



## EXECUTIVE SUMMARY 2020 ANNUAL REPORT

This annual report, available at [www.defensordelpueblo.es](http://www.defensordelpueblo.es), details the Ombudsman's actions during the year 2020. This annex summarises some of the most important of the 28,020 cases processed that year.

### HEALTHCARE

In 2020, the Ombudsman received **three times the number of health-related complaints**, the vast majority related to the Covid-19 crisis.

The pandemic has exacerbated many of the **shortcomings of the National Health System (NHS)**, which has experienced its worst crisis since its creation and whose healthcare capacity, made up of the health services of the autonomous communities, was overwhelmed at the worst moments. The institution has been warning for years about its weaknesses and shortcomings, including the fragility of primary care and hospital emergency services, the chronic problem of waiting lists and insufficient public attention to mental health.

Other serious problems are a very high pressure of care; the restriction of some services; the shortage of professionals in some specialities and territories, especially in primary care; the lack of motivation of professionals; the ageing of technological equipment; and the maintenance problems of hospitals, especially the older ones.

In the opinion of the Ombudsman, this crisis should serve to materialise major agreements and concrete legislative and administrative measures that solve the weaknesses noted and at the same time consolidate the strengths of the system and make its modernisation possible, through an intelligent increase in investment in material and human resources.

At the beginning of the crisis, complaints were received expressing the fears of many people for their own health and that of their loved ones and lamenting the saturation of hospital centres and the suspension of routine activity in primary health care centres.

Other complaints reported a shortage of beds, trained staff and respirators, as well as a lack of protective equipment for health workers. As the weeks passed, and the state of alert was lifted, complaints focused on the closure of local clinics, difficulties in primary care, delays in appointments for consultations, tests and operations, accompaniment of hospitalised patients, and protocols for testing for the virus and delays in obtaining results.

Many citizens have also expressed their views on public health measures over the past months.

The Ombudsman decided to open ex officio general proceedings with all the health ministries of the autonomous communities in order to ascertain their efforts to reorganise their resources and allocate resources to stop the spread of the epidemic and to be able to identify areas for improvement. The Ministry of Health was informed of all the relevant issues raised in the complaints that required a regulatory or coordinated response.

The Ombudsman also initiated action on specific complaints and has continued to act on those complaints that raised pressing issues outside the pandemic such as waiting lists, access to special treatments or medicines, problems in the recognition of the right to publicly funded health care or requests for access to documents or medical records.

The Ombudsman also opened a dossier with the Ministry of Health and with all the autonomous communities to find out the basic reference protocols for hospital centres in each region in terms of visits and accompaniment of patients in an emergency situation. In addition, the Ombudsman asked for information on practical problems when travelling to Spain from other countries or on the price of PCR tests in private laboratories.

With all the information gathered, the institution drew up **conclusions** on the impact that this health emergency has had and continues to have on the NHS, and on the needs or shortcomings that have been most exposed. These conclusions were presented in the Spanish Parliament at the end of November and sent to the Ministry of Health and all regional health ministries.

The Ombudsman stresses the **need for more investment, especially in primary care and public health, and calls for more staff and more material resources, as well as an end to the precariousness and temporary nature of healthcare workers**. To this end, the Ombudsman believes that it is necessary to ensure the maintenance and reinforcement of the NHS and to guarantee territorial cohesion, through a stable State agreement, similar to the existing one for the sustainability of the Social Security system.

There is also an urgent need to boost public health services, health promotion and disease prevention, as well as health research. The creation of a state public health agency with high management and decision-making capacities, especially in emergency situations, should also be addressed.

The autonomous communities must also continue to increase their own public health and epidemiological surveillance resources.

In the Ombudsman's opinion, the reinforcement of primary care centres, their professionals and their technical and organisational resources cannot be delayed, especially in the areas with the greatest problems of shortages and lack of staff. This crisis should be an opportunity to solve the problems of underfunding of this level of care.

At the same time, it is essential to strengthen the hospital structure. Thus, the administrations must already have reinforcement plans in place to tackle waiting lists in the most affected specialities, in order to restore care to all patients without delays, in terms of quality and safety. Special attention needs to be paid to the increased demand for mental health care.

Precariousness and temporariness are probably the biggest structural problem for many workers in the National Health System, and in an increasing percentage. It is therefore necessary that the administrations undertake an increase in permanent staff in accordance with the structural needs observed and a review of those aspects of the statutory framework that most require it, with social dialogue and with the objectives of rationalisation and modernisation that are essential.

Lastly, **this crisis has shown that the inter-territorial coordination mechanism needs to be made more effective.** The joint decision-making procedure of the Interterritorial Council of the National Health System needs to be reviewed and extended, drawing on recent experience during the health emergency. Aspects such as the adoption of agreements and their binding force or the increased operational capacity of central services need to be addressed and improved.

The agreements of the council when exercising coordinating functions, in certain matters not only related to public health emergencies, should be able to be adopted by majority vote and be binding on all territories. Moreover, it should be mandatory for these council agreements to be officially published for the information of all actors involved and the public.

## CARE FOR THE ELDERLY

The model of residential care for the elderly presents structural problems that have been revealed in all their crudeness in the current health crisis and about which the Ombudsman has been warning for some time.

