



THE *pocket*  
OMBUDSMAN  
BOOK



DEFENSOR  
DEL PUEBLO  
SPANISH OMBUDSMAN



THE *pocket*  
OMBUDSMAN  
BOOK

## **REPORTS ISSUED BY THE OMBUDSMAN**

All original publications, including annual reports, monographs and National Preventive Mechanism (NPM) reports, can be accessed in Spanish on the [www.defensordelpueblo.es](http://www.defensordelpueblo.es) website.

Editions of annual summaries, the NPM annual reports and the law regulating the institution are available in English in book format. All of these may be accessed on the aforementioned website.

## **RECENTS MONOGRAPHS ISSUED BY THE OMBUDSMAN**

- *Las urgencias hospitalarias en el Sistema Nacional de Salud* (in collaboration with other regional Ombudsman's Offices), 2015
- *La situación de los presos españoles en el extranjero*, 2015
- *La escucha del menor: víctima o testigo*, 2015
- *Seguridad y accesibilidad en las áreas de juego infantil*, 2015
- *Tramitación de las licencias urbanísticas*, 2015
- *El asilo en España*, 2016
- *Los derechos de las víctimas de ETA*, 2016
- *La situación de las personas con enfermedad celíaca en España*, 2017

## **OMBUDSMAN MONOGRAPHS ALSO PUBLISHED IN ENGLISH**

- *The Process of Hearing and the Best Interest of the Child*, 2014
- *Injury Reports on People Deprives of their Liberty*, 2014
- *Asylum in Spain*, 2016

All such publications may be accessed online at [www.defensordelpueblo.es](http://www.defensordelpueblo.es)

THE *pocket*  
OMBUDSMAN  
BOOK



DEFENSOR  
DEL PUEBLO

SPANISH OMBUDSMAN

Text

Antonio Mora

Covert design

Antonio Otero

Correction and general supervision

Eva Cuenca

Translation

Essential English

There is a large format, illustrated first edition of this book titled *El Libro del Defensor del Pueblo* and edited in 2016. It is available in Spanish with an English translation and includes a complete bibliography and two studies on the headquarters of the Institution of the Ombudsman.

Text edited by the Spanish Ombudsman Institution

© Defensor del Pueblo

Eduardo Dato, 31 – 28010 Madrid

[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

[documentacion@defensordelpueblo.es](mailto:documentacion@defensordelpueblo.es)

The total or partial reproduction of the contents of this publication is authorised, as long as the source is cited. It may not, under any circumstances, be reproduced for profitable purpose.

# CONTENTS

OMBUDSMAN AND <i>DEFENSOR DEL PUEBLO</i> : BACKGROUND, CREATION AND EXPANSION OF AN INSTITUTION.....	9
Human rights: from their declaration to their application.....	13
Maladministration.....	27
The institution of the Ombudsman or <i>Defensor del Pueblo</i> .....	33
A supranational Ombudsman: The European Ombudsman ....	59
International coordinating organizations .....	67
 SPAIN'S OMBUDSMAN, <i>DEFENSOR DEL PUEBLO</i> .....	75
Origin and context .....	77
The Organic Act establishing the Ombudsman, <i>Defensor del Pueblo</i> .....	83
How the institution functions .....	95
Implementation and new competencies .....	107
 A KIND OF SUMMARY .....	123
 BASIC BIBLIOGRAPHY.....	125
 APPENDIX.....	127
Declaration of Human Rights (1948) .....	129
Paris Principles (1993) .....	135
Spanish Constitution of 1978, article 54 and article 162.1.....	141
Organic Act 3/1981, April 6th, Regarding the Ombudsman... 143	
Organizational and functioning regulations of the Ombudsman, April 18th of 1983.....	157
 INDEX.....	175





Ombudsman and  
*Defensor del Pueblo*: background,  
creation and expansion of an  
institution



The philosopher José Ortega y Gasset, in a flight of fancy very typical of him, reflected on a judicial post called the "inspector of unanimity" which was instituted in the Greek state of Heraclea, in the 4th century BCE: "I have often let my mind drift back to that very evocative official title, and although I generally detest public office, I would have been happy to hold that post."

Although he could not consider it – since it did not then exist – surely that famous philosopher would have liked to be the *Defensor del Pueblo* – Public Advocate or Ombudsman – that institution which was born in the Nordic countries and has, over time, and not without significant variations, spread throughout the world. It's quite a story – or history. Or rather a set of stories and histories that should be retold separately, since the idea, and even the evolution of the Ombudsman, followed two paths that finally converged. On the one hand, that of human rights – from the many national declarations until they became internationalised, institutionalised and effectively applied. On the other hand, the increasing implementation of the concept of a State under the Rule of Law implies extending (in fact multiplying) the administration. This in turn often leads to maladministration and the misuse of funds that must, in turn, be controlled and corrected, since it is simply – though not without complexity – the tendency of the bureaucracy itself to become bureaucratised.

The institution of the Ombudsman – which now exists in many countries around the world – is born and develops between these two paths or axes.

Sometimes one of these aspects is emphasised more than the other, but it is through both of them and their complex histories (especially the institutionalisation of human rights) that the emergence and implementation of the Ombudsman can be understood. We in Spain officially refer to it as the *Defensor del Pueblo* – Public Advocate – a name by which it is also known in several Latin American countries, but we also often – and without making any distinction – use the Scandinavian word by which this office is known worldwide and in all languages: Ombudsman – from the Swedish.

# Human rights: from their declaration to their application

## *The beginnings: from an idea to its declaration*

The idea that all humans should enjoy certain essential rights, common to all, can already be found in certain ancient civilisations, since it is the basis of many religions. It is important, however, to be aware that it was used in a way that is very different from our modern idea of human rights. The most decisive difference is that the ancient idea of equality, according to which there is a common link between all humans, consists of the conviction that it *has already been granted* – for example: all men *are* equal before God, in part because they are *his children* – while in modern declarations, what is truly innovative is that they proclaim a determination and a commitment. The condition of being children may persist within this modern concept, and from that comes the French Revolution's concept of *fraternité* – brotherhood.

Human rights thus tend to be confused with natural law – they are said to be inalienable rights for all people. However, what all declarations of human rights really contain is a *desideratum*: the expression of a desire that things should be that way. A declaration is therefore a commitment, or even a promise, to accomplish something that, at the time the declaration is made is far from being a reality, and that fact is therefore recognised by the very act of making the declaration. The modern idea of human rights does not refer to their origin, but rather points to

something that needs to be achieved, so action must be taken in order that what has been stated to be desirable becomes possible and is indeed achieved. That is the start of something that we can truly call the history of human rights, with its different phases: the phase of the declaration of these rights – repeated over time; the phase in which they are slowly implemented; the phase of institutionalising these rights; and, lastly, the phase in which they spread around the world. This is a history that is obviously ongoing. We are right in the middle of it.

At the end of the eighteenth century there was an outpouring of declarations of rights, specifically in two places: in the British colonies in America – which would soon become, as the United States, an independent country; and in the Kingdom of France, which was about to become a Republic. Both events soon came to be known by a name that had not previously been used for human activity: Revolution.

The Virginia Declaration of Rights (June 1776), drafted to accompany the Constitution of Virginia, was used by Thomas Jefferson for the preamble to the United States Declaration of Independence (Philadelphia, 4 July 1776). The Declaration of Independence contained a list of rights that is quite close to the modern concept of the rights of man: equality of all men; separation of powers; power to the people and their representatives; freedom of the press, military power subordinated to civil power; the right to justice; and religious freedom. The translation of this declaration into French influenced the working committee drafting the Constitution and the Declaration of the Rights of Man and of the Citizen in 1789, in the midst of the French Revolution.

The start of the first article has become a reference point that gives meaning to all declarations of human rights – and even to mere approximations to such declarations: "Men are born and remain free and equal in rights." This was something more than a declaration. The French author, Jules Michelet – who wrote, amongst many other books, a History of the French Revolution – called it the 'Creed of the New Age'.

The Declaration of the Rights of Man and of the Citizen not only enunciates a series of fundamental principles of a political nature – it attributes, to peoples and individuals, certain rights that are as relevant now as they were then: the right to resist oppression (article 2), the presumption of innocence (article 9), freedom of opinion and religion (article 10), freedom of expression (article 11) and the right to property (article 17).

But the Declaration was not established at a stroke, once and for all. As is well known, the French Revolution continued through difficult ups and downs that led to more declarations of rights. The author Olympia de Gouges wrote a draft Declaration of the Rights of Woman and of the Citizen in 1791– and that literally cost her her head. Later declarations fared better. The Declaration of the Rights of Man and of the Citizen in the year I (1793) returned to the content of the 1789 declaration, with special emphasis on equality, and added the following rights: the right to public assistance (article 21); the right to work (articles 17 and 21); the right to education (article 22); and the right to insurrection (article 35). Article 18 – "Every man can contract his services and his time, but he cannot sell himself nor be sold" – is considered to be the first attempt to outlaw slavery, although it does not explicitly refer to slavery by name. This declaration was

followed by the Declaration of the Rights and Duties of Man and of the Citizen (1795), which was much more restrictive than the two that preceded it (in fact, it suppressed the new rights added in the Declaration of 1793) and which, after the period of the Terror, aimed to re-establish a balance between rights and duties.

What followed was a much less visible history. The Revolution seemed to turn back and devour itself, but the idea of the Rights of Man had already become much more than an idea upheld by a few thinkers in their books, and, during the following century, it developed from declarations and proclamations to bearing real fruit. However, the fever of declarations was to resurface later. And when it did, it was no longer with the novel euphoria of the revolutions (although it did also maintain some of that euphoria in a few cases), but rather with the crucial new development of the 20th century: world wars.

The impact of the First World War led to a proliferation of new declarations that, in one way or another, were once more along the lines of proclaiming and protecting human rights: the Constitution of the United Mexican States (1917); the Soviet Declaration of Rights of the Working and Exploited People (1918); and the Weimar Constitution (1919). But the aspirations towards an international dimension, although addressing only a segment of the population, were expressed in the Declaration of the Rights of the Child, or Geneva Declaration, which was adopted in 1924 by the League of Nations.



## *The Universal Declaration of 1948*

The decisive impetus for a universal declaration was a direct consequence of the next world war: the Atlantic Charter. This arose out of a meeting between Winston Churchill and Franklin D. Roosevelt on a warship, in 1941, which led to the Declaration of The United Nations in January 1942, in which twenty-six nations declared themselves to be concerned about the struggle against the Axis powers and committed themselves to creating, after the conflict, an international organisation to work for world peace.

