
Executive Summary 2019 Annual Report

These were the complaints received and highlights of the Ombudsman's activity over the past year:

HEALTHCARE

The **economic crisis has affected the healthcare budgets** of the public administration, although healthcare is still the first line of current expenditure in each region. **This has had a noticeable impact, only partly compensated over the last few years.**

Most of the cut-back was in staff expenditure: downsizing, halt in recruitment, less long-term employment, lower salaries and worse working conditions. Investment in equipment and maintenance works also fell considerably during the crisis.

Some serious issues have come to light as a consequence. **Waiting lists are still too long and emergency rooms are often overcrowded.** These circumstances have been going on for several years now, and may become chronic and lead to impairment of the Spanish public healthcare system.

Along these lines, last year more than 800 complaints were received, mostly related to **primary care** and **specialised medical care**. Those related to **waiting lists** reflect that there is a shortage of professionals or a lack of services and specialities, particularly in smaller hospitals. Patient transfers between regions due to social needs, emergency and scheduled healthcare transport and pharmaceutical services, were also the object of quite a few citizen complaints.

Of interest are the Ombudsman's steps to gather information due to **insufficient healthcare resources in rural areas** and a **lack of specialised coverage in primary care**.

As regards **waiting lists**, the Office has continued to make recommendations to various regions in order to reduce the delay in surgical procedures for breast reconstruction; to ensure that waiting time for initial out-patient consultations in certain specialities does not exceed what is legally foreseen; or to inform all patients of the approximate date of surgery scheduled some time before.

Furthermore, in 2019, a procedure ended with the Ministry of Health, Consumer Affairs & Social Wellbeing and all regional administrations, to find out which resources have been assigned to the National Health System to provide **adequate psychological care**. The Ombudsman has recommended that the Ministry of Health submit the matter

as soon as possible to the Interterritorial Health Council (CISNS), in order for the State and Regions to examine the possibility of increasing psychological care resources, extending this to primary care and generating more openings for specialised training.

Vulnerable groups

In 2019, the Ombudsman began steps before the Ministry of Health, Consumer Affairs & Social Wellbeing and the National Social Security Institute, to find out the current status of economically and socially vulnerable persons who are still not entitled to **free healthcare**, due to being excluded under applicable law. These persons are foreign citizens who are temporarily in Spain (the first 90 days after they arrive) or who are relatives of Spanish or Community citizens, who are required to take out their own health insurance under immigration laws.

The Ombudsman made further recommendations to the Ministry of Health, Consumer Affairs & Social Wellbeing, and to the regional governments of Madrid and Galicia, to safeguard the right to health and to guarantee publicly financed healthcare for these vulnerable groups.

In turn, the **shared payment of medication** is a recurring citizen complaint ever since it was introduced in 2012 as a measure to reduce costs. Some low-income citizens have trouble paying the price of medication that is no longer publicly financed and which, albeit indicated for less serious ailments, may be essential in order to complement treatment of the main illness.

This shared payment has a negative impact on the low-income and unemployed population, and on disabled or seriously ill patients. Entitlement to an exemption from shared payment for persons receiving income below a certain minimum threshold could be the most effective way to compensate deficiencies in the current system. The Office trusts that, during the legislature that has recently commenced, a regulatory reform may be considered, which the Ombudsman has repeatedly recommended, to adjust the current pharmaceutical joint payment system in progressive and equitable terms.

HOUSING

Complaints on the **award of subsidized housing (VPP)** and **financial aid for housing** were again usually the object of citizen claims in 2019. Of interest in the first group are complaints related to a **lack of transparency** in the process and the **long waiting time that passes since a housing exchange is requested** and until the request materialises. As for the second group, complaints were received due to **delays in receiving already granted aid** and **delayed approvals and publications of**

beneficiary lists. Furthermore, there were more **applicants excluded for budgetary reasons** despite meeting the necessary requirement to be entitled to aid.

A large amount of **complaints** were also received from **families caring for minors** who, faced with the possibility of becoming homeless, **have become squatters** and were **not given any alternative by the Administration**, not even on a temporary basis. In most cases, these families have been applying for subsidized housing for years. In the Office's opinion, it is not reasonable to expect a family to agree to become homeless in order to be entitled to housing which, furthermore, is not guaranteed in any way. The Office cannot condone squatting but it cannot look the other way either, when these families are left unprotected, which is why it has requested that the Administrations reflect on the matter.

In this context, **the Ombudsman advocates an increase in the amount of low-income housing for rent and that groups at risk be granted priority**, such as low-income and single-parent families, young applicants, evicted persons, female victims of gender violence and immigrants.

The Office also took steps to ensure that **those affected by the sale of public housing to mutual funds in Madrid** not be expected to complete the entire award process again, and that they be assigned a home following a specific procedure (if their personal circumstances have not changed). The Office made individual recommendations to the Regional Government of Madrid and the City Council of Madrid on the matter.

MINIMUM WAGES

The complaints received and processed by the Ombudsman on the matter indicate that **coverage, the scope and adequacy of minimum wages greatly differ** depending on the territory.

In order to balance out these differences, **the Ombudsman advocates an integrated system for minimum wages, structured as a state policy**, whether by establishing and regulating by law non-contributory benefits under the Social Security System- the most effective solution- or by foreseeing benefits with a minimum content established by law further to Article 149.1.1 of the Spanish Constitution. In either case, each region would be entitled to increase these benefits.

In the Ombudsman's opinion, the differences raised by the proposals submitted over the last few years could be overcome by reaching a technical and political equilibrium through legislative debate. **There is sufficient leeway to be able to reach an agreement to increase guaranteed wages in Spain, taking the form of a**

feasible bill endorsed by a parliamentary majority, in order to guarantee that higher income is received by households suffering the greatest financial distress.