The dramatic situation experienced in the first months of the pandemic in many old people's homes reflects the lack of resources and staff and the difficulties in adopting

sufficient prevention and response measures, as it is a care model that depends on the regional health services for health care, which were overwhelmed.

At the end of April 2020, the Ombudsman sent **recommendations to all the autonomous communities** to improve health care in elderly care centres, information to relatives and the protection of their rights.

At the same time, the institution initiated **ex officio proceedings with all the ministries of social policy of the autonomous communities** in order to ascertain the response given in each territory to the situation caused in the residences by the pandemic and to determine aspects for improvement.

As a result of these actions, and after the joint study and analysis of complaints, the official information received, the different regulations and the evolution of the pandemic, the Ombudsman prepared **conclusions** which were sent at the end of November to the autonomous communities and the Ministry of Social Rights and the 2030 Agenda.

In the Ombudsman's opinion, the examination of the responses, together with the work and studies that each entity is carrying out on the basis of their harsh experiences, will make it possible to address the pending and necessary reforms for the full guarantee of the rights of the elderly in the residential sector.

## PUBLIC SAFETY

The declaration of the state of alarm had a strong impact on citizens' freedoms and, in addition, the application of the **Organic Law on Public Safety** to sanction those who infringed the prohibitions could lead to the payment of exorbitant fines.

The Ombudsman has maintained a critical position on the appropriateness of the Public Safety Law for situations such as a state of alarm. In this regard, the Ombudsman reiterates that some aspects of this regulation need to be reformed in order to strike the right balance between freedom and safety.

The institution has processed complaints referring to restrictions on freedom of movement, disagreement with complaints received and others showing a general disagreement with the effects and limitations imposed on citizens' rights during the state of alarm.

In order to protect citizens from the restrictions of rights brought about by the state of alarm, increase legal certainty and ensure equal treatment throughout the territory, the Ombudsman made three recommendations.

On the other hand, the Ombudsman initiated an ex officio action to find out what measures were in place in the detention facilities of the Security Forces and Corps to

prevent possible contagion. Within the framework of this action, resolutions were issued to the heads of these centres.

The effects of Covid-19 have also had an impact on **traffic administration and road safety**. The Ombudsman opened an ex officio inquiry into the reorganisation of the driving licence aptitude tests and the way in which they were to be carried out, bringing them into line with the health authorities' guidelines on safety distance and disinfection.

Elections to two regional parliaments were held in 2020, highlighting the difficulties of conducting such **elections** in a pandemic situation. The Ombudsman insists on the need to modernise the Electoral Law, which he considers inadequate to deal satisfactorily with voting from abroad, the use of new technologies in electoral processes and a global pandemic with intense repercussions in Spain.

## EDUCATION

The Ombudsman considers **education to be the main instrument of social mobility and the best aid to overcome economic and social inequalities**. In the Ombudsman's view, the pandemic has had a negative impact in this area.

In the first weeks after the declaration of the first state of alarm, classes were suspended and many families informed the Ombudsman of their difficulties in accessing **distance education systems** as they did not have access to the network or connection devices to be able to continue with the teaching activity by telematic means.

These concerns were conveyed to the Ministry of Education and Vocational Training so that, once classroom education had resumed, it would promote the adoption of compensatory measures and the specific support that students might need depending on their personal circumstances, as well as the establishment of assessment and promotion criteria taking into account the specific problems that the health crisis has caused in all areas of education.

In June, the institution initiated an ex officio action with all the educational administrations to find out their plans and forecasts for the **return to the classroom**. This action was taken up again in 2021 to assess the adequacy of the plans and protocols implemented in the new academic year and to ascertain the actual coverage of teaching posts.

The Ombudsman is aware of the investments that all the autonomous communities have been making in teacher training and in the provision of technological infrastructure and equipment for the teaching process-(devices, wireless networks, connectivity, access to digital platforms) since the beginning of the health crisis. However, the Ombudsman points out that the pandemic has shown that **greater investment** is needed to achieve

methodological innovation and the transformation of school organisation, which is now, more than ever, essential.

On the other hand, the Ombudsman also initiated an ex officio action after receiving numerous complaints about educational care for **vulnerable pupils** or **pupils** living with people considered at risk of the coronavirus in order to find out the educational response for these families.

Although the pandemic has marked most of the complaints received in the field of non-university education, in 2020 there have also been cases related to deficiencies in school facilities, difficulties in gaining access to a particular centre, complications in obtaining grants and aid, and problems related to the provision of complementary services such as transport or dining facilities.

In addition, complaints continued to come in this year from citizens stating that the attention given to students with **specific** educational **support needs** was not adequate due to the lack of personnel or material resources necessary to guarantee inclusive education, both in basic education and at non-compulsory education levels.

The Ombudsman has continued to insist on the need for regulatory and organisational measures to further develop **inclusive education**.

In the area of **university education**, the Ombudsman's actions were essentially aimed at liaising with universities closed due to the pandemic, which students were unable to access for academic procedures, and also to provide them with updated information on the measures adopted by each of the centres to complete the academic year.

