional de Estadística* [National Institute of Statistics], unemployment affects over four million workers in Spain, a rate of unemployment of over 18%. It is fundamental that administrations at state, autonomous community and local level maintain active employment policies within the framework of a coordinated strategy promoting the improvement of employability for those groups of individuals particularly penalized by the

lack of employment, as is the case for individuals over 45 years old and young people, as well as job creation in the private sector.

The unemployment rate among people under 25 years old is close to 50%, which makes this group an absolute priority for aggressive employment policies.

The **Sistema Nacional de Garantía Juvenil** [National Youth Guarantee System] has not produced the anticipated results. At the end of 2016, the number of people enrolled in the dossier created for eligibility for the system's benefits did not number half a million young people, which means that only one out of every ten youths is a possible beneficiary. This Institution noted the complexity of the enrollment application procedure and the rigorous requirements of the same as possible causes. The *Real Decreto Ley 6/2016, de 23 de diciembre, de medidas urgentes para el impulso del Sistema Nacional de Garantía Juvenil* [Royal Decree Law 6/2016 of 23 December, on urgent measures for promoting the National Youth Guarantee System] has suppressed these requirements, rendering all unemployed young people under 30 years old and looking for work as possible system beneficiaries, thus favoring their training and employability.

Several complaints have been received by business owners who purchased **training courses for employees** with entities listed in the *Catálogo de Entidades Organizadoras* [Index of Organizing Entities] on the Tripartite Foundation website. The corresponding discounts were applied to Social Security payments in 2011 and 2012. However, years later, the General Treasury for Social Security claimed the return of the discounts applied, based on reports from the National Public Service for Employment, which considers the training activities to have been incorrectly carried out. It is the view of this Institution that reasons of equity prohibit the extension of responsibility to the business which has acted in good faith investing in training, due to irregularities concerning questions of pedagogy or methodology which are beyond their control. The National Public Service for Employment has not accepted the Suggestion from this Institution, considering that in such cases the company's responsibility extends to all instances of training activity.

As in previous years, it is necessary to reiterate the failure to comply with the obligation assumed by the Government of Andalucía to **provide budgetary endowment for lodging, board and transport assistance corresponding to participation in training activities for the unemployed**, regulated under the Order of 23 October 2009. In accordance with the latest information received, 292 cases corresponding to 2008 training course offering remain pending audit and payment, an approximate sum of 99,280 Euros. 1,857 cases have been reviewed from the 2009 training course offering, of which 1,014 have been audited and are pending payment. The credit assigned for payment of this assistance comes to 600,000 Euros, which practically corresponds to the sum total of the audited cases. The cases corresponding to the 2010 and 2011 training course offerings are still pending review. Even being aware of the budgetary difficulties through which the administrations have passed in recent years, it is difficult to justify the delay in payment for this assistance of over 7 years since, in order to fulfill its purpose, such payment should be made immediately after the course is completed. It is worth calling for the Government of Andalucía to prioritize these payments.

The **fraud detected in the funds allocated to vocational training in previous years in Andalusia** have likewise determined the decision by the *Consejería de Empleo, Empresa y Comercio* [Regional Department for Employment, Business and Commerce] of the Government of Andalusia to review the cases processed at least since 2011 as regards vocational training, numbering approximately 1,500, and even cases from 2008 and 2009 whose payment is paralyzed. The Institution has informed the Government of Andalusia Regional Department for Employment, Business and Commerce of the need for this review to be carried out with maximum efficiency and diligence, and has asked that it assess the possibility of increasing the number of personnel dedicated to this task. The *Secretaría General de Empleo* [Office of the Secretary General for Employment] has requested reports of a legal and technical-budgetary nature from the *Gabinete Jurídico de la Junta de Andalucía* [Government of Andalusia Legal Office] considered necessary for adopting the measures for streamlining case processing and giving priority to processing for certain among these, yet it has not obtained a response to date. For this reason, this Institution's inspections will persist.

Various business and union organizations from the entire national territory have requested this Institution's intervention concerning the **use given to vocational training reserves**. The organizations concerned have noted that in 2015 the funds proceeding from the vocational training reserve were not used up, despite which the inclusion of the remaining credit dating to 2016 did not occur, in application of that foreseen in the eighth additional ruling of Law 30/2015 of 9 September.

In consideration of the undeniable importance of endowing vocational training for employment in the labor market with sufficient funds and the concern shown by various business organizations who have contacted this Institution, inspections have been opened with the Office of the Secretary of State for Employment. The Institution has therefore requested information as to the amount of remaining credit assigned to the system of vocational training for employment in the labor market originating from the reserve for vocational training that has gone unused in previous years, and if the same has been effectively applied in its entirety for the following years, with particular reference to 2016.

At the end of the year the Office of the Secretary of State for Employment provided this Institution with its criteria in accordance with which the regulation contained in Royal Decree 395/2007 of 23 March, which regulated this issue, lacked sufficient regulatory status for producing the application of the vocational training reserve to the financing of any costs. The Office of the Secretary of State considers that the configuration of the vocational training reserve for employment as an income applied to the financing of certain expenses only exists as of *Real Decreto-ley 4/2015, de 22 de marzo, para la reforma urgente del Sistema de Formación Profesional para el Empleo* [Royal Decree-law 4/2015 of 22 March for the urgent reform of the Vocational Training System for employment in the labor market] and that it is optional for the Administration. It confirms a remaining credit of 273 Euros in the 2015 accounts and indicates that 33 million Euros were added in 2016. The unused remaining credit will be applied to the financing of professional training for employment to be collected from the accounts of the

National Public Service for Employment from 31 December 2016. The response received was currently under study at the time that this report was completed.

The Ombudsman Institution again asked the Tax Agency to be clearer, more flexible and closer to the people

The Institution asked the *Agencia Tributaria* [Tax Agency] to use less obscure language in its correspondence with taxpayers and to make payment due dates more flexible in order to facilitate tax payments. It also recommended improvements to "*Renta Web*" ["Web Return"], the new support program for declaring *Impuesto sobre la Renta de las Personas Físicas* [Personal Income Tax, abbreviated as IRPF in Spanish] and that assistance be offered to taxpayers to help them meet their obligations.

State taxes

Personal Income Tax

Clarity. The language and wording used in written correspondence from the *Administración Tributaria* [Tax Administration] have been the subject of constant complaint, as citizens do not understand the content and thus have difficulties meeting their tax obligations and exercising their right to appeal. Numerous actions have been taken with the aim of ensuring the use of less obscure and more accessible language and the avoidance of standardized models that do not take the specific circumstances of their intended users into account.

A Recommendation was put forth to the *Agencia Estatal de Administración Tributaria* [State Agency for Tax Administration, abbreviated as AEAT in Spanish] for the adoption of measures ensuring that all tax-related correspondence is understood by its intended audience, ensuring legal certainty and the possibility for appeal, and for the modification of existing forms for this purpose. This Recommendation was accepted, yet the State Agency for Tax Administration has not confirmed the specific measures it has adopted or plans to adopt for improving the wording of tax documents, nor has it confirmed the actual modifications that have been made to the forms currently used. The complaint is still being processed.

As has been made clear by this Institution for some time now, neither the language nor the wording of enforcement procedures have proven comprehensible to their intended audience who, failing to understand the cause or the objective the procedures aim to achieve, are forced to request information from the offices of the Tax Agency. This situation could be avoided by providing citizens with clear, reasoned and simple wording. From the beginning of the enforcement procedure, it is essential to determine that the person receiving the notification does not have pending debts with the Tax Agency.

Recommendations were made to the State Agency for Tax Administration that a simple letter be attached to the notification of a loan enforcement procedure, stating that the recipient is not responsible for the debt reclaimed but that his or her assistance is required for settling a third party debt in the event of a loan pending with this party. The Recommendation was accepted and the State Agency for Tax Administration is now accompanying enforcement procedure notifications with a simple paragraph explaining that the recipient is not in debt to the Tax Administration.

Payment deferrals and installment plans As in previous years, the lack of flexibility on the part of the Tax Administration in processing requests for Personal Income Tax payment deferral or installment plans has been cause for complaint. The Ombudsman Institution has carried out numerous inspections in the aim of making it easier for taxpayers to meet their obligations.

There are also many complaints which reveal that the amount to be paid for settling a tax debt has proven to be higher than the income of the taxpayer. This circumstance leads to the seizure of assets, including the habitual residence, triggering an unsustainable situation for many families who could have covered their tax debts if the Agency had been more flexible.

A Recommendation was made that the State Agency for Tax Administration modify the criteria granting payment deferrals/installment plans, making timelines more flexible so as to facilitate payment of tax debts. In its response, the Administration made no comment on this Recommendation or on the various questions posed, such that the Recommendation has again been put forth.

2015 Tax Season The filing of Personal Income Tax returns for 2015 was characterized, above all, by the complexity surrounding the new "Web Return" system. Apart from the problems arising in the initial days of the application's operation and subsequently repaired, the new system makes it difficult for ordinary taxpayers to file their returns. Previously, they had the possibility of easily checking the information declared and proceeding to the confirmation of the draft tax form. With this new method, however, there is a sense of bewilderment with the way it works, and the fact of having to check so many screens creates a sense of insecurity as to the information included.

It has been confirmed that, despite being in the possession of the Agency and having fiscal repercussions, the draft tax form does not include all tax information. This situation has created confusion for taxpayers doubting whether or not information should be included.

The State Agency for Tax Administration has been informed about various aspects that, in the view of this Institution, should be improved. A response is currently pending.

Habitual residence for tax purposes A decision from the Tax Agency as to whether the established requirements are being met for applying the deduction for the purchase of a habitual residence and the exemption for reinvestment in a habitual residence may give rise to conflict, due to the strict interpretation given by the Administration and to the lack of clarity as to the acceptable forms of evidence that may be submitted in order to demonstrate the source of the corresponding deduction or exemption.

Low electricity consumption has been used by the State Agency for Tax Administration to drive Personal Income Tax payments, yet many taxpayers feel that this does not take into account either personal circumstances or the use given to the residence.

To clarify the situation and guarantee legal certainty for citizens, a Recommendation has been made for establishing an open-ended list of acceptable forms of demonstrating that a property under a taxpayer's ownership may be considered as a habitual residence; setting uniform criteria for the minimum consumption levels to confirm that the property is indeed the habitual residence; and making administrative criteria more flexible. The Recommendation has been rejected.

In cases of separation and divorce, the Tax Administration's interpretation of the necessary requirements for claiming the aforementioned deduction and exemption is detrimental to those taxpayers who have been obliged to abandon their conjugal residence without having had an immediate settlement of their community property. The Administration does not take into account the fact that the decision to stop living in a residence is one dictated by circumstances and that, on many occasions, the divorce process is not necessarily a rapid one.

Value Added Tax (VAT)

The impediments and obstacles encountered by taxpayers when it comes to meeting their obligation to file certain tax documents and returns in an exclusively telematic fashion have been the source of many complaints as regards the *Impuesto Sobre el Valor Añadido* [Value Added Tax, hereinafter, VAT- and abbreviated as IVA in Spanish].

It has been confirmed that, in the days leading up to the expiry of the deadline for filing returns, the downloading of the support programs from the State Agency for Tax Administration website (www.agenciatributaria.es) produced problems. In some cases it was not possible to obtain these programs or, if downloading was successful, the tax return itself could not be sent in due to problems beyond the user's control. These setbacks result in penalties and late fees for taxpayers due to the filing of their return after the deadline.

A Suggestion was made that State Agency for Tax Administration website highlight the available options in order for taxpayers who are unable to submit their returns on time due to

website technical difficulties can avoid being penalized. A Recommendation was also made to Agency that it provide assistance to taxpayers in order to make it easier for them to meet their tax obligations.

Local taxes

Property tax

As with the rest of taxes referring to property, complaints have been received concerning the market depreciation of property and the perception of disproportionate taxation on the same. The linking to the market value associated with the taxation of this property directly affects the amount that taxpayers have to pay their local Tax Authority for this purpose.

Tax repercussions of the property tax value assigned to undeveloped building land. Many citizens expressed their nonconformity with payments of the *Impuesto sobre Bienes Inmuebles* [Property Tax, abbreviated as IBI in Spanish] for land classified as building land, since its property tax value was similar to that of built-up land. On occasion, urban planning takes a great deal of time to be executed or is canceled due to a legal judgment. As long as the city council does not notify the *Dirección General del Catastro* [General Directorate of Land Registries] of the judgment this undeveloped land continues to be valued as built-up land even though it is used for agriculture or rural land.

Tax regularization Another recurring complaint concerned the carrying out of tax regularization procedures for Property Tax by city councils, as a result of the previous land registry regularization. These procedures have seen suppressed ownerships and property come to the surface, or rather the values have been updated as a result of improvements or extensions made by the owners which were not declared and for which taxes had not previously been paid. While it is true that this procedure makes it easier for every taxable person to pay in direct relation to his or her assets, the existence of errors in the previous period of land registry regularization has led to taxpayers demanding that the allegations and errors which may have been committed in the said procedure be resolved before tax collection begins.

The claims submitted by taxable persons have been systematically rejected, owing to the fact that the presumption of veracity of the land registries necessitates that these are amended in advance, with the subsequent initiation of a procedure for returning the income unduly received.

The Ombudsman Institution has contacted various provincial administrations and city councils to request information concerning the handling of these procedures. It has come to the

conclusion that, although declarations have been presented and are pending resolution by the competent management, the tax payments remain and leave open the possibility of initiating a procedure for returning undue income if the land registry and, as a result, the base value of the payment are modified, yet without cancelling or revoking their actions so as to avoid prescription.

Tax on the increase in value of urban land

The majority of complaints centered around the taxation of building land lacking urban development — *Impuesto sobre el incremento del valor de los terrenos de naturaleza urbana* [Tax on the increase in the value of urban land, abbreviated as IIVTNU in Spanish]. Many complaints also concern the system for calculating tax, which is based on the land value in the Property Tax (which coincides with the land registry value), along with the high tax rate (up to 30%) and the obligation to pay tax even if no profit whatsoever is earned in the sale of the land and even where loss occurs respect to the purchase value.

One of the most frequent complaints reflects the nonconformity of many citizens with the payment of this tax on land allocated for agriculture which municipal planning considers to be building land. The land registry values this land as urban property and therefore qualifying as a taxable event and requiring tax payment even where it has none of the characteristics of building lots.

The approval of correction coefficients for land registry values for municipalities whose [property value] reports were prepared during the years of peak real estate prices has not prevented many taxpayers from paying taxes on fictitious values.

This situation is exacerbated by the fact that, due to its being an objective tax which simplifies municipal management, the taxpayer is not permitted to appeal against the presumption of wealth. Some citizens have therefore turned to the courts, with judgments beginning to be passed that rule against the Administration. This is currently an issue subject to consideration by the Constitutional Court, which has not taken a stance in this respect.

Tax procedures

The obligation to find a resolution in tax issues. Even where it has improved with respect to previous years, the delay in the resolution of procedures, as well as the indiscriminate use of administrative silence as a form of termination is the cause of the majority of the complaints received on this subject. On many occasions it has been necessary to remind city councils that

the legal obligation to seek a resolution is not at the discretion of the Administration and that the termination of a procedure due to a failure to comply with this obligation must be an exception justifiable by reason of extreme difficulty and not a faculty available to the councils so that the interested parties in the procedures may initiate proceedings under administrative law.

The city councils have also delayed their response to this Institution, corroborating the complaints that citizens have presented against them for this very reason and demonstrating little willingness to collaborate with the functions of the Ombudsman Institution.

Tax notifications For the execution of taxation procedures it is necessary for notification to have been effectively given. Deficiencies in the practice or contents of such procedures determine the invalidity or revocability of the very procedure for which notification is intended.

On many occasions, citizens do not receive tax notifications because they are not addressed to a place of residence that guarantees their receipt and the State Agency for Tax Administration does not carry out investigation work to guarantee notification.

The same administrative offices which appear incapable of locating a taxpayer to notify him or her of the beginning of a procedure capable of providing notification of the corresponding collection proceedings. This is frequently the first notification that the affected parties receive as to the existence of a tax collection case for which they are they responsible. Moreover, citizens are unaware of their obligation to notify the Tax Administration directly with any changes to their fiscal residence, being under the impression that changing their address in the municipal register of inhabitants is sufficient.

Through the processing of complaints, the Institution has been able to confirm the existence of these alleged errors and yet, even where proof has been provided as to errors in the addresses where notification of procedures is attempted to be delivered, many administrations reiterate that their actions are in keeping with that provided for by law. The Ombudsman Institution has again pointed out that, in many cases, the interested parties only learn of these procedures when bank account seizures are enforced and not at such a time when they might have recourse to defend their rights before the acting administration.