Once the war was over, the Charter of the United Nations was signed on 26 June 1945. This was the first international treaty with objectives expressly based on a universal respect for human rights, and was followed by the signing of the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), in 1945.

We thus see that protecting human rights formed part of the founding of the United Nations itself. Three years after the UN was created, a universal and specific recognition of human rights was considered necessary. As a result, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in Paris, on 10 December 1948.

The text of the first article of the declaration – which has become so widely known – reads as follows: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." For the first time, human rights were recognised "without distinction of any kind, such as race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status." Its innovative nature is not only found in the declaration of objectives, since it includes a commitment to promote "universal respect for and observance of human rights [...] and their effective recognition and observance."

To fulfil this mission, the Charter then endowed the UN with attributes and methods based on three concepts: "study", "examination" and "recommendation". The Assembly determined that all the member states should publish and divulge the text, so that it would be "disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

Human rights were internationally defined in these terms and with this scope: "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

Article 30, which ends the text of the Declaration, is the one that determines its worldwide scope – which has been affirmed and confirmed over the years: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

Since the Declaration, one of the principal aims of the UN has been to implement its content, by providing itself with new instruments over the years. This process began very soon after the Declaration, on 12 August 1949, with the signing of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention or GCIV). This Convention had been adopted by the diplomatic Conference to prepare international treaties to protect the victims of war.

Continuing with this work of reinforcing the Universal Declaration of Human Rights, it was complemented by two different Covenants that are closely related to it: the International Covenant on Civil and Political Rights, on the one hand, and the International Covenant on Economic, Social and Cultural Rights, on the other. Both of these treaties were signed in 1966 (although they did not come into force until 1976). The first of the two highlighted several points that are directly related to the 1948 Declaration, in stating that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." (Article 6).

The Covenant on Economic, Social and Cultural Rights, along the same lines of universal protection, endeavours to create solutions to suit the signatory nations, taking into account the great differences in degree of development between them, by differentiating between developed countries and developing countries: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." (Article 2). In order to ensure the effectiveness of these two Covenants,

several mechanisms were created to monitor compliance by the signatories.

### *Institutionalisation*

Within the UN, the Economic and Social Council had already spoken, as early as 1946 (i.e. two years before the Declaration), of the need to create national institutions. There was a conviction that national institutions should be created – which might even have regional offices – in order to achieve a real dynamic that would promote the protection and implementation of human rights.

It was in 1978 that this type of institution was to receive a major boost. That year, in a seminar held by the UN in Geneva, initial guidelines were laid down regarding the structure and operation of national human rights institutions. The functions that were then specified were:

- to act as a source of human rights information for the Government and people of the country;
- to assist in educating public opinion and promoting awareness and respect for human rights;
- to consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally;
- and that the Government may wish to refer to them;

With respect to the structure of the institutions, the recommendations approved were the following:

- to be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;
- function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- in appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

In the following years, and throughout the eighties, many such institutions were created around the world. The first International Workshop on National Institutions for the Promotion and Protection of Human Rights (NHRIs) was held in Paris in 1991. Its conclusions were defined in a resolution on the Principles regarding the statute for such national institutions (commonly referred to as the "Paris Principles"), and were adopted by the UN General Assembly in 1993. The Paris Principles in general extended the recommendations listed above. In these Principles, the responsibilities of these NHRIs were as follows:

- to present, to the Government, Parliament and any relevant body, recommendations, proposals and reports on all issues relating to human rights;
- to ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party and promote their effective implementation;
- to contribute to the reports which States are required to submit to United Nations bodies and

- to collaborate on preparing human rights programmes;
- to cooperate with the United Nations, regional institutions and other countries' national institutions.

The composition of this type of commission (NHRI) varies from one country to the next, since, although the UN recommends that they be set up, their implementation is always directly dependent on a national process and on specific legislation. Many countries have opted for a different type of institution - and in others they even maintain several, operating in parallel. In 1993, at the World Conference on Human Rights, held in Vienna, a declaration was signed which recognised that it was appropriate that each Nation should choose the framework for a national institution that would best meet its own needs.

### *Towards a legal authority: the International Criminal Court*

In parallel with this process that led from the various declarations of human rights to their international and institutional definition by the UN, a process developed that led to the creation of an International Criminal Court. It had its roots in the Treaty of Versailles (1919), which in article 227 declared Kaiser Wilhelm II guilty of having caused a war of aggression. This was the first time an international crime was to be punished, although it was not referred to as a crime against peace or a crime of

aggression. In 1945, the victorious powers in the Second World War – France, the Soviet Union, United Kingdom, and the United States of America – adopted the London Charter. This created the first international military tribunal, known as the Nuremberg Tribunal and defined four crimes: conspiracy, crimes against peace, war crimes, and crimes against humanity.

A year later, after unilateral action by the US governor in the Far East, an international tribunal was set up (the International Military Tribunal for the Far East). The judges were not only from the great powers, but also from all the other belligerents, such as Japan, and from other neutral countries, such as India. Shortly after this tribunal was set up, another was created in the Philippines, to judge those Filipinos who had committed atrocities against the Americans and the Americans who had committed atrocities against the Filipinos (Yamasitha Sentence).

In the nineties, under article 41 of the Charter of the United Nations, two *ad hoc* tribunals were created. In resolution 827, the United Nations Security Council created The International Criminal Tribunal for the former Yugoslavia, to prosecute everyone, including the heads of state (articles 6 and 7), accused of committing international crimes in the former Yugoslavia between 1 de January 1991 and a date to be determined by the Security Council (article 8). This Tribunal hears cases of grave breaches of International Humanitarian Law (article 2 of the Geneva Convention of 1949), violations of the laws and customs of war (article 3 of the Hague Convention and article 4 of the Genocide Convention) and crimes against humanity, i.e. systematic or massive assassinations, torture or rape of civilians (article 5).

The second tribunal mentioned was established in 1994, at the request of the Rwandan Government. The United Nations Security Council adopted Resolution 955 to create an International Tribunal to judge the crimes committed in Rwanda and neighbouring states (Burundi, Zaire, Uganda and Tanzania), between 1 January and 31 December 1994 (article 7). This tribunal tries the crimes of genocide (article 2 of the Genocide Convention) and crimes against humanity (article 3, common to the Geneva Conventions and Additional Protocol II).

In 1989 there was a movement in the General Assembly of the United Nations, driven by Latin American countries, to reactivate the process of establishing an international criminal court. Such a court had already been considered in 1947, but had never been established because the states could not reach an agreement. At the Rome Conference, held in Rome on 17 July 1998, the states, together with representatives of civil society and NGOs, negotiated the text of the treaty that enshrines the Rome Statute and unanimously approved over a hundred of the hundred and twenty articles. As of 31 December 2000, one hundred and thirty-nine states had signed the Statute of the Court. In a second phase, the treaty was ratified by one-third of the international community, the minimum required for an international institution to be established that represent all the countries in the world.

The establishment of an International Criminal Court is an attempt to create a permanent, general and universal International Court, because the current tribunals and courts are open to criticism, since their justice is selective and occasional and they were created after the crimes were committed. The jurisdiction of the International Criminal



Court includes genocide (article 6), crimes against humanity (article 7), war crimes (article 8) and crimes of aggression (articles 5, 121 and 123). Its territorial jurisdiction includes the territories of all the states parties and the states that accept its jurisdiction (article 12). The Court can prosecute all nationals of these States who are accused of one of the crimes over which the Court has jurisdiction (article 25), and all such crimes committed in a state party.

In the development of human rights and the implementation of institutions that promote and defend these rights, the establishment of a judicial arm, in the form of a Criminal Court, is another building block, all part of the same process.



# Maladministration

It is not easy to define maladministration unambiguously, although, without going into more or less exact definitions, everyone knows what it refers to, since we have all suffered from it at one time or another. There are those who simply call it 'bureaucracy', or uncontrolled and excessive bureaucracy. Maladministration is usually generically identified with a form of administrative tort or administrative error that, in principle, cannot be appealed against and is cannot be easily tried in a court of law. It is a sickness of developed administrative systems, but also arises from a lack of control of these systems. The concept is especially well covered under French and Anglo-Saxon Law. In fact, in those countries' texts on public administration – principally in academic media but increasingly in political and even journalistic circles – *maladministration* is frequently referred to. It can now, however, be said to be a worldwide problem.

What are easier to describe are the symptoms of maladministration and those cases that can be agreed to be symptomatic of maladministration. A preliminary list contains administrative irregularities and omissions, injustice, discrimination, abuse of power, negligence, illegal proceedings, lack of or refusal to provide information, unnecessary delays, favouritism, dysfunction or incompetence, etc. The most extreme example of maladministration is the inability of a public service to consider, identify, and overcome these symptoms and

cases, because then its effects will just continue, be repeated, and probably multiply.

For some authors – and maladministration is receiving increasing attention – discussing this concept does not necessarily imply accusing any administrative body or group of civil servants of incompetence or worse. On the contrary, they say, such discussions are a healthy part of democracy. Once it is conscious of the side effects of how it operates, the bureaucratic structure must recognise and seek out any blunders or departures from the smooth running of its operations. This can be said to be the minimum required to cure any sickness: recognising that it exists. Thus, it is only through regular reviews and checks that an administration or public service can renew itself and improve its organisational performance.

The administration, according to a common definition, must serve the public interest and be concerned to respect the rights of its users, by appropriately managing the missions assigned to it. This can be better understood if expressed in terms of the scope and criteria of a company's finance – something which, ultimately, goes beyond comparative criteria. In business, it is clearly understood that a budget control system indicates self-criticism in the field of financial management and can only result in benefits (and, in the best case, not only financial benefits).

Obviously, however, in the case of public services, the damage that may be suffered by a victim of maladministration can be more serious than just a financial loss. In the field of health, maladministration may cause damage that is simply irreparable, and although damages are usually paid, on some occasions – if the victim has died or been seriously injured – that may be of little importance. A democratic society aims to create a health

service that minimises any possible adverse effects – if it cannot fully eliminate them. In this case, therefore, it is not a matter of minor faults or malfunctions, but rather the possible deterioration – or death – of patients on waiting lists. And, as has been said, it is not enough that the administrative system and the courts resolve the case by compensating the relatives and punishing those specifically responsible in that case – people who are often part of a vicious bureaucratic circle. Continuing with the example of health, the truly effective solution to the problem requires locating the ultimate roots of the problem and all that flows from them.