Numerous complaints were also received this year about delays in the processing of **applications for the recognition of foreign university degrees**. Despite the efforts and measures adopted by the Ministry of Universities, the Ombudsman regrets that during 2020 the situation of collapse has continued, with more than thirty thousand files accumulating, an unacceptable situation that the bodies involved continue to attribute to being lacking sufficient human and material resources to cope with the proper management of their functions.

To alleviate the lack of health personnel, the Ombudsman made a recommendation to the Directorate General for Professional Organisation and to the Secretary General for Universities to facilitate the incorporation of health professionals who at that time were still waiting to complete the accreditation or recognition of their health training. This recommendation was accepted.

## MINORS

The Ombudsman has been concerned in recent years about the high number of children in the care of public administrations who remain in residential care for prolonged periods of time. In general, it can be stated that **the desirable change towards a model in which family foster care prevails over residential care has not occurred**. The institution formulated several Recommendations to the Autonomous Communities for the effective implementation of foster care as a preferential and majority measure for the protection of minors.

With regard to **unaccompanied foreign minors**, for yet another year, numerous complaints have been received concerning age determination procedures for undocumented foreigners, whose minority age cannot be established with certainty. The disagreement with the State Attorney General's Office on the appropriateness and sufficiency of the medical tests carried out is maintained.

Significant differences also continue to be detected between the data provided by the regional child protection bodies and those provided by the Register of Unaccompanied Foreign Minors.

In 2020, through an instruction, the Directorate General for Migration established the requirements for access to a two-year residence and work permit, renewable for another two years. The Ombudsman welcomes this measure which, together with the acceptance of the recommendation for the modification of the legal regime of residence permits for unaccompanied foreign minors, will contribute to the necessary improvement of the social and labour integration of this group.

On the other hand, complaints have been received from children's organisations requesting the Ombudsman's intervention to promote measures to eradicate the proliferation of **hate speech against unaccompanied foreign minors**. On several occasions, the Ombudsman has made appeals to combat intolerant and xenophobic messages against these children.

Once again, this year, the Ombudsman has to express his concern about the actions and lack of collaboration of the Provincial Directorate of Education in Melilla which, despite repeated requests from the Ombudsman and the opinions of the Committee on the Rights of the Child, continues to fail to **provide schooling for a group of minors** who were born in Melilla or who have been living in the autonomous city for years. Throughout 2020, the institution has initiated several actions and made suggestions to the Directorate General for Educational Planning and Management of the Ministry of Education and Vocational Training to try to remedy this situation.

## MALE VIOLENCE

The Covid-19 crisis has led to an increased risk of violence against women. The number of fatalities in Spain has fallen compared to the previous year, but not violence. The Ombudsman deplors the murder of 45 women and three minors.

The Ombudsman has carried out monitoring actions at all stages of the protection system.

Recommendations were made to the Ministry of Justice at the end of 2019 to extend protection against all forms of violence against women, thus introducing the application of the concept of male violence as set out in the Istanbul Convention. The Ministry has accepted this recommendation, which is pending regulatory development.

Actions regarding the development of personal intervention plans for victims have also continued. The Ministry of Equality has committed itself to drafting a reference protocol to enable the elaboration of these plans within the framework of the Sectoral Conference on Equality.

For yet another year, complaints have been received illustrating the problems of victims of violence against women during court proceedings. The Ombudsman has made recommendations to the Ministry of Justice to avoid double victimisation in the course of judicial proceedings.

On the other hand, the Secretary of State for Territorial Policy has accepted the recommendation made by the institution on the registration status of women victims of violence against women who are in residences and sheltered flats or shelters.

The Ombudsman has also drawn attention to the reality of children who are directly or indirectly victims of violence against women. The Ombudsman welcomes the approval of the Organic Law for the Comprehensive Protection of Children and Adolescents against Violence, which incorporates the Ombudsman's recommendations, and trusts that this new law will serve to achieve greater protection for minors who are victims of violence against women.

The special vulnerability of foreign women exposed to violence against women is of particular concern to the Ombudsman, who has again insisted on the need to reinforce protection against expulsion for women in an irregular situation who come to a police station.

The Ombudsman has again denounced the difficulties in **identifying victims of trafficking in human** beings and called for the improvement of existing protocols for the detection of particularly vulnerable profiles. Furthermore, the Ombudsman has warned of the need to ensure that those few victims who come into contact with the authorities receive



a swift and rapid response, taking all necessary measures for their identification and protection.

The institution has also pointed out problems in identifying **child victims of trafficking**. The report covers the shortcomings identified by the Ombudsman in the case of two Somali minors. The Ombudsman insists on the need for special training for asylum interviews with minors and calls for the identification of appropriate centres for the care of this profile of girls with specific needs.

## HOUSING

The health emergency has had a particular impact on the housing situation of citizens. Despite the extraordinary measures such as the suspension of evictions, the temporary and extraordinary deferral of rent payments and the aid announced for the rental of permanent housing, the pandemic has generated a strong economic and social impact that is affecting the income of **many citizens who are now unable to pay the rent or mortgage on their homes**.

The impact of this crisis has affected certain groups, particularly vulnerable groups, for whom it is necessary to readapt and adjust social housing policy. In the Ombudsman's opinion **it is necessary to adopt immediate and effective alternatives and measures to address the increasing housing problems** of these families. For this reason, in 2020 the Ombudsman recommended extending the deadline for applying for rental subsidies for permanent housing and also asked to include situations of residential vulnerability derived from Covid-19 in the allocation of housing for social emergency.

