



## EXECUTIVE SUMMARY 2021 ANNUAL REPORT

The annual report, available at [www.defensordelpueblo.es](http://www.defensordelpueblo.es), details the Ombudsman's actions over the past year. This annex summarises some of the most important of the almost 30,000 cases processed 2021.

### HEALTHCARE

**The Covid-19 pandemic continued to feature in complaints** received by the Ombudsman on health matters, mainly concerning public health policies and administrative measures and the functioning of the National Health System (NHS). The introduction of the EU Covid certificate and the measures to restrict rights that continued to be applied during 2021, especially during periods of increased infection and saturation of health care services, were also a cause for complaint.

In this context, and after receiving a large number of complaints about **incidents related to the EU digital Covid certificate** issued by the Spanish authorities, the Ombudsman made a series of Recommendations to the Ministry of Health. The high price of PCRs also prompted an action, whereby Health was recommended to limit, on a temporary and extraordinary basis, the price of PCR diagnostic tests carried out in public and private health centres and establishments.

Moreover, the Government accepted the Ombudsman's recommendation to recognise Covid-19 as an occupational disease in healthcare workers, rather than as an accident at work.

The institution also initiated actions with different autonomous communities, including Andalusia, Castile-La Mancha, Valencia, La Rioja, Cantabria and Galicia, to determine the extent of **saturation in primary care centres**, as a result of the accumulation of health care and epidemiological surveillance tasks that they had to assume. For the Ombudsman, it is clear that knowing the average delay between a

patient's request for an appointment and the first available consultation at each health or primary care centre is an ideal indicator for monitoring the quality of the service provided. In this context, it recommended that the Community of Madrid establish mechanisms that would make it possible to know the period between the patient's request for a consultation and the first available appointment at each primary care centre.

As with all other specialities, the pandemic situation impacted on the clinical follow-up of **mental health** patients. The institution hopes that the approval of the new Mental Health Strategy of the National Health System will promote action plans that effectively address the least covered needs in all regional administrations.

## EDUCATION

In 2021, most of the complaints received in the field of education referred to **problems caused by the pandemic**. Families have raised concerns about Covid protocols; ventilation systems; truancy of vulnerable children and the difficulties of non-presentational education, among other issues. The Ombudsman has taken action with the education administrations to prevent the health crisis from having a negative impact on education.

Complaints also continued to be made about the difficulties in the admissions process at certain schools, the lack of resources to attend to students with specific educational support needs, accessibility barriers, delays in construction and maintenance work at some schools, and difficulties in accessing grants and scholarships.

The institution has also been approached by people who disagree with the educational projects implemented in publicly funded schools in the autonomous communities of Valencia, Catalonia and the Balearic Islands, requesting that the Spanish language be used proportionally and equitably at all stages of compulsory education.

At the end of 2021, the Ombudsman initiated an ex officio action against the Ministry of Education of the Regional Government of Catalonia to find out how it was protecting a minor from **Canet de Mar** (Barcelona) and his family from the social and political pressure to which they were being subjected, after having demanded classes in Spanish. The institution also requested information on other similar cases that may have occurred in that autonomous community. The institution conveyed to the Regional Ministry of Education its concern about the situation in which this family finds itself after the ruling of the High Court of Justice of Catalonia (TSJC), which requires a minimum of 25% of classes to be taught in Spanish, became final.

For years, the Ombudsman has been receiving complaints from people concerned about difficulties in accessing **vocational education and training**. In 2021, the institution initiated ex officio proceedings before the Ministries of Education of the Community of

Madrid and the Regional Government of Catalonia to obtain official data on the number of places offered for vocational training studies and the forecasts for adapting the current offer to the growing demand. The Ombudsman considers that vocational training is key to reducing school dropout rates and improving the employability of young people by offering more varied options for both training and employment.

At the **university level**, problems with the recognition and validation of degrees have once again been the subject of complaints. Letters have also been received highlighting difficulties in marking and assessment and issues relating to scholarships and grants.

## SOCIAL POLICY

The pandemic crisis has meant a real social emergency for many people, increasing the demand for assistance in the different networks of social resources organised and managed by the other administrations.

In this context, the Ombudsman appreciates that the **Minimum Living Income Act**, passed at the end of 2021, has included several of his proposals in the proceedings processed in the last two years to broaden the scope of potential beneficiaries. The institution continued, however, to receive complaints about delays in resolving applications and complaints and worked to ensure that the administration improved the motivation of decisions denying this benefit. In addition, the delay of the National Institute of Social Security (INSS) in updating the benefit has been the cause of many proceedings.