The State Agency for Tax Administration deems its actions to be correct and argues that, in the majority of cases, it makes a greater effort than that required by law in order to ensure effective notification of the legal proceedings initiated, investigating possible addresses, carrying out more than two attempts to deliver and endeavoring to provide notification of procedures considered already notified by the law itself. In the view of the Ombudsman Institution, this effort is not clear when it comes to providing notification of a settlement proposal or a resolution for provisional settlement yet is, however, clearly documented when it comes to collection or enforcement procedures. Just as the Tax Administration carries out the necessary verifications

for delivering notification of executive proceedings and obtaining the bank account details of the liable taxpayers so as to proceed to the seizure of the same, it should follow the same criteria during the voluntary payment, thus allowing taxpayers to exercise their right to appeal.

A Recommendation has been made for carrying out all necessary actions for ensuring that effective notice of tax procedures is delivered to its intended recipients. While it is true that the State Agency for Tax Administration expressed acceptance of this Recommendation, its actions speak to the contrary, as indicated by the complaints received.

Installment plans and facilities for debt payments. Despite their desire to meet their tax obligations, individuals affected by the financial crisis have been forced to request the Administration for an adjustment of their payment conditions. For this reason, the *Ley General Tributaria* [General Tax Law] allows for the payment of tax debts by installment, such that the Administration, in approving a plan for regular payments, reserves the possibility of collecting the amounts paid — plus the legally claimable interest.

The Administration gives its approval for these requests yet, where the amounts to be paid by installment exceeds the debtor's financial capacity, it tends to deny payments in installments of lesser amounts and agrees to initiate or continue with the executive collection procedure. Where the interested party has assets, these may be seized and yet, on many occasions, the only asset under ownership is the habitual residence, a family vehicle, or nothing, since there are families affected by foreclosures who owe either Property Tax or Tax on the Increase in Value of Urban Land for what was once their habitual residence.

By way of example, the Ombudsman Institution was presented with an initiative from the Malaga City Council which had been raised to the *Federación Española de Municipios y Provincias* [Spanish Federation of Towns and Provinces] in order to provide a solution for citizens without means. This initiative consists of a procedure that can be either legally initiated or initiated at the request of the debtor in order to declare temporary bankruptcy (provided that the debtor provides sufficient proof of his or her financial situation). The difference between this procedure and those previously in use is that the existence of a habitual residence as the only seizable asset does not prevent a declaration of a failure to pay due to temporary bankruptcy, ensuring in the application of the principle of proportionality that seizure will not take place while the debtor continues to inhabit the said residence, and exercising the administrative functions necessary for verifying that there is no unexpected solvency which would allow for the complete settlement of the debt.

Land Registry

For land registry purposes, land can only be rural or urban. This circumstance has been the source of numerous complaints, due to the fact that urban planning allowed for intermediate definitions of land, which fundamentally meant that it had been classified in town planning as land to be developed until becoming built-up land. However, this development frequently suffers undue delays, possibly reaching periods of over 20 years from the approval of town plans until actual development work is carried out. In the meantime, the land comes to be considered as built-up land for land registry purposes and, even more important, its value is calculated taking into account the maximum buildability that planning allows for this land.

For this reason, there are rural lots which maintain their agricultural activity yet which have been included in urban development plans as land allocated for residences, commercial areas or, for example, hotels. For land registry purposes, their value coincides with the value of the lots once urban development has been completed, obliging the owners to pay different types of taxes based on this value. Both Property Tax and the Tax on the Increase in Value of Urban Land have been the cause of further complaints concerning the land registry value assigned to each type of lot.

With the acceptance of the Recommendation put forth for the modifying the *Ley del Catastro Inmobiliario* [Land Registry Law] the land registry value of this land has been partially adjusted to its real value in accordance with its development.

However, this measure requires the collaboration of the city councils, such that in 2016 many of these properties continued to pay taxes as if they were urban land, and there are still city councils that do not collaborate with the General Directorate of the Land Registries in communicating the real status of planning for some industrial estates, which has prevented the process of adjusting all property to its real value. This situation has occurred in city councils such as Cartagena (Murcia), Matallana del Torio (Leon), Santoña (Cantabria), Avila, Sagunto (Valencia) or Calella (Barcelona). On other occasions city councils have taken the initiative of calling for values to be changed so as to adapt to reality, such as in La Fuliola (Lleida), Almazora (Castellon), Caravaca de la Cruz (Murcia), Tudela de Duero (Valladolid) or L'Espluga de Francolí (Tarragona). The Dos Hermanas City Council (Seville) has suspended the collection of Property Tax until the value of the affected property is adjusted.

FINANCIAL ACTIVITIES

Floor clauses, bank machine commissions, quick loans and energy poverty were at the center of the Ombudsman Institution's inspections

Company performance in financial markets and the obsolescence of certain regulations for taking on new problems were the focus of the Institution's activities in 2016.

Lending

Inspections continued last year concerning the difficulties experienced by certain citizens in obtaining the necessary credit or loans for coping with their financial obligations, eventually turning to non-financial private capital companies.

Law 2/2009 of 31 March aims to protect consumers in their dealings with individuals or entities that are not banks. For those lending money on a professional basis, the law establishes conditions similar to those in banking, such as the requirement to be registered in a consumer registry and requirements to provide security, advance information and a binding offer.

Certain moneylenders pass themselves off as ordinary individuals lending money to others as if they were partners or friends and therefore not obliged to meet any requirements, with the consumer left unprotected.

Faced with this situation, the Institution put forth a Recommendation to the Ministry of Health, Social Services and Equality and to the *Ministerio de Economía, Industria y Competitividad* [Ministry of Finance, Industry and Competition] for studying the possibility of modifying the law under the terms proposed by the *Colegio de Registradores de la Propiedad y Mercantiles de España* [Association of Spanish Property and Commercial Registrars]. The Institution suggests defining the situations surrounding a borrowers state of need or subjection to special protection and stipulating which individuals should be considered as professionals dedicated to lending or mortgage credit activity.

It was also recommended that the autonomous communities promote the creation of autonomous community registries of companies dedicated to lending or mortgage credit activities or to their mediation, in compliance with that set out in Article 3 of the aforementioned law.

Return of amounts paid on account for unbuilt housing

The bankruptcy of building developers during the crisis revealed that many had not been complying with the legal requirements for establishing guarantees or insurance ensuring the return of money paid in advance for a home in the event of bankruptcy.

Through Judgment number 5263/2015 of 21 December, the Supreme Court declared a financial institution jointly liable for the said funds and obliged it to return all of the amounts in full which had been paid on account by a buyer of an off-plan residence that was not built due to the bankruptcy of the building developer. Further to this Supreme Court judgment many courts are passing judgments in favor of the consumer.

The *Secretaría de Estado de Economía y Apoyo a la Empresa* [Office of the Secretary of State for Finance and Business Support] was requested to provide information as to whether banks were going to return the amounts paid in advance by buyers of unfinished homes who had not insisted on a guarantee or insurance from the building developer ensuring the return of the money paid on account without having to take legal action, since many customers lack sufficient financial resources. Should this not be the case, it would be necessary to call on the banks to assume their share of the responsibility — in keeping with the Supreme Court judgment — and requiring them to return the amounts paid plus interest.

Collection agencies

With the financial crisis and the increase in defaults numerous companies have been created to manage debt collection. However, as this activity is not regulated, many of these companies violate an individual's fundamental rights, using unorthodox methods such as threats, humiliation, and so forth.

This Institution put forth a Recommendation to the Office of the Secretary of State for Finance and Business Support for regulating collection activities. The Recommendation was rejected.

The Institution has subsequently reiterated its insistence on the need to set up a regulation for the provision of collection services for unpaid amounts in order to prevent the existence of companies using unorthodox methods. This Recommendation was accepted and, according to the Administration, the regulation will be part of the transposition of *Directiva 2011/7/UE del Parlamento Europeo y del Consejo, de 16 de febrero de 2011* [Directive 2011/7 EU of the European Parliament and the Council of 16 February 2011] which sets out measures to combat defaults in commercial operations. As the deadline for transposition has expired and the directive has been included in other regulations, inspections will continue.

Banking

The ineffectiveness of the *Servicios de Reclamaciones del Banco de España* [Bank of Spain Claims Services] and the *Oficina del Inversor* [Office of the Investor] of the *Comisión Nacional del Mercado de Valores* [National Commission for the Stock Market] is demonstrated by the fact that, in spite of issuing resolutions in favor of consumers, certain financial institutions do not rectify their behavior. For this reason, a Recommendation was made to the Office of the Secretary of State for Finance and Business Support for the allocation of the necessary resources to create a system of extrajudicial claims which is truly efficient and which makes it incumbent on banks to correct their behavior so that citizens may be truly protected by the Administration.

Mortgage Loan Reference Index Judgments declaring the *Índice de Referencia de Préstamos Hipotecarios* [Mortgage Loan Reference Index, abbreviated as IRPH in Spanish] to be null and void are increasingly frequent, with the Index being considered abusive and the banks failing to provide consumers with sufficient information at the time of its being agreed to. Not all consumers can afford to take the legal route to seek nullification of the Mortgage Loan Reference Index, given their scarce financial means, fearing the loss of their home due to an inability to cope with their debt. Information has been requested from the Office of the Secretary of State for Finance and Business Support concerning the possibility of establishing measures to solve the problem.

Single European Payment Area (SEPA) Citizens have approached this Institution with problems concerning the receipt of transfers by individuals who are not the beneficiaries, due to errors in account identification and a lack of information in the receipts issued to consumers. An ex officio investigation has been opened and the following Recommendations have been made to the Office of the Secretary of State for Finance and Business Support:

1. Establish a system so that the user of a payment service can obtain unequivocal verification of the identity of the account beneficiary when making a transfer.
2. Provide all consumers making payments with the expanded information service for the “*concepto*” [description] field in SEPA direct debits.
3. Oblige financial institutions to provide the expanded information service at an affordable price.
4. Enjoin administrations charging for paying tax settlements directly into bank accounts to contract this service or send a draft extract of the settlement in advance with complete information for the taxpayer.

Floor clause. The Supreme Court judgment of 9 May 2013, completed by an explanatory Decree of 3 June 2013 and Judgments 16 July 2014 (Rc 1217/2013) and 24 March 2015 (Rc 1765/2013) declared floor clauses to be null and void in certain circumstances, yet limited the return of amounts paid by its application to 9 May 2013.

With the new judgment from the European Union Court of Justice of 21 December 2016, it will be possible to claim that, further to the declaration of the clause as null and void, the said clause will not have had legal consequences and therefore the entirety of amounts unduly paid from the beginning of the loan are to be returned.

The experience, given the numerous legal actions brought by citizens, is that few mortgage floor clauses meet the transparency requirements to avoid being classified as abusive and it would therefore be necessary to set up an extrajudicial system in order to spare consumers from being forced to take legal action to obtain reimbursement for sums unduly paid.

With this objective, an ex officio investigation has been opened with both the Ministry of Finance, Industry and Competition and the Bank of Spain.

Debt assignment. After the financial crisis, the assignment of credit and loans by financial institutions to fund management companies became a habitual practice. For personal loan portfolios with outstanding payments, funds have paid in the order of 5% to 10% of the loan, paying between 20% and 40% of the debt for mortgage loans.

These fund management companies are not providing debtors with clear notification that they have purchased their debt, using intermediaries so as to hide the true identity of the assignee and, moreover, failing to provide information as to the price at which the debtor may exercise his or her right of first refusal of the assignment. As such, the debtor is unaware either of the assignment or its price.

Consumers learn that their load has been assigned when their financial institution initiates the foreclosure procedure: faced with the impossibility of coping with the mortgage loan they request the application of the *Código de Buenas Prácticas Bancarias* [Code of Best Banking Practices] included in Royal Decree Law 6/2012 of 9 March. However, their bank denies their request, claiming that the mortgage loan is no longer in their name.

This Institution is unaware of the monitoring being carried out with respect to this business where consumer rights are affected. It has therefore opened an ex officio investigation with the Bank of Spain in order to verify the monitoring carried out for these transactions, the number of claims submitted by debtors, the information gathered in the debt assignments executed by financial institutions and the information concerning debtors' right of first refusal.

At the same time, an enquiry of those citizens affected by debt assignment has been published via the Ombudsman Institution website for the purpose of discovering the scope of the problem and, after studying the information collected, drawing conclusions and making the appropriate Suggestions for improving the situation and preventing the spread of poor practices in this type of business.

Commissions for cash withdrawal from bank machines The *Comisión Nacional de los Mercados y la Competencia* [National Commission for Markets and Competition] prepared a report in which confirmed a lack of conclusive results available due to the scant margin of time that had elapsed from the effective date for the new system for withdrawing cash from bank machines. In their obligation to provide information, which affects both financial institutions among themselves (recipient-issuer) as well as the relationship between financial institutions and the system users, certain aspects are reducing system transparency. These inspections continue with the Bank of Spain and the aforementioned Office of the Secretary of State.

Abusive interest rates in quick loans. An ex officio investigation was opened in 2015 concerning nominal and late payment interest rates charged by certain businesses, financial institutions and banks for so-called "quick loans".

For this Institution, the prevailing rules do not prevent banking institutions from setting interest rates — both remunerative-rate and late-payment — that may be considered abusive and which are seriously detrimental to citizens.

According to the Office of the Secretary of State for Finance and Business Support, remunerative rates must be higher in the case of personal loans, compared to mortgage guarantee loans, since the lack of real guarantees increases the credit risk for the creditor.

Article 18.1 of *Orden EHA/2899/2011* [Edict 2899/2011 from the Ministry of Finance and the Tax Administration, abbreviated as EHA in Spanish] establishes that, before entering into a credit or loan contract, the credit institution must assess a client's capacity for meeting the obligations derived from a contract. That is to say, if the solvency analysis carried out by the institution confirms that the client is not going to have the capacity to cope with the loan payment obligations, the institution has the duty to abstain from entering into a contract. Citizens who regularly meet their obligations do not have any reason to assume the consequences of the high rate of non-payments, sustaining a high remunerative and late-payment interest rate.

This Institution has insisted that remunerative and late-payment interest must remain limited to twice the legal interest of the amount, according to jurisprudential criteria. For this reason, this limitation has been recommended.

Insurance

Complaints increased in 2016 over the procedure followed with the *Dirección General de Seguros* [Directorate General of Insurance], especially those concerning the delays to the same and the lack of enforceability of its resolutions.

Insurance linked to mortgage loans. The Ombudsman Institution pursued an ex officio investigation in which it put forth a Recommendation concerning the possibility of setting restrictions on the banking institution practice of linking the purchase of insurance to mortgage loans. The Institution has insisted on different occasions as to the necessity for approving an order without waiting for the new directive, yet the Ministry of Finance continues to be of the view that, once it has been adopted, it is more appropriate to wait for the transposition of the directive to Spanish law.

Electric power

Energy poverty is yet another manifestation of the general scarcity of resources and this Institution cannot remain on the sidelines of the circumstances in which a sector of the population finds itself. The Ombudsman Institution has repeatedly asserted that the provision of electricity is essential for a decent quality of life and a necessary condition for the exercise of other fundamental rights such as, for example, education. School-age minors do their homework during the winter after sunset, such that depriving a home of electricity where minors reside affects their fundamental right to education and equal opportunity. Likewise, the provision of electricity is essential for health, given that refrigerators are indispensable for proper food conservation. For this reason, regulation of the conditions in which electricity is provided should attend to this essential feature of the same, where its objective is domestic consumers in their habitual residence.

Various inspections are open, focused on obtaining general regulatory modifications in order to respond to the problems identified concerning the supply of electricity as a fundamental element of the right to life. Accounts have already been provided of the Recommendations put forth, in the 2014 and 2015 reports. Many of these remain open, since they were suspended during 2016 due to the long period of caretaker administration.

As an example of the significant inspections carried out in this area, mention must be made of the Ombudsman Institution's ex officio intervention after the death of an elderly woman in the town of Reus (Tarragona), as a result of a fire caused by candles she was using for light due to a lack of electricity. Another example is the ex officio investigation after power was cut for social housing in Parla (Madrid).

Social allowance. One of the Recommendations concerning regulatory changes affects the social allowance, which continues to be regulated apart from income. This circumstance determines that the resources focused on fighting energy poverty are not being used appropriately and that there are people who, owing to scant financial means, need to receive energy at a discounted rate, a right that is not being recognized. Already in 2014, the Ombudsman Institution recommended that the *Secretaría de Estado de Energía* [Office of the Secretary of State for Energy] change the requirements for granting the social electricity allowance based on an applicant's income and not on other criteria. Throughout 2016 complaints continue to be received concerning this issue, and this Recommendation continues to be pending acceptance.

High proportion of fixed charges for electricity bills. The proportion of the total represented by the high fixed charges of an electricity bill, corresponding to regulated system costs, has increased in recent years to reach very high minimums, which has a particular effect on all homes in which consumption is not registered during the majority of the year. A Recommendation was made to the Office of the Secretary of State for Energy to revise the distribution of the fixed and variable charges for electricity bills, whose current configuration does not encourage conservation. The Institution is pending notice from the said Office as to whether it accepts the Recommendation in the end.