Maladministration can often be dealt with at the level of the less visible or showy parts of a great policy: perhaps by modifying detailed regulations before – and above all after – major legislative reforms; whether by proceeding with the inevitable increase in the number of doctors (continuing with our health service example), by reorganising the workforce to adapt it to new situations, or through ongoing training, not only of health professionals but also of the civil servants who process patient data, or by other measures. These steps may form part of a reformulation of a health policy that should, itself, be healthy, and a sign of the awareness – at all levels of the administration – of the problems generated by how it operates.

Public services are viewed differently from the outside than from inside – that may be a good point of view when discussing maladministration (and bad administrators). Sometimes the best survey is taken by asking for opinions of those at the back of a queue. What is definitely true is that someone affected by maladministration feels helpless, anxious and suspicious, because they are not familiar with

the bureaucratic processes and they don't always have a good relationship with the civil servant in charge of their case. To this one can add the facts that some forms are hard to understand, there are delays in returning documents, etc.

Theoreticians discussing maladministration usually argue that the limitation on effectively monitoring this phenomenon lies in the fact that it has to be the administrative body itself – and often the same part of it – that must limit possible mismanagement and resolve any problems. This is why an external control system is so important – and it must not only be external to a branch of the administration, but to the whole of it. This implies independence and autonomy. It is therefore an authority that goes further than a complaints service. Such services have their function, but there must be an authority that is external to them and at the same time has the capability to check up on and control them.

This has taken us right to another of the duties of an Ombudsman. All the rest of this book will address, more or less directly, the question of maladministration and how to deal with it. We should now say that it has been the European Ombudsman who has particularly emphasised the concept of maladministration and related it to the institution of the Ombudsman or *Defensor del Pueblo*. This has been done in several documents, and a *European Code of Good Administrative Behaviour* has been prepared, and was approved by the European Parliament in 2001. A run through the essential points in its articles gives a pretty exact idea, somewhat dogmatic, of what is understood to be the opposite of maladministration, which is nothing other than what this code calls Good Administrative Behaviour (putting it simply, good administration):

- Lawfulness
- Absence of discrimination
- Proportionality
- Absence of abuse of power
- Impartiality and independence
- Objectivity, legitimate expectations, consistency, and advice
- Justice
- Courtesy
- Reply to letters in the language of the citizen
- Acknowledgement of receipt and indication of the competent official
- Obligation to transfer to the competent service of the institution
- Right to be heard and to make statements
- Reasonable time limit for taking decisions
- Duty to state the grounds of decisions
- Indication of appeal possibilities
- Notification of the decision
- Data protection
- Keeping of adequate records

And so that the code, in turn, is an example of good behaviour and usage, article 25 lays down that the public must have access to the code.

It's now worth revisiting the journey made up to this point. On the one hand, we have seen how, since the end of the eighteenth century, a process has developed which has gone from the declaration of human rights to such rights being effectively institutionalised, especially as from

the 1948 Declaration and the work the UN has carried out since then. On the other hand, the negative effects of public administration bureaucracy have been defined in the concept of maladministration.

Now we will see how, in response to both of these – the breaches of human rights and the practice of maladministration – institutions have been established throughout the world, which will be examined below.



# The institution of the Ombudsman or *Defensor del Pueblo*

## *Origin and History*

In a very few years, institutions to defend fundamental rights and control or monitor the administration have been set up, with various configurations and denominations.

The figure of the Ombudsman was created in the nineteenth century in the Scandinavian Kingdoms of Northern Europe. That word, which has become standard in many parts of the world, is usually translated as ‘agent’, ‘representative’, or even more freely, to mean ‘agent and interpreter of laws’, although it has ended up as equivalent to the *Defensor del Pueblo* - Public Advocate.

It was King Charles XII – of the kingdom equivalent to modern-day Sweden and Finland – who in 1713 appointed a representative called *Högste Ombudsmännen* to monitor and control the government administration. In Sweden, this task was in addition to that of a Chancellor of Justice, who had the obligation of ensuring that civil servants acted within the law and in accordance with regulations. These representatives, therefore, complemented each other to a certain degree, and together were the precursor of the future concept of Ombudsman. As from 1766, the Chancellor of Justice ceased to be designated by the King, and was designated by the representatives of the four estates, and gradually became a true civil servant, until, as a

result of the coup d'état of King Gustav III, he took on the powers of a Justice Minister.

### *Origin and development in Scandinavia*

The true Ombudsman, who was called the *Justitie Ombudsman*, was created in Sweden by the new Constitution of 1809. This constitution was the result of a revolutionary clash at the time, and placed special emphasis on the separation of powers, the powers being the King and his Council, the Parliament and the courts. The Ombudsman, appointed by the Parliament, was charged with controlling and monitoring government activities, the correct application of laws, and reporting all irregularities and negligence by civil servants and the courts, as well as investigating complaints by citizens. Part of that Constitution is still in force in Sweden today, especially the chapter on the form of Government, which establishes the Ombudsman.

Since then, other fundamental laws have implemented and complemented the Constitution: the Act of Succession of 1810, the Parliament Act of 1866, and lastly, the Press Freedom Act, which established a series of parameters related to the Ombudsman, such as the peoples' right to consult official documents. Since they came into force, many minor amendments have been made to these laws.

In the Constitution (article 6 of chapter XII on parliamentary control) the Ombudsman is provided for as follows: "The Parliament shall designate one or more parliamentary procurators (*Ombudsmän*) who are charged, in accordance with the terms of reference given by the Parliament, to supervise the application of laws and other

statutes in the public service. An Ombudsman may institute criminal and disciplinary proceedings in the cases indicated in these terms of reference". This provided for the possibility of designating as many procurators (*Ombudsmän*) as might be considered necessary, thus creating the ongoing tradition of having several Ombudsmen, such as one for Justice, one for the Consumer, one for Free Trade, one for the Military and, more recently, one for the Environment. In 1968, the different Swedish Ombudsmen were brought together into a single institution, under the general supervision of one of them.

Finland, which had formed part of Sweden and therefore been aware of the precursors of the Ombudsman, adopted the institution in its first Constitution of 1919, after achieving independence from Russia. Denmark created the Ombudsman as part of the constitutional reform of 1953, extending the institution's jurisdiction to overall, instead of sectoral responsibility, and charging it with supervising both the civil and military administrations. At around the same time (1955), Norway created a military Ombudsman in 1955, and a civil one in 1962.

**FIGURE 1: The first Ombudsman, in Scandinavia**

Country	Institution	Type	Created
Denmark	Ombudsman	national	1953
Finland	Parliamentary Ombudsman	national	1919
Norway	Ombudsman	national and sectoral	1955, 1962
Sweden	Ombudsman	national and sectoral	1809

## *Spread to other Democracies after the World War II*

The reconstruction of Europe after the devastation of World War II was undertaken with the conviction that the ideals of liberty and democracy should be accompanied by specific institutions that would guarantee them (it should, however, be mentioned that this reconstruction took place during the Cold War, which partially explains the enormously slow pace and repeated setbacks). We have already seen the process that led to the Universal Declaration of Human Rights and the UN's efforts to develop an awareness that national institutions should be created that would work actively for those rights.

In parallel, several countries implemented the institution of the Ombudsman. The history of this is not just that of adopting and deploying an idea (already a reality in Northern Europe), since it was a more complex process of changes, reforms and restructurings that has not, in fact, ended. The fact that, in many countries where these institutions have been created, small amendments are made just a few years later to give the Ombudsman additional powers or jurisdiction, shows how complex the process is. And, as we will see, there are institutions called the National Human Rights Commission that, in fact, have many of the characteristics – if not all – of the Ombudsman, while certain institutions that take on the Ombudsman role (whatever they may be called) do not have all these characteristics – starting with one of the most important, that of having been chosen by Parliament.

Israel had a related institution (State Comptroller) almost as soon as the nation was founded, in 1949; it was reformulated in 1971 to be a true Ombudsman. Federal Germany, however, adopted the military Ombudsman

model in 1956, but considered that it was not yet necessary to establish a civil Ombudsman since it had strengthened the Petitions Committee, which was intended to carry out the same function. The Petitions Committee Powers Act, passed by the German *Bundestag* in 1975 (with several later amendments) grants certain powers, such as the power to investigate, which go beyond the functions assigned to Petitions Committees in other countries. (Additionally, the German Committee belongs, as a normal member, to both the International Ombudsman Institute and the European Ombudsman Institute).

**FIGURE 2: Ombudsman and *Defensor del Pueblo* in Europe**

Country	Institution	Type	Created
Albania	People's Advocate	national	2000
Germany	Petitions Committee of the German Bundestag	sectoral	1956,1975
Andorra	Raonador del Ciutadà	national	1998
Armenia	Human Rights Defender	national	2004
Austria	Ombudsman	national	1982
Belgium	Le Médiateur fédéral	national and regional	1991
Bosnia-Herzegovina	Human Rights Ombudsman	national	1996
Bulgaria	Ombudsman	national and regional	2004
Czech Republic	Ombudsman	national	2000
Cyprus	Commissioner for Administration	national and regional	1991
Croatia	Ombudsman	national	1993

Country	Institution	Type	Created
Denmark	Ombudsman	national	1953
Slovakia	The Public Defender of Rights	national	2002
Slovenia	Ombudsman for Human Rights	national	1995
Spain	Defensor del Pueblo	national and regional	1981
Estonia	Chancellor of Justice	national	1999
France	Médiateur de la République	national	1973-2011
	Défenseurs des Droits	national	2011
Georgia	Public Defender	national	1997
Greece	Ombudsman	national	1998
Greenland	Ombudsman	national	1994
Hungary	Commissioner for Fundamental Rights	national	2012
Ireland	Ombudsman	regional	1980
Iceland	The Parliamentary Ombudsman	national	1997
Italy	Difensore Cívico	regional	1971
Kosovo	Ombudsman	national	2000
Latvia	Ombudsman	national	1996
Lithuania	Ombudsman	national	1995
Luxembourg	Commission des Pétitions	national	2001
Macedonia	Ombudsman	national	1997
Malta	Ombudsman	national and regional	1995
Moldavia	Parliamentary Advocate	national	1998
Montenegro	Ombudsman	national	2004

Country	Institution	Type	Created
Norway	Ombudsman	national and sectoral	1955-1962
Netherlands	Ombudsman Nationale	national	1981
Poland	Commissioner for Human Rights	national	1987
Portugal	Provedor de Justiça	national	1975
United Kingdom	Ombudsman	regional	1967,1994
Romania	The Advocate of the People	national	1997
Serbia	Protector of Citizens	national	2007
Switzerland	Ombudsman	regional	1971
Turkey	Ombudsman	national	2012

In New Zealand, the Ombudsman was created in 1962. In Australia, between 1972 and 1979 federal Ombudsman Institutions were established for the North and South (both in 1972), and for the Commonwealth of Australia (in 1976).