On the other hand, the Ombudsman considers that the minimum incomes of the autonomous communities should be used to complement or improve the minimum living income. However, the subsidiary nature of these incomes has caused serious damage, as a result of both the lack of measures to guarantee an adaptation of both benefits and the interpretation that some Autonomous Communities have made of the regulatory regulations. In many cases, families in a situation of social exclusion or at risk of social exclusion have gone for months without receiving any money.

As far as **residential care for the elderly is concerned**, the Covid-19 crisis should, in the Ombudsman's view, mark a before and after in the aftermath of the ordeal. The state territorial council has already started work to review fundamental aspects of the operation of residential centres. On the table are issues that the institution has highlighted in its annual reports, such as the review of the residential model, the increase of human resources and the improvement of working conditions, effective socio-sanitary coordination, greater control by the Public Administrations or a reinforcement of guarantees, which always ensure respectful and dignified care.

The pandemic has also had an impact on delays in the processing of **disability assessment** applications, and in 2021 there were numerous complaints about delays in cases handled by the Principality of Asturias, Andalusia, the Canary Islands, Catalonia, the Community of Madrid, the Regions of Murcia, Cantabria and Castile-La Mancha.

## ECONOMIC ACTIVITY

Numerous complaints were received in 2021, highlighting the **inadequacy of the complaint services of regulatory bodies**, such as the Bank of Spain or the Directorate General of Insurance and Pension Funds. The Ombudsman has followed with interest the regulatory process for the creation of a new body, the Financial Customer Protection Authority, which is expected to bring about an improvement.

Another issue highlighted was the problem of **foreign nationals who are hindered from opening or maintaining bank accounts** because they do not yet have a foreigner identification card.

The Ombudsman continued to receive complaints about **electricity**, mainly concerning problems with supply, billing or the recognition of the status of beneficiary of the social electricity bond and the social thermal bond. There were also frequent complaints about power cuts, which particularly affect vulnerable groups, such as the elderly, the sick and minors.

In this context, the actions for the **lack of electricity in the Cañada Real (Madrid), which had been without electricity for more than 500 days**, stand out. The institution began 2021 urging the Community of Madrid and the Government Delegation to solve the lack of electricity in the Cañada Real Galiana. Despite the dramatic situation faced by the more than 4,000 people living in sectors 5 and 6, many of them minors and vulnerable people, the administrations have not been able to solve this problem. At the end of the year, and after meeting with the Commissioner of the Government of the Community of Madrid for the Cañada Real, the Ombudsman has warned that the situation now has the dimensions of a humanitarian emergency and has once again called for an urgent solution.

On the other hand, the **opacity of the model of the electricity bill** received by millions of users under the Voluntary Price for Small Consumers (PVPC) led to an action by the institution, which is still being processed. At present, consumers know the total price of the energy they pay on their bill, but they do not know how much of the price they pay in relation to each of the time slots currently in force (peak, flat and off-peak). The Ombudsman considers that the bill needs to be clearer on this point.

## TAXES

Complaints in this area focused on the **disruption of normal administrative procedures** due to the measures adopted in the framework of the fight against Covid-19, the **obligation for recipients of the minimum living income to file a tax return**, and the impact on some groups of citizens of the government's decision to prioritise **digital means of communication** as the usual - and sometimes the only - means of **processing tax procedures**.

In addition, the institution asked the government for a regulatory amendment to **apply the lowest possible VAT rate**, even 0%, **to masks**, while they remain compulsory for the population. In the same vein, there was also a request to **lower the taxation of hydroalcoholic gels**, as long as their use continued to be recommended.

Another noteworthy action was the ex officio enquiry opened before the State Public Employment Service (SEPE) and the Tax Agency (AEAT) to find out the measures planned to prevent the errors accumulated by the SEPE with the payments to workers in Temporary Redundancy Proceedings (ERTE) from entailing a tax penalty for these citizens in the 2020 Income Tax campaign.

## PUBLIC SERVICE AND EMPLOYMENT

The health crisis has also caused problems in access to public employment. Complaints have been received about delays in the convocation of processes or people who claim that they have not been able to sit the exams because they were infected on the day of the test. In the Ombudsman's view, there should be a specific and individual assessment of the facts by the selection bodies.

On the other hand, the shortage of human resources and the limitation of citizens to face-to-face attention for access to certain public services, due to the pandemic, have been alleviated through the use of e-Government. The technological dispersion applied by the different administrations and the difficulty that the use of new technologies entails for certain profiles, especially for older people, have also generated complaints.

## MIGRATION

Once again, this year, according to the number of complaints received, the issues that have most affected foreign nationals residing in Spain have been **delays in** obtaining their identity cards, appointments to apply for international protection and, once the application has been formalised, delays in interviews or in obtaining the documentation that accredits such status.