Procedures for pursuing electricity fraud. Moreover, Recommendations focused on ensuring that procedures for the pursuit and detection of electricity fraud are carried out with safeguards respecting the right to the presumption of innocence continue to be pending a response. The necessary process for approving the royal decree regulating commercialization activities and conditions for the contracting and supply of electric power was paralyzed for the duration of the caretaker administration period.

Presumption of innocence in procedures for the pursuit of electricity fraud. The need for the establishment of guarantees in the inspection of electricity fraud, such that no one is condemned to pay the corresponding penalties where there is no incriminating evidence, continues to be pending.

Water

As in previous years, complaints in 2016 focused on excessive billing and on cuts to the water supply. On many occasions the interested parties approached this Institution before raising the corresponding complaint with the water supply company or with the corresponding city council. In these cases they were informed of the need to raise the corresponding claim previously with the competent authority.

Freedom of business and commerce

Regulation of tourist rentals. The regulation of the applicable legal framework for the rental of houses for tourist lodging has continued to be the subject of complaints in 2016 on the part of the owners affected. The autonomous communities have begun to regulate this type of activity, such that the first complaints have arrived from citizens who consider that the Administrations restrict the freedom that they had been enjoying until now.

The legitimate interests of the owners in obtaining a financial profit for their property enter into play in this regulation, in addition to other rights and interests, themselves worthy of protection, such as urban or environmental planning or the right to personal and family privacy for the other residents of a building, such that the evaluation of the agreed measures are necessarily casuistic in nature.

In the 2015 report, an account was given of an inspection concerning regulations in the Balearic Islands preventing the owners of apartments from offering these as tourist rentals, except where they ceded their business to the same company which had already commercialized the rest of the units in the building. A Recommendation was made that, in such cases in which the residential and the touristic uses coexist, private individuals should be allowed to offer their homes as tourist rentals without greater restrictions than those established for companies. The Recommendation is pending. This autonomous community has prepared a draft bill of the law, which has already received a complaint from an individual contending the necessity of having authorization from the resident's association in order to offer a home as a tourist rental.

Other autonomous communities have also legislated on this issue and the regulations have been the subject of criticism.

An ex officio investigation has been opened as to the possible violation of the rights of ownership and freedom of business by the Canary Islands autonomous community government and, in this case, corrective measures are being urged. The investigation is centered on three main problems:

1. The prohibition, on the part of the individuals affected, to reside in homes under their ownership;
2. The principle of unity of exploitation, which prevents private individuals from directly offering an apartment under their ownership as a tourist rental;
3. The possible loss of a property due to a failure to comply with certain duties of conservation and rehabilitation.

Apart from the reasons of general interest that may lie behind this regulation, it is clear that such restrictions would have an unexpected impact on properties acquired without any restriction whatsoever, such that it should be evaluated as to whether there is a violation of the guarantee of compensation for the affected owners as required by Article 33 of the Spanish Constitution.

Subsidies

As has come to be habitual in recent years, the financial deficiencies in administrations gives rise to already-acknowledged delays in the payment of subsidies and assistance which, together with a lack of awareness on the part of citizens as to the date foreseen for their receipt and regardless of the projects that have been carried out on behalf of individuals, gives rise to financial harm for the beneficiaries. Another cause for complaint is the request for repayment on the part of the administration granting the subsidy.

COMMUNICATIONS AND TRANSPORT

Improving access to transport for persons with disabilities: a priority for the Ombudsman Institution

The Institution made a rapid intervention in order to resolve issues due to the interruption of landline telephone service, in particular for cases affecting elderly users, and to ensure access to transport for people with disabilities.

Communications

The necessary equity in user-operator relations incites many controversies and citizens encounter difficulties in asserting their rights.

Landline telephones

Service interruption. The rapid processing and resolution of these problems is essential in general terms and, in particular, for resolving cases in which lines are registered in the name of elderly individuals living alone or receiving home telephone assistance services. This is the case for a seniors center in Mieres (Asturias), which went several days without landline telephone services as a result of a technical incident and for which, in spite of the claims raised through the 1002 and 1004 telephone numbers, the problem had not been resolved. Both the telephone company and the Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información [Office of the Secretary of State for Telecommunications and for the Information Society] assured the Ombudsman Institution that the incident affecting the center had been repaired through the replacement of the telephone connection cabling. A discount of 30.26 Euros was applied in compensation for the interruption to the available public service, in accordance with the applicable regulations.

In another case requiring a rapid response and resolution, the interested party, a resident of the town of Aguilas (Murcia) was using Red Cross home telephone assistance. For the provision of this service, the organization required an item known as a "voice box" from the operator and the company informed as to the impossibility of meeting the specific request due to a lack of stock. The problem was favorably resolved, according to the aforementioned office of the secretary.

Public pay telephones Telephone boxes are disappearing despite still being regularly used by many citizens. Inspections were opened with the Secretaría de Estado para la Sociedad de la Información y Agenda Digital [Office of the Secretary of State for the Information Society and the Digital Agenda] and the Comisión Nacional de los Mercados y de la Competencia [National Commission for Markets and Competition] for the purpose of gaining an understanding of the situation and permanence of public pay telephones.

In March 2016 the National Commission for Markets and Competition confirmed that the element of universal service relative to the provision of a sufficient supply of pay public telephones is in decline, which renders it advisable to reconsider the appropriateness of having regulations which continue to require the provision of this element of universal service, bearing in mind the low demand and that a significant number of countries of the European Union no longer assign providers responsible for this service. Nevertheless, the element of universal service of a sufficient supply of public pay telephones continues in effect to this day, and will continue to do so as long as the regulations are not changed.

The decision to continue providing this universal service belongs to the Administration of Spain and the Ministry of Finance, Industry and Competition. At the moment this document was concluded the complaint was pending a response from the Office of the Secretary of State for the Information Society and the Digital Agenda and the National Commission for Markets and Competition. The outcome shall be related in the 2017 annual report.

Cellular phones

Billing. Many citizens have conveyed the impossibility of raising a claim with the service provider. A complaint originating in Murcia indicated that a provider's customer service department did not provide a complaint number to support the telephone service, nor did it accept complaints by email or post which would serve as evidence. For this reason, inspections were opened with the Office of the Secretary of State for the Information Society and the Digital Agenda and with the Consejería de Desarrollo Económico, Turismo y Empleo [Regional Department for Economic Development, Tourism and Employment] of the Region of Murcia, whose outcome will be noted in next year's annual report.

In another instance, a citizen submitted a complaint and, as the response provided was not satisfactory, attempted to send an email answering the correspondence she had received. The company informed her that she would have to submit her complaint via an internet form, including a reference number for its processing that she would have previously needed to be given by telephone. The procedure in place for users of this provider to submit their complaints is complicated and should be simplified. The information requested has still not been received

from the Office of the Secretary of State for the Information Society and the Digital Agenda, the Dirección General de Consumo de la Junta de Andalucía [Government of Andalucía Directorate General for Consumption] and the Agencia Española de Consumo, Seguridad Alimentaria y Nutrición [Spanish Agency for Consumption, Food Safety and Nutrition].

Complaints have also continued this year in which several citizens have confirmed delays in administrative case processing, caused by resolutions being passed without respecting the time periods set down in regulations for this purpose. The greatest delays are produced in the resolution of appeals for reversal, as opposed to the resolutions passed in administrative complaints procedures.

Coverage areas for roaming services. An account was provided in the 2015 report of an inspection concerning the procedure followed up until the removal of roaming surcharges, which will finally occur as of 15 June 2017. The problem arose due to a lack of information concerning the date for the removal of roaming fees in Europe and their excessive price.

On 25 November 2015, the European Parliament and the Council approved Regulation 2015/2120, which modifies the aforementioned, on roaming in public cellular communication networks in the European Union. The aforementioned modification establishes the definitive removal of retail roaming surcharges for voice and SMS as of 15 June 2017, for the purpose of eliminating the difference between national rates and roaming rates.

The Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información [Office of the Secretary of State for Telecommunications and for the Information Society] (currently the Office of the Secretary of State for the Information Society and the Digital Agenda) confirmed that the costs for roaming services are billed separately from the plans contracted by consumers with their national provider, although they are found together in the same bill. The main telecommunications services provided during roaming are: telephone calls, short text messages and multimedia messages (SMS and MMS) and broadband Internet access (or data service). There is a European Union regulation for cellular telecommunications services for international (roaming) when users visit a different country from that of their original provider. The main objective of this regulation is the removal of barriers for the use of these services by citizens and companies, for the sake of developing a single telecommunications market in the European Union.

With this objective, in recent years the maximum prices for telecommunications roaming services have been regulated within the European Union. The new Regulation (EU) 2015/2120 of the European Parliament and the Council goes beyond this, establishing the removal of roaming surcharges as of June 2017. This means that, as of that date, users of cellular

telephone and internet services will be able to travel within the European Union on the same rate as those applying in their country of origin for these services (domestic rate).

Until the removal of roaming surcharges on the domestic rate for each user, the maximum prices for telephone services and broadband cellular roaming Internet access have been fixed.

Companies should offer roaming users these regulated rates by default. Moreover, they may offer an alternative rate yet users should provide their explicit consent to have it applied. The new roaming regulations also introduce certain limitations in order to ensure that reasonable use is made of the roaming service by its users in order to prevent certain abuses, such as situations of "permanent roaming", that is to say, when a user obtains a SIM card in another member state — where domestic rates are more favorable— in order to use it permanently in his or her country of residence. This guarantee of reasonable use is based on a limit to the use of roaming services for which, once used, providers may charge an additional surcharge, which is also regulated.

Transport

Access to transport for people with disabilities. The strict application of the law as regards accessibility does not always resolve mobility needs for people with disabilities. With respect to train travel, the refurbishment of stations for the purpose of ensuring total accessibility is a gradual process, yet the more rapid adoption of these measures is necessary for people with reduced mobility as they require ease of access in order to carry out their daily life in a normal manner. This situation was laid bare by various citizens in the complaints lodged, all of which have been processed, for the purpose of meeting their need for mobility at the soonest possible time.

As regards highway bus travel, it is necessary for the administrations responsible for these services to practice careful oversight to ensure that they are provided using accessible vehicles. The problem lies in the fact that highway public transport is provided via the awarding of licenses, with many contracts dating back to a time when vehicle adaptations were not required. The accessibility obligations may not be imposed without warning during the time that a contract remains in force, due to the economic impact on the same. However, in the view of the Ombudsman Institution, it is fundamental that — once the corresponding contract has expired — a new contract is tendered as soon as possible which includes obligations for accessibility. For this reason, the extension of expired licenses is not appropriate for cases in which a new contract would be linked to the requirement that a service is provided with accessible vehicles.

In the area of urban transport, a Recommendation to the Madrid City Council was included in the 2015 report, consisting of the facilitation of transport alternatives to persons with disabilities who, due to a ramp failure, are unable to access buses. The Empresa Municipal de Transportes de Madrid [Madrid Municipal Transport Company] accepted the Recommendation and, in compliance with the same, approved a protocol by which, in the event that a bus is unavailable for the next 15 minutes, the individual with reduced mobility will be transferred in an accessible taxi.

Airline fares for people with reduced mobility. In 2007 a citizen confirmed that both herself and her brother had planned a trip to Tenerife, her brother being a tetraplegic who, in order to travel by plane and because of flight requirements, requires a stretcher equipped for this purpose. Several airlines were consulted, with some informing that they did not provide this service due to company policy and others offering the service yet adjusting it to additional requirements, among these the need for a companion for stretcher travel, and with the obligation to charge for the price of the said companion's ticket.

For this Institution, the situation described may imply the denial of the right of accessibility to air transport at an affordable price for people with disabilities, a right enjoyed by the rest of citizens, and a Recommendation has therefore issued.

In the view of the Dirección General de Aviación Civil [General Directorate for Civil Aviation], the establishment of effective mechanisms ensuring access to air transport for passengers with disabilities — passengers with reduced mobility, under the terms of the applicable European Union regulations —, including the necessity of travelling accompanied by another person, carries the implicit guarantee that, when airlines impose the obligation to be accompanied, the companion should travel for free.

The European Union has assumed the regulation of the rights of people with disabilities or reduced mobility for airline transport, such that member states may not adopt national measures concerning private citizens. It is for this reason that the General Directorate for Civil Aviation will promote the adoption of regulatory measures before the European Union, rendering the treatment of people with reduced mobility in airline transport equal to that foreseen by European Union regulations for other means of transport.

ENVIRONMENT

The Ombudsman Institution calls for more administrative inspections in environmental affairs

The Institution noted a lack of administrative inspections further to the beginning of activities that would have required information on environmental impact. The said inspections are carried out only after repeated complaints due to the disturbance of affected parties by the activity or facilities (noise, odors or fumes). In the view of the Ombudsman Institution, a complaint made by a private citizen cannot replace the exercise of the faculties of control and discipline produced by environmental legislation.

Rights of access to information, public participation and access to Justice

Complaints were processed concerning a lack of response to requests for environmental information related to issues such as forest exploitation, actions taken concerning riverbeds, public sea-land boundaries, pesticides, power lines, marine contamination and animal welfare. Inspections were also carried out with the *Dirección General de Política Energética y Minas* [General Directorate for Energy Policy and Mines] which has refused to provide information to an environmental association with respect to hydrocarbon investigation permits.

The nature of the environmental information and the obligation to provide it is unrelated to whether or not formal administrative proceedings have been initiated. It is enough that environmental information is under the Administration's control for it to be supplied, provided there is no legal cause justifying the contrary. Furthermore, the request for environmental information does not require accreditation of any interest whatsoever. The technical nature of the information is, moreover, not a reason for declining to provide the information.

Impact assessment. Municipal licenses

The inspection with respect to two gas exploitation sites opposite the Doñana coast (Huelva) is noteworthy. The complaint fundamentally refers to three issues: a failure to subject the activities of exploitation, transport and gas processing to an instrument of environmental control; the impact of these activities on the Doñana natural protected area; and the spillage of formation water into the municipal sanitation network. On submitting the same complaint to the Andalucía Ombudsman, the inspections continued only as regards the environmental assessment of the marine portion of the exploitation facilities.

From the information received it is not possible to say that no environmental assessment was carried out: the autonomous community reviewed those facilities located on land and, with respect to the marine portion, the *Ministerio de Industria, Energía y Turismo* [Ministry of Industry, Energy and Tourism] requested reports from various authorities with environmental competencies. However, the documentation provided has proven insufficient for demonstrating a correct assessment, since there was no joint assessment of the project, made up of gas extraction facilities from deposits in the marine subsoil, transport for the extracted gas and treatment in the land-based processing plant.

According to the information provided by the General Directorate for Energy Policy and Mines the site is at the end of its useful life; the exploitation company has adopted measures for preventing accidents or incidents posing health and environmental risks, which are periodically supervised by the Administration; the exploitation company has not submitted an application for hydrocarbon storage and if this occurs the environmental impact assessment would be processed prior to the resolution; based on the plans, it is unlikely that it will be used as a storage site.

As regards the impact of the use of hydraulic fracturing for the exploration, investigation and exploitation of hydrocarbons of the so-called "*Permiso Luena*" ["Luena" License] affecting the Autonomous Communities of Cantabria and Castile and Leon, the *Ministerio de Energía, Turismo y Agenda Digital* [Ministry of Energy, Tourism and the Digital Agenda] has not confirmed with this Institution that a *Declaración de Impacto Ambiental* [Declaration of Environmental Impact] has been prepared, and this information has therefore been requested.

As for the license for hydrocarbon drilling, known as "Cronos", which encompasses parts of Soria and Guadalajara, the Ministry of Industry, Energy and Tourism (now the Ministry of Energy, Tourism and the Digital Agenda) has indicated that, in general, the existing projects in Spain are currently in a very preliminary phase, corresponding to drilling, without authorization being given to execute any type of exploration with high volume hydraulic fracturing techniques.

With respect to the application of the European Commission Recommendation of 22 January 2014 on hydraulic fracturing (2014/70/EU), the ministry assures that it is working to offer more detailed information on its website concerning hydraulic fracturing. The Ombudsman Institution stipulated that transparent information must be provided as to current knowledge in this area (for example, the substances injected) and concerning the process for analyzing the adopted decision. The information makes reference to the fact that processing for these licenses is linked to compliance with environmental regulations as a guarantee for the protection of the affected areas.

Infrastructural impact: highways, airports, and railways

The administrations' delay in executing plans of action and corrective measures for **highway** noise pollution continues to be a noteworthy issue. Suggestions have been made for streamlining the processing of action plans against noise for the prompt implementation of corrective measures for noise pollution in the highway infrastructure of Asturias, Madrid, Cantabria and Seville.