Most of the complaints received by the Ombudsman in relation to minimum wages were related to excessive delays.

Of particular interest is the delay that has been accumulating in **Andalusia** over the last few years. At 5 September 2019, there were 43,411 outstanding applications for which the resolution deadline had expired. Furthermore, at the time, applications were being resolved filed in January 2018- a year and a half later-, evidencing that it was necessary to immediately change the system used to manage minimum wages for social inclusion, in the Office's opinion.

This is why the Ombudsman has issued a recommendation and several reminders of legal duties to the **Department of Equality, Social Policy & Conciliation**, in order to adopt the necessary measures to endow human and material resources guaranteeing that all applications for minimum wages for social inclusion are resolved within the legal timeframe.

Procedural delays in the processing of both applications and appeals for reconsideration also exist in other regions, such as **Catalonia**, the **Principality of Asturias** or the **Region of Valencia**.

Furthermore, the Ombudsman is still receiving complaints on various issues related to how benefits are regulated and managed in the **Region of Madrid** and he issued four recommendations to improve this service.

OLD PEOPLE'S HOMES

The Ombudsman advocates a **thorough regulatory reform** to guarantee that the elderly are able to uphold their rights. More budgetary and formative resources, as well as facilities and inspections, are required in homes in order to face current and future challenges.

At present, Spain has 4.1 available accommodation places for every 100 senior citizens. In 2019, the total number of places was 372,985, according to the database of network accommodation for the elderly (CESIC). Today, 6.1% of the entire population is over eighty years old and there are 16,303 persons over a hundred. This clearly evidences **an "ageing of the elderly", which is likely to increase over the next few years**.

In this context, the population's age structure and future prospects, along with changes in the type of household and less family support, all require that measures be updated for social care.

This is why **the Ombudsman has been examining for some time the quality of care provided at old people's homes** throughout Spain, and has very often pointed out that they lack means and staff. In 2018 he gathered information on current residential care nation-wide and reached some general conclusions.

In 2019, the Office continued with its analysis and by the end of the year had already received half the new reports requested from each region (Aragón, Principality of Asturias, Cantabria, Castilla-La Mancha, Castilla y León, Balearic Islands, La Rioja, Region of Murcia, Navarre, the regional deputations of Álava, Bizkaia and Gipuzkoa and the Institute for the Elderly and Social Services (IMSERSO), Ceuta and Melilla).

The Ombudsman's follow-up of the last few years is described in a supplement attached to the 2019 Annual Report. In the Office's opinion, **the system as a whole requires an in-depth review** in order to ensure that there is a sufficient number of accommodation places for the elderly, providing quality care focused on each person, individual dignity and rights.

Amongst these urgent reforms, the Office considers that it is necessary to **increase the ratio of direct caregivers in order to improve the quality of care**. There are more dependent users, with a greater degree of dependence, who need adequate care whilst their rights are fully upheld.

This is why the Territorial Council should obtain more information about the needs of old people's homes caring for persons with dependency levels II and III, thus establishing requirements and adequate standards in human resources matters; ratios need to be established, both in global and specific terms, by professional category, making a difference between geriatric assistants and other categories.

Another **urgent matter is for all regions to increase their inspection capacity**, given the large number of existing homes and different types of management.

The Office also **thinks it is appropriate to reinforce medical and nursing care at these homes**. Without prejudice to examining the adequacy of increasing the number of homes that are specifically designed to meet sociohealthcare needs, with broader and more extensive medical and nursing care, it may be adequate to generate smaller and more domestic surroundings, where quality of life prevails as a priority, as well as respect for self-sufficiency and the dignity of all residents.

Another one of the Ombudsman's conclusions is that there are still a lot of scattered regulations on the requirements that homes need to meet in order to be validated and subsequently be able to operate. Consequently, in order to resolve this situation, it is necessary that all regions make a special effort to update and harmonise these rules.

In turn, life at a home may entail a deprivation of freedom, such as the involuntary committal of cognitively or mentally impaired residents, or physical restraints. The set of problems generated as a consequence **require an organic act defining extraordinary circumstances associated to health and physical and mental impairment** affecting the elderly and where, as an exception, some of their fundamental rights may be restricted, with a special focus on residential home care.

EDUCATION

Defective facilities, difficulties to access a certain school, problems when receiving a scholarship and aid, and the provision of extras (such as school bus and lunch services), are still the object of most complaints from fathers, mothers and students received by the Office. In the course of the academic year, proceedings have also been filed in relation to the enrolment of the youngest school applicants and difficulties to access text books in some regions.

Fernández Marugán has asked the competent administrations to assign more investments towards the improvement and maintenance of **school facilities**. In addition, he has advocated quality education where the educational system follows an inclusive education model, where teaching about equality is a priority and where equitable access to education is a fact.

The Ombudsman considers it “indispensable” to have a “solid and efficient” system of **scholarships** and study aid to avoid one’s personal, cultural, economic and social situation conditioning access to education. The Office has been working on the matter for years, insisting that the granting and payment of scholarships take place before the start of the subsidized school year or course.

As regards **professional training**, the Ombudsman considers it necessary to reinforce, update and adjust vocational training and to increase the range offered, both in formative cycles and number of available places.

Proceedings are still underway with respect to the removal of **asbestos** in schools located in the regions of Catalonia, Madrid and Murcia.

The Office has ended its “ex officio” proceedings with all educational authorities, which began in 2018, allowing it to complete a comparative analysis of regulations and practices in various educational administrations affecting **students with specific tutorship needs**.