In parallel, in some countries, other similar types of institutions have been created having the nature of a parliamentary commissioner. These do not exactly follow the model of a national Ombudsman, nor that of a Petitions Committee. Great Britain is an example of this. In 1967 (with amendments in 1994), the Parliamentary Commissioner for Administration was created. This Commissioner is formally appointed by the monarch but proposed by the Government. The office is referred to as the ‘Ombudsman’ – but only by extension. This institution is characterised by limitations in its investigations – for example, it cannot investigate the police or local

authorities. This was also the case of France and its *Médiateur de la République*, which was created in 1973, appointed by the Government, and could only receive a citizen's complaint through a Member of Parliament. This situation was resolved by the creation of a new institution, the *Défenseurs des Droits*, in 2011).

**FIGURE 3: Other countries**

Country	Institution	Type	Created
Australia	Ombudsman	regional	1972
Canada	Ombudsman/Protecteur du Citoyen	regional	1967
South Korea	Ombudsman	national	1994
USA	Ombudsman	regional	1969
Israel	Ombudsman	national	1971
Japan	Administrative Evaluation Bureau	national	2001
New Zealand	Ombudsman	national	1962
Russia	High Commissioner for Human Rights	national	1996

In turn, different models of a sectoral Ombudsman have been developed, such as the abovementioned military Ombudsman in Federal Germany. Additionally, general Ombudsman institutions that are regional in scope have been created. One example is Italy, where a regional Ombudsman was set up in Tuscany in 1971, and was followed by the establishment, between 1979 and 1981, of 11 in the various regions, with the Tuscan one performing certain coordination functions. Over the years, regional institutions (whether federal or based in the autonomous



regions), and having a variety of relationships with the Ombudsman, have been established in America. Institutions were established in Canada, as follows: Alberta and New Brunswick in 1967; Quebec in 1969; Manitoba in 1970; Nova Scotia in 1971; Saskatchewan in 1973; Ontario in 1975; Newfoundland in 1975; British Columbia in 1979; Yukon in 1996.

In 1980, an Ombudsman was established in Ireland. In Holland an Ombudsman was established in 1981 (with changes after the 1983 Constitution). In Austria there is the Austrian Ombudsman Board, provided for in the Constitution and based on the Act of 1982, although there was a precursor institution in 1976. These were followed by Hong-Kong (1988), North Korea and Malaysia (1994). There has been an Ombudsman in Greenland since 1994. In Belgium there are *Médiateurs fédérales* – established in Flanders in 1991 and in Wallonia in 1994 – that are governed by an act passed in 1995. They are chosen by the Parliament.

In 1996, South Africa established the Public Protector. Greece has been unusual in that it established an Ombudsman who was appointed by the Council of Ministers in 1997, although, after the Constitution was amended in 2001, an Ombudsman was established who is independent of the executive power and has greater powers.

It can be said that in Africa there has been a correlation between a country becoming independent and appointing an Ombudsman or similar institution. For example: Tanzania – independence in 1964, Ombudsman in 1966; Ghana – 1957 and 1969, respectively; Mauritius – 1968 and 1970; Zambia – 1964 and 1973.

**FIGURE 4: Ombudsman in Africa and Asia**

Country	Institution	Type	Created
Botswana	Ombudsman	national	1997
Burkina Faso	Médiateur	national	1995
China	Ombudsman	national	1988
Gabon	Médiateur de la République	national	1992
Gambia	Ombudsman	national	1997
Ghana	Commissioner for Human Rights & Administrative Justice	national	1969
India	Ombudsman	regional	1972
Indonesia	Ombudsman Commission	national	2000
Jamaica	Parliamentary Ombudsman	national	1978
Madagascar	Défenseur du Peuple	national	1992
Malaysia	Public Complaints Bureau	national	1994
Malawi	Ombudsman	national	1994
Morocco	Médiateur du Royaume du Maroc	national	2011
Mauritius	Ombudsman	national	1970
Mauritania	Médiateur de la République	national	1998
Namibia	National Ombudsman	national	1990
Nigeria	Public Complaints Commission	national	1975
Pakistan	Federal Ombudsman	national	1972
Senegal	Médiateur de la République	national	1991

Country	Institution	Type	Created
South Africa	Public Protector	national	1996
Sudan	Public Grievances and Correction Board	national	1995
Thailand	Ombudsman	national	1999
Taiwan	Ombudsman	national	1992
Tanzania	Permanent Commission of Enquiry	national	1966
Tunisia	Médiateur Administratif	national	1992
Uganda	Inspector General of Government	national	1986
Zambia	Investigator General	national	1973
Zimbabwe	Ombudsman	national	1982

### *Transitions to Democracy in Spain and Latin America*

Portugal and Spain experienced very long-lived dictatorships that ended within a few years of each other. The Ombudsman institutions arose during both these countries' transitions to democracy and their constituent processes. In both cases, significant emphasis was placed on the duty to defend Fundamental Rights. In Portugal, the institution was created in 1975 and is called the *Provedor de Justiça*.

The Spanish *Defensor del Pueblo* was established in 1981. We will return to describe the Spanish *Defensor del Pueblo* in more detail in the second part of the book. Shortly after the national Ombudsman was implemented, regional

Ombudsmen were set up in Spain's autonomous regions, each reporting to the regional parliament:

- in 1983, the *Defensor del Pueblo* in Andalusia;
- in 1984, the *Síndic de Greuges* in Catalonia and the *Valedor do Pobo* in Galicia;
- in 1985, regional laws established the following institutions: the *Ararteko* (Basque Ombudsman), the *Justicia de Aragón* (Aragonese Ombudsman) and the *Diputado del Común* (Ombudsman for the Canaries);
- in 1988, the *Síndic de Greuges* in the Valencian Community;
- in 1994, the *Procurador del Común* in Castilla y León;
- in 2000, the Navarre *Defensor del Pueblo* was established;
- in 2001, the *Defensor del Pueblo* in Castilla-La Mancha;
- in 2005, the *Procurador General* in the Principality of Asturias;
- in 2006, the *Defensor del Pueblo* in La Rioja; and
- in 2008, the *Defensor del Pueblo* of the Region of Murcia.

Due to the administrative reorganisations of several autonomous regions that have taken place in recent years, some of these institutions have ceased to exist. This has happened in Castilla-La Mancha in 2011, Murcia in 2012 and La Rioja in 2013. There has also been a law for implementing the *Síndic de Greuges* for the Balearic Islands since 1993, but it has not yet been implemented; similarly, the Extremadura Statute of Autonomy provides for an

Ombudsman, but the law implementing it has not yet been approved.

And, just as the implementation of an Ombudsman in Spain – including the regional institutions – is a consequence of the transition to democracy, one can see the implementation of this institution in several countries in Latin America as a relatively comparable process. In this process, the case of Spain has continued to be a reference point, although in very different social and political contexts. Additionally, in some countries the process of legislating for these institutions has been long and in many cases it has been quirky. All have a greater emphasis on fundamental rights rather than on supervising the administration, although they all have the latter power.

In several Latin American countries, this implementation has begun with constitutional reform. This was the case for Guatemala, the first Latin American country to have an Ombudsman, which provided for the institution – ‘*Procurador de los Derechos Humanos*’ – in its 1985 Constitution. Mexico was the next Latin American country to appoint a national Ombudsman, although it had clearly had precursors. The earliest was the *Procuraduría de los Pobres* in the state of San Luis de Potosí (1847) – a more direct and recent precursor was the *Procuraduría Federal del Consumidor* (Federal Consumer Protection Office), which was created in 1975 and started up the following year. In 1990 national Department of Human Rights was created, the direct precursor of the National Human Rights Commission, which was created in 1992 through constitutional reform, and although it began as just that, a Human Rights Commission – rather than a parliamentary Ombudsman – it has become fully assimilated to that model since the Act that created it was amended in 1999.

Puerto Rico's *Procurador del Ciudadano* has also had an unusual history. The institution was created in 1977, but for many years the Ombudsman was appointed by the Government, until it was reformed in 1987; appointments are now made by the executive. In El Salvador, the *Procurador para la Defensa de los Derechos Humanos* was created in 1991, as a result of the constitutional reform that followed the end of the civil war. The Constitution of Colombia, which was also passed in 1991, provided for an Ombudsman. This came after several previous attempts to create a similar institution. In Peru, an Ombudsman was provided for in its 1993 Constitution.

In Costa Rica, the *Defensoría de los Habitantes* was established in 1992, after several attempts in the previous decade. In Argentina, there has been a tradition of regional and municipal Ombudsman (the first was created in Buenos Aires in 1985), and the national Ombudsman was created in 1993. These were followed by the *Comisionado Nacional de los Derechos Humanos* in Honduras, in 1995; the *Procuraduría para los Derechos Humanos* in Nicaragua, in 1995; the *Defensoría del Pueblo* in Paraguay, in 1995; the *Defensor del Pueblo* in Ecuador, in 1997; the *Defensoría del Pueblo* in República de Panamá; and the *Defensor del Pueblo* in Bolivia, in 1997. The table below shows when the above, and those that followed, were created.

**FIGURE 5: Ombudsman in Latin America**

Country	Institution	Type	Created
Argentina	Defensor del Pueblo	national and regional	1993
Bolivia	Defensor del Pueblo	national	1998

Country	Institution	Type	Created
Brazil	Procurador Federal dos Direitos do Cidadao	national	2000
Colombia	Defensor del Pueblo	national	1991
Costa Rica	Defensoría de los Habitantes	national	1992
Ecuador	Defensor del Pueblo	national	1997
El Salvador	Procurador para la Defensa de los Derechos Humanos	national	1991
Guatemala	Procurador de los Derechos Humanos	national	1985
Honduras	Comisionado Nacional de Los Derechos Humanos	national	1995
Mexico	Comisión Nacional de Derechos Humanos	national	1992
Nicaragua	Procuraduría para los Derechos Humanos	national	1995
Panama	Defensoría del Pueblo	national	1997
Paraguay	Defensoría del Pueblo	national	1995
Peru	Defensor del Pueblo	national	1993
Puerto Rico	Commonwealth Ombudsman	regional	1977
Venezuela	Defensoría del Pueblo	national	1999

### *Transitions to Democracy in Russia and Eastern Europe*

The expression 'transition to democracy' can be used to refer to various situations that are very different. One type is the transition to democracy in the three countries of southern Europe that experienced dictatorships that were very long in comparison with their geopolitical context –

Portugal, Spain and Greece – and other type, very different, is the transition of the countries that lived through decades of "real socialism" within the orbit and, to a greater or lesser degree, under the influence of another country – the iron curtain countries, which were dominated by the USSR. The first group were transitions from a dictatorial regime to a democratic government, but in the second group there was not only a change of political system – the social and economic systems also changed.