With respect to the Adolfo Suarez-Madrid Barajas **Airport**, a resident of San Sebastian de los Reyes contacted this Institution because her house was excluded from the Plan de Aislamiento Acústico [Plan for Noise Insulation] and the Administration had rejected her requests to have it included or to adopt corrective measures against the noise. A Suggestion was made that the Administration measure the noise inside the house of the claimant, for the purpose of verifying compliance with the maximum levels established by the regulations. In the case of non-compliance, the house should be included in the Plan for Noise Insulation. On a similar note, Suggestions have been made for retaking measurements in the areas affected by contamination originating from the Alicante **Airport**.

Processing continues underway for the complaint concerning the restructuring of accesses to the city of Murcia. The *Administración de Infraestructuras Ferroviarias* [Department of Railway Infrastructure, abbreviated as ADIF in Spanish] has announced the execution of a provisional detour yet it has been necessary to request more detailed information. Likewise as regards the project for running railway lines underground and the legal inspections underway, should it be necessary to suspend the inspections carried out by the Ombudsman Institution. In addition, inspections with the Department of Railway Infrastructure continue in progress as regards the installation of acoustic screens included in the Declaration of Environmental Impact for the *Corredor Norte-Noroeste de Alta Velocidad* [North-Northwest High Speed Passage] project for the following sections: Valladolid-Burgos and Venta de Baños-Palencia. Despite the measures not having been implemented, the infrastructure has entered into operation.

In the case of the noise originating from the Rodalies R3 train line in Santa Perpetua de Mogoda (Barcelona), the Department of Railway Infrastructure has confirmed that, as suggested by the Ombudsman Institution, a new noise study will be carried out which will determine the noise levels to which the houses are subjected. The complaint opened with this Institution due to the noise generated by the passing of the Madrid-Zaragoza-Barcelona-French border high-speed line in the municipality of Sant Celoni (Barcelona) is in the same situation. The Institution is pending receipt of the said studies from the Department.

NATURAL RESOURCES

An inspection was opened in 2016 concerning the changes introduced in the *Ley de espacios de relevancia ambiental de Baleares* [Law on areas of environmental relevance in the Balearic Islands] for the purpose of understanding the technical justifications for the said changes which allowed for public access to the areas of integrated reserve in natural spaces, which would particularly affect the coastal area of the *Sierra de la Tramontana* [La Tramontana mountain range] (Palma de Mallorca).

October 5 2016 saw the publication in the *Diario Oficial de la Generalitat Valenciana* [Autonomous Regional Government of Valencia Official Newspaper] of *Ley 7/2016, de 30 de septiembre, de reforma de la Ley 11/1994, de 27 de diciembre, de Espacios Naturales Protegidos de la Comunitat Valenciana* [Law 7/2016 of 30 September, on reforms for Law 11/1994 of 27 December, on Protected Natural Areas in the Autonomous Community of Valencia] for removing the duty to classify wetlands as part of their definition. The Institution encouraged an inspection in this sense with the *Conselleria de Agricultura, Medio Ambiente, Cambio Climático y Desarrollo Rural* [Regional Department of Agriculture, Environment, Climate Change and Rural Development] considering that, with the previous wording, the Administration's duty to protect these areas and the classification of the land was made dependent on the act of classification and not on whether the wetlands possessed the physical characteristics by which they are defined.

A noteworthy ex officio investigation is that concerning the effectiveness of reforestation in certain lands as a measure compensating for the extension of the Madrid-Barajas Airport. AENA [Spain's national air navigation manager] confirmed that the Declaration of Environmental Impact for the Barajas extension project has been modified due to the fact that not all of the actions initially foreseen have been undertaken, based on an environmental report requested from a consultant. It is of the view that the adoption of new compensatory measures is not necessary. It has been indicated that the fact that all of the measures initially planned do not need to be adopted does not mean that the measures already adopted do not need to fulfill the purpose of compensating for the damage already caused. If the measure for reforestation fails, the compensation also fails and the objective pursued by the law is not met. It has been necessary to request further information from AENA and initiate inspections with the *Consejería de Medio Ambiente, Administración Local y Ordenación del Territorio de la Comunidad de Madrid* [Regional Department for Environment, Local Government and Land Planning for the Autonomous Community of Madrid] as there does not appear to be a formal declaration on the part of the environmental authority.

Salient among the inspections related to flora and fauna is that concerning the repercussions of the use of **veterinary medicines with diclofenac** in their composition in vulture populations. The *Ministerio de Agricultura, Alimentación, Pesca y Medio Ambiente* [Ministry of Agriculture, Food, Fishing and Environment] confirmed that, in the authorization procedure carried out by the *Agencia Española de Medicamentos y Productos Sanitarios* [Spanish Agency for Medication and Sanitation Products, abbreviated as AEMS in Spanish] for medication containing diclofenac, information was not requested from the *Dirección General de Calidad y Evaluación Ambiental y Medio Natural* [General Directorate for Quality and Environmental Evaluation and Natural Surroundings] when it is an issue that has an impact on its competencies in matters of biodiversity conservation and is therefore necessary to resolve.

According to the precautionary principle established by the European Union (EU) where an urgent action for protecting human or environmental health is deemed essential, the member states, on their own initiative or at the request of the European Commission, may suspend the use of an authorized medication for veterinary purposes in their territory.

This Institution has become aware of a scientific study on this matter, whose principal conclusion is that veterinary medicines contain diclofenac which may be responsible for the deaths of between 715 and 6,389 vultures each year, representing an annual rate of decline of their population of between 0.9 and 7.7%. The study also indicates that a very low availability of animal carcasses with lethal doses of diclofenac is sufficient to produce a rapid decline in the population and warns of the risks caused by irregular veterinary use of diclofenac. The study reviews a measure appropriated in Spain and, in keeping with the precautionary principle, the prohibition of the use of diclofenac, given the existence of other equivalent medicines yet without lethal effects for necrophagous birds.

For this reason, two Recommendations were put forth to the Ministry of Agriculture, Food, Fishing and Environment and the Spanish Agency for Medication and Sanitation Products for the review of the aforementioned study and, in light of its conclusions and the precautionary principle, assess the withdrawal of those medicines containing diclofenac for veterinary use.

Three complaints were also received due to the practice of pigeon shooting in Madrid, Murcia and Valencia. This latter complaint has the participation of the Ombudsman of the Valencian Region which has been asked to keep this Institution up to date.

It is the opinion of this Institution that the Administration should take into account that these birds are launched into flight by a launching machine or tube, which means subjecting them to aggravated conditions with respect to birds living wild in nature. Moreover, there are similar shooting practices in existence, such as clay shooting, in which living beings are not used, resulting in an alternative solution more in keeping with the conditions imposed by legislation for the correct treatment of animals.

Further to the sentence passed by the Supreme Court modifying the Catálogo español de especies exóticas invasoras [Spanish Index of exotic invasive species], an ex officio investigation was opened with different administrations concerning the inspections and measures to be carried out in order to comply with the legal ruling and, specifically, with the Ministerio de Medio Ambiente [Ministry of the Environment] and the Autonomous Communities of Galicia, Castile-La Mancha, Castile and Leon, Aragon, Catalonia, Madrid and Murcia.

Lastly, an ex officio investigation features prominently concerning the protection of unique trees, opened with the Consejería de Medio Ambiente de Extremadura [Extremadura Regional Department of the Environment] and concerning protective measures for the purpose of preventing incidents such as that which occurred with respect to the Roble Grande de La Solana [Great Oak of La Solana] in the town of Barrado (Caceres). The Administration is taking actions for the tree's recovery and continues with an investigation of the regional department itself in order to identify the presumed culprit of the poisoning.

Pollution

One of the Institution's more prominent activities in the area of **prevention and waste management** is the ex officio investigation opened after the fire at the Seseña tire dump (Toledo), which brought various complaints from citizens. The object of the investigation was to obtain verification of the measures adopted for protecting public health and safety and the environment after the fire; existing levels of pollution and air quality; and the actions to be taken for handling the residual tires. Processing of this complaint has been suspended due to legal intervention. However, inspections have been opened with all autonomous communities as regards the existence of irregular tire dumps no longer in use. Information is currently being gathered.

Mention must also be made of the inspection opened after the detection of asbestos in land close to a residential neighborhood in the city of Toledo. Various Suggestions have been issued to the competent administrations, such that it may act in coordination to address the impact on the water, air and soil.

Ex officio investigations were opened with 15 city councils in order to obtain information as to measures against **air pollution**, particularly when caused by vehicular traffic. More specifically, information was requested concerning the councils' respective Action Plans. The Institution is pending responses from the pertinent administrations before drawing its conclusions.

With respect to **noise pollution**, the Institution received complaints related to the noise produced by restaurants and their outdoor dining areas, social meeting venues catering to

young people, street parties, local fairs, sports or festive events, commercial or industrial activities, street cleaning, dog barking and street traffic in specific areas of various cities.

In the case of disturbance-producing activities generated by leisure establishments, the Ombudsman Institution urges city councils to make effective use of their competencies and increase their monitoring and inspection work. Administrative actions in these cases must be especially diligent in order to prevent the affected parties suffering from continuing noise disturbance (in addition to odors or fumes) for a prolonged period of time. The Institution has therefore made Suggestions to city councils for inspecting the businesses in question, as well as carrying out noise level measuring both at business premises and in the interior of houses at such a time when activities are most bothersome, in order to confirm the veracity of the facts.

As for local fairs hosted by city councils, repeated Suggestions have been made for thorough planning of event schedules and venues during fair days, such that the festivities may coexist with residents' right to rest.

The *XXXI Jornadas de Coordinación de Defensores del Pueblo de España* [31st Conference for the Coordination of Spanish Ombudsmen] held in Pamplona (Navarre) on 22 and 23 September 2016, were likewise devoted to this issue, under the heading "*La invasión del domicilio por ruidos: la inviolabilidad del domicilio y el derecho a la integridad física y psíquica*" [Invasion of noise in the home: the inviolability of the home and the right to physical and mental integrity]. At the conclusion of the conference a single text was agreed to and prepared by all of the autonomous community commissioners, in which a number of proposals and Recommendations were put forth for communicating with all administrations for the purpose of improving people's quality of life and providing an adequate response to the problems identified caused by the noise interference in private homes.

As regards **harmful substances**, the most relevant inspection concerned phytosanitary products whose ingredients contain **glyphosate**, which is used as a herbicide. A Suggestion has been issued to the Ministry of Agriculture, Food, Fishing and Environment for streamlining the market withdrawal and denial of an extension for commercialization of these products.

It is the Institution's opinion that the Administration must adopt measures limiting the use of these products in areas accessed by the public or vulnerable groups of individuals (pregnant women, breastfeeding women, children, the elderly, and so forth). The aim is to promote the replacement their use with other phytosanitary products having a lower risk to human health, using natural methods of pest control or alternative methods foreseen in the *Real Decreto de uso sostenible de los productos fitosanitarios* [Royal Decree on the sustainable use of phytosanitary products]. Thus was suggested to the ministry, as the same had indicated that it had not contemplated the adoption of national measures for restricting these products, due to a lack of scientific evidence.

A Suggestion was also made to the ministry for informing citizens of the measures adopted and encouraging the Administration to reinforce mechanisms of inspection, monitoring, control and sanctioning in order to ensure that when a administration decides to use phytosanitary products containing glyphosate the risks are reduced to a minimum, all conditions of use are complied with and any adverse effects on health or the environment are rapidly detected.

Animal welfare

A large portion of the complaints concerning animal welfare received by the Ombudsman Institution have to do with dogs and cats. These cases refer to abandoned or wandering animals or a failure to comply with hygienic-sanitary conditions for animals or their places of rest, both in private homes and in municipal shelters. It is important to allocate financial resources for maintaining municipal facilities in adequate condition.

The need to suggest that certain city councils comply with regulations on possession and use of animals is becoming increasingly common as there are a number of obligations that owners or keepers must fulfill in order to ensure the welfare of animals and not cause their discomfort.

Other complaints concern the **use of animals in local festivities**. Practices endure which in some cases entail the death of animals, such that the Institution informs administrations as to the necessity of supervising compliance with the conditions authorizing those festivities involving animals.

Ecological associations complain that the Administration does not recognize their role as concerned parties in disciplinary procedures when the said associations have themselves lodged the complaint. It has been suggested that administrations recognize animal protection associations as qualified interested parties as they are formed for the purpose of protecting animals and therefore have a legitimate interest. In this last year, recognition has been obtained in various disciplinary procedures underway with the Autonomous Community of Madrid, the Government of Andalusia and the Government of the Balearic Islands.

TOWN PLANNING

The Institution asked citizens about architectural barriers in roads and public places

Complaints concerning architectural barriers in the urban environment increased in 2016. The Ombudsman Institution issued a questionnaire concerning perception of urban accessibility. After studying the data provided, nine *ex officio* investigations were opened, three with municipalities with less than 10,000 inhabitants, three with between 10,000 and 100,000 inhabitants and another three with over 100,000 inhabitants.

Planning and execution

Excessive processing delays, in both urban planning and management and in the resolution of appeals or responses to written submissions; **lack of planning for basic urban services**; and **infrastructural deficiencies** are among the habitual administrative irregularities observed.

Despite the financial shortages affecting municipal corporations, the Institution considers that these should spare no effort in responding to citizen's requests that, moreover, went unanswered in the years of economic boom, as is the case with the aforementioned complaints.

As was already noted in 2015, the owners' obligation to finance the maintenance and conservation of a housing development is temporary, lasting for the stipulated time period and carried out on an exceptional basis, even after delivery of the development to the Administration. The duty to maintain housing developments fundamentally affects public goods and services. When such obligations are required of private citizens, they are assuming competencies as befits a public entity, an exception to the *Régimen General de Competencias Municipales* [General Rules of Municipal Competence] that only public interest itself may justify and protect. The existence of a collaborating urban planning entity on no account exempts the local Government from the duty to accept housing development works and, therefore, take responsibility for their conservation once they are completed to acceptable standards.

The construction crisis has caused work already begun to come to a standstill in recent years, as well as the abandonment of unfinished housing development and constructions. When not executed correctly, the works may not be accepted by the city council, with the residents left defenseless and with no decent housing. This Institution urges municipal corporations to prevent the occupation of unfinished houses lacking a first occupancy permit. Buildings must be securely maintained. The building developer must maintain the housing development until delivery and acceptance by the city council, which solely assumes this responsibility once the

development has been completed. In many cases, a failure to comply with the obligation to complete construction work on time is also observed.

Urban construction permits

An ex officio investigation was opened with the Santa Cruz de Tenerife City Council, owing to the existence of over 6,000 urban development cases pending resolution by the *Gerencia Municipal de Urbanismo* [Municipal Urban Planning Manager], many of these concerning permits. The city council confirmed the existence of thousands of cases pending resolution since 2014 and announced its intention to pass a new bylaw for simplifying the resolution process, especially as regards the **granting of permits**.

As in previous years, this Institution continues to receive complaints concerning the slow processing of construction permits, whose granting or denial is in many cases delayed by months. An example of this is the case of a business that submitted an application to the Valencia City Council in September 2013 for a permit to operate a temporary open-air parking service, a request that has still not received a resolution. In 2015 the Institution suggested that the Municipal Government proceed to pass an express resolution and notify the applicant according to the law. It was necessary to repeat this Suggestion in 2016.

Inspections with Autonomous Community and Local Government have been carried out during 2016 concerning the existing difficulties in taking action against **children's recreational centers** who either lack an operating permit or are in possession of a permit yet are in reality functioning as preschools, leading to unqualified professional practice.

The lack of regulation in children's recreational centers in the Autonomous Community of Castile-La Mancha contributes to the problems identified in their processing. The problem lies in jurisdictional ambiguity. The *Consejería de Educación* [Regional Department for Education] does not consider the so-called play centers as an integrated part of the education system, such that supervision of their activities remains under municipal control. However, the control exercised by the city councils is solely related to urban planning, adapting the premises to urban planning parameters and enforcing formal compliance of the activities carried out, fundamentally in terms of opening hours. The supervision of these centers is therefore carried out both with respect to urban planning authorities and as regards public events, it being necessary to modify these regulations so that there is a clear line of competency in this area. The Institution has requested a report providing clarity on this issue.

Participation and access to urban planning information

Of note are the high number of complaints due to denied access to information, without grounds and generally through silence or the claiming of erroneous interpretations of laws, such as the *Ley de Transparencia* [Transparency Law]. As has already been pointed out in reports from previous years, denial of access to internal correspondence and reports is appropriate, yet the definition of “internal” must be understood in the strictest sense. This Institution has already observed in the past that the remarks "*entre órganos o entidades administrativas*" [among administrative authorities or entities] should not have been added to the Transparency Law, since correspondence from one authority to another — and even more so from one administration to another — is not internal but external.

This has therefore produced erroneous and legally restrictive interpretations from the Administration, often denying access or granting access only partially or with considerable delays to the maximum time period established.