None of the administrations consulted intends to increase the number of special needs schools, although none are expected to disappear. Nevertheless, some administrations plan on converting these specific schools into specialised schools to

back up and advise regular schools; others are putting case studies into practice to generate inclusive schools where both non-disabled and disabled students are taught together (from special needs schools).

As regards educational measures used to encourage educational inclusion, in general terms, all regional administrations have pointed out a significant increase in personal and material resources assigned to the disabled student population, as well as the number of specialised classrooms in regular schools, where students are enrolled who were formerly sent to special needs schools.

However, it is disheartening to see the low rate of students with special educational needs enrolled in non-compulsory education (4.84% in 2017-2018), based on Ministry statistics.

This is why the Ombudsman considers that the teaching of these students on non-compulsory courses should include a series of positive actions to avoid discrimination, thereby ensuring that there are equal opportunities. In the Office's opinion, current regulations need to be reviewed and accordingly amended to implement the principle of inclusion in the Spanish educational system.

In **university education** matters, complaints have still been received that evidence the need to harmonise the academic calendar followed by all universities.

In turn, as regards disabled students, the Office considers that in order to ensure that the disabled are rapidly and effectively integrated into society all bodies and authorities that are competent in the matter need to contribute towards the maintenance and improvement of assistance available to disabled university students, and should also assign the necessary economic resources.

GENDER VIOLENCE

In 2019, a total of 55 women and three minors were murdered. From the complaints received by the Office, it is clear that all phases of the protection system have loopholes, even more so in the case of the most vulnerable victims. It is also clear that the training of public officers directly handling these women needs to improve; female victims very often claim to feel alone, challenged, ignored and abandoned by the public authorities.

The Ombudsman has completed **supervisory measures at all phases**: during detection and emergency situations (starting with a police report and ending at court); trial and criminal prosecution; and the social integration of these victims, to include social services and help for these women's emancipation and self-sufficiency.

Fruit of these steps by the Office are new recommendations to strengthen the protection system for the victims of gender violence and their children. Thus, for example, the Ombudsman has asked the State Secretariat of Justice to endow gender violence courts with **forensic evaluation units** and the necessary human and material resources, ensuring that both prosecutors and judges are able to offer a fully guaranteed service. Furthermore, he has recommended that the Ministry of Justice promote the necessary regulatory amendment to ensure that **visitation rights** are reviewed, provided that the mother and minors involved are currently under protection, suspending such rights in all cases where the father is convicted of gender violence offences.

He has also asked the Government Delegation to Fight Gender Violence to draw up a common **training** plan in gender violence and victim assistance matters, for all staff at the service of the General State Administration, in regions and local bodies.

In turn, he advocates greater protection against all forms of violence against women, thus introducing the concept of gender violence foreseen in the **Istanbul Convention**.

For the Ombudsman, it is essential to reinforce **education about equality**, including specific subjects and activities on the matter at schools in order to fight gender violence. In late 2019, Fernández Marugán initiated “ex officio” proceedings with the Ministry of Education to find out how educational measures had been implemented to promote awareness and prevention, foreseen in the State Compact.

Human trafficking

Once again this year, the complaints received basically focus on the inadequacy of existing protocols to cover victims’ needs. The Ombudsman’s main concern is based on failed coordination, communication errors, a failure by the National Police to identify signs, or delayed proceedings.

For Fernández Marugán, official numbers for victims identified in Spain (238 in 2018) still show that the necessary tools are not yet in place to effectively detect victims and offer them the necessary protection.

Difficulties encountered to effectively detect and identify trafficking victims are applicable to minors. Furthermore, for the Office, the fact that minors are particularly vulnerable means that the procedure needs to be thoroughly reviewed. During 2018, just six girls were identified as trafficking victims.

The Ombudsman hopes that the future Comprehensive Act to Fight Human Trafficking for Sexual Exploitation will help remedy the failures detected and effectively protect these victims.

Equal treatment

Discrimination against women, the gypsy population, disabled people and the LGTBI community has been the object of most steps taken in this field. Moreover, the Office has investigated attacks and intolerant messages directed at unaccompanied foreign minors and has initiated proceedings in relation to a group of illegal minors in Melilla who were not schooled.

In 2019, the Institution repeated a recommendation to amend current regulations in order to ensure that undocumented foreign victims may report any offence without fearing extradition.

The Ombudsman has reiterated that undocumented foreign women, or who are unable to enter Spain due to not meeting entry requirements, are particularly exposed to gender violence. Last year, the Office received a complaint from a woman who had been sexually abused whilst in the room for rejected applicants located in Barajas Airport. Fernández Marugán has issued four recommendations to the Ministry of Justice, suggesting a full application of the concept of gender violence foreseen in the Istanbul Convention for these cases. Furthermore, he has recalled the need to establish contingency plans for arrivals by land and by sea, and the application of a gender approach in all assistance programmes.

In turn, the Ombudsman has ongoing “ex officio” measures to find out the current situation of foreign female temporary workers who are recruited at source.

SYSTEM FOR THE PROTECTION OF MINORS

The Ombudsman has been alerting for some time now about the **high number of children that the system to protect minors is still accommodating under the residential system** and considers that the public administrations should adopt comprehensive policies to support foster families.

In the Ombudsman’s opinion, “extended families” are a valuable resource in Spain that is not adequately handled, which suffers economic and material needs and also lacks educational psychology resources.

After the matter was examined in 2018 in the Region of Madrid, last year the Office began “**ex officio**” **proceedings** with other regions **to find out what measures should be used when prioritising and incentivising family foster care, increasing**

the number and selection of available foster families, and improving training and support.