Furthermore, the Ombudsman is particularly concerned about the high number of complaints received regarding family units made up of people with minor children, single-parent families or particularly vulnerable people, who have been **evicted from public subsidised housing**, without the regional or local Administration or public body having provided a housing alternative.

Problems in managing the various **housing subsidies** were at the forefront of complaints in 2020. Among the ordinary ones, those relating to aid for the rental of permanent housing and those related to problems with applications for reduced rent, a clear symptom, in the institution's opinion, that the economic situation of families is in decline, particularly after the health crisis, stand out.

On the other hand, as in previous years, the Ombudsman continued to receive complaints from people who, out of necessity, have **illegally occupied** housing. In many cases, these are families with minor children and it is women, mainly with dependent

children, who are the most vulnerable and punished group and those who most frequently turn to this institution for help.

## BASIC SERVICES AND UTILITIES

Since the declaration of the first of the states of alarm, the Ombudsman paid preferential attention to complaints related to **water supply, electricity and telephone line cuts** (especially in cases of tele-assistance to vulnerable people). **The Ombudsman** was also interested in the **extension of the social bonus** to workers affected by redundancy measures and self-employed workers who have ceased their activity or whose income has been reduced by 75% and in the creation of the new category of vulnerable consumer.

**The availability of an electricity supply at affordable conditions that people can afford is a key issue**, according to the Ombudsman, who points out that Spain is one of the countries where people spend a greater proportion of their income on paying electricity bills, despite having an energy *mix* that is more favourable to maintaining lower prices than other countries.

In the institution's opinion, the tax burden affecting the whole bill (VAT at 21% and electricity tax) does not help in this matter, even for utilities covered by the social electricity bonus, or the impossibility for individuals to adjust their electricity power to their needs, which may change throughout the year due to weather conditions or the conditions of their home, and which has only been made more flexible during the state of alarm on a temporary and exceptional basis for the self-employed and companies.

The Ombudsman also detected problems in the processing of the social bonus for electricity for those people who are not obliged to file personal income tax returns because they have lower income. For this reason, the Ombudsman initiated an *ex officio* action before the Secretary of State for Energy and requested information from the National Commission for Markets and Competition (CNMC), which issued a report in October 2020 that coincided with the institution's postulates.

Other noteworthy actions were the recommendations made to re-establish electricity in sectors 5 and 6 of the Cañada Real (Madrid) and in the northern area of Granada.

## SOCIAL BENEFITS AND WORKER PROTECTION

In 2020, social security benefits were a key tool for the protection of employees, the self-employed and vulnerable groups affected by the economic effects of the pandemic.

Despite the extent of the measures taken to protect employees and self-employed workers affected by the Covid-19 crisis, the Ombudsman, through complaints, detected situations that fell outside the scope of social protection.

Thus, **the Ombudsman made numerous proposals** to the Ministry of Labour and Social Economy and the Ministry of Inclusion, Social Security and Migration **to improve the protection of salaried and self-employed workers, many of which were accepted.**

For example, **new groups have been included in unemployment protection**, some of them at the institution's request, such as workers who have been dismissed on probation and have been on voluntary leave for the previous three months, workers who have left their jobs and have been offered a new position that is not effective due to the current situation, the group of discontinuous permanent workers, or the group of artists.

**New specific subsidies have also been established**, such as the special subsidy for the unemployed who have exhausted the contributory benefit or the assistance subsidy (and also the active insertion income) between 14 March 2020 and 30 June 2020, and the extraordinary unemployment subsidy for bullfighting professionals, after a recommendation made by the Ombudsman, as well as management improvements in the extraordinary subsidy for domestic workers or the exceptional subsidy for the end of a temporary contract.

In addition, the institution recommended that unemployment benefit be recognised for workers who were moonlighting at the time of the declaration of the first state of emergency. These are workers included in the ERTE (Temporary Redundancy Proceedings) of their companies and, at the same time, affected by the total paralysis of their business or self-employed activities, or with a drastic reduction of their income from self-employment.

Last year, there were also numerous complaints about **problems in contacting the State Public Employment Service (SEPE) by telephone or through the electronic headquarters** and about the excessive delay in assigning a date in cases of virtual appointment requests. **Complaints were also received about the management of the extraordinary unemployment benefit due to the Temporary Redundancy Proceedings (Expediente de Regulación Temporal de Empleo - ERTE)**, especially due to difficulties in accessing the application process electronically, delays in recognition and payment, and errors in the amount or in the undue termination of the benefit.

The Ombudsman opened several proceedings before the Secretary of State for Employment and Social Economy, and **made recommendations to improve the management of the extraordinary unemployment benefit due to ERTE and to make communication between citizens and the SEPE more accessible by different means.** The response was positive, without prejudice to the enormous difficulty of materialising all

these improvements in practice as long as the enormous workload and the inevitable short-term insufficiency of the human and technical means available to the SEPE continue.