In terms of this subject matter – the Ombudsman – the difference is significant. In the countries in the first group, the Ombudsman was born of - and in fact as a result of – a constitutional process, so the institution is a direct consequence of democratisation. This is very clear in Spain, where the *Defensor del Pueblo* was only created after several general elections, and even more so in Greece, where the institution was created quite a long time after the end of the dictatorship. In the slow transitions in eastern European countries, the creation of an Ombudsman is often an asset which is a factor in democratisation and has to be taken into account in that process.

To this must be added a fact that apparently contradicts the last statement: the Ombudsman created in these countries undergoing a slow transition to democracy confront specific, and sometimes very acute, problems when they try to apply their powers and prerogatives, since the process of transition occurs with a change in legislation, which is sometimes very fast, and this is accompanied by a lack of democratic tradition that affects the interpretation of the new laws and regulations. Indeed, the constitutions of these countries (whether new or, in



some cases, restored, as in Latvia) pass through a period of assimilation by the governments themselves and even by the society as a whole, which has little or nothing in common with the rapid and effective implementation of Constitutions – not that long ago – such as the abovementioned countries in southern Europe.

Additionally, the democratisation process is very different in each of these countries, beginning with the fact that their constitutional histories are very varied: there are countries that had democratic constitutions before the second world war (Czechoslovakia and Romania, as well as Poland in its tradition to democracy); countries that had some constitutional control during the socialist era (Yugoslavia, Romania, Czechoslovakia and Hungary – the latter two countries as late as 1982 and 1985, respectively); and countries for which constitutional justice has been a completely new concept, which arose during the transition (Albania, Bulgaria, the Baltic Republics and Russia).

Many of the new constitutions include the Ombudsman institution (Albania, Slovenia, Estonia, Hungary, Macedonia, Poland, Romania, Russia and the Ukraine). The following institutions have now been created: the Protector of Civil Rights in Poland (1987); the Parliamentary Commissioner for Human Rights in Hungary (1993); the Ombudsman in Slovenia (1993); the National Human Rights Office in Latvia (1996); the Ombudsman in Romania (1997), the Ombudsman in Estonia (1999), and the Ombudsman in the Czech Republic (2000). As is usual, their powers and jurisdictions vary.

### *Transitions to Democracy after the Yugoslav Wars*

The Yugoslav wars marked another turning point in the process of democratising Europe. Although the process is related to the events triggered by the fall of the Berlin Wall and the collapse of the USSR, in part of the Balkans there was yet another specific context, since the transitions were strongly affected by the immediate post-war situation. This, and the very way the wars finally ended, determined that these transitions occurred under the direct supervision and advice of other countries. It must be remembered that it was during these wars – on the 14th of December 1995 – that the Agreement for Peace in Bosnia was signed in Paris, by the presidents of Bosnia, Croatia and Serbia, and witnessed by the presidents of France and the United States of America and the prime ministers of the United Kingdom and Russia and the German chancellor, as well as the then prime minister of the European Union.

After the wars, the new Constitutions generally implement the Ombudsman institution, which already existed in Croatia (1993) and Bosnia-Herzegovina (1995).

### *Types of Ombudsman and their Limitations*

One of the principal differences between the various types Ombudsman and the original Scandinavian ones is that a model that was originally sectoral and especially focussed on controlling the Government has led to a national type of Ombudsman, with general powers and special emphasis on Fundamental Rights. There are, however, very different forms of Ombudsman, going beyond the evolution of the Scandinavian model and the implementation of that model

in other places. There are Ombudsmen with very varied criteria and characteristics: with general or sectoral, national or regional scope, reporting to the Parliament or the executive power, with more emphasis on supervising the Administration rather than protecting human rights, or vice-versa, etc.

The key to an Ombudsman's independence lies, obviously, in who chooses him or her and the obligations they have to the person or institution that appointed them. The key to the scope and reach of their capability lies in the functions, duties and investigative powers assigned to them. Apart from this - sometimes clarifying, but more often not, are the many and various names: *Ombudsman* in a universal sense - as in the case of the *Defensor del Pueblo* in Spain and in many Latin American countries, as well as the Ombudsman Institutions that have been implemented in eastern Europe and other places around the world; *Mediator*, above all in francophone areas - although with a tendency to become Ombudsman, as in the case of France, since 2011); and an infinity of *Commission/Committee* (those called National Human Rights Commissions which are on a specific track, linked to the UN, and the Parliamentary Petitions Committees), Procurators Offices, etc. The following is an attempt at a general representation of the institutions that can serve as a guide, a general chart of differences.

**FIGURE 6: Distinguishing features of types of Ombudsman**

Constitutional status	
Institution included in the Constitution and development by Organic Act	Institution not included in the Constitution and equivalent with the status of a ordinary law

Protect and promote the Human Rights	
Assignment as National Commission of Human Rights	The National Human Rights Commission is a separate institution from the Ombudsman

Body that chooses the Ombudsman	
Parliament	Government

Mandate period	
Matches the legislature	current period

Capacity to receive complaints	
directly from the citizen	indirectly through a member of Parliament

Scope of investigation			
Territorial		Competencial	
National	Regional/Autonomous region	General	Sectoral

National Preventive Mechanism against Torture (NPM)	
Within the Ombudsman	Developed by another institution

### *General Ombudsman or Defender of the People*

The Ombudsman is an independent institution, of non-jurisdictional control, the holder of the office appointed by the Parliament, the sole authority to which the administration has to be accountable, and which has a dual mission – to both protect human rights and check that all

public administrations are functioning correctly. It is national in scope and has the specific obligation of attending to and processing any complaints it receives directly from citizens in cases of breaches of fundamental rights or supposed maladministration, in addition to being able to act on its own initiative. Its mandate does not coincide with parliamentary terms. It has normally been provided for in the Constitution and can appeal unconstitutional laws.

This is the model that originated in Scandinavian countries and tends to be considered to be a true Ombudsman or *Defensor del Pueblo* (Public Advocate) based on the extent to which it has all the above characteristics. These institutions are normally called Ombudsman or *Defensor del Pueblo*, and have not only been established in Scandinavian countries, but in most of Europe – Austria, Portugal, Spain, etc – and Latin America.

### *Médiateur*

A *Médiateur* (Mediator), like a general Ombudsman, has powers to monitor the administration throughout the country, but has been appointed by the executive branch (either by the President of a Republic or the King or Queen in a monarchy), and in some cases may not receive complaints directly from citizens. Its mandate often coincides with the legislative term, and there are normally limits on the scope of the powers of such an institution.

This is the model that has principally been adopted by France and most of the francophone countries, such as Senegal, Gabon, etc. However, as has been stated above, in 2011 the institution of *Médiateur de la République* has been

replaced by a Defender of Rights (*Défenseur des Droits*), as a result of the 2009 constitutional reform. This institution has practically all of the abovementioned characteristics of Ombudsman.

### *Sectoral Ombudsman or Defensor*

Appointed by Parliament, it has similar functions to a general Ombudsman, except that they are restricted to a sector of the population (minors, the elderly, the military, consumers, etc.).

As we have seen, this is the model that originated in Scandinavian countries but was then implemented as a general Ombudsman.

### *Regional Ombudsman or Defensor*

Appointed by a regional (or federal or autonomous region-based) Parliament, these institutions have the same powers as a general Ombudsman, but they are restricted in scope to the region (or the autonomous region). Italy and Germany are examples of this type of structure.

There are many possible combinations. In Germany, there is a national sectoral Ombudsman (the military Ombudsman), a Petitions Committee with broad powers, and some regional Ombudsman, which all coexist. In Spain, as will be discussed in more detail there is the *Defensor del Pueblo*, an institution that is general and national in scope (having powers over all public administrations), as well as several autonomous region-based Ombudsman institutions and some that are sectoral. For a time there were institutions that were both sectoral and regional, such

as the Children's Ombudsman in the Madrid region and in the Basque Country, although in both cases it was finally concluded that their functions were being carried out by the *Defensor del Pueblo* and the *Ararteko*, respectively).

*Other Institutions: (I) Parliamentary Commissions: the Right to Petition*

Mentioning these institutions does, in fact, take us back to another forerunner, which has certain points in common with the institution of the *Defensor del Pueblo* or Ombudsman. A Petition of Right goes back to 1628, when King Charles I of England called Parliament in order to ask for money for his campaign against Spain and France, and the condition imposed was that a Petition of Right be created. The demands included the obligation on the King to consult Parliament over any new taxes. It also demanded an end to imprisonment without cause and to special and military courts, and that those accused should receive a fair trial, respecting at all times the rights and freedoms established by the laws of the Kingdom and accepted by the King himself. The Petition was in force for the two years of the war with France and Spain, since, once the war was over, the King returned to his absolutist stand and governed without Parliament until his death in 1649. But the precedent had been set.

As they currently function, a Petitions Committee fulfils, within Parliament, a task that is partially similar to that of an Ombudsman, depending on the extent to which it can receive petitions from citizens. There are some countries where both these institutions – an Ombudsman and a Petitions Committee coexist, although in such cases

the Petitions Committee is pretty inactive. However, in certain countries where no national Ombudsman has been established, such as Germany, the Parliamentary Petitions Committee has been strengthened.

Like an Ombudsman, this Committee has no decisive power and is informative in nature, making suggestions to Parliament regarding cases of maladministration. A petitions committee principally differs from an Ombudsman in that the former is headed up by a Senator and made up of Senators from the different parliamentary groups, as is the case in Germany.

Spain is one of the countries that has both a national Ombudsman and a Petitions Committee – the latter being governed by the following articles of the Constitution: article 29.1 ("All Spaniards shall have the right to individual and collective petition, in writing, in the manner and subject to the consequences to be laid down by law") and 77 ("1. The Houses may receive individual and collective petitions, always in writing; direct submission by citizens' demonstrations is prohibited. 2. The Houses may refer such petitions to the Government. The Government shall provide an explanation regarding their content, when required to do so by the Houses). Organic Law respecting the right to petition, of 2001, specified how petitions should normally be dealt with.