All of these regions have been sending their reports, except for Catalonia. From the replies received as a whole, it may be inferred that there is an insufficient number of foster families for the number of minor foster care applicants, and that it is harder to find a family for minors over 7 years old, siblings or minors with special needs. Furthermore, the total benefits and aid received by foster families are insufficient, which means that the system nearly totally depends on the altruism of applicant families; in the Office's opinion, this support is essential but insufficient if the idea is for foster care to replace residential care.

Consequently, the Ombudsman believes that **extra measures are necessary to incentivise fostering**. Specifically, it would be necessary to provide more aid, more and better support, as well as training for foster families, increasing the number of families entitled to provide specialised foster care and to implement professionalised fostering.

In turn, during 2019, the Office continued to act before the **Initial Accommodation Centre for Minors in Hortaleza** (Madrid), whose situation has considerably worsened and it is now critical.

Overcrowding continues and has been exceeding acceptable levels for years. This infringes the rights of accommodated minors, leads to greater conflict and prevents an adequate intervention to evaluate and educate these minors, to the extent that the centre's organisational tasks use up all available time and space.

However, despite the problems evidenced and the Ombudsman's recommendations, the Department of Social Policies, Family Issues, Equality and Natality in the Region of Madrid has not adopted the measures required to remedy this situation.

Unaccompanied foreign minors

In 2019, complaints were still received due to proceedings initiated to determine the age of both undocumented persons claiming to be minors, and those bearing documentation to confirm their underage status. In turn, due to the constant complaints received and significant defects located in the Registry of unaccompanied foreign minors, the Ombudsman believes that the latter's operation needs to be immediately reviewed.

Fernández Marugán has called upon society as a whole, to particularly include the public powers, political parties and the media, in order to firmly reject all intolerant

and xenophobic messages addressed to unaccompanied foreign minors, which became a highlight in late 2019.

CENSUS OF INHABITANTS

Last year, many complaints were filed related to the fact that the **Autonomous City of Melilla** is refusing to register in the municipal census the **underage children of Moroccan citizens**. This means that they are not entitled to many public services, such as healthcare or education.

The Ombudsman has recommended that the Autonomous City adjust its census regulations to the requirements established in a judgment delivered by the Contentious-Administrative Chamber of the Spanish National Court, dated 28 December 2018.

This judgment forbids any form of discrimination against foreign minors with respect to Spanish nationals as regards identification requirements to be included in the census, and establishes that the census does not constitute proof of legal residence in Spain, but is just a register of “de facto” situations, which is why a visa should not be necessary.

The Ombudsman has also reminded the Autonomous City that unawareness of the actual number and profile of its residents constitutes a huge limitation when adequately planning and executing its competencies, given that the current situation means that the financing received by the city does not coincide with what it would be entitled to if everyone actually living in the municipality were included in the census.

MIGRANTS

Unlike what happened in 2018, when the main issue was the record number of illegal arrivals (nearly 65,000 people), another historic figure was reached in 2019, this time regarding the number of persons applying for international protection (118,264 people).

In the Ombudsman’s opinion, management of the humanitarian assistance given to persons **illegally entering** Spain and who, for different reasons, cannot be expelled, and the shelter of persons applying for **international protection**, all need a thorough review in organic and functional terms. In both cases, the steps taken have detected two basic needs: first, that several authorities exist, ascribed to different ministerial departments, with overlapping competencies and which are not coordinated; and, second, a lack of involvement on the part of regional governments and city councils when managing this assistance.

International protection and asylum

In relation to the historical number of persons requesting international protection last year, twice the figure registered in 2018 (118,264 over 54,000), the Ombudsman considers that this increase in arrivals should be viewed as “an opportunity” to improve the situation in some territories that are underpopulated and have little economic activity. Consequently, he believes that a concentration of resources in Madrid and Barcelona is “inefficient” and advocates the provision of shelter for these persons in other regions.

Spain has ended 2019 with 133,015 outstanding applications, over the 78,000 outstanding last year. A response was given to 62,398 requests for international protection, five times more than in 2018. This improvement represents a step forward for the Asylum and Refugee Office. However, the rate of acknowledged refugee status (1,653) and subsidiary protection (1,503) is still very low in relation to the total number of requests. A total of 63% of all resolutions refer to Venezuelan citizens. Temporary residence permits for humanitarian international protection were granted to 39,776 Venezuelans.

During 2019, there has been a disconcerting increase in complaints received from foreign citizens requesting international protection who, for various reasons, were unable to access protection. Fernández Marugán has issued more than fifty suggestions to the State Secretariat for Migration, in order for these persons to receive immediate assistance.

The Office has suggested that existing resources be diversified, with greater collaboration between regions and local bodies, increasing the number of spaces available in those parts of Spain that are not overcrowded. Furthermore, he has requested all the administrations involved to act jointly in order to provide dignified shelter and to remedy procedural delays.

Arrivals at the coast

In 2019, according to Home Office data, the number of persons intercepted at sea and taken to the coast has decreased by more than 50%. This decrease has been generally registered at all entries by sea to mainland Spain, the Balearic Islands and Ceuta and Melilla, except for the Canary Islands, where the number of arrivals has doubled with respect to 2018 (2,698 over 1,391).

The Office, through complaints and inspections conducted at arrival points, has continued to analyse both deprivation of freedom conditions and the state of these facilities. During 2019, the Office has examined the extent to which various

recommendations issued last year have been followed, to try and improve the conditions in which these people are welcomed and sheltered, as well as measures to ensure that persons requiring international protection are effectively detected, as well as minors and the victims of human trafficking.