The duty of conservation

Three ex officio investigations were opened in 2016. The first of these was focused on a plot of land on the Santa Catalina highway in Murcia that was filled with debris and garbage and which belonged to the Ministry of Public Works and Transport. Information was requested from the Murcia City Council, which confirmed that the area had been cleaned and that it was in a good state of conservation, such that the investigation was considered closed.

Another ex officio investigation was carried out due to the abandoned and unsanitary state of the old hospital *Puerta de Hierro* [Puerta de Hierro Hospital] in Madrid. The *Consejería de Sanidad de la Comunidad de Madrid* [Autonomous Community of Madrid Regional Department of Health] provided information as to the measures adopted for guaranteeing that the old hospital meet adequate standards of safety, health and public appearance in order to prevent its current abandoned state from aggravating the deterioration process.

The third ex officio investigation concerns the abandoned and ruinous state of the land on which the old *Mercado del Carmen* [Carmen Market] in Huelva previously stood.

The Institution also received complaints due to the poor state of conservation of the children's play areas in various municipalities. As has already been warned in the presentation of the study on *Seguridad y Accesibilidad de las Áreas de Juego Infantil* [Safety and Accessibility of Children's Play Areas], only two Autonomous Communities (Galicia and Andalusia) have a specific regulation on the safety measures to which children's play areas must comply. This does not mean that city councils may not use bylaws to regulate safety requirements for children's play areas installed in their municipality, by virtue of their

competency in town planning, urban environment (public parks and gardens, for the purposes of the issue at hand), locally owned buildings and facilities for sports and leisure.

Urban planning

Complaints concerning urban planning have increased. The majority are concerned with a lack of municipal action taken over the failure to comply with urban regulations.

The Institution determined that in certain cases the delays and gridlock in case processing is due to the lack of communication and coordination among the various municipal areas, in spite of the fact that the progress made on a case depends on a report that one area requests from another. Another reason is the misplacement of case files.

It is the Ombudsman Institution's opinion that, as the managing authority of the municipal government, the mayor's office is responsible for ensuring that the units and departments making up the same act in a coordinated fashion.

Figuring prominently among the complaints processed in 2016 is that concerning illegal installation and construction work in the Barrio Corbanera neighborhood of Santander. After urging the city council to carry out a site inspection to verify whether disturbance-causing, unsanitary or dangerous activities were being conducted, if the existing facilities were complying with the law and if these were protected by a municipal authorization, various cases for the reinstatement of urban regulations were opened in 2016. This complaint continues in process and is pending information as to the progress made.

Architectural barriers

The Ombudsman Institution confirmed the significant delays that continue to occur in approving the *II Plan Nacional de Accesibilidad* [2nd National Plan for Accessibility]. The time period granted by the consolidated wording of the *Ley General de derechos de las personas con discapacidad y de su inclusión social* [General Law on the rights of people with disabilities and their social inclusion] came to an end on 30 November 2014. Despite this and according to the latest information provided by the Ministry of Health, Social Services and Equality, this issue had still not been addressed in either the *Consejo Territorial de Servicios Sociales y del Sistema para la Autonomía y Atención a la Dependencia* [Territorial Council on Social Services and the System of Autonomy and Care of Dependents] or the *Consejo Nacional de la Discapacidad* [National Disability Council].

Complaints concerning **architectural barriers in the urban environment** increased in 2016. The majority concern problems identified on public roads.

The Institution sent out a questionnaire during October and November concerning perception of accessibility in the urban environment and, specifically, if the pedestrian routes, parks, gardens of cities and towns are able to be enjoyed by all residents, regardless of whether they suffer from any type of disability. The principal complaints with respect to pedestrian walkways focus on traffic lights and the tactile, visual or audio signals considered inadequate or deficient, as well as the insufficient amount of crossing time at crosswalks owing to antisocial behavior (cars, motorbikes or bicycles parked in walkways). The pavement hampering wheelchair access to children's play areas, a lack of accessible playground furniture and the benches in adjacent rest areas are indicated as barriers in parks and gardens.

After reviewing the information provided, the Ombudsman Institution has considered it appropriate to explore this issue in greater detail and request information from various Spanish municipalities as to the procedure in place for resolving complaints concerning architectural barriers in an urban setting. Nine *ex officio* investigations have therefore been opened, three with municipalities having less than 10,000 inhabitants, three with between 10,000 and 100,000 inhabitants and a further three with over 100,000 inhabitants.

The object of these investigations is to ascertain whether there is a fluid and efficient channel of communication so that citizens are made aware of the complaints concerning architectural barriers. Furthermore, this Institution is interested in verifying if the city councils consulted have assessed their urban environments and if they have prepared a *Plan Municipal de Accesibilidad* [Municipal Accessibility Plan] for the removal of existing architectural barriers in public roads and in municipal parks and gardens.

LOCAL GOVERNMENT

The Ombudsman Institution called for greater transparency from city councils when providing information

The Institution defended the right of citizens to access public information found in files and registers, and carried out inspections to ensure greater transparency and the provision of information on the part of city councils. It also reminded city councils of their obligation to allow the recording of plenary sessions.

Organization and legal framework of local corporations

After citizens complained that they were unable to record plenary sessions, the Institution suggested that the city councils allow this, provided that the interested parties respect the rules on personal data protection and the legally established limits.

In cases where city councils refuse to provide municipal information or fail to respond to citizens' written correspondence, the Institution suggested that these councils provide an express and timely response and that any administrative resolutions passed contain the full text and mention of any appropriate appeals. Moreover, in case of denial of information, the reasons for this denial should be specified.

The Institution defended citizens' right to access public information found in files and registers, carrying out inspections to ensure greater transparency in city councils. The said information must be provided as long as its content does not affect the security or defense of the state, criminal investigations or personal privacy. The Institution also took action to safeguard the right of the interested parties in a procedure to be informed of the status of their case, receiving copies of any documents that are part of the said procedure.

Some city councils informed the Ombudsman Institution that they were unable to meet requests for access to certain documents and files due to a lack of personnel, the high volume of information requested or an inability to locate the documents in question from among their files. The Institution responded that a lack of personnel does not constitute a legal excuse for failing to recognize the rights of citizens. Moreover, it is not possible to deny access to certain documents in the name of data protection regulations when such documents are public, or when the information requested does not qualify for such protection. A Suggestion was also made for city councils to respond expressly to requests received, providing the information requested or explaining the reasons for which access to this information cannot be granted.

Territory and population

The majority of cases in which citizens have experienced problems with the *empadronamiento* [registration of one's place of residence with local authorities] have led to the opening of inspections to shed light on the circumstances described. As such, the Institution was successful in having a city council modify the nationality of an adopted minor in the *padrón de habitantes* [registry of inhabitants] to reflect the information in the *libro de familia* [family record book] and the Civil Registry. Inspections also resulted in individuals who had been reported for being listed in a municipality's registry of inhabitants without actually having their habitual residence in the said municipality being deleted from the registry by the respective city council.

Complaints were received from foreigners experiencing difficulties registering their local residence, either because they were asked for additional documentation with respect to that requested of Spanish nationals, or because their applications for the renewal of their local residency registration were verbally denied, which is not standard practice. Mention must be made of complaints processed with the **City Council for the Autonomous City of Ceuta** due to its interpretation of the regulations governing the registration of inhabitants: instead of the applying these regulations, the council applies the civil law of another country or does not register residents in the Temporary Accommodation Centers for Immigrants, providing no reason whatsoever and failing to offer applicants either the corresponding appeal or inclusion in the registry of inhabitants, in the case of immigrants in possession of a provisional refugee identity card. The Ombudsman Institution put forth Suggestions for registering the interested parties, further to verifying that their habitual residence is in fact the address declared in their application, and even if they have irregular status with respect to other legal aspects.

Public municipal activities and services

Complaints were received in 2016 concerning the poor conservation and maintenance of **local public roads**. Inspections were opened for verifying the complaints lodged due to the lack of paving for rural streets and roads, or because the residents of a housing development had set up barriers impeding general vehicular access to its streets even in cases where these streets are public.

The Institution also received complaints due to the unsatisfactory provision of other municipal public services classified as essential and obligatory, such as the supply of water, street cleaning and public streetlights.

Complaints about green zones were also processed, as regards their state of abandonment, lack of cleanliness or their being used for other purposes such as vehicle parking. The conservation of green zones is a constant concern for this Institution insofar as

they constitute a guarantee of citizens' quality of life. This is reflected in the frequency with which the local government is encouraged to include provisions for green zones for public use in their planning decisions.

A noteworthy example is an inspection concerning the deterioration and obsolete state of sanitation infrastructure and the collection of rainwater in Godella (Valencia), which has led to floods causing significant financial damage.

An ex officio investigation was likewise carried out concerning the abandoned state of the so-called *barrio del Aeropuerto* [Airport neighborhood] belonging to Madrid's Barajas district. The Madrid City Council was requested to provide information on the urban environment conditions of this neighborhood, its state of conservation and the level of public services provided. The Council was also requested to confirm the measures foreseen for responding to residents' claims.

PUBLIC DUTY AND EMPLOYMENT

The Institution launched an inspection into the increasing assaults on public employees

An inspection was opened in 2016 concerning the increase in physical and verbal assaults on public employees. An investigation was also conducted into the payment of bills for medical services for life-or-death emergencies at centers not belonging to the Social Security system, in which the payment for these services is accepted but not the interest generated in arrears until the claim is actually reviewed.

Offers of public employment

For certain public hiring processes, there is persistent failure to comply with the mandate established in the *Estatuto Básico del Empleado Público* [Basic Statute on Public Employment] regarding the time frame for the tendering of public employment offers for a non-extendable period of three years.

On the other hand, limited access to public employment through staff turnover has led the Administration to rely heavily on internal promotion procedures for certain sections and departments.

While the Administration should encourage the internal promotion of its employees, it should avoid turning this into an exclusive system for accessing certain sections and departments, preventing applicants through the free-access system, that is to say for individuals who have never held a position of public employment.

For example, as the result of a complaint concerning the 2015 *Oferta de Empleo Público* [Offer of Public Employment] in which certain sections and departments were being accessed exclusively through internal promotion, a review was carried out of the offers of public employment in recent years. The findings confirmed a recurrence in this practice, affecting the *Cuerpo General Administrativo de la Administración del Estado* [General State Administrative Corps], the *Cuerpo Especial de Instituciones Penitenciarias* [Special Prison Corps] and the *Escala Técnica de Gestión de Organismos Autónomos* [Technical Department for the Management for Autonomous Community Institutions].

In response to a request for a report in this regard, the then *Secretaría de Estado de Administraciones Públicas* [Office of the Secretary of State for Public Administrations] confirmed that the dates for the latest round of external-access vacancy announcements for the aforementioned sections and departments were as follows: 1992 for the General State Administrative Corps; 1988 for the Special Prison Corps and 1992 for the Technical Department for the Management for Autonomous Community Institutions.

It was the Ombudsman Institution's opinion that this situation implied limited access to public employment, which is not in keeping with the constitutional principles guiding the same.

The Administration argued that the vacancies announced in its provisions for internal promotion do not count as part of the maximum available vacancies due to the corresponding staff turnover, assuring that there was no existing legal provision conditioning internally-promoted vacancy announcements on the occurrence of external vacancy announcements. It likewise maintained that internal promotion vacancies correspond to the legal right of civil servants to career progression and are an instrument for the personnel and organizational planning of human resources for administrations.

The Institution issued a Recommendation to the then Office of the Secretary of State for Public Administrations for promoting external-access vacancies in upcoming offers of public employment for those sections and departments where these had not been available in recent years, insofar as budgetary and organizational planning of human resources allowed. The said Recommendation was accepted.

Hiring processes

For yet another year, delays on the part of certain administrations have been observed, especially in local corporations, with respect to the hiring processes for available vacancies once the relevant announcements are approved and published.

The Ombudsman Institution recommended that administrations provide candidates with timely information regarding the progress of the hiring processes in which they participate and that any difficulties arising in these processes be resolved in a reasonable period of time, respecting these candidates' professional and work-related expectations.

Moreover, inspections have been carried out due to the lack of reasons given for resolutions adopted by selection boards in response to complaints lodged by candidates, as well as the failure to respond to appeals lodged by participants in hiring processes, either concerning their progress or their outcome, since on many occasions administrations do not pass resolutions.

Referring to the entities tendering the offers in question, the Ombudsman Institution insists that the decision to pass or not pass a resolution for appeals and complaints put forth by participants is not at the discretion of those responsible for hiring decisions, since one thing is the area of expertise in which the professional discretion of the selection boards operates, and quite another the obligation to explain the reasons for this expert decision when these have been expressly denounced or where the review of the hiring process reflected by this expert decision is being considered.

As the number of vacancies announced in offers of state public employment has increased, so the number of participants invited to participate in hiring processes has also increased. Aspiring candidates for public employment have lodged complaints with the

Ombudsman Institution, calling for greater transparency both in hiring processes and in the resolutions for the same. A fundamental concern for this Institution has been the safeguarding of the principles of equality, merit and ability in access to public employment, as well as transparency and openness as regards selection boards, always respecting the margin of discretion conferred upon these professional associations.

Through the complaints received, it has been observed that the actions taken by administrations at times do not adhere to the principles contained in the regulations, since participants in hiring processes inform this Institution that they are not provided with a copy of exercises performed or are denied access to the question papers used in the exams.

As such, an inspection was carried out with the *Dirección General de la Guardia Civil* [General Directorate of the Civil Guard] concerning the experience of participants in the 2016 hiring round for access to the Department of Corporals and Officers. The candidates stated that the selection board published the official answer keys to the spelling, knowledge and language exam yet did not publish the questions corresponding to each exercise. Moreover, the candidates were not allowed to keep a copy of the question paper along with the carbon copy of their answer sheet, something that is common practice in the majority of hiring processes announced by the General State Administration, in accordance with the principles of transparency and openness which should inspire any hiring process.

When it came time to making any claims regarding this process based on the published answer key, the affected parties found themselves unable to do so, as they did not have an exact recollection of the questions asked by the panel in the first place.

With the inspections underway, the General Directorate of the Civil Guard claimed that the rules governing the selection process for the aforementioned exam did not include the delivery or publication of question booklets provided to candidates, alluding moreover to the "confidential nature" of the exam questions and the efficient functioning of the public services.

The Ombudsman Institution has affirmed that even though there is no specific regulation imposing this obligation on the hiring entity, it is worth pointing out that providing or publishing exam question booklets —as is currently done with the answer key — would be a positive step for this institution, as interested candidates may, where applicable, present the pertinent claims with greater support for their arguments.

The Ombudsman Institution recommended that the General Directorate of the Civil Guard adopt appropriate measures for allowing candidates to retain or access exam question booklets under similar terms as those for the publication of answer keys and in keeping with the principles of transparency and openness that must govern processes for accessing public employment, since the State should never seek to decide against citizens where at least one interpretation in their favor is available. The said Recommendation is pending a response.

Remuneration for public employment

With respect to wages, an important number of the complaints lodged have been due to reductions in the same that occur when a civil servant is in a situation of temporary disability.

On an exceptional basis and when duly justified, each administration may determine the cases in which staff may receive a wage supplement, reaching up to a maximum of one hundred per cent of wages and expressly including cases of surgical intervention.

Working conditions for public employees

The increase in physical assaults and verbal threats towards public employees on the job was the reason behind the launching of an ex officio investigation in 2016 with the then Office of the Secretary of State for Public Administrations in order to determine the scope of these situations, specific measures to be taken and the systems in place for protection as established by the *Protocolo de actuación frente a la violencia en el trabajo* [Action Protocol for violence in the workplace] published at the end of 2015.

The said protocol is considered an instrument of common use throughout the entire General State Administration as a whole, without prejudice to its being adapted to the specific characteristics of each department or entity, depending on the type of activity that is being protected.

The execution of the Action Protocol for violence in the workplace requires the endowment of the corresponding budgetary items with sufficient appropriations for carrying out the necessary work. The affected civil servants informed this Institution that the aforementioned protocol was not applied, precisely due to the lack of budgetary appropriations.

In response, the *Dirección General de la Función Pública* [Directorate General of the Civil Service] confirmed that it was pending receipt of the review of the aforementioned protocol carried out by the sections and departments of the General State Administration in the first six months of 2016, in order to proceed with the adaptation of the existing risk levels in each workplace. The Directorate General confirmed that only 50% of the sections had provided the necessary information and, when this information had been received in its entirety, it would be duly submitted to this Institution.

According to the Basic Statute on Public Employment, civil servants have the right (provided that both parents, adopters or permanent adoptive or foster guardians are working) to a **reduced working day** of at least half the normal duration, receiving full wages from the budget allocated for the same by the institution or entity where their services are provided for the care, during hospitalization and ongoing treatment, of a minor-aged child suffering from cancer or any other serious illness involving long-term hospitalization as demonstrated by a report from the healthcare services and up to a maximum limit of such time when the minor reaches 18 years of age.

This 50% reduced working day is at times insufficient, such that civil servants request that a further reduction in the working day be granted in order to meet the needs of their ailing children.