In this context, the Ombudsman believes it is necessary for the Secretary of State for Employment and Social Economy and the SEPE to simplify management as much as possible (mostly automated, although with the need for individual interventions by public employees), taking advantage of the experience accumulated in recent months.

On the other hand, the approval, with the unanimous support of Congress, of the **minimum living income** as a non-contributory Social Security benefit to prevent the risk of poverty and social exclusion, something for which the Ombudsman had advocated in his 2019 report, stands out.

However, in the Ombudsman's view, there is an urgent need to resolve the high number of pending cases to prevent the worst-off people from remaining uncovered. The **key to this is to increase the capacity of the INSS (National Institute for Social Security), with human and technical means, and it is also necessary to simplify the procedure and regulation, which are very complex and demanding.**

In addition, the approval of the minimum living income has also had an impact on the processing of minimum incomes and the Ombudsman is examining this in regions such as Andalusia, Valencia, Castile-La Mancha and Catalonia.

## POVERTY AND SOCIAL EXCLUSION

In 2020, **complaints about food subsidies** and rent subsidies from users of social services increased as a result of the economic crisis caused by the pandemic.

The Ombudsman is concerned about the increase in the number of people who are left without financial resources of any kind, without the right to benefits or waiting for a decision on the minimum living income or with a recognised unemployment benefit or allowance that is not sufficient to cover the cost of their family needs.

In this context, the institution opened an **own-initiative inquiry into compliance with the poverty reduction targets of the Europe 2020 strategy**. In addition, he asked the Madrid City Council about the management and reasons for the delay in the effective implementation of the Family Card.

Other notable actions in this area were related to **care for the homeless in the health emergency**. After receiving complaints at the beginning of the pandemic, the Ombudsman requested information from all the autonomous communities, provincial councils of the Basque Country, the autonomous cities of Ceuta and Melilla, and some city

councils such as Madrid and Torrelavega, where the municipal network of resources for homeless people was involved.

Lastly, the Ombudsman also inquired about the precarious situation of **seasonal workers in settlements in Huelva and Lleida**.

## MIGRATION

In 2020, around 40,000 people arrived in Spain irregularly, more than 20,000 of them in the Canary Islands. The Ombudsman has compiled all his actions and the visits made to facilities and centres for migrants located in this archipelago in a monograph on the migratory situation in the Canary Islands.

Given the increase in the number of arrivals on the coast, the Ombudsman initiated ex officio proceedings with the Canary Islands, Andalusia, the Balearic Islands, Murcia and the Valencian Community and with the Ministry of Inclusion, Social Security and Migration to find out what **health measures** they were adopting in the face of possible cases of Covid. The ministry established a protocol which has been followed up by the institution.

With the health crisis, the problems of overcrowding in the **centres for the temporary stay of immigrants** (CETI) increased, especially in the one in Melilla. The Ombudsman has repeatedly called for the transfer of the most vulnerable people to the mainland. Some transfers were carried out, but in the Ombudsman's view they did not resolve the situation.

After the state of alarm was decreed, the institution began to receive complaints about the situation of people in the **detention centres for foreigners** (CIE). The Ombudsman called for the release of these persons, as their return or expulsion could not be carried out in the current situation. All detainees held in the CIEs were released.

The issue that has most affected resident foreign nationals has been delays in obtaining **identity cards**, as well as documents proving their status as applicants for international protection. With almost six million legal residents in Spain today, in the Ombudsman's opinion, the Ministry of the Interior should urgently review the personnel and material resources allocated to the processing of foreigners' documentation. The Ombudsman made a Recommendation to the Ministry of the Interior to urgently facilitate foreign citizens' access to the appointment system to apply for international protection and to carry out various immigration procedures at police stations.

The number of **asylum applications** in Spain during 2020 has fallen significantly compared to the previous year, due to a decrease in the number of foreign arrivals due to border closures and the restrictions imposed on international travel by Covid-

19. According to data from the Ministry of the Interior, as of 31 December, 88,762 people had applied.

Most complaints continue to focus on access to the procedure and delays in obtaining appointments for different procedures. Furthermore, despite the measures adopted to reinforce reception resources, complaints continue to be received about problems of access to the reception system for applicants and beneficiaries of international protection in different parts of Spain.

In 2020, the Public Administration has accepted the recommendation made by the Ombudsman, admitting the compatibility between international protection procedures and applications for residency on the basis of social bonds. The institution is very positive about its acceptance, as it provides a framework that is much more protective and in line with international standards.

Despite the measures that have been taken to rationalise and adapt the reception system to a growing demand for asylum seekers, the Secretary of State for Migration has recognised that the capacity to reinforce it is limited, as the system is overstretched. The Ombudsman insists that formulas must continue to be sought to address the structural shortcomings of the system and to respond to the existing emergency, and in this sense, calls for the participation of all the administrations involved, which must be coordinated to offer a dignified and comprehensive reception to applicants for international protection.

During the first weeks after the declaration of the pandemic, many **Spanish** citizens and foreigners legally resident in Spain, who were **outside the country**, requested the intervention of the institution to return to Spanish territory. The Ombudsman maintained constant communication with these people and passed on to them all the information provided by the Ministry of Foreign Affairs, European Union and Cooperation. In some cases the institution formulated resolutions which in most cases were accepted.