The Ombudsman is particularly concerned about the situation of women with children in their care who access Spain illegally. Last year he called a meeting with the presence of all the administrations involved, where many proposals were put forward to guarantee that these minors are effectively protected.

Other steps

Once again this year, the main complaints related to **Temporary Accommodation Centres for Immigrants (CETIs)** referred to delayed transfers to mainland Spain and lengthy DNA testing, which usually involve separating families until the results are received.

A recommendation has been reissued to facilitate a transfer to mainland Spain of asylum applicants in Ceuta and Melilla, who are particularly vulnerable, insisting on the need to improve and speed up ongoing proceedings to identify accompanied minors, if it is not possible to verify family ties with their accompanying persons.

On two occasions during 2019, the Ombudsman has been obliged to issue warnings to the General Police Station for Immigrants and Borders (CGEF). In March, whilst visiting the asylum room in Barajas Airport, a Spanish minor was detected who was with his mother, of Colombian nationality. A warning was issued to stop any measure that could deprive this Spanish citizen of his right to enter Spain. The procedure ended with both being allowed to enter Spain.

For the same reasons, another warning was issued to the CGEF after an Ecuadorian woman was denied entrance into Spain, along with her underage Spanish daughter, both fleeing from gender violence. The mother was detained on the premises of Valencia Airport, whereas her daughter, of Spanish nationality, was separated from her mother and committed to a centre for the protection of minors. Finally, both were allowed to reunite in Spain.

Once again this year, many complaints filed by the migrant population are related to applications for Spanish nationality based on residence where it was impossible to receive an appointment, within a reasonable period of time, to complete any immigration law step. As a consequence, recommendations were issued to improve the situation of **immigration offices**.

Registry Office

In 2019, problems at registry offices have continued. The Office has received 881 complaints on the matter, of which 623 are related to delays in nationality application proceedings. For many of these persons, the problem does not end once nationality is granted given that the final step is to swear or promise loyalty to the King and obedience to the Constitution and Spanish laws, and such acquired nationality needs to be registered at the Registry Office (until then, a certification may not be issued to obtain a Spanish Identity Card (DNI)).

The Office has received many complaints evidencing that it is impossible to be scheduled an appointment for this pledge. This is why the Ombudsman has recommended that the necessary measures be adopted in order for the Registry Office itself, whilst notifying the granted nationality resolution, schedule and notify a date to the interested party to complete the pledge. Furthermore, he has requested that in those cases where a resolution has already been notified, the Registry Office should summon the interested party to complete the pledge in the timeframe foreseen by law.

In turn, the 2011 Registry Office Act has not yet come into force in 2020. In the Ombudsman's opinion, it is necessary for the Act to come into force or, instead, that a different decision be taken on how to regulate the Registry Office. For the Office, what should not continue any longer is the interim nature of the rules on such an important matter, as has been the case for many years. Thus, he considers that, irrespective of what decision is adopted, the aim should be to have an effective Registry Office to speedily resolve applications, at no citizen cost.

DISABLED PERSONS

In 2019, the Ombudsman continued his work to improve the quality of life of the disabled. Thus, he made many recommendations and reminders of legal duties to the competent administrations, after detecting **tardiness and delays in proceedings to appraise a disability level, exceeding legally established timeframes.**

The Office has also noticed that **no significant progress has been made in approving a new disability appraisal scale**, which is essential for entitlement to social assistance dispensed by the public administration.

It is also necessary for regional governments to adopt additional measures with respect to the organisation of human and material resources, when appraisal procedures suffer a structural delay or waiting lists are too long.

Early care should also be guaranteed by the regional government. The process to assign spaces should also be more transparent. The Ombudsman has consequently

recommended that the Regional Government of Madrid periodically post on its website its current waiting lists and any awarded spaces, in a clear, structured, accessible and comprehensible manner.

In September 2019, the Ombudsman published a study entitled “specific care for cerebral damage in children”, where he advocated the need for national socio-healthcare strategy in order to care for acquired brain injury (ABI), including a specific section for cerebral damage in children and adolescents.

In turn, last year the Office reiterated its opinion on the fact that benefits paid for each dependent disabled child over 18, with a degree of disability equal to or greater than 65%, should not be taken into account as personal income when determining economic capacity and entitlement to benefits under the Dependency Act, if the beneficiary and entitled person differ.

The Office also took care of the difficulties encountered by travellers with reduced mobility. In this context, it demanded that RENFE improve information on train station accessibility and urged the Office to Assist the Handicapped (OADIS) to check that the more than 600 companies providing transportation services by road are offering adequate user information on station and vehicle accessibility.

Furthermore, two recommendations were made and accepted, to protect blind people when signing private contracts not attested by a notary public, in order to guarantee that all signatories have been able to access the wording of the contract and fully understand it.

As regards **assistance to dependent persons**, the Office was able to ascertain through the complaints received that the System for the Self-Sufficiency and Care of Dependent Persons (SAAD) is still unable to include all officially dependent persons within a reasonable period of time, who still lack benefits or service. In some regions, furthermore, a degree of dependence evaluation is excessively delayed.

Nevertheless, for the Office, the greatest concern is that persons whose dependency has already been evaluated and who are officially entitled to benefits or service, sometimes have to wait long periods of time before these are actually received, either because there are insufficient public or semi-public resources to provide assigned services, or because funds are insufficient to pay the economic benefits granted. In the Ombudsman’s opinion, **the system’s financing must be improved at once**.