Contrary to other administrations, where higher percentages of remunerated reduced working days are granted, in the Directorate General of the Police the maximum reduction granted to civil servants with minor-aged children in such circumstances was found to be 50%, with higher percentages not being granted based on the fact that the criteria for doing so had not been developed by the General State Administration. In the Ombudsman Institution's opinion, this could constitute a grievance with respect to other public employees, as well as a detriment to minors' rights and the care required in these situations.

For this reason, inspections were opened in order to determine the scope and interpretation applied by this authority with respect to the possibility of adopting a percentage of reduced working day greater than 50%, since based on the regulation it is understood that the reduction needs to be, at minimum, half of the working day, with the legislator not having established a maximum limit for the percentage of the said reduction.

The Ombudsman Institution reminded the Directorate General of the Police of its legal obligation to assess and evaluate the circumstances accompanying each of the police civil servant cases under consideration in the granting of permission for a reduced working day of over 50% for cases of care for a minor-aged child suffering from cancer or other serious illness, and that justification be provided for such a decision.

Complaints concerning **mobility** — and the various systems considered for making it a reality — focused again on procedures for voluntary mobility in 2016.

In this sense, the difficulties encountered by civil servants in changing their job position for reasons of reconciling work with family life were notable. While certain regulatory mechanisms exist which are linked to the health or rehabilitation of civil servants, their spouses or the children in their care, the current regulations suffer from a certain lack of flexibility in allowing for civil servant mobility when it comes to other reasons for reconciliation.

As regards mobility in terms of merit-based selection processes or transfers, it is important to ensure sufficient transparency of processes, guaranteeing their progress in accordance with the applicable procedural regulations.

Pensions and benefits

Ex officio investigations were initiated in 2016 with the *Mutualidad General de Funcionarios Civiles del Estado* [General Mutual Society for State Civil Servants, abbreviated as Muface in Spanish] as regards claims made by its members with respect to payment of bills for medical services provided at centers not supported by Social Security in cases of life-or-death emergency in which payment for medical services to these providers was accepted. However,

this does not cover interest generated in arrears until the claim submitted is reviewed, a cost which falls directly to the mutual members.

In these cases, the non-affiliated medical center that has provided its services submits the bill for the costs involved directly to the mutual member, granting a time period for voluntary payment. The member, under the impression that these services are covered by their mutual society's affiliated insurer, claims the amount of the payment from this insurer according to the terms and time period established in the corresponding policy.

When the affiliated insurer denies payment, the member then claims these costs from the General Mutual Society for State Civil Servants, which has a time period of three or six months to settle the claim (depending on whether it is brought before the *Comisión Mixta Provincial* [Joint Provincial Committee] or, subsequently, the *Comisión Nacional* [National Committee]). This means that the time period for voluntary payment comes to an end and, with no payment having been made interest is generated in arrears, falling directly to the mutual member.

Once General Mutual Society for State Civil Servants calculates the claim and assumes payment of the costs involved in the life-and-death emergency care provided to the mutual member, it only assumes responsibility for this payment and for any interest generated in arrears from the moment that the claim was settled, yet not for the interest that has accrued up until this time.

It is this Institution's opinion that acceptance of payment by the General Mutual Society for State Civil Servants does not exempt the affiliated insurer responsible for this payment from covering any surcharges due to the expiry of the voluntary payment period, since this very interest has been caused by the insurer's initial criteria for refusing to pay the bill even where the resolution passed by the General Mutual Society for State Civil Servants recognizes the right claimed by the mutual member.

Successive agreements have established that if insurers do not fulfill their obligation once a claim has been settled and do not cover payment for the amount of the life-or-death emergency services provided, payment will be made directly to the healthcare provider, deducting it from the next monthly payment to be paid to the insurer. It is therefore a matter in which the corresponding cost of the services provided will be claimed from the third party responsible for payment, that is to say from the affiliated insurer, in accordance with the regulations in force.

In this Institution's opinion, it is not appropriate to deny any obligation of the affiliated insurer with respect to the payment of interest in arrears generated prior to the settlement of a claim, thus transferring the responsibility for not having made payment according to the time frame and method stipulated solely to the mutual member, since the delay in payment is due to the initial considerations imposed by the insurer refusing to cover the cost, such that logic dictates that this insurer should assume the surcharges and administrative processing fees produced as a result of the unmet obligation to pay. Were this not the case, a breach of the right to healthcare assistance would occur, resulting in financial damage to the mutual member.

A Recommendation has therefore been made that the mutual society consider reviewing the clauses of current and successive agreements such that, for cases in which the insurer is responsible for costs incurred by life-or-death emergency services provided by non-affiliated medical centers, such payment is covered, including the entirety of any surcharges and late payment interest generated.

Finally, once again, mention should be made of complaints in which members voice their disagreement with the mutual society's actions when, faced with an emergency health situation, the members or the individuals handling the said situation ask for medical assistance on the 112 telephone number, which results in the patient being transferred to a public medical center, since emergency medical staff generally insist on the impossibility of transfer to a different facility. This means that, subsequently, the patient or his or her family members must assume the costs generated by this care and initiate the process for reimbursement of expenses, which in the majority of cases is denied by the mutual society, which does not consider it to be a case of life or death.

This Institution insists on the need to adopt solutions for these cases, through the formalization of agreements between the mutual society and those in charge of public emergency medical teams for the purpose of providing cover for costs incurred in the said circumstances.

Army and navy

In the area of military administration, particular mention must be made of the numerous complaints lodged in 2016 by non-career professional army and navy servicemen, who shared their concern with the Ombudsman Institution about the situation affecting them once their long term contract with the *Fuerzas Armadas* [Armed Forces] comes to an end, on reaching 45 years of age and after 18 years of service.

The interested parties stated that the military administration had not fully complied with the right to professional promotion, measures for facilitating labor market entry and complementary actions foreseen in the *Ley de tropa y marinería* [Law on army and navy].

The aforementioned regulations stipulate that, for such time as they remain in active service, professional army and navy servicemen will be provided with the necessary means of guidance, encouragement and support for their full entry into the labor market on completion of their commitment to the Armed Forces. For this purpose, vocational training activities will be deployed in order to complement their professional qualifications, in addition to the development of self-employment programs and measures for supporting the viability of these initiatives. To this end, the *Ministerio de Defensa* [Ministry of Defense] will organize and convene with public institutions and private entities for carrying out activities focused on facilitating the entry of professional army and navy servicemen into the labor market.

The number of available positions announced in recent years for internal promotion to the status of career serviceman have been scarce, which has limited expectations for continuity

in the Armed Forces for those undertaking the commitment which is now coming to an end. If they have, moreover, received insufficient training and little resources for their full entry into the labor market, their finding employment at the age at which their contract has finalized is uncertain at the very least.

For all of these reasons, inspections have been opened with the *Subsecretaría de Defensa* [Office of the Sub secretary of Defense] for considering the contributing circumstances and any further actions appropriate for this Institution, where applicable.

State work force

Reports were received in 2016 from various state business associations concerning complaints related to hiring processes for the entry of contract staff or concerning the rights of contract staff. The said associations consider that because these workers are not classified as state employees, the regulations for common state procedure do not apply and they are therefore free of any obligations claimed by interested parties.

This Institution has provided an account in previous reports of the difficulties facing contract staff in obtaining voluntary inter-government mobility outside of the territorial limits of the autonomous community where they provide their services. Already in 2000, the Institution encouraged administrations to put systems in place for facilitating staff mobility. In 2013, owing to a lack of progress in this area, new ex officio investigations were opened.

Throughout these investigations, the Institution has observed that the limited measures adopted to date have not achieved their anticipated results, hence the ongoing practical impossibility of this staff being able to obtain voluntary mobility among the autonomous community governments, and between these and the central government.

TRANSPARENCY, FINANCIAL LIABILITY AND EXPROPRIATION

The Ombudsman Institution continued to work towards improving transparency of the administrations

The Institution carried out various inspections for improving transparency of the administrations. The Ombudsman Institution has sought a simple and efficient method for monitoring resolutions, passed not only by the Council on Transparency and Good Governance but by similar autonomous community entities as well.

Transparency and access to public information

In 2015 and in application of the Transparency Law, the *Consejo de Transparencia y Buen Gobierno* [Council on Transparency and Good Governance, abbreviated as CTBG in Spanish] began to refer its resolutions to the Institution, in keeping with Article 24.5 of the aforementioned legal ruling. Since then, the following has been confirmed:

- The Ombudsman Institution has sought a simple and effective method for monitoring resolutions passed not only by the Council on Transparency and Good Governance but by similar autonomous community entities as well.
- In general, investigations are only carried out for cases in which the organisms responsible for transparency do not themselves encourage the State to comply with their resolution. In practice, however, and especially with respect to the Council on Transparency and Good Governance, what the Ombudsman Institution decided to suggest already occurs: calls for State compliance with the approved resolution passed by the council in favor of the applicant requesting information.
- Something similar occurs in the autonomous communities: for example, in the *Consejo de la Transparencia* [Council on Transparency] of the Region of Murcia. The Ombudsman Institution is weighing the opportunity to open an ex officio investigation with the Public Administration concerned owing to the resolution dictated by the council on transparency (whether state or autonomous community), the findings of which it will immediately inform the organisms (councils).
- The Ombudsman Institution does not take action regarding resolutions that are dismissed or claims that are either filed or not accepted for processing.

Among the most relevant inspections worth pointing out is the Recommendation for implementing a system for obtaining immediate, complete and reliable information on the corporate credit card movements of a port authority accessible to the public.

In addition to this inspection, others regarding transparency of the administrations took place, concerning the following: participation and access to information concerning urban planning; the public declaration of Personal Income Tax by civil servants; the organization and legal framework for local corporations; and civil service hiring processes.

Financial liability

Procedural delays. The delays in concluding procedures is a habitual practice on the part of the administrations involved, as has been observed for yet another year after numerous complaints were received.

Delays in healthcare services. The delay in resolving cases of financial liability acquires the greatest significance in healthcare, given the numerous authorities and organisms intervening in the same, as well as the various activities and reports essential for their resolution.

Expropriation

Administration inactivity in carrying out expropriation procedures and a lack of public momentum as regards fair price payment procedures and late-payment interests constitute the common thread for complaints in this respect. The State often makes reference to a scarcity of financial resources for the payment of amounts established as the fair price, yet it does not provide details on measures for rectifying this situation.

Delays in case processing and failure to pay the fair price. Complaints concerning delays in the payment of the fair price have a long and exhaustive process, many of them addressed to the *Secretaría de Estado de Infraestructuras, Transporte y Vivienda* [Office of the Secretary of State for Infrastructure, Transport and Housing] of the Ministry of Public Works and Transport. Moreover, their conclusion takes time, sometimes years, as the problem continues to endure.

Slow processing is observed in practically all complaints lodged concerning expropriation and the failure to pay the fair price, denoting a lack of budget available for expropriations carried out years ago. In such cases, the State does not indicate if these amounts are included in the budget for the following year's expenses, nor does it provide indication of the measures adopted for cancelling the debt. These delays are detrimental to all: both to the State, which will see higher costs in the execution of works, and to citizens, who do not receive compensation for the forced sale of their possessions.

The problem is aggravated where a delay causes particular harm to a citizen, as might be the case when not being able to cover the payment for a mortgage that the citizen in

question has been forced to take out in order to transfer the residence affected by the expropriation.

It appears contradictory that the Office of the Secretary of State for Infrastructure, Transport and Housing takes its time to assume payment for the debt caused by an expropriation, and yet this same General State Administration, when it comes to the State Agency for Tax Administration, does not show the same flexibility.

Non-payment of interest. Article 57 of the *Ley de Expropiación Forzosa* [Law on Expropriation] stipulates that the fair price accrues interest in arrears once six months have elapsed from the date the said price was set and until payment is made. These interests accrue by legal mandate and their payment must be automatic. However, citizens have to carry out numerous bureaucratic tasks until they can obtain a settlement and insist on its payment.

The State generally delays payment, to the extent that the net amount claimable and now expired — which was the reason for the late payment interest — begins to accrue new interest. Contrary to the interest derived directly from the Law on Expropriation, which does not expire, the aforementioned interest does expire, since Article 25 of the *Ley General Presupuestaria* [General Budgetary Law] stipulates that debts expire after four years.

NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE (NPM)

The Ombudsman visited 101 places of deprivation of liberty in capacity of NPM

101 visits were made to places of deprivation of liberty in 2016. The Ombudsman participated in 9 of these. The NPM drew up 12 Recommendations, 336 Suggestions and 4 Reminders of legal obligations. 131 ex officio cases were also opened.

In 2016, the Institution, in its capacity as the National Preventive Mechanism against Torture (NPM), made 101 visits to centers of deprivation of liberty. The Ombudsman participated in 9 of these. Members from the NPM Advisory Council participated in 14 visits, with advisers from Autonomous Parliamentary Commissioners (Ombudsman of Andalusia, Catalanian Ombudsman, Ombudsman of Aragon, Valencian Ombudsman, Ombudsman of Castile and Leon, the Ombudsman of the Basque Country, Canary Island Ombudsman and the Galician Ombudsman) participating in 8 visits.

According to the typology of the units visited, the distribution of these inspections are as follows:

PLACES		NO. VISITS
Short-term places of deprivation of liberty	Prisons in judicial buildings	2
	Autonomous community police stations	2
	Local police stations	9
	Police stations and other short-term places of custody of the National Police Force	23
	Barracks and other places of short-term custody of the Civil Guard	21
	Rooms for individuals denied entry and asylum seekers at border crossing points	2

Medium-term places of deprivation of liberty	Immigrant Detention Centers (CIE)	6
Long-term places of deprivation of liberty	Juvenile offender facilities	10
	Prison facilities	18
	Social healthcare centers	4
Instrumental places of deprivation of liberty	Transfer operations of foreigners from Algeciras to Ceuta	1
	Transfer operations of foreigners (FRONTEX)	2
	Hospital Care Units	1
Total		101

Of the visits made in 2016, 17 were multidisciplinary, with the collaboration of external specialists, experts in medicine, forensic medicine, psychiatry and psychology. Four social healthcare centers, 5 youth detention centers, and 9 prisons were visited.

61 monitoring visits were made for the verification of compliance with Recommendations made on previous visits and identification of possible new deficiencies.

In the visits to the National Police Force and the Civil Guard detention premises during 2016, the Institution placed special interest to verify the degree of compliance with the provisions of Instruction 11/2015, of the Office of the Secretary of State for Security, which approves the "technical instruction for the design and construction of areas of detention" and Instruction 12/2015 of the Office of the Secretary of State for Security, which approves the "Action Protocol for State Security Forces in matters of Custody of Detainees". In addition, it was confirmed that there are standard forms available with information on rights that are fully adapted to the reform of article 520 of the Law of Criminal Procedure, carried out by the Organic Law 13/2015, 5 October, as well as information on the habeas corpus procedure at all premises visited in 2016. These forms exist in different languages.

The Institution carried out a visit with the European Committee for the Prevention of Torture (CPT): Repatriation operation, FRONTEX flight from Madrid to Bogota and Santo Domingo. The CPT, in the framework of the *ad hoc* visit carried out to Spain from 17 to 19 February, oversaw the reception at the Madrid-Barajas airport of foreign persons who were to be repatriated and the boarding of the plane, as well as the procedure followed during the whole

flight until arrival at the destination. Personnel from the Ombudsman, in its capacity of NPM, had an interview with the delegation and accompanied them during the whole flight.

As a direct result of monitoring the deprivation of liberty premises, 12 Recommendations, 336 Suggestions and 4 Reminders of legal obligations were made. In addition, the NPM opened investigations on 131 ex officio cases in 2016.

On 26 September 2016, the Institution held a meeting at its headquarters with a member of the European Subcommittee for the Prevention of Torture (SPT) of the UN and responsible for the European countries and the Spanish Rapporteur, Mari Amos, in order to achieve a more intense cooperation with that body.

INSTITUTIONAL REPRESENTATION ACTIVITIES

INSTITUTIONAL REPRESENTATION ACTIVITIES

This chapter offers a summary of the Institution's schedule. In general, it is the Ombudsman or her Deputy Ombudsmen who carry out these activities, although on many occasions they are accompanied by the Ombudsman Institution's technical personnel.

Appearance before the Spanish Parliament

Since 2013, the Institution has fulfilled its commitment to submit its Annual Report to the presidents of the Spanish Congress and the Senate before the end of February so as to provide deputies and senators with an up-to-date overview of its activities.

On 25 February the Ombudsman, accompanied by her deputies and the Secretary General, presented the 2015 Report to the presidents of the two chambers of the Spanish Parliament. She appeared before the *Comisión Mixta de Relaciones con el Defensor del Pueblo* [Joint Commission on Relations with the Ombudsman Institution] on 5 April, before the Senate Plenary Session on 12 April and before the Plenary Session of the Spanish Congress on the following day.