In any case, over the years the contrast between the petitions to the Houses of Parliament and the complaints made to the *Defensor* has been very clear. Between 1982 and 1989 (the 1982-1986 and 1986-1989 parliaments), the two Houses received 4,566 petitions, while the *Defensor del Pueblo* received a total of 132,795 complaints in the same period. Over time, the process of the committees transferring a significant number of petitions to the



*Defensor del Pueblo* each year has become regularised. Many of these petitions can be converted into complaints, which are what the *Defensor* usually deals with.

### *Other Institutions: (II) National Human Rights Commissions*

It is clear that the Parliamentary Commissions/Committees are not Ombudsman, although they are similar in certain respects, and in some countries it is even stated that they already function as Ombudsman institutions. And one can say something similar, although more specific and emphatic in another respect about the National Human Rights Commissions: they are not Ombudsman institutions, although they are very similar in some of their tasks, especially in protecting these rights.

As we have already seen, these commissions are directly promoted by the United Nations, although, ultimately, they do not necessarily report to it. Their mission focuses on defending and promoting human rights and their structure depends on the legislation passed in each country that adopts such an institution. Spain does not have a Human Rights Commission, and it is frequently stated that there is already a *Defensor del Pueblo* that not only fulfils the functions of such a commission, but does much more.

### *The limits to an Ombudsman*

The success of the Ombudsman concept is clear, since it has become so generalised in two respects – implementation throughout the world and variety of models. This generalisation has, however, in some people's opinion, become excessive. The Ombudsman name has

been attached to institutions and above all, to bodies, that are not true Ombudsman – or, indeed, are nothing of the sort. When a complaints bureau is called Ombudsman, *Defensor*, or a similar name, it can be said that we have returned to what was merely a precursor, losing the defining characteristics of an Ombudsman – the true independence and autonomous nature, and the fact that it must be outside the administration or authority.

It has also appeared in a different field – showing the success of these institutions but also the increased, some would say excessive, use of the name: private companies worldwide have used the word Ombudsman for organisations that have some of the characteristics of this type of institution, without truly being one, since they have not been created by a parliament, or even a public authority. Many media companies, for example, especially daily newspapers, have an "Ombudsman" or "Readers' advocate" – and some television companies have an "Audience Ombudsman"). Many universities also have a similar body, with a similar name, and even the Catholic Church has debated whether to create an Ombudsman for the church. Obviously, nobody can claim exclusive rights to a name, or even to an idea: an attractive-sounding word may be used to describe a habit, a vocation, even a democratic nature. But an Ombudsman or Public Advocate is an institution that has been commissioned by a Parliament to protect Fundamental rights and supervise good public administration. If this term is used in other contexts, it must be recognised that it is doing so because it is an approximation, in imitation, or as a metaphor.

## **A supranational Ombudsman: the European Ombudsman**

Given all the variety of institutions that may be called Ombudsman, Public Advocate or *Defensor del Pueblo* – although they may sometimes not really be one – and not forgetting those that have a different title but in fact are Ombudsman, and given also that the movement to create national Ombudsman has been followed by a trend to create others that are more restricted in scope – for countries within nation-states and for regions, all that is lacking is to consider similar institutions that are supranational. Indeed, for some time this had been repeatedly discussed. Ultimately, Human Rights must be universal. And public administration and its dark side – maladministration – are now present everywhere. Given that a major process of globalising is ongoing, the Ombudsman can also be globalised. Or it seems that it can also be globalised. For the present, an Ombudsman has been created in the process of constructing a united Europe. It is not exactly supranational, since it supervises just one administration, but it receives and processes complaints from nationals of the different member states of the European Union, provided that they are about the European administration.

The interest in creating an institution similar to an Ombudsman at the European level goes back to when the Council of Europe was created. At the time, an institution that could be part of the European Commission of

Human Rights was under consideration. In 1974, a draft recommendation by the Legal Affairs Committee to the Parliamentary Assembly of the Council of Europe argued for this possibility, pointing out that it would be appropriate to have an authority that would guarantee the application and protection of human rights. Later, in the process of creating the European Union, the importance given to the political sphere and not just to economic matters, made it clear that there was a democratic deficit within the Community, as well as the fact that the gap between European citizens and this ongoing project of the Union was widening. The Community therefore proposed, in the European Council in Milan in June 1985, the initial idea of creating a European "*Médiateur*" or "Mediator". This proposal was not, however, included when the Single European Act was passed in 1986, as it was argued that, fundamentally, it would duplicate the Right of Petition.

On 4 May 1990, the Spanish President wrote a letter to the other members of the Council proposing the creation of a European Ombudsman that would guarantee those rights linked to the condition of being a European citizen. This proposal was very well received by the European Council meeting in Rome in 1990. In November of that same year, the Danish government, based on its own successful experience of a national Ombudsman, and the feeling of judicial security that the institution gave its citizens regarding the administration, made a new proposal for the creation of a European Ombudsman, based on the Danish model. This suggestion was well received, and the Danes were put in charge of drawing up a proposal, which was presented in March 1991. The 1992 Treaty of Maastricht introduced several elements aimed at formally involving citizens in the life of the EU. The most

important and constructive element of this was the creation of a European Ombudsman.

The priority of this institution, as it is defined in the Treaty of Maastricht, is to defend citizens, giving them an appropriate form of redress in the case of maladministration on the part of EU institutions. The terms of the Treaty on European Union centre on the general principles of the competencies, powers, independence, and length of term of the European Ombudsman. The result was the creation of a new kind of Ombudsman, which simultaneously has the characteristics of the different models in existence (general and specialised ombudsman, and parliamentary commissioner for administration), conceived as a democratic body of the EU that aims to create a relationship of trust between the citizens and European institutions.

The profile of a candidate for European Ombudsman was defined in terms of these requisites: they must be citizens of the EU, enjoying all civil and political rights, and having the requirements necessary in their own countries for exercising judicial functions, or have experience of or acknowledged competence in the exercise of such office (point III of the Committee on Petitions report). Some of these requirements correspond to those established by the national legislatures of the different EU member countries for civil servants or high political officials, whereas others derive from the European scope of the Ombudsman's post.

It is the European Parliament that designates the Ombudsman, by majority vote, for a five-year term. Article 195.6 of the Treaty on European Union specifies that the Ombudsman shall be elected by the European Parliament after each parliamentary election, for the duration of its

term of office. The Ombudsman shall be eligible for reappointment". The election rules specify that a candidate must have the vote of a group of at least 29 parliamentarians that are nationals of at least two member states, and that each parliamentarian may support only one candidate.

At the end of each term, the Ombudsman may run for re-election. The European Parliament may also request that the Ombudsman be dismissed if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

The most striking characteristic of the office of European Ombudsman is its independence from EU institutions, since the holder may neither seek nor take instructions from anybody, whether the Committee, the Council, or Parliament. Likewise, it is independent of both national and EU legal jurisdiction. The person who accepts this post may therefore not exercise any other professional, political, or administrative activity or function, even if unpaid. To ensure the office's independence, the European Ombudsman has the same rank, rights, and privileges as a judge of the Court of Justice. Moreover, the European Ombudsman enjoys supplementary guarantees such as immunity for all acts committed in EU member states, with the same diplomatic privileges as an ambassador within the European Union.

With respect to EU institutions, the Ombudsman has a close relationship with the European Parliament, as it appoints him and may demand that he be dismissed, as well as determining the structure of his staff and supervising the institution's budget. Likewise, the European Ombudsman must send an annual report to the Parliament on the results of his investigations.

The European Ombudsman may handle any case of maladministration in all the institutions and bodies of the European Community except for the Court of Justice and the General Court. Any citizen of the Union or any natural or legal person residing or having its registered office in a member state may lodge a complaint with the Ombudsman. In this, the office's jurisdiction differs from those of national ombudsman, since the European Ombudsman may not accept complaints from persons who are nationals of an EU member state, but do not reside within its territory.

There are three mechanisms enabling the European Ombudsman to start an investigation: after receiving a complaint directly from an EU citizen, through a Member of the European Parliament, or on his own initiative. These terms are, therefore, more flexible than those for certain countries, which only allow complaints to be presented in one of these ways. If the European Ombudsman considers that the complaint or situation he observes is related to breach of Community law, or is a case of maladministration, and therefore justified, he may send it to the European Parliament so that it may consider the matter and, if it so decides, create a temporary investigation committee or send the case to the European Commission to decide whether it should launch an infringement procedure. To ensure that the Ombudsman's Institution can carry out its work efficiently, all EU institutions and bodies must provide it with all requested information and give it access to any documents it requests.

The European Ombudsman, like all ombudsman, has the power to make recommendations. When he establishes that there has been a case of maladministration, he

presents a report to the body that committed the error, and proposes means to remedy the situation. According to the Treaty on European Union, this body then has a period of three months to explain the events and how the maladministration arose. The Ombudsman then presents his definitive opinion in a report sent to the European Parliament and the EU body in question. If no satisfactory response is forthcoming, the Ombudsman includes his recommendations in the report; these recommendations are not, however, binding. If the body persists with its behaviour, the Ombudsman may continue to present additional demands to EU institutions and inform the competent authorities.

Through these investigations, evaluations, reports, and recommendations, the European Ombudsman has been establishing its role and function within the scope of its mandate. The importance that it acquires in the future will, however, depend not only on its work and the path it takes, but also on the development of the European Union itself. To a sceptic who asks about the scope of this Ombudsman's competencies – *Can he only act within the European administration?* one should reply with an exhaustive list of the EU bodies and institutions under his supervision: the European Commission, the European Council, the Parliament, the Court of Auditors, the Court of Justice (with the exception of acts committed in its judicial capacity), the Economic and Social Committee, the Committee of the Regions, the Monetary Institute, the Central Bank and the Investment Bank, etc. From this viewpoint, one can tell this Euro-sceptic that it all depends on the future of European political unity whether the office that we have considered to be the first supranational ombudsman turns out to be no more than just another



institution with a strictly national scope: that of the European Nation.



## International coordinating organizations

The growth in the number of Ombudsman around the world has shown that there is a need to create international organizations able to bring them together to foster coordination and exchange experiences, as well as to promote human rights and the creation of this type of institution where it does not yet exist.