TAXES

The taxes attracting the most complaints are Personal Income Tax (IRPF) and Real Estate Tax (IBI), as well as the Tax on the Increased Value of Urban Land (IIVTNU).

The Office has asked the Spanish Tax Authorities (AEAT) about how it expects to cover those taxpayers who **are finding it difficult to file an income statement on-line**. The Ombudsman is concerned about the problems that may be suffered by certain groups (the elderly, people with little IT knowledge and rural residents with limited Internet access or without a bank) if it were no longer possible to file a hard-copy statement. The Ombudsman also thinks it is necessary to simplify the “renta web” platform.

Furthermore, the Office has recommended that the AEAT **use more didactical language, which is also plain and simple, when replying to written tax consultations**. This resolution was accepted and the Administration has acknowledged the need to reach a balance in the language used between the need to inform a taxpayer and the legal certainty required by the tax system.

In turn, the Ombudsman has received many taxpayer complaints due to unsuccessfully claiming an IRPF refund in administrative or judicial channels, for **maternity or paternity benefits**, before the Supreme Court declared that these benefits are tax-free. Finally, the Ministry of Finance returned the amounts claimed. The Ombudsman requested the Tax Authorities to report on how the process was evolving and the time expected in processing these refunds, in order to duly inform those citizens who had issued a complaint at the time.

Another 2019 highlight was the suggestion made by the Ombudsman so that a woman, who was unfairly dismissed and later reinstated following a court order, would not lose her **maternity tax break** during the period transpiring between her dismissal and return to work. This suggestion was dismissed by the Tax Authorities.

However, the Office has in fact been able to have the AEAT recognise that a **maternity tax break is fully applicable in new families**, such as those with same-sex couples and adopted children. The AEAT has assured that it will publicise this new criterion in order to apply to all similar cases.

SOCIAL SECURITY

In 2019, a total of 1,072 Social Security complaints were received, basically related to **retirement pensions, employment disability benefits and unemployment benefits**.

The Ombudsman again insisted on the need to not order a lien on **current accounts held by debtors if these only receive non-seizable deposits and accumulate monthly delays**, following his 2018 recommendation. In these cases, the amount should be proportionally distributed based on the months elapsed to see

whether the monthly payment is or not covered by legal non-seizable limits (monthly minimum wages (SMI)).

Another relevant step was taken in relation to updated **contribution bases and unavailable unemployment benefits for housekeepers**. The Administration has informed that it intends to propose a regulatory change, empowering the Social Security Treasury (TGSS) to apply a contribution base “ex officio” depending on the hours’ work notified and to accordingly examine and appraise unemployment benefits. The Ombudsman will therefore continue the process before the General Social Security Directorate.

Furthermore, complaints were received from citizens who were unable to access the **prior appointment service** through the **Social Security website**, and who were also unable to do so by phone due to the avalanche of calls. Once this defective operation was ascertained, measures were requested to improve the service and two recommendations made to the Spanish Social Security Institute (INSS).

In 2019, it was verified that the TGSS had dismissed **requests for a deferral of debt** for the sole reason that the debt was less than double the amount of minimum wages. The Ombudsman recalled the recommendations made and accepted in 2018, for such requests to not be automatically dismissed on these grounds only. He also recommended that the dismissal expressly reflect the true reason, that the maximum legal timeframe of five-years be exhausted to adjust the deferral plan to each debtor’s actual economic capacity, and requested that a partial and immediate reduction in Social Security debt not be required as a prior condition to be granted a second deferral/instalment plan following an unsuccessful prior plan.

On the positive side, of particular interest are the changes made in unemployment subsidies for people over 55, by means of Royal Decree-Law 8/2019, on urgent measures for labour protection and to fight against employment uncertainty in working hours. In the Office’s opinion, the protection offered to this particularly vulnerable group of workers is significantly increased whilst they are unemployed and also upon retirement, given that early retirement is not required and payable pensions are accordingly decreased, at the same time as contributions are increased whilst the subsidy is being received.

SINGLE-PARENT FAMILIES

The Ombudsman agrees with both parents enjoying the same leave for the birth of a child, and creating a new benefit in order to jointly care for a nursing baby, passed by Royal Decree-Law 6/2019; this represents a step forward in achieving real and effective

equality between men and women, encouraging a balance between work and family life, and demanding the joint responsibility of both parents.

Nevertheless, the Office believes that the new regulations do not apply equally for single-parent families in some cases. Thus, for instance, in families where both parents work, they would jointly have 10 weeks more of provisional rest to care for their child (26 weeks in total), whereas single-parent families, where there is just one parent, cannot enjoy a rest period that is longer than 16 weeks.

The Ombudsman has requested that a possible extension of leave be considered in these cases. He has also asked the State Secretariat for Social Security why the new benefit to care for nursing children, if both parents work, has not been foreseen for single-parent families. The Office is still taking up the matter with the State Secretariat for Employment & Social Economy and the State Secretariat for Social Security & Pensions, as regards benefits.

TRANSPORTATION

In 2019, several complaints were received, some filed by platforms or associations of residents on defective interconnection by train between rural towns. In some cases, railway networks that were no longer used were asked to be reactivated, in others more train frequency and stops were requested, for trains going through these stations en route to larger cities. General defects were also reported in the provision of railway services to these areas, using obsolete trains, with insufficient frequency, suffering constant breakdowns and delays, particularly in Extremadura, Galicia and Salamanca.

In the Ombudsman's opinion, the supply of public transportation services should cover demand as a general rule, except for rural areas, where the Office believes that supply should also adjust to naturally low demand in order to avoid isolation, for economic profitability reasons only, as it is still a public service.