On 20 July the Ombudsman presented the 2015 Annual Report on the National Preventive Mechanism Against Torture (NPM), the preview of the 2016 Ombudsman Institution Annual Report — corresponding to the first semester — and the study entitled “Asylum in Spain. International protection and reception system resources”. The study on asylum was debated by the Joint Commission on Relations with the Ombudsman Institution on 20 December.

On 20 December the Ombudsman appeared before the Joint Commission on Relations with the Ombudsman Institution to provide information on inspections carried out at the Immigrant Detention Center of Aluche (Madrid).

Relations with the Autonomous Community Parliamentary Commissions

This year the Navarre Ombudsman has been responsible for organizing the 31st Conference for Coordination, held in Pamplona on 22 and 23 September, which dealt with "Invasion of noise in the home: the inviolability of the home and the right to physical and mental integrity." The Ombudsman, her deputies, the Secretary General, the Ombudsman's Director of Cabinet and the Technical Director of Environment and Urban Planning participated on behalf of the Institution.

A preparatory workshop in Vitoria (Alava) was held in preparation of the conference on 24 May, attended by the Technical Director of Environment and Urban Planning.

The Institution also maintains contacts and bilateral relations with the autonomous community Ombudsmen in order to study the best method for coordinating and unifying criteria for action, especially when the investigation of citizens' complaints is focused on common

issues and shared areas of supervision. Meetings were held this year with the Canary Islands Ombudsman and the Basque Country Ombudsman.

Working meetings

Working meetings with social organizations occupy most of the Institution's schedule. These partners are necessary for the efficient execution of our functions. In many cases they allow us to reach particularly vulnerable sections of the population who are unlikely to approach the Institution.

Meetings with the Administration and other public service authorities

As regards the administration of justice, a meeting was held with the president of the General Council of the Judiciary, who was accompanied by two council members, in order to strengthen cooperation between both institutions, find solutions for delays, fully implement new technologies and carry out the necessary coordination among the different state and autonomous community authorities with competency in the area.

Interviews were held with representatives from the three territorial levels of the public administrations: State, such as the director general of the Police or the director of the *Oficina Nacional de Caza* [National Hunting Office]; Autonomous Community, such as authorities from Castile-La Mancha or from the Community of Madrid Regional Department of Education, Youth and Sports; and Local, such as the *Federación Española de Municipios y Provincias* [Spanish Federation of Municipalities and Provinces, abbreviated as FEMP in Spanish] or the City Council of Sant Feliu de Pallerols (Gerona).

The Ombudsman also made institutional visits to the mayor's offices of Zamora, Palencia and Vitoria-Gasteiz (Alava).

Meetings with social and citizens' organizations

The Ombudsman, her deputies and the Institution's technical personnel hold meetings and working meetings with representatives of social organizations and businesses — and with private citizens as well — in order to do their work in a way that keeps close to what is happening in reality.

Meetings have been held with representatives of ADABANKIA [*Asociación en Defensa de los Accionistas de Bankia* - Association in Defense of Bankia Shareholders], ING Bank, FACUA [*Federación de Asociaciones de Consumidores y Usuarios de Andalucía* - Federation of Andalusia Consumer and User Associations], *Asociación PAH*, *Plataforma PAH* [*Plataforma de Afectados por la Hipoteca* - Platform for People Affected by Mortgages], ASUFIN [*Asociación de Usuarios Financieros* - Association of Users of Financial Products] and ADICAE [*Asociación de*

Usuarios de Bancos, Cajas y Seguros de España - Association of Users of Spanish Banks, Credit Unions and Insurers] regarding the rights of banking and loan clients.

Meetings on school bullying were held with the *Fundación ANAR [Ayuda a Niños y Adolescentes en Riesgo* - Help for At-Risk Children and Adolescents Foundation] which manages a telephone helpline for minors and adolescents, Save the Children, the parents of a child victim of school violence and with the author of the book *Tratamiento EMDR del Bullying y el Mobbing Una guía para terapeutas* [EMDR - Eye movement desensitization and reprocessing - Therapy for Bullying and Harassment. A guide for therapists].

A meeting was held with representatives from the *Coordinadora de Representantes de Estudiantes de Universidades Públicas* [Coordinator of Public University Student Representatives] concerning access to scholarships.

Meetings were held with representatives from various non-government organizations [abbreviated as ONG in Spanish] collaborating in the protection and social integration of people with international protection needs in Spain: ACCEM [*Asociación Comisión Católica Española de Migraciones* - Spanish Catholic Migrations Association Commission], CEAR [*Comisión Española de Ayuda al Refugiado* - Spanish Commission for Refugee Assistance], the *Coordinadora de Barrios* [Neighborhood Coordinator], the Red Cross, the *Red de Acogida Interlavapiés* [Interlavapies Shelter Network], the *Servicio Jesuita a Migrantes* [Jesuit Migrants Service], the United Nations World Food Programme and the *Foro por los Derechos de las Personas Refugiadas y Migrantes* [Forum for the Rights of Refugees and Migrants].

A meeting was likewise held with the *Fundación +34* [+34 Foundation] on protection of Spanish prisoners abroad, also attended by family members and ex-prisoners.

Regarding the rights of people with disabilities, meetings were held with representatives of the Spanish Committee of Representatives of Persons with Disabilities in order to discuss the deprivation of the vote for people with disabilities, with representatives of the *Instituto Lectura Fácil* [Easy Reading Institute], with authorities from the *Plena Inclusión* [Full Inclusion] association, the Francisco Luzón Foundation concerning protection for people suffering from Amyotrophic Lateral Sclerosis [ALS- abbreviated in Spanish as ELA], with the INTEGRA Foundation, the *Asociación Ayuda Afasia* [Help Aphasia Association] and the *Confederación Salud Mental España* [Spanish Confederation of Mental Health].

For issues related to the right to healthcare, interviews were held with the *Observatorio Español de Cannabis Medicinal* [Spanish Observatory for Medicinal Cannabis], the *Sociedad Española de Cardiología* [Spanish Society of Cardiology], the Mylan pharmaceutical company, the *Plataforma de Padres de Pacientes de Oftalmología Pediátrica de La Paz* [La Paz Platform for Parents of Pediatric Ophthalmology Patients], the *Colegio de Farmacéuticos de Andalucía* [Andalusia Professional Pharmaceutical Association], the *Comité Científico en Radiofrecuencias y Salud* [Scientific Committee on Radiofrequency and Health], *Celíacos en Acción* [Celiacs in Action] and the *Federación de Asociaciones de Celíacos de España* [Spanish Federation of Celiac Associations].

Concerning the rights of different professional interest groups, meetings were held with the *Sindicato de Técnicos de Enfermería* [Nursing Professionals Union], the *Asociación Pro Guardia Civil* [Pro Civil Guard Association], the *Sindicato de trabajadores de la Administración de Justicia* [Department of Justice Workers Union], *Asociación de Empresas de Ortopedia Técnica de Andalucía* [Andalusia Association of Technical Orthopedic Businesses] and the *Federación Española de Ortesistas Protésistas* [Spanish Federation of Prosthetic Orthesists].

On labor issues, a meeting was held with the *Federación Española de Diabetes* [Spanish Federation of Diabetes] concerning access to public employment for individuals suffering from this disease.

Talks were held with *Comisiones Obreras* [common name for the Union Confederation of Workers Committees] over energy poverty, and with representatives of the *Federación Española de Familias Numerosas* [Spanish Federation of Large Families] over their difficulties coping with electricity costs.

With respect to housing, meetings were held with Caixa bank and the cooperative from the *Residencial Metropolitano de Cuatro Caminos* [Metropolitan Housing Development in the Cuatro Caminos neighborhood].

Meetings were also held with the *Unión Internacional para la Defensa de los Motociclistas* [International Union for the Defense of Motorcyclists] and the *Federación Nacional de Asociaciones de Mujeres Gitanas (Kamira)* [National Federation of Associations of Roma Women, also known as Kamira].

As regards the rights and protection of the elderly, meetings were held with representatives from the *Seguir Creando* [Keep Creating] platform and with the winners of the *Premio ABC Solidario* [ABC Public Spirit Award] for the presentation of their project "*Sistema de detección de caídas para personas mayores*" [Fall detection system for the elderly].

Meetings were held with the Hazteoir.org and Change.org platforms for citizen collaboration.

Meetings were arranged on certain occasions for the delivery of reports and studies prepared by various entities to the Ombudsman Institution. The following publications were submitted:

- *La transmisión intergeneracional de la pobreza: factores, procesos y propuestas para la intervención.* [The intergenerational transmission of poverty: factors, processes and proposals for intervention] Caritas.
- *Informe Anual 2015. Teléfono ANAR* [2015 Annual Report. ANAR Phone Line] ANAR Foundation.
- *El asilo en España: un sistema de acogida poco acogedor* [Asylum in Spain: an unreceptive system of reception]. Amnesty International.
- *Necesita mejorar. Por un sistema educativo que no deje a nadie atrás* [Needs improvement. For an education system that leaves no one behind]. Save the Children.

- *Sanidad penitenciaria* [Prison health] *Asociación de Derechos Humanos y Sociedad de Medicina Penitenciaria* [Association of Human Rights and Prison Medicine Society].

Study preparation meetings

The Plenary Session of the Spanish Congress entrusted the Ombudsman Institution with the preparation of a study specifically focusing on the **victims of terrorism**. To meet this request, information-gathering meetings were held with: Joseba Arregi, ex minister and spokesperson for the Basque Government; Mikel Buesa, president of the *Foro de Ermua* [Ermua Forum] from 2005 to 2007; Teresa Jiménez Becerril, member of the *Grupo del Partido Popular* [Popular Party Group] in the European Parliament; Alfonso Sánchez, president of the *Asociación Víctimas del Terrorismo* [Association of Victims of Terrorism, abbreviated as AVT in Spanish] and Miguel Folguera, trustee of the *Association of Victims of Terrorism*. The report was presented to the Spanish Parliament on 23 December.

Working meetings were also held on 26 and 27 October with the main associations for **celiac sufferers**, suppliers of specialized products and scientific societies to assess the needs and problems faced by individuals affected by celiac disease. The conclusions served to prepare a report which will be published soon.

Visits to facilities and centers of deprivation of liberty and meetings with the Committee for the Prevention of Torture

The Ombudsman personally visited 9 facilities, among these police stations, Civil Guard units, prisons, centers for minors, living facilities for the elderly and immigrant detention centers.

The Institution oversaw a foreigner repatriation flight organized by Spain in coordination with Frontex, departing from the Madrid-Barajas Adolfo Suárez Airport for Bogota (Colombia) and Santo Domingo (Dominican Republic). As part of this visit, the Institution oversaw the reception process at Madrid-Barajas airport for the individuals to be repatriated, as well as the flight boarding process and the process followed throughout the entire flight — which occurred without incident — up to arrival at the destination.

The NPM Advisory Council met on two occasions to provide information on the activities carried out by the unit in 2016.

The following figures make up the council, presided over by the Ombudsman: Francisco M. Fernández Marugán, First Deputy of the Ombudsman Institution; Concepció Ferrer i Casals, Second Deputy of the Ombudsman Institution; Milagros Fuentes González, practicing lawyer and head of the *Fundación Abogacía Española* [Foundation for the Spanish Legal Profession] expressly assigned at the suggestion of the *Consejo General de la Abogacía Española* [General Council of the Spanish Legal Profession]; Berta M.^a Uriel Latorre, doctor of Medicine and head of the Preventive Medicine Service of the Ourense University Hospital Complex, assigned at the suggestion by the *Consejo General de Colegios Oficiales de Médicos de España* [General

Council of Spanish Professional Medical Associations]; Vicenta Esteve Biot, clinical psychologist and secretary of the *Colegio Oficial de Psicólogos de la Comunitat Valenciana* [Autonomous Community of Valencia Professional Psychologist Association] assigned at the suggestion of the *Consejo General de Colegios Oficiales de Psicólogos de España* [General Council of Spanish Professional Psychologist Associations]; M^a José García-Galán San Miguel, magistrate and member of the European Committee for the Prevention of Torture; Emilio Ginés Santidrián, practicing lawyer and member of the United Nations Subcommittee on Prevention of Torture; Jesús López-Medel Báscones, State Attorney and Professor of Administrative Law at Cantabria University; Lorenzo Martín-Retortillo Baquer, Professor Emeritus of Administrative Law at Madrid Complutense University and expert on jurisprudence at the European Court of Human Rights; Julián Carlos Ríos Martín, Professor of Criminal Law at Comillas Pontifical University and lawyer specializing in Penitentiary Law.

Institutional Awards

VII Premio de Derechos Humanos Rey de España [7th King of Spain Human Rights Award]

The seventh award was received by the *Patrulla Aérea Civil Colombiana* [Colombian Civil Air Patrol].

The Air Patrol is a private, non-profit entity whose purpose is to provide free medical and surgical assistance to dispersed rural populations in situations of poverty and extreme poverty or to victims of disasters in the territory of the Republic of Colombia. The award will be presented in 2017 by King Felipe VI.

II Premio institución del Defensor del Pueblo [2nd Ombudsman Institution Award]

Awarded on 24 October to the *Confederación de Salud Mental de España* [Spanish Confederation of Mental Health] for its work to improve quality of life for individuals living with a mental illness and their families, and for its defense of equal opportunities for this group of individuals.

XIII Concurso escolar de dibujos [13th school drawing contest] 2015-16

In order to promote awareness of human rights among Spanish schoolchildren, the Ombudsman Institution and the NGO *Globalización de los Derechos Humanos* [Globalization of Human Rights] organize a school drawing contest. For the 13th contest, the following have received awards in the Elementary School category: Nieves Romero Abellán, Jorge Juan Primary and Preschool Center of Education, Monforte del Cid, Alicante; Izan Ruíz Milán, Pedro I Primary and Preschool Center of Education, Tordesillas, Valladolid, and Carla Martín Gavilanes, Pedro I Primary and Preschool Center of Education, Tordesillas, Valladolid.

The winners in the Secondary School category were: Carlos Furelos Guitián, Ames Institute for Secondary Education, Bertamirans, A Coruña; Daniela Lagunas Ortega, the Nuryana School, La Laguna, Tenerife, and Laura Cañadilla Infante, Valdehiero Institute for Secondary Education, Madridejos, Toledo.

The Awards Ceremony took place on 9 May in the Spanish Congress, further to the reading of the Universal Declaration of Human Rights.

Official meetings and events

The Ombudsman attended several official meetings and events, such as the formal opening of the 12th Legislature.

She attended formal events held on the *Día de la Fiesta Nacional* [Spain's National Holiday], *el Día de la Constitución* [Constitution Day], *el Día de la Comunidad de Madrid* [Autonomous Community of Madrid Holiday] and the opening of the Legal Year for the military jurisdiction.

She attended the formal inauguration of the *fiscal general del Estado* [Attorney General], José Manuel Maza, at the central offices of the *Fiscalía General del Estado* [Office of the Attorney General].

The Ombudsman also attended the medal ceremony for *Mérito en el Trabajo* [Work Merit] and for the *Medalla de Honor 2016 de la Real Academia de San Fernando* [Royal Academy of San Fernando 2016 Medal of Honor] awarded at the Casa Encendida.

She was present for the *Acto de Conmemoración del Día Oficial de la Memoria del Holocausto y la Prevención de los Crímenes contra la Humanidad* [Commemorative Event for the Official Holocaust Remembrance Day and for Prevention of Crimes Against Humanity] and at the official event marking World Rare Disease Day, as well as at various events in memory of the victims of terrorism.

On 14 July the Ombudsman was awarded the title of officer of the Legion of Honor, the highest distinction in France.

Collaboration, dissemination and public communication activities

As part of its work promoting the Institution and fundamental rights, the Ombudsman Institution participated in events held by social organizations, giving speeches at various forums on topics related to its competencies and carrying out diffusion and public communication activities.

The Secretary General, delegated by the Ombudsman, forms part of the *Comisión de Transparencia y Buen Gobierno* [Commission on Transparency and Good Governance], governing body of the Council on Transparency and Good Governance. The main objective of the council is to achieve a Administration characterized by transparency and open governance.

In collaboration with the *Cátedra Democracia y Derechos Humanos* [School for Democracy and Human Rights] (Alcala University), the Ombudsman Institution organized the course entitled "The Rights of People with Disabilities: Inclusive education", held at the Institution's headquarters and also followed live online, from 30 May to 2 June.

The conference entitled "*Acogida e integración de refugiados en España*" [Reception and integration of refugees in Spain] was held on 5 October at the Ombudsman Institution headquarters in collaboration with the United Nations High Commissioner for Refugees. During the conference all administrations were called on to work in coordination and promote programs for the reception and integration of refugees.