## TAXES

In the area of taxation, **Covid-19 issues accounted for more than half of the complaints received.**

The arrival of the pandemic and the declaration of the state of alarm posed difficulties for the fulfilment of tax obligations on time, so **the Ombudsman asked to accommodate the taxpayer's calendar to the special circumstances that were being experienced.** Thus, the institution urged the Ministry of Finance to extend the deadline for filing quarterly VAT and Personal Income Tax returns for companies (SMEs) and the self-employed for the first quarter of 2020 and requested an extension of the deadline for Personal Income Tax and Wealth Tax returns 2019 for displaced persons, carers of the

sick, those with particularly demanding work regimes and also for the bereaved of deceased persons who have to take charge of filing the returns of the deceased.

Other issues addressed by the Ombudsman were the saturation of the telephone helpline and other means of helping taxpayers to meet their obligations; VAT deferrals for SMEs and the self-employed and their compensation with the refunds resulting from the 2019 personal income tax return; and the calculation of days of the first state of alarm for the determination of tax residence. In addition, in July, the Ombudsman asked the government to amend the rules to apply the lowest possible VAT rate, even 0%, to masks and hydroalcoholic gels, as they have become essential goods.

On the other hand, the different tax treatment of reduced working hours for parents, adoptive or foster parents for the care of minors affected by cancer or another illness led to a Recommendation to the Secretary of State for Finance to correct this disparity in treatment and to consider the situation of self-employed or self-employed professionals. Action was also taken to ensure the confidentiality of political or trade union affiliation data in the personal income tax return.

Lastly, it is noteworthy that two out of three of the decisions issued by the institution in this area were reminders of legal duties due to chronic and long delays in the review procedures entrusted to the economic and administrative tribunals (EATs). The Ombudsman opened an ex officio enquiry with the Secretary of State for Finance to ascertain the content of the Ombudsman's Plan for the Improvement of the EAT and the impact of such measures on the correction of delays.

## ECONOMIC ACTIVITY

Regarding issues related to the impact of Covid-19 on economic activity, complaints were received about the excessive rigour and even ineffectiveness of the **ICO (Institute of Official Credit) lines**, conceived as a financial support for the most arduous period of the pandemic. Already in the period of "new normality", the Ombudsman opened an ex officio case.

A general action was also initiated with the Bank of Spain after complaints were received from **foreign citizens**, some of them vulnerable persons, **who are being refused to open bank accounts** because they do not have a Foreigner's Identification Card (TIE), when a Foreigner's Identity Number (NIE) or passport would be sufficient. From the complaints that have continued to be received, the Ombudsman concludes that opening an account for certain categories of persons, even for access to the so-called basic payment account, can be complex. There seems to be a certain tendency for banks operating in Spain to opt for refusal at the slightest added difficulty, rather than managing this risk in a more individualised way. The case is therefore kept under review.

On the other hand, in 2020, the regulation of commercial communications for **gambling activities** was approved (R.D. 958/2020). The institution's assessment is positive because, despite the fact that it does not address the absolute prohibition of advertising, whose study the Administration accepted at the time, it presents clear improvements in guaranteeing the rights of the groups most sensitive to the problem of gambling.

## JUSTICE

In 2020, justice, understood as a public service, has suffered from the problems resulting from the closure of court offices and the suspension of procedural deadlines until the beginning of June. The Ombudsman has dealt with numerous complaints which have shown that the known **delays in the administration of justice** have been aggravated by the pandemic.

Since 2017, two young people have died (Melilla and Almería) after being subjected to mechanical restraint in a detention centre for juvenile offenders. In order to prevent further deaths in these circumstances, the Ombudsman made Recommendations to the Ministry of Justice, the Autonomous City of Melilla and the Regional Government of Andalusia with the aim of abolishing **mechanical restraints** in these centres throughout the national territory.

The Ombudsman has asked the Ministry of Justice to repeal the section of the regulation on the criminal responsibility of minors that regulates mechanical restraints in order to put an end to them as a means of restraint, and the communities to suspend their practice while this change in the law is being made. The ministry has reported that a working group has been set up to draft a reform of the regulation and to respond to the Ombudsman's recommendation.

In the current context of sudden impoverishment of the population, due to the economic effects of the pandemic, the Ombudsman considers that a well-functioning **legal aid system** is essential. In 2020, the institution has dealt with complaints in which its reform was proposed in order to attend to all citizens who might need access to it. The Ministry of Justice has announced that it is working on several draft regulations with an impact on the legal aid system. Already in 2021, Royal Decree 141/2021 of 9 March, approving the new regulation on legal aid, has been passed.

## CIVIL REGISTRY

For yet another year, the Ombudsman continues to receive complaints both about delays in the resolution of applications for nationality by residence and about delays in the



notification of decisions, in those cases where electronic notification has not been consented to.

The Ombudsman insists, once again, on the need to adopt the necessary measures to resolve the delays in the resolution of Spanish nationality by residence applications, thus avoiding the enormous damage that these delays cause to the people affected. In the Ombudsman's view, this situation must come to an end, and for this to happen, sufficient financial funding is essential.