### *Worldwide*

The first of these organizations to be created was the International Ombudsman Institute (IOI), established in 1978 as an international organization of Ombudsman offices, and incorporated under the Canada Corporations Act. Its voting members are public sector, independent Ombudsman offices located around the world, while specialised Ombudsman offices and public human rights organizations may become voting members if they satisfy certain criteria. The IOI Secretariat is in Canada – it has an administrative support office and specialised library in the Faculty of Law of the University of Alberta, in Edmonton. The International Ombudsman Institute funds its regular activities purely from its members' subscription; special projects are funded by grants from official governmental development agencies and private foundations.

The IOI is organised in six regional chapters: 1) Africa, 2) Asia, 3) Australasia & Pacific, 4) Europe, 5) the

Caribbean & Latin America and 6) North America. Most regions have a structure for regular meetings and communication between their Ombudsman offices. The By-Laws of the International Ombudsman Institute set out its objectives: promoting the concept of the Ombudsman and encouraging such activities worldwide; developing and operating programs facilitating an exchange of information and experiences between Ombudsman throughout the world; developing and operating educational programs such as workshops, formal training courses and conferences for Ombudsman, their staff, and other interested persons; encouraging and supporting research and study of the institution of Ombudsman; collecting, storing and disseminating information and research data about the institution of Ombudsman; organising International Ombudsman Conferences; and providing scholarships and other types of financial support to individuals throughout the world to encourage the development of the Ombudsman concept and to encourage study and research into it.

The IOI is governed by a Board of Directors made up of representatives of the voting members around the world, some from each of the six regions. The members of the Board are elected by the voting members of their particular region. The number of Board members per region (three or four persons) depends on the number of IOI voting members in each region. The executive Board members (elected by the Board), are the President, Vice-President, and Treasurer, and the Board also has an Executive Secretary. The directors of each region elect their regional Vice-President.

One of the IOI's main activities is organising International Ombudsman Conferences, held every four

years. Since 1978, there have been conferences in: Edmonton (Canada); Jerusalem (Israel); Stockholm (Sweden); Canberra (Australia); Vienna (Austria); Buenos Aires (Argentina).

Other activities include organising workshops and conferences for Ombudsman Institutions; in recent years, the main focus has been promoting the Ombudsman Institution in young democracies or countries in the process of making a democratic transition. The IOI's Special Projects Committee raises the finance for such activities, as well as for organising the workshops and conferences. The various regions of the IOI also hold their own regional conferences, workshops and meetings. As required, members of the IOI Board of Directors provide advice and support to new Ombudsman offices around the world, and to countries that are interested in establishing an office. For example, in previous years, advice and support has been provided to new offices in Central and Eastern Europe, and to countries in Latin America and Africa which are considering establishing the institution, or have done so.

The Institute publishes the *International Ombudsman Yearbook* (formerly called the *International Ombudsman Journal*), and also a quarterly newsletter of articles based on conference papers, the Directory of Ombudsman Offices, and other publications on the Ombudsman model around the world. The IOI maintains a library and resource centre at the Faculty of Law in the University of Alberta, which is one of the most important international centres for Ombudsman research.

## *In Europe*

There is also a European Ombudsman Institute, which is an association under Austrian law. The Institute's headquarters are in Innsbruck, Tyrol, where it was founded in 1988, after operating unofficially since 1983 at Innsbruck University as the European Ombudsman Academy.

The European Ombudsman Institute is a non-profit making, research-oriented association; its purpose is to adopt a scientific approach in addressing issues relating to human rights, civil protection and the institution of Ombudsman. It conducts research in these areas, as well as promoting and disseminating the Ombudsman concept, and cooperating with institutions advocating similar objectives. Any individual or legal entity involved with issues relating to the Ombudsman concept that agrees with the objectives of the association may become an ordinary member of the European Ombudsman Institute. There are also extraordinary members; these may be persons who share the Institute's objectives and are in a position to promote them, or anyone dealing with issues of the European ombudsman system outside Europe.

One of the Institute's main subjects of study has always been the reform of Ombudsman's offices around the world. The question of whether Ombudsman should have the right to intervene in legal proceedings and provide legal assistance; has been considered. There have also been discussions around whether the collective 'popular complaint' system (in place in Sweden, Finland, and Denmark) should be favoured over systems that allow only individual citizens to present complaints. It also promotes preference for the model of an Ombudsman elected by a

qualified majority of Parliament – at least two-thirds – in order to guarantee democratic legitimacy, and ensure the necessary distance between the office and party interests.

The Institute's Board of Directors, elected by its ordinary members, comprises a President, two Vice-presidents, a secretary, a treasurer, one representative from each division, and at least three, but at the most ten, other members, taking the membership structure into consideration. The Board is elected for a term of two years.

In practice, the Institute has become a major point of reference and encounter, above all for Europe's regional ombudsman's offices. Since 1985, it has organised conferences in several countries.

The Association of Mediterranean Ombudsman was founded in 2007 by the Moroccan Ombudsman, the French Mediator (*Médiateur de la République*) which is now the Defender of Rights (*Défenseur des Droits*) and Spain's Ombudsman, (the *Defensor del Pueblo*). All the equivalent institutions in the Mediterranean region are members.

### *In Latin America*

Latin America also felt the need to create an organization bringing together the different national initiatives to promote ombudsman's offices in each country, and, as this project has become a reality, it has become a common reference point and coordination centre. Before the definitive creation of the Federation, there were two precursors: the *Instituto Iberoamericano del Ombudsman*, founded in Caracas in 1984, and the *Asociación*

Iberoamericana del Ombudsman, created in Buenos Aires in 1992.

The *Federación Iberoamericana de Ombudsman* (Latin American Ombudsman Federation, or FIO) was established in 1995, in Cartagena de Indias, Colombia. It has its own legal personality and its members are Ombudsman, Councillors, Commissioners, and Presidents of Human Rights Committees from Latin American countries, whose mandates may be national, regional, state, or provincial. The FIO defines itself as a forum for cooperation and exchange, and for the promotion, dissemination, and strengthening of the Ombudsman institution throughout Latin America, independently of the specific title that might be used, as long as they meet the basic requisites of an Ombudsman office and are constitutionally mandated or specifically created by a law passed by the appropriate legislative body. Each institution in the Federation is represented by the holder of the post of Ombudsman or equivalent.

Its principal objectives are the following: to strengthen co-operative ties among the Ombudsman of Latin America, Spain, and Portugal, supporting the work of its members; promote, expand, and strengthen the culture of human rights in Latin American countries; establish and maintain collaborative relationships with those international and intergovernmental institutions and bodies, as well as NGOs, that work to promote, defend and foster respect for, human rights; to denounce human rights violations to the international community; to support the promotion of the Ombudsman model in those Latin American countries that do not yet have one; carry out joint programmes of work aimed at strengthening and modernising the FIO member institutions; and promote



studies and research on issues under the Federation's mandate, with the aim of supporting rule of law, democratic government, and peaceful coexistence among peoples.

The Federation has a General Assembly and a Board of Directors. The former is the Federation's governing body, and comprises the holders of Ombudsman offices or the representatives designated by them. Each member has one vote. The General Assembly meets annually, and extraordinary sessions are held when required. Members of the Board of Directors are designated for two-year terms, and include the heads of the national bodies that are members of the FIO, as well as three representatives, elected by their peers, of the state, regional, and provincial ombudsman's offices, thus ensuring that the different geographic regions are represented.

The Federation's rotating headquarters are located in the country of the current Chairman of the Board, who is charged with setting up a FIO office for the length of his or her term. The General Assembly meets regularly in different countries on either side of the Atlantic.



**Spain's Ombudsman,  
Defensor del Pueblo**



## Origin and context

### *Remote Precursors*

The Constitution of 1978 introduced the institution of the Ombudsman, or *Defensor del Pueblo*, into the Spanish politico-legal framework. However, historical precursors have been suggested that have a more or less direct relationship with this figure which, as we have already seen, actually arose from a northern European tradition no more than two centuries old, which has undergone major changes down the years.

As an example of this kind of remote precursor – a shadow of a true precursor – it has been pointed out that, when Spain was under Arab rule, there was a certain Sahib-al-Mazalim, who served as a kind of judge in charge of hearing and verifying complaints of abuse of authority. More often cited is the 14th century *Justicia Mayor* (literally, Justice Major), of what was then the independent Kingdom of Aragon. This was an adjudicator or judge, who acted preventively to impede the abuse of laws and regulations.

In fact, the Aragon's *Justicia Mayor* was a judge whose verdicts were binding on the authority in question; failure to comply could result in serious punishment. But Aragon's *Justicia* could have his own problems with Spain: as a result of the uprisings of 1591, Juan de Lanuza the Younger was beheaded on the orders of Philip II for defending Aragon's regional jurisdiction and defying the

King's will. Another King of Spain, Philip V, decided to abolish the figure of the *Justicia* completely in 1711. The memory of this precursor is enshrined today in the name of the regional Aragonese Parliament's Commissioner for Administration, which was created in 1985, and which is also called the *Justicia Mayor*.

Others have cited as precursors in historic Spanish legal practice the *personero* (attorney) and *vocero* (spokesperson), who focussed on defending the accused before the courts. Some commentators cite the existence of the historical concept of *contrafueros* (breaches) or *agravios* (grievances), known as *greuges* in Catalan, understood to be breaches of Law committed by the King.

### *The Constitution of 1978*

As has been described above, the northern European origin of the Ombudsman as an institution and its later implementation around the world were part of common general processes, conditioned by very specific national situations. In Spain, the Ombudsman appeared forcefully on the scene, with an especially wide mandate, given the context of the debate on creating this institution. This took place during the period after the death of the dictator Francisco Franco in 1975, and the subsequent transition to democracy, including the drafting of the Constitution, leading to final approval of the Constitution of 1978.

In Spain, therefore, it was the Constitution of 1978 that established the institution of an Ombudsman's Institution for the first time, specifically in article 54, in the first section, 'On basic rights and duties', chapter IV, 'Guarantees of basic rights and freedoms'. It does so in the

following terms: "An organic act shall govern the institution of the Defender of the People (*Defensor del Pueblo*) as the Parliamentary High Commissioner for Administration, appointed by Parliament to defend the rights contained in this Part; for this purpose he or she may supervise the activity of the Administration and report thereon to the Parliament."

It should be remembered that this chapter IV, which enshrines the guarantees of basic rights and freedoms, stresses that all public powers are bound to protect these rights and freedoms, so that "any citizen may assert a claim to protect the freedoms and rights recognised in article 14, by means of a preferential and summary procedure before the ordinary courts and, when appropriate, by lodging an individual appeal for relief to the Constitutional Court."