During 2021, 41,945 people arrived irregularly in Spain, 22,316 of them in the **Canary Islands**. The Ombudsman has continued to pay special attention to the migratory situation in this region with new visits to reception, detention and care facilities for foreigners in April and November. At the beginning of the year, the institution presented the monographic study *Migration in the Canary Islands*.

In mid-May, numerous people entered **Ceuta** in an irregular manner. The situation of the more than 1,000 minors who entered the autonomous city during those days was of particular concern to the Ombudsman, who from the very first moment was aware of the conditions in which the reception of these children was being carried out. On 13 August, after learning of the expulsion of more than 50 minors to Morocco, the Ombudsman issued a Reminder of legal duties to the Ministry of the Interior, on the same day, to cease this action, as, in his opinion, it could contravene the legally foreseen procedure.

The case was brought to court and the returns were suspended, with the courts agreeing with the criteria set out by the Ombudsman, who suspended the proceedings. Subsequently, 57 of the minors who were returned to Morocco lodged a complaint with the institution. The Ombudsman is still pursuing this matter.

Already in 2022, the Administrative Court No. 1 of Ceuta ordered the return to Spain of 14 of the minors who were sent back to Morocco. This Court points out that this expulsion took place without following, as required, the relevant procedures in a repatriation file, as the Ombudsman had warned.

In October 2021, a **reform of the Immigration Regulation** was approved in order to facilitate the transition of minors in care to adulthood in an appropriate manner. This reform took into account the criteria of the institution which, in March 2020, recommended to the Ministry of Inclusion, Social Security and Migration, the modification of three articles of the Immigration Regulation that regulate the legal regime of unaccompanied foreign minors in order to improve their documentation and guarantee them all the rights to which they are entitled.

Four Recommendations were also addressed to the Ministry of Social Rights and Agenda 2030 to improve the protection of unaccompanied foreign minors. The Ministry accepted the recommendations and included them in the draft of the Comprehensive Strategy for the Care of Unaccompanied Migrant Children and Adolescents, whose work continues in the Sectoral Conference on Childhood and Adolescence. The proceedings are still open.

## EQUAL TREATMENT

In the area of equal treatment, complaints continued to be received denouncing discrimination against the Roma community, against foreigners in an irregular situation, or against women in various areas. Actions have also been carried out in relation to the need to eradicate police stops based on ethnic and racial profiling, or the initiation of sanctioning proceedings against foreigners in an irregular situation who are the parents of Spanish minors.

In 2022, a resolution of the Secretary of State for Education has been published which recognises the uniqueness of **schooling** in the autonomous cities of **Ceuta and Melilla**, in line with the Ombudsman's recommendation, and accepts other documents as proof of residence, beyond census registration.

Complaints received since 2018 have revealed the continued presence in Melilla of generations of foreign families whose children were born or usually reside in the city, but are not registered and are in an irregular administrative situation.

In the institution's view, this decision guarantees the right to education, equal access to education and freedom of choice of school. Furthermore, the resolution puts an end to the damage that the irregular documentary situation of their parents caused to a significant number of minors residing in Melilla.

## HOUSING

The largest group of housing complaints related to the **allocation of Public Subsidised Housing (PPH)**, mainly due to issues such as the opacity of the allocation procedures established in the regional regulations, the requirements demanded and the lack of availability of housing.

The institution detected a significant increase in needs linked to social emergencies. In this regard, numerous complaints were received about **judicial evictions of vulnerable families** who have no alternative housing.

Complaints were also received regarding **financial assistance for the payment of housing rent, linked both to the State Housing Plan and to other lines of regional or municipal aid**.

On the other hand, and although the extraordinary measures approved for social protection against Covid-19 in the field of housing and rental aid have mitigated the economic impact of the health crisis in this area, they also led to a massive number of applications that sometimes exceeded the administration's management capacity.

The Ombudsman proposed **two measures** to the Community of Madrid at the beginning of the year to **tackle the housing problems resulting from the pandemic**. For this reason, it recommended extending the deadline for applying for rental subsidies for permanent housing and also called for the inclusion of situations of residential vulnerability caused by the pandemic in social emergency housing allocations. The latter resolution was accepted by the regional government.

## THE ENVIRONMENT

The increase in extreme weather events and the disruption of daily life as a result of Covid-19 intensified the growing concern for the quality of the environment.