The situation at the Central Civil Registry has also been the subject of numerous complaints about delays in the issuing of certificates and the performance of marriage registrations. Having found that their poor functioning affects the private sphere of individuals, the Ombudsman has issued resolutions to try to remedy this situation. Thus, it has recommended that the Secretary of State for Justice provide the registry with the necessary means to provide a quality, agile and efficient public service. It has also called for the digitisation of the civil registry to be addressed as a matter of urgency. Finally, it recommended that the Regional Ministry of Justice, Interior and Victims of the Community of Madrid urgently reinforce the staff that attends to the certification and general affairs service of the Central Civil Registry.

In its annual report, the Ombudsman notes that the delay in the entry into force of Law 20/2011 on the Civil Registry has caused a slowdown in its modernisation. On 30 April 2021 it finally entered into force after a wait of almost ten years.

## CIVIL SERVANTS AND PUBLIC EMPLOYEES

Public employment has been one of the essential pillars on which the State has relied to cope with the Covid-19 pandemic. The Ombudsman would like to thank all public employees for their efforts to guarantee and maintain services and especially the health and non-health staff of the health services who have responded in an exemplary manner.

The Ombudsman reaffirms the value of public employment as one of the basic pillars of the State for the guarantee of the fundamental rights and values recognised in the Constitution and calls for it to be maintained and strengthened, especially in those sectors that provide and guarantee essential services to the community.

Following the declaration of the state of alarm, the institution initiated proceedings to inquire into the working conditions in which the State Security Forces and Corps, firefighters and prison officers were carrying out their work. The Ombudsman requested that they be provided with Covid-19 detection devices and personal protective equipment to enable them to carry out their work safely.

Furthermore, in 2020, complaints continued to be received regarding delays in the execution and resolution of public employment announcements. In this year, mostly due to the exceptional measures enacted to deal with the pandemic.

## THE ENVIRONMENT

**The covid-19 crisis also had an impact on the environment.** On the one hand, the containment decreed by the government in March 2020 resulted in a certain improvement in several environmental parameters such as air quality and biodiversity conservation, caused by the stoppage of economic activities. In addition, the limitations caused noise nuisance generated by economic activities, which usually represent the largest number of complaints received, to be significantly reduced or even abruptly terminated when the activity of the hotel and catering premises ceased definitively.

On the other hand, the delay in processing and the restriction of attention to citizens caused by the generalised suspension of administrative procedures decreed during the confinement was the subject of complaints from citizens. Complaints about penalties imposed by municipal authorities for improper practices and irregular deposits of cartons and leftover parcel and courier waste in general have also increased, as the practice of internet shopping has grown enormously.

Among the Ombudsman's actions in environmental matters, the recommendations to prevent hunting in the Monfragüe National Park (Cáceres) and the resolution by which the institution urged the Regional Government of Extremadura to draw up and approve the wolf recovery plan in the region as soon as possible, in accordance with the provisions of the Heritage and Biodiversity Act, stand out.

With regard to **atmospheric pollution**, new resolutions were formulated to improve the environmental control of activities potentially polluting the atmosphere in the Community of Madrid and work continued within the framework of the ex officio action initiated in 2019 on the "Central Madrid" low emission zone.

## THE DEMOGRAPHIC CHALLENGE AND EMPTY SPAIN

The Ombudsman continued in 2020 to work on the problem of depopulation in Spain. The priority objective of all public administrations in tackling the demographic challenge must be to guarantee citizens the existence of quality public services on a universal basis.

In this context and as a consequence of the pandemic, the forced stay at home of many people last year, including students at all levels who had to attend classes and do homework and an unprecedented increase in teleworking, led to an increase in complaints

related to network deficits in many places, mainly in what is known as "empty Spain". Although cases of absolute absence of signal are becoming less frequent, these complaints show the persistence of areas where the quality of the available signal is incompatible with the requirements derived from the work and study rhythms that have been implemented.

On the other hand, the problems of accessibility and continuity of electricity supply in rural areas have a common cause with those occurring in urban areas: the lack of investment in the grid and a regulatory framework characterised by a lack of effective incentives to provide a quality service. The institution has been able to identify a specificity in depopulated Spain that points to a structural deficit, which compromises the constitutional principle that all Spaniards have the same rights and obligations in any part of the territory of the State.

Along these lines, the Ombudsman recommended that the Regional Ministry of Industry, Employment and Economic Promotion of the Principality of Asturias pay for the electrical installation in the village of La Prohida, which does not have access to the electricity grid. In addition, the institution also intervened with the corresponding regional authorities in cases such as utility cuts in municipalities in the province of León caused by a snowstorm or utility interruptions in the area from Villalba de la Sierra to Cañamares (Cuenca).

## TRANSPORT

The Ombudsman received complaints about the reluctance of some airlines to **refund money for tickets for journeys cancelled** due to the limitations put in place during the state of emergency. After opening an ex-officio action on this matter, the institution called on the Aviation Safety Agency (AESA) to inspect what the airlines were doing. In its reply, the agency has stated that it has opened investigation procedures against nine companies, and that once the proceedings have been concluded, it will analyse whether it is appropriate to open sanctioning procedures. In parallel, the Ombudsman initiated proceedings with the Undersecretariat of the Ministry of Consumer Affairs.