Thus, the Ombudsman has begun "ex officio" investigations to find out what global criterion is applied by Renfe and the Ministry of Development with respect to policies to avoid discrimination on the grounds of residence, in railway link terms. With this step, the Ombudsman wants to find out what is being done to avoid towns far away from main communication points from becoming isolated, whether due to insufficient services, a lack of connections or defective operation of those existing.

PUBLIC SERVICE AND EMPLOYMENT

In 2019, complaints were still received on the delayed execution and resolution of public service openings, insufficient reasoning in the resolutions issued by grading tribunals

with respect to allegations submitted by participants in selection processes, a failure to publish the official correction template, or a failure to deliver to the candidates the question leaflet and self-copying sheet of their replies.

Furthermore, the Office has issued resolutions to uphold the rights of **female candidates to public office during their pregnancy, birth and after-birth**. It has also taken steps to ensure that public employment openings guarantee the quota reserved for disabled persons.

In turn, the Ombudsman is particularly concerned about persistent **mobbing and sexual harassment** arising in various fields of the Public Administration. Thus, he has taken steps to find out if protocols are in place to fight sexual harassment and harassment on the grounds of sex in the General State Administration, the State's Law Enforcement Agents and the Army.

In military matters, a recommendation was issued to adapt the Military Criminal Code to the recognised Victim Statute, thus increasing the protection offered to the victims of offences committed in the Army related to discrimination on the grounds of sex. Recently, the Ministry of Defence has accepted this recommendation.

CITIZENRY AND PUBLIC SAFETY

In 2019, the Ombudsman insisted again on the need to reform some aspects of the **Organic Act on Citizen Safety**, following his recommended amendments of 2015.

In 2019, 17 complaints of police abuse were received, and 89 were related to mistreatment.

The Office has ascertained that there is ongoing social debate about how to specify which conduct is adequate in terms of the "proportional use of force"; this is not as applicable when a right of demonstration is peacefully exercised, as it is when, in turn, citizens show passive resistance or active violence against legal police action. In this regard, the Ombudsman considers it necessary to have an **action protocol on the use of force**, providing clear and accurate instructions to police officers on how and in what circumstances they should use both force and regulatory weapons and antiriot equipment, in order to reinforce legal certainty amongst agents and citizens.

Last year, a recommendation was made to the General Police Directorate to **guarantee a prompt confidential interview with a lawyer** in all detention cases (which has been accepted), and another on **police identification**, specifically related to the members of Prevention & Reaction Units, Citizen Assistance Groups and Operative Response Groups (which has also been accepted).

In 2019, the Ombudsman also made some recommendations to fight fraud related to **identity theft**. His resolutions intended to improve police and court coordination, avoiding harm to the citizens suffering this type of offence. The State Secretariat for Security informed the Ombudsman in early 2020 of its wish to design a strategy on cybercrime.

In 2019, several electoral processes have been held and the Office has still received complaints related to “**requested votes**” and, above all, letters that indicate the difficulty in receiving the necessary documentation to vote abroad. Fernández Marugán considers that the Organic Act on the General Electoral Regime (LOREG) should be reformed to facilitate and improve the vote of Spanish emigrants in future elections.

For example, the Ombudsman advocates a new design for overall timeframes, thus extending the time granted to voters to send their vote by mail; or to articulate an alternative procedure, based on the use of new technologies, to remedy any incidents arising in postal deliveries due to being handled by more than one mailing administration.

Last year, the Office brought an appeal against the Constitutional Court (TC) against a section of the Electoral Act that allowed political parties to gather citizens’ personal data for ideological profiling. The TC unanimously upheld the Ombudsman’s appeal, in less than two months.

During 2019, the Office has issued many reminders of legal duties to various Catalan administrations in order to uphold ideological neutrality on the outside and inside of public buildings. The Ombudsman considers that “the principle of ideological neutrality in a pluralist society is incompatible with the presence of ideological symbols in public buildings”.

JUSTICE

Last year, 294 citizens filed a complaint in disagreement with a court resolution and 180 did not agree with an ongoing court procedure.

The halt in parliamentary activity in 2019 (the Spanish Parliament was practically inactive due to two dissolutions of the Courts) has prevented parliamentary work to continue on the bill related to “**stolen babies**”. The Ombudsman has made recommendations on the matter which he trusts will be heeded when Parliament returns to its regular activity. The Office has reiterated its commitment with the victims and trusts that all the competent public administrations will take the necessary measures to help clarify the investigated events.

ENVIRONMENTAL MATTERS

In 2019, the Office continued to analyse the problem of Spain's atmospheric pollution. In this context, it has received many complaints against removing the low-emission zone in **Central Madrid** and still has a procedure underway with the City Council of Madrid and the Regional Government of Madrid.

Furthermore, the Ombudsman has taken various steps related to **soil pollution**. Thus, in Murcia, the Administration has declared El Hondón land to constitute polluted soil, like the Ombudsman was claiming. This was not the case of lindane-polluted soil in an industrial estate close to Vigo, as the Regional Government of Galicia dismissed the suggestions received from the Office.

Pollution due to **foul smells** generated by **Parque Tecnológico de Valdemingómez** were also the object of two suggestions made to the City Council of Madrid and Regional Government of Madrid, which are still awaiting a response from both administrations.

Noise pollution, once again this year, was the object of many complaints, particularly related to the noise caused by economic activities such as bars, restaurants or night clubs. As regards **electromagnetic pollution**, the Office has finished its "ex officio" procedure on the deployment of 5G technology once its resolutions were accepted.