At an event on 3 March forming part of the *VI Congreso Nacional de Innovación y Servicios Públicos* [6th National Congress for Innovation and Public Services, abbreviated as CNIS in Spanish], the Ombudsman Institution received the *premio CNIS* [Congress for Innovation and Public Services Award] for the best digital transformation project, a distinction that recognizes the work of those projects and people who make the greatest contributions to the state's digital transformation.

The Institution was part of the jury for the *Premios del CGAE* [Awards for the General Council of the Spanish Legal Profession] as well as the awards for the *Fundación Excelentia* [Excelentia Foundation] and *ABC Solidario* [ABC Public Spirit]. It also presented the *XXIV Premio de Convivencia Profesor Manuel Broseta* [24th Professor Manuel Broseta Award for Coexistence] to Francesca Friz-Prguda, as the representative of the UNHCR in Spain.

In addition, it has been present at the awards ceremony for the *Verdad, Memoria, Dignidad y Justicia* [Truth, Memory, Dignity and Justice] awards for Association of Victims of Terrorism; the *Premios Manos Unidas* [United Hands Awards]; the *XXXIII Premios Internacionales de Periodismo Rey de España* [33rd King of Spain International Journalism Awards] and the *XII Premio Don Quijote de Periodismo* [12th Don Quijote Award for Journalism]; the *III Premio Procuradora Ascensión García Ortiz* [3rd Ascension Garcia Ortiz Attorney Award]; the *XXII Premio Pelayo para Juristas* [22nd Pelayo Jurist Award]; the *IX Premios Foro Justicia y Discapacidad* [9th Justice and Disability Forum Award]; the *96 Edición de los Premios Internacionales de Periodismo ABC* [96th ABC International Journalism Awards]; the *XVIII Edición Premios Derechos Humanos* [18th Human Rights Awards] and the closing ceremony for the *Conferencia Anual de la Abogacía Española* [Conference on the Spanish Legal Profession] and the *Premio Nueva Economía Forum* [New Economy Forum Award], awarded to Juan Manuel Santos, President of the Republic of Colombia.

The Ombudsman Institution attended the presentation of the book *Desafección política y regeneración democrática en la España actual: diagnósticos y propuestas* [Political disaffection and democratic regeneration in today's Spain: diagnoses and proposals], coordinated by Francisco Llera. It was also present for the presentation of the report entitled *Fortalezas de la Marca España* [Strengths of the Spanish Brand] at the Casa de America central offices and at the presentation of the minutes for the *II del Congreso de la Asociación de Diplomados Españoles en Seguridad y Defensa* [2nd Congress of the Spanish Association of Security and

Defense Graduates, abbreviated as ADESyP in Spanish] held at the Higher Center for National Defense Studies [abbreviated in Spanish as CESEDEN].

The Institution attended the master class given by Miguel Herrero y Rodríguez de Miñón, presenter of the 1978 Constitution, entitled "*Sobre la Reforma Constitucional*" [On Constitutional Reform], organized by the *Cátedra La Caixa "Economía y Sociedad"* [La Caixa School for Economy and Society], as well as attending learning breakfasts, organized by *Forum Europa* [Europe Forum] with Mitzy Capriles de Ledezma, wife of the mayor of the Caracas Metropolitan District and with Rebeca Grynspan, Secretary General of *Iberoamericana* [Ibero-American Conference].

With respect to disability, the Ombudsman participated in the inauguration of the interdisciplinary conference on the "*El actual sistema de protección de menores*" [Current system for protecting minors] and in the presentation of the "*Yo tengo espina bífida*" [I have spina bifida] campaign, organized by the *Federación Española de Asociaciones de Espina Bífida e Hidrocefalia* [Spanish Federation of Spina Bifida and Hydrocephalus Associations, abbreviated as FEBHI in Spanish]. It also attended the inauguration of the conferences organized by Alcalá University entitled "*X Aniversario de la Convención de Naciones Unidas sobre Derechos de las Personas con Discapacidad: Tareas cumplidas y retos para la siguiente década*" [10th Anniversary of the United Nations Convention on the Rights of Persons with Disabilities: work achieved and challenges for the next decade].

The Ombudsman and other members of the Institution attended various events for the victims of terrorism, prominent among these the presentation ceremony for the microsite "*Memoria de vida. Homenaje a los hombres, mujeres y niños asesinados por la banda terrorista ETA 1960-2010*" [Memory of life. Homage to the men, women and children killed by the ETA terrorist group. 1960-2010], organized by Spanish Radio and Television [abbreviated as RTVE in Spanish], as well as the closing ceremony for the "*Las Víctimas de ETA en el cine y la literatura*" [ETA victims in cinema and literature] conference on terrorism.

They also inaugurated the Conference on the mortgage market, organized by ADICAE, entitled "*El mercado hipotecario tras la crisis: Las hipotecas que vienen, ¿Cómo evitar una nueva burbuja?*" [The mortgage market after the crisis: How to avoid a new bubble for mortgages to come?] and participated in the round table set up to mark the third anniversary of the Transparency Law, access to public information and good governance.

Representatives of the Institution attended various events concerning minors, disability, migrations, the administration of justice, healthcare or education.

Institutional dissemination and public communication

Within the framework of the "*Otra Mirada*" [Another Look] program organized by the Madrid City Council on 21 and 22 October, over 150 people were able to see firsthand the work carried out by the Institution and the various channels available for lodging a complaint.

On 6 December, in recognition of Constitution Day, another open-door conference was organized, in which over 160 citizens were able to learn about the Institution, its website and how to lodge a complaint, as well as visit the headquarters.

Technical personnel from the Institution taught a course module on the Ombudsman Institution as part of Alcalá University's *Máster en Protección Internacional de los Derechos Humanos* [Masters in International Protection of Human Rights] within the framework of the School for Democracy and Human Rights.

The Ombudsman gave speeches on the work carried out by the Institution at the *Foro Mirasierra* [Mirasierra Forum] and at Comillas Pontifical University. She also led a learning breakfast, organized by the New Economy Forum.

The Ombudsman participated in summer courses at the following Madrid Complutense University: "*Treinta años de defensa de los derechos y libertades de la Comunidad Universitaria Complutense*" [Thirty years of defending the rights and freedoms of the Complutense University Community], organized by the university Ombudsman; "*Libertad y Seguridad frente a las nuevas amenazas*" [Freedom and Security against new threats], the conference on "*Efectos y limitación de derechos ante las alertas y estados de emergencia*" [Effects and limitation of rights in situations of alarm and states of emergency], the round table "*Las nuevas amenazas a la libertad y seguridad de los ciudadanos europeos*" [The new threats to freedom and security for European citizens].

The Institution welcomed groups of students from various academic centers and other institutions. Students from the following programs participated in these visits: Law, Carlos III University, International Relations, Complutense University Faculty of International relations; the non-accredited *Experto en el mundo actual* [Expert in today's world] program offered at Madrid Autonomous University; Masters in Constitutional Law, organized by the *Centro de Estudios Políticos y Constitucionales* [Center for Political and Constitutional Studies] and Menéndez Pelayo University; Masters in Access to the Legal Profession and Masters in Law, organized by the *Colegio Universitario de Estudios Financieros* [University College of Financial Studies, abbreviated as CUNEF in Spanish] in Madrid. Members of the Junta Directiva del Colegio de Abogados de Valladolid [*Valladolid Lawyers' Association Board of Directors*].

Cultural visits to the Institution

Members of more than 35 association and cultural centers visited the Institution this year to learn about the work it carries out.

International activity

In a globalized world such as that in which we live, the work of the Ombudsman Institution requires knowledge and cooperation with other related foreign institutions for the exchange of experiences and best practices, as well as for collaboration on other issues, increasingly greater

in number, which extend beyond national borders, such as the arrival in Europe of Syrian refugees or the situation of Spanish inmates in foreign prisons, in many cases in subhuman circumstances.

Bilateral and international cooperation 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 Institute of Human Rights.

In this context, the Institution appeared before the United Nations Committee on Economic, Social and Cultural Rights [abbreviated as CESCR in Spanish] 57th session to present its contribution to the list of issues prior to the presentation of the report by the Spanish Administration

It also submitted considerations to the Committee on the Elimination of Racial Discrimination with respect to the periodical consolidated reports for Spain reviewed during the 89th session.

The Institution responded to questionnaires submitted by the United Nations Special Rapporteurs concerning human rights and the environment, the rights of persons with disabilities and modern forms of slavery.

It responded to requests for information submitted by the United Nations Global Alliance of National Human Rights Institutions (GANHRI- previously CIC) concerning relations between the Ombudsman Institution and the Spanish Parliament and concerning the Institution's participation in procedures carried out by the authorities responsible for human rights agreements.

The Institution submitted the questionnaire to the *Federación Iberoamericana de Ombudsmán* [Ibero-american Federation of Ombudsmen, abbreviated as FIO in Spanish] concerning the role of Human Rights institutions in the *Nueva Agenda Urbana–Habitat III* [New Urban-Habitat III Agenda].

In its capacity as National Preventive Mechanism Against Torture (NPM) the Institution held a meeting with a delegation from the European Committee for the Prevention of Torture, as well as with Mari Amos, team member responsible for Spain in the Subcommittee on Prevention of Torture, an organization depending on the United Nations.

The Ombudsman's Director of Cabinet participated in a conference on the Spanish NPM at the *I Encuentro Internacional de MNP* [1st International Meeting of NPM] organized by Mexico's *Comisión Nacional de Derechos Humanos* [National Commission on Human Rights, abbreviated as CNDH in Spanish].

The technical director for *Migraciones e Igualdad de Trato* [Migrations and Equal Treatment], accompanied by a technical staff member for the NPM, took part in a training workshop for mechanisms for controlling the forced return of third country nationals illegally

present in the European Union, organized by Frontex and the European Union's European Agency for Fundamental Rights.

The Ombudsman attended a learning meeting with Rebeca Grynspan, Secretary General for Iberoamericana and a luncheon-conference hosted by the New Economy Forum with Irina Bokova, Director General of UNESCO.

The Institution attended an Aspen Ideas@Lunch debate forum, presented by Matthias Behnke, the coordinator for Syria of the Office of the United Nations High Commissioner for Human Rights [abbreviated as OACDH in Spanish] concerning refugees and the situation in Syria.

The Ombudsman's Director of Cabinet attended two meetings held by the *Dirección General de Naciones Unidas y Derechos Humanos* [Directorate-General for the United Nations and Human Rights] of the *Ministerio de Asuntos Exteriores y de Cooperación* [Ministry of Foreign Affairs and Cooperation] for the organization of the 50th anniversary of Spain's entry into the Council of Europe.

2016 saw the conclusion of the European Union Twinning project with the Turkish Ombudsman, initiated in March 2014. Assigned by the European Commission to the consortium formed by the Spanish Ombudsman and the French Defender of Rights, this goal of this Twinning was to assist in the setting up of the institution of the Ombudsman in this country.

The Ombudsman's Director of Cabinet, who led the project, participated in the workshop on the Court of Human Rights and accompanied the Ombudsman at the closing ceremony.

Working meetings were held with related foreign delegations who visited the Institution in order to understand its functioning.

Working conferences were held with a delegation from the Constitutional Court for the Republic of Georgia, representatives from the *Asociación Jurídica Cubana* [Cuban Legal Association] and with the National Human Rights Institution [abbreviated as INDH in Spanish] of the Philippines.

With respect to the functioning of the NPM, meetings were held with a delegation of the Korean National Commission on Human Rights and with members of this Mechanism in Italy.

The Institution also welcomed a group of students from the *XIV Curso para Asesores Parlamentarios de América Latina y Norte de África* [14th Course for Parliamentary Advisors for Latin America and North Africa] as well as students from the De Paul University (Chicago) summer program.

Meetings and interviews were held with: the director of the *Capítulo Chileno del Ombudsman-Defensor del Pueblo* [Chilean Chapter of the Ombudsman], representatives in Spain of the *Defensor del Pueblo de Ecuador* [Ecuadorian Ombudsman], the Turkish Ombudsman, the Ombudsman for the former Yugoslav Republic of Macedonia, the *Defensor del Pueblo de Panamá* [Panamanian Ombudsman], the European Ombudsman, the Secretary

General of the *Defensoría del Pueblo de Tucumán* [Tucuman Ombudsman] (Argentina) and the *Defensor del Pueblo de Colombia* [Colombian Ombudsman Institution].

International meetings

Within the framework for collaboration with the United Nations System, the Ombudsman's Director of Cabinet, representing the Institution, attended the 29th Meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights entitled, "Current challenges to human rights protection".

As part of the 28th Session of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsman met with the Committee's regional European team to present the work carried out by the Ombudsman Institution in its capacity as National Preventive Mechanism Against Torture.

The technical director of the National Preventive Mechanism Against Torture participated in the conference entitled "Protecting human rights while countering terrorism: the role of the National human rights Institutions", organized by the Council of Europe and the European Network of National Human Rights Institutions.

Along with her Director of Cabinet, the Ombudsman attended the conference of the European Network of Ombudsmen, organized by the European Ombudsman and held in Brussels (Belgium).

The Ombudsman, accompanied by her Director of Cabinet, attended the 9th Meeting of the Association of Mediterranean Ombudsmen, held in Malta, where she took part in the third Plenary Session with speech entitled "*El papel del Ombudsman para proteger los derechos humanos en época de crisis política y económica, terrorismo e inmigración irregular*" [The role of the Ombudsman in the protection of human rights at a time of political and economic crisis and irregular immigration].

During her speech, the Ombudsman insisted that the European Union must provide a common and coordinated response that ensures a humanitarian reception, relocation and integration into the receiving society.

The *XXI Congreso y Asamblea General* [21st Congress and General Assembly] of the Ibero-american Federation of Ombudsmen took place in Santa Cruz de Tenerife, from 22 to 24 November. The Ombudsman took part in the inauguration of the Congress, which addressed such issues as extreme poverty, malnutrition, the right to housing, inclusive education and access to quality vocational training, and presented the *Informe FIO 2016: Pobreza y Derechos Humanos* [Ibero-american Federation of Ombudsmen Report: Poverty and Human Rights].

In addition to the Ombudsman, two Deputies and her Director of Cabinet were in attendance, who also took part in the meetings of the Federation's four thematic networks: migrants and human trafficking, childhood and adolescence, women and communicators.

The Ombudsman, along with the Second Deputy and her Director of Cabinet, participated in the closing ceremony for the Seminar entitled "*Retos actuales de los Derechos Humanos: el Ombudsman ante las amenazas*" [Current Human Rights Challenges: the Ombudsman before the threats], organized by the Catalanian Ombudsman, president of the International Ombudsman Institute (IOI).

The Ombudsman took part in the international conference entitled "Challenges for Ombudsman with respect to mixed migratory flows", co-organized by the Association of Mediterranean Ombudsmen, the Association of Ombudsmen & Mediators of the Francophonie (AOMF), the Ibero-american Federation of Ombudsmen and the International Ombudsman Institute.

During the conference the Tirana Declaration was adopted, in which States are requested, among other issues, to receive and demonstrate public spirit and humanity towards individuals requiring international protection.

Official visits and meetings

The Ombudsman held a meeting with Volker Türk, the United Assistant Nations High Commissioner for Refugees, concerning the situation of Syrian refugees.

On the occasion of the closing ceremony in Ankara (Turkey) of the European Union's Twinning program with the Turkish Ombudsman, the [Spanish] Ombudsman held an interview with the President of the Turkish Grand National Assembly.

During the trips made to the Former Yugoslav Republic of Macedonia and Greece for visiting refugee camps, the Ombudsman took the opportunity to hold interviews with the president of the Greek Parliament and with local authorities, such as the mayor of Athens.

The Ombudsman attended the event organized by the *Círculo de Confianza de Nueva Economía Forum* [Circle of Trust of the New Economy Forum] in honor of the president of Colombia, and received the Hungarian and Bolivian ambassadors to Spain at the Institution's headquarters.

Visits to foreign centers of deprivation of liberty

The situation of Spaniards deprived of liberty in foreign prisons has been for years a topic of concern for this Institution, which takes various types of action with respect to the competent entities, particularly as regards the consular sphere. Authorities from the Ombudsman Institution visit the inmates personally when carrying out trips abroad.

The Ombudsman Institution habitually collaborates with its counterpart institutions in those countries housing the Spanish prisoners, to which it resorts in order to bring about their intervention with the authorities and obtain better results in the management of multiple

activities (streamlining transfer cases, medical assistance for inmates suffering from serious illnesses, and so forth).

Visits were made this year to Spanish inmates held at the Corradino Correctional Facility in Malta; the *los reclusorios Norte* [North prisons] (Mexico City) and the Ecotepec prison (state of Mexico) in Mexico; and the prison of Higüey in the Dominican Republic.

Visits to refugee camps

Visits were made to refugee camps in Tabanovce in the Former Yugoslav Republic of Macedonia; Babrry in Tirana (Albania) and Thermopiles and Elaionas in Greece, for the purpose of collecting information on the situation of refugees and promoting policies for receiving and integrating these people in Spain.



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