On the other hand, the actions promoted by the institution through the European Ombudsman before the European Commission in relation to the **services for the accompaniment of minors** are also noteworthy. The fact that such services are voluntary for companies gave rise to some complaints from separated families having difficulties in maintaining access with both parents. In the case of Spain, the fact that it is an island poses an additional problem, due to the lack of transport alternatives. The Ombudsman concluded that, in order to adequately guarantee the right of children whose parents live apart to maintain contact with both parents, it is necessary, in certain cases, to have facilities for the child to travel alone, a regulation which is not yet adequately guaranteed.

In the area of rail transport, in 2020 the Ombudsman continued the ex officio enquiry begun a year earlier to ascertain the overall criteria of Renfe and the Ministry of Transport, Mobility and Urban Agenda on the **strategy to be followed to prevent rural populations far from the main communication axis from becoming progressively isolated**, either due to insufficient rail services or their gradual reduction, or due to the lack of connections or the poor functioning of existing ones.

In addition to this general enquiry, complaints were processed concerning reductions in rail services which are detrimental to specific areas of the national territory, with a particular impact on rural localities, such as those denouncing the elimination of lines and stops on the line connecting the municipalities of the region of La Alcarria with Guadalajara and Madrid; the progressive elimination of services on the lines linking the provinces of Granada and Almería with those of Alicante and Valencia; or the reductions in timetables, the age of the infrastructure and the frequent breakdowns of the units operating on the Bobadilla-Algeciras line.

## PENITENTIARIES

In 2020, 939 files were initiated, a very high figure, up from 722 the previous year. This increase can be explained by the health crisis and the better knowledge of the Ombudsman through his visits as National Preventive Mechanism (NPM).

The most frequent complaints related to hygiene, health and food (334), transfers (127), communications (112), leave (76), interior separation/classification (59) and ill-treatment (43).

In order to preserve the health of the inmates, after the state of alarm was declared, some 3,000 people were released from prison. The Ombudsman, who since the first weeks of the pandemic has kept an ex officio action open to monitor the incidence of the coronavirus in prison, positively evaluates the measures taken by the prison administrations that served to contain the virus in the centres.

It also acknowledges the efforts of prison officers and highlights the commitment of the prisoners themselves, who have had to endure the inevitable limitation of some of their rights in the interest of preserving life and health.

After the state of alarm was declared, visits to prisons were suspended. To enable detainees to maintain contact with their families, they were provided with mobile phones that allowed for **video calls**. The Ombudsman applauded this initiative and advocated the extension of this type of terminals to all centres to reach as many inmates as possible. Furthermore, it called for its use to be extended beyond video calls with family members

by allowing access to legal counselling services, religious assistance services, community-based telephone counselling services currently available to free individuals, etc.

Many of the recommendations made by the Ombudsman in the report *Persons with Intellectual Disabilities in Prison* were accepted this year. Thus, the Secretary of State for Justice has positively assessed the request to transform custodial sentences into security measures for cases of unnoticed intellectual disability and has undertaken to take it into consideration in the reform of the Penal Code.

For its part, the Secretary of State for Social Rights has accepted the Recommendation to include prisoners with intellectual disabilities in the Social Agenda and in the Spanish Strategy and Action Plan on Disability, as a particularly vulnerable group. The Catalan prison administration has also undertaken to follow the recommendations made by the Ombudsman in order to improve the situation of these people.

#### ACTIVITY OF THE NPM

The pandemic also marked the Ombudsman's activities as National Preventive Mechanism (NPM) in the past year. Since the beginning of the health crisis, the NPM has been in contact with prison officials to learn about the measures taken to protect the health of inmates and staff.

In the first months of the state of alarm, following the recommendations of international organisations, the NPM carried out remote or non-contact monitoring. A total of 49 non-face-to-face actions were carried out.

As soon as ordinary visits could be carried out with all the guarantees for the technicians who carried them out and for the inmates and staff of the places of deprivation who received the visit, these in-depth inspections were resumed. A total of 115 supervisory actions were carried out, of which 66 were on-site visits to places of deprivation of liberty.

In 2020, 671 resolutions were formulated (57 Recommendations, 598 Suggestions and 16 Reminders of legal duties) for the better prevention of torture, ill-treatment and respect for the fundamental rights of persons while deprived of their liberty, in terms of facilities and especially the procedures applied to them during this situation.

All actions carried out as a National Preventive Mechanism will be detailed in the specific report published each year by the Ombudsman.

## CONSTITUTIONALITY OF THE STATE OF ALARM

Some citizens asked the Ombudsman to lodge an appeal of unconstitutionality against Royal Decree 463/2020, of 14 March, which declared a state of alarm for the management of the health crisis caused by Covid-19 and its extensions.

The Ombudsman decided not to lodge an appeal as, in his view, the restrictions on the exercise of certain fundamental rights were justified by the existence of a serious pandemic and were adopted within the framework of Article 116 of the Constitution. The Ombudsman pointed out that neither the government declaring the state of alarm, nor the Spanish Parliament extending it, wanted to suspend fundamental rights. The aim was to confine the population in order to save the lives and preserve the health of as many people as possible.

Following the declaration of the second state of alarm, through Royal Decree 926/2020 of 25 October, some people asked the Ombudsman to lodge an appeal of unconstitutionality.