In 2021, citizens complained about the **impact of wind and photovoltaic installations on protected areas and** called for **greater protection of natural areas**, as in the case of the **Mar Menor** (Murcia). The Ombudsman was concerned about the environmental degradation of this Murcian lagoon and contacted the Regional Ministry of the Environment of the Region of Murcia and the Ministry for Ecological Transition to find out what actions they were carrying out to restore the Mar Menor and what they planned to do in the future.

The **drought** is aggravating conflicts over the allocation of water for different uses such as drinking water supply and irrigation. In this context, the Ombudsman reopened proceedings for the impact on groundwater bodies in the **Doñana** Park. The Ombudsman also urged the implementation of a plan to protect the **Ebro delta** in order to correct the effects of climate change and the alteration of biological processes as a result of human activity.

**Pollution** from industrial installations or traffic also played a major role in some cities such as Gijón (Asturias) and Madrid. Thus, the Madrid City Council was asked to review the regulation of the Sustainable Mobility Ordinance, which it had approved, to avoid a reduction in the protection of air quality in the city. Furthermore, it was urged to establish as soon as possible the monitoring, control and evaluation measures provided for in the new mobility ordinance so that the evolution of pollution levels in special protection areas can be analysed and the general scope of the entry into force of the modifications made can be checked.

Another important action concerned the **marketing of pesticides in Spain**. The Ombudsman formulated resolutions to improve the transparency, publicity and motivation of administrative decisions granting permits to use pesticides banned in the European Union. These substances, which can be harmful to human health, to other animals such as bees, or to the environment, are used to prevent and control crop pests in phytosanitary



emergencies. The institution considers it necessary for the Administration to exercise greater control over the use of this type of product.

## SECURITY AND JUSTICE

Following the events in Linares (Jaén), which involved police charges in which several people were injured in the use of ammunition by the police, the institution again recommended the drafting of complementary legislation to the existing legislation on the use of **riot control equipment**.

In relation to **traffic**, irregularities were detected in the processing of complaints, with penalties being imposed on drivers who had nothing to do with the events reported. In the complaints received, the interested parties had lodged appeals, but the administration had issued generic decisions. The Ombudsman initiated proceedings to verify the irregularities denounced by these persons and concluded these cases when the administrations revoked the decisions issued ex officio.

During 2021, there was an increase in complaints from **victims of violence against women** related to custody, guardianship and access procedures. In view of this increase, the Ombudsman considers that specific interventions to safeguard their rights are essential. In addition, the institution advocates improving the detection of risks in which victims find themselves and facilitating their access to available resources, from emergency intervention to social integration.

The Ombudsman highly appreciates the approval of the Organic Law for the Comprehensive Protection of Children and Adolescents against Violence, in June 2021, which incorporated recommendations of this institution to improve the protection of minors who are victims of male violence.

The new regulation includes the imposition of the penalty of deprivation of parental rights for those convicted of homicide or murder due to violence against women, when the victim and the perpetrator had a child in common, or when the victim was the child of the perpetrator. In addition, it amends the Civil Code to restrict visiting rights for parents convicted of violence against women or suspend them during the proceedings. It also reinforces the exercise of the right of children and adolescents to be heard and taken into account in custody and guardianship proceedings affecting them, as well as in criminal court proceedings in which they are victims, when they are sufficiently mature.

With the approval of the aforementioned law against violence against children, the use of **mechanical restraint** in detention centres for juvenile offenders (CIMI) was also ended, assuming the criteria of the Ombudsman who, in 2020, recommended to the

Ministry of Justice to abolish these practices which in the last 10 years have led to the death of three young people in centres in Madrid, Melilla and Almería.

In relation to the defence of the rights of **victims of terrorism**, in 2021 the institution appeared before the European Parliament's Committee on Petitions and stated that the problem of ETA's unresolved crimes requires solutions from two perspectives: justice (judging) and truth (knowing). In their view, public authorities should provide families with the available information and continue to work - in close cooperation with associations - to clarify all unsolved crimes. And criminal law and the judicial system, to facilitate prosecutions.

Persons deprived of their liberty in **penitentiaries** have continued to submit their complaints, the most frequent being those relating to hygiene, health and food, transfers, communications, leave, internal separation/classification and ill-treatment.

#### ACTIVITY OF THE NPM

In 2021, the National Preventive Mechanism (NPM) carried out 72 visits to places of deprivation of liberty and 7 non-face-to-face actions and formulated 899 resolutions (255 Recommendations, 618 Suggestions and 26 Reminders of legal duties) to improve the living conditions of persons deprived of liberty.

In 2021, work has continued on the **Prisons and Gender** project, initiated in 2018, in the framework of which NPM staff carry out visits to places of deprivation of liberty, with a specific focus on the situation of women.