Furthermore, the Ombudsman continued work during 2019 to protect the **Doñana natural park**. The Office's suggestion that the aquifer be declared as over-exploited and that an action plan be approved to guarantee its sustainable use was accepted by the Guadalquivir Hydrographical Confederation.

In turn, the Ombudsman decided to lodge an appeal before the Constitutional Court against the Castilla y León Hunting Act. Other notable measures were related to forest fires, management and control of invasive exotic species and **animal abuse** suffered by hunting dogs, or as a consequence of pigeon shooting and other types of shooting of live birds.

Also of interest is the ongoing procedure with eight regions, in addition to Ceuta and Melilla, to check the extent of legal compliance, establishing the technical requirements to be met by high-voltage electricity lines located in protected areas, in order to avoid bird killing due to electrocution and collision. Both are the most common causes of death for unnatural causes of Spain's bird fauna.

In turn, in the case of wild animals, the Ombudsman considers that **Article 337 of the Criminal Code needs to be amended in order for wildlife to be protected against abuse**, as is the case of domestic animals.

ELECTRICITY

Last year, the Ombudsman began two “ex officio” proceedings to find out how the on-line app was operating to request a **social electricity voucher**, and what guarantees are available to vulnerable consumers if their application is denied.

Although Royal Decree-Law 15/2018, on urgent measures for an energy transition and consumer protection, represents a step forward, the Office has noticed that in some cases vulnerable consumers are left unprotected if their application is unduly denied for a social electricity vouchers, and that devices to file a remedy are not operating correctly. Thus, an application for a social electricity voucher involves a costly journey full of procedural red-tape which, given the insufficient information provided to applicants, may worsen their vulnerability.

In this way, the Ombudsman will submit proposals for the protection of vulnerable consumers, granting them speedy guarantees to be able to appeal an unduly denied social voucher.

In turn, the State Secretariat for Energy last year dismissed the Office’s recommendation that household consumers be allowed to change the electrical power contracted, removing the current restriction that prevents them from making any change in the course of a year.

TOURIST APARTMENTS

In 2019, the Ombudsman took two important measures related to tourist apartments.

On the one hand, it recommended that the Government of the Canary Islands change several articles of the 2013 Tourist Renovation Act, specifically those forbidding the owners of tourist complex apartments from residing there, forcing them to assign their use to the same manager. In the Office’s opinion, the residential use of these apartments should be upheld, or their owners indemnified.

In turn, the Office has also requested regulatory changes from the Regional Government of Madrid in order for the registration of this type of housing to be mandatory and that public access be granted to the registry. In the Ombudsman’s opinion, the information held at this registry is not only necessary for statistical purposes or to manage other policies, such as urban planning, but is also used for consumer and user protection. Thus, he considers that the public powers need to

create a regulatory framework to encourage transparency and avoid an increase in illegal tourist accommodation, or this getting out of control.

BETTING AND INTENSIVE GAMBLING ADVERTISING

The proliferation of betting houses and intensive gambling advertising is a matter of concern for the Ombudsman, particularly due to its potential impact on underage consumers. For the Office, the uncontrolled broadcasting of gambling, particularly for underage players, is similar to that of smoking or drugs.

This was why last year “ex officio” proceedings began that resulted in two recommendations to the Ministry of Economy & Finance, and the Ministry of Health, Consumer Affairs & Social Wellbeing, to limit the advertising of gambling and betting and to reinforce the protection of vulnerable persons against compulsive gambling.

Both ministerial departments have accepted all the recommendations made and have promised to improve the wording of the Royal Decree on marketing communications related to gambling and responsible gambling.

The Office will follow up on the effective implementation of these accepted recommendations.

PRISONS

The Office has initiated 722 proceedings related to prisons, 103 “ex officio”. The most common issues are transfers (159), hygienic-sanitary and food-related matters (139), communications (49), internal separation and classification (48), abuse (47) and deaths (45).

In 2019, the study entitled *Mentally disabled prisoners* was published, which has helped draw attention to the situation of a highly vulnerable social group of which little is known. The General Secretariat for Prisons (SGIP) has accepted many of the recommendations made in this report and has pointed out that it is considering another two units to accommodate **mentally disabled inmates** at another two prisons. It also announced that the Social Inclusion Centre of Alcalá of Henares has been designated as a reference in the committal of these disabled inmates, classified in the third degree.

Last year, the SGIP published several instructions and service orders following the Ombudsman’s resolutions. Thus, in relation to investigation on alleged abuse, it passed the Service Order entitled “**Legal Duty to Provide an Injury Report**”, which gathers the Office’s indications. Instructions on **experiments with prisoners** and the **transportation of belongings and communications**, passed in 2019, also include the Ombudsman’s recommendations. Finally, the SGIP has informed the Ombudsman that

it will review Instruction 3/2018 to clarify the intervention of prison healthcare professionals when using **mechanical restraints**, like the Office was requesting.

The Ombudsman has also advocated before the Administration for dialogue to handle and resolve employment issues affecting prison officers which, in his opinion, are providing an essential service.

MNP ACTIVITY

In 2019, the Ombudsman, acting as the Spanish System to Prevent Torture (MNP), completed 106 visits to prisons and issued almost 889 resolutions (48 recommendations, 813 suggestions and 28 reminders of legal duties) to improve the quality of life of detained persons. Over the year, inspections were conducted in fourteen regions and in the Autonomous City of Melilla.

Furthermore, gender profile visits have continued to analyse the main problems faced by female inmates. Three prisons were visited as a result. This approach will also be used in the future when inspecting other types of prisons.

All measures taken as the Spanish System to Prevent Torture are described in the specific report published by the Ombudsman each year.