A key characteristic of the Constitution's definition of the Ombudsman as a Parliamentary High Commissioner for Administration is not only the fact that the office reports only to the Houses of Parliament, but also that the Ombudsman is free to act independently of them. In fact, the institution's actions are constrained only by the Constitution itself, which indicates clearly that in order to carry out its aim and purpose – the defence of basic rights – the Ombudsman is endowed with the power to lodge an appeal for unconstitutionality against the activity of the very body that appoints the Ombudsman: that of legislating. We should not, therefore, confuse the Ombudsman's obligation to report on his actions to Parliament with any kind of hierarchical dependency.

Regarding the importance of the Spanish Ombudsman's power to lodge appeals for unconstitutionality, which the Constitution specifies in article 162, it is worth noting that this is a power otherwise

held only by the Prime Minister, fifty deputies of the Congress of Deputies (the Lower House of Spain's Parliament) or fifty members of the Senate (the Upper House) acting together, the executive body of one of Spain's autonomous regions and, where applicable, the assembly thereof.

*The Ombudsman's place within Spain's constitutional framework*

The task of defending basic rights, which is such a specific characteristic of the Spanish Ombudsman's mission, is not one that the Constitution assigns solely to that institution. We should therefore clarify the Ombudsman's specific role. In article 124.1, the Constitution entrusts to the Public Prosecutor's Office the task of 'promoting the operation of justice in defence of legality, the rights of citizens and the public interest safeguarded by the law, ex officio, or on petition by interested parties.' This task is not, however only given to the Public Prosecutor, since article 124.1 indicates that this is established 'without prejudice to functions entrusted to other bodies.' Evidently, these other bodies include the Ombudsman's office. And here is an area – the defence of citizens' rights – where the mandates of the Public Prosecutor and the Ombudsman coincide, so it would be useful to take a closer look to see the specific role of each body, because far from giving them the same competencies, the law distributes their fields of action so that they complement each other. The very location of each one of these two bodies within the Constitution gives us a clue as to their different natures: as we have seen, the Ombudsman is defined in Part I, regarding 'basic rights and duties'; the



Public Prosecutor, is defined in Part VI, on the 'judicial branch'. The latter acts within the court system, with one of its missions being to support the system, and like the Ombudsman, the Prosecutor may lodge appeals for protection; however, unlike the Ombudsman, the Prosecutor is not authorised to lodge appeals of unconstitutionality. In fact, there is an implicit zone of co-operation between them, since any dysfunctions in the administration of justice that come to the Ombudsman's attention must be passed on to the Prosecutor's office, for it to take action. This, however, is taking us on to the field of the Organic Act that established the Ombudsman or *Defensor del Pueblo*.



## The Organic Act establishing the Ombudsman, *Defensor del Pueblo*

### *Nature, scope, and competencies*

The Ombudsman's activities may be characterised in general terms – and in line with definitions made of different Ombudsman around the world – as that of non-judisdictional, and therefore non-binding, supervision. The office has been called a magistrate of opinion and dissuasion, so that it is distinguished, primarily by its *auctoritas* (authority and prestige): its activity is that of exercising influence, which is in no way jurisdictional. The fact that it is free – not only free of charge to citizens, but free from formalistic constraints, combined with its flexible management, enable the Ombudsman's office to co-operate with and complement the judiciary, precisely because its role is so different from that of a judge. It has no supervisory competencies as such, but if its function is understood as pre-supervisory, then we can see its potential for becoming an important instrument in ensuring that those institutions that do have such competencies, such as parliament, the courts, or the administration itself, do take action.

The Ombudsman's scope of action is clearly established, as we have just seen, in Part I of the Constitution: that of defence of citizen's rights. There has been some debate among constitutional scholars as to whether the list of rights covered in that Part of the

Constitution is restrictive or not, although the predominant interpretation has been to consider the list to be wide-ranging, so that we could say that the constitutionally recognised basic rights are open to the interpretation implicit in any democratic and social state that respects the rule of law. And the Ombudsman's scope of action is no more and no less than the whole of the state.

This same article of the Constitution also states that the Ombudsman 'may supervise the activity of the Administration'. This wording implies that the Ombudsman's Institution's mandate covers the public administration as a whole, at all levels: national, local, regional, military, judicial, and so on.

### *Qualifications and election*

To be elected Ombudsman, the law places no other limits than those of being an adult and enjoying 'full civil and political rights'. Among the prerogatives specified in Chapter III of the Act that established the Ombudsman, is that of not being 'subject to any orders', and 'not receiving instructions from any authority', carrying out his work with complete autonomy. The Ombudsman enjoys immunity, and may not be arrested, subjected to disciplinary procedures, fined, prosecuted, or judged on account of opinions he may express or acts committed while performing the duties of his office. Even when not performing his duties, in all other cases, while still holding the office, the Ombudsman 'may not be arrested or held in custody except in the event of *'in flagrante delicto'*, in which

case the 'Criminal Division of the Supreme Court has exclusive jurisdiction'.

The post of Ombudsman is incompatible with: any elected or politically appointed office; active service in any public administration; membership in any political party, trade union, or even association or foundation; with practising the professions of judge or prosecutor, or any other professional or business activity. The Ombudsman therefore has ten days after his appointment to terminate any situation of incompatibility.

As Parliament's High Commissioner for Administration, the Ombudsman is appointed by the legislature for a five-year term. A new Ombudsman is chosen on the basis of a proposal by the Joint Ombudsman Committee of both Houses of Parliament (the Congress of Deputies and the Senate). Once the committee has passed, by a simple majority vote, a resolution proposing one or more candidates, plenary sessions of both chambers of parliament will then vote on them. A candidate must first be supported by three-fifths of the Congress, and then ratified by the same majority in the Senate. If these majorities are not obtained, the process is repeated, with the Joint Committee proposing new candidates. For one of these to be elected, he or she must be supported by three-fifths of the Congress and an absolute majority of the Senate. Confirmation of the appointment is jointly signed by the Speakers of both Chambers - Congress and the Senate, and the new Ombudsman takes office in the presence of the Procedures Committees of a joint session of both Houses, either taking an oath or promising to faithfully perform his duties.

Since the Ombudsman's term has been fixed at five years, the office holder shall be relieved of his duties upon

expiry of this term of office, or in case of resignation, death or unexpected incapacity, flagrant negligence in fulfilling the office's duties and obligations, or a final judgement of conviction for a premeditated offence. When the post is vacant, the above process of naming a new Ombudsman begins again.

### *Spain's Ombudsman*

The office of *defensor del pueblo* is elected by the Parliament, by three-fifths of the members of Congress, and then ratified by the same majority, by the Senate.

The mandate is five years, after which the first deputy becomes the acting ombudsman until the new holder is elected.

Since 1982, five ombudsmen have occupied the post.

- Joaquin Ruiz-Giménez Cortés was the first to hold the office of *defensor del pueblo* between December 1982 and December 1987.
- Álvaro Gil-Robles y Gil-Delgado, served as *defensor del pueblo* between March 1988 and March 1993. During the following month, the first deputy, Margarita Retuerto Buades, held the position of acting ombudsman.
- Fernando Álvarez de Miranda y Torres held the position between December 1994 and December 1999. Antonio Rovira Viñas, then deputy first, held the position in office for a few months.
- Enrique Múgica Herzog was a *defensor del pueblo* in two mandates, from June 2000 to June 2005 and from June 2005 to July 2010. For a few months,

- Soledad Becerril Bustamante is a *defensora del pueblo* from July 2012 to July 2017. She has been the first woman elected as an ombudsman in Spain.

### *Internal structure*

Although it is very much a one-person institution – indeed the institution and the office holder are known by the same name – the Spanish Ombudsman's Institution has a certain collective structure. The law governing the post establishes that the Ombudsman shall be assisted by a First Deputy Ombudsman and a Second Deputy Ombudsman, "to whom he may delegate his duties and who shall replace him, in hierarchical order, in performing these duties, in the event of his temporary incapacity, resignation or dismissal" (article 8). The law also establishes that these deputies are proposed by the Ombudsman and confirmed by Parliament.

The Deputy Ombudsman's competencies are specified in article 12 of the Ombudsman Regulations. In addition to substituting for the Ombudsman and carrying out delegated functions set out by the Organic Act, and collaborating with the Ombudsman in liaising with Parliament and preparing annual or special reports, a very specific function stands out and makes up most of the Deputies' everyday work: "directing the processing, checking and investigation of citizens' complaints and the Ombudsman Institution's ex officio actions, proposing that the Ombudsman accept or reject them, as well as proposing the redress that they consider appropriate, and

carrying out the appropriate actions, correspondence, and notifications."

It is the Ombudsman who distributes the work delegated to the Deputies, duly informing the Joint Parliamentary Committee. The regulations indicate only one difference between one deputy and the other (besides the stipulation that they shall substitute for the Ombudsman 'in their hierarchical order'): the First Deputy is responsible for coordinating the services reporting to the Ombudsman's Institution and dealing with its Secretary General. Moreover, there is the stipulation in the Organic Act Regarding the Legal Protection of Minors (1996), which determines that one of the Deputy Ombudsman is in charge of issues relating to minors.

The Ombudsman Regulations give some more detail regarding the relatively collective structure of the institution, stating that the executive and administrative functions correspond to the Ombudsman and the Deputy Ombudsman, and that the body governing these functions is the Coordinating Committee, whose members are the Ombudsman, the Deputies, and the Secretary General – the latter attending meetings as a non-voting participant. It is an advisory body, for deliberations and consultation. The Committee deals with the following: economic and financial issues, building works, services and supplies, and the Institution's personnel. The Committee must be informed of the appointment and resignation of the Secretary General, as well as the possible lodging of appeals to the Constitutional Court, annual and special reports to Parliament, and any modifications to the Ombudsman Regulations. Lastly, the Committee cooperates in coordinating the working areas, organising



services and consulting on matters determined by the Ombudsman.

The Regulations do not make any specifications as to the content of the Institution's working areas or how they are shared out. Each of Spain's Ombudsman to date has opted for an organization that, seen as a whole, has not differed significantly in content, although there have been differences in the number of areas, and how they are assigned to, and shared between, the two holders of the post of Deputy Ombudsman.

### *Procedures*

Article 9 of the Organic Act Regarding the Ombudsman determines, that the institution 'may instigate and pursue, ex officio, or on petition by interested parties, any investigation conducive to clarifying the actions or decisions of the Public Administration and its agents regarding citizens, as established in the provisions of article 103.1 of the Constitution, and the respectful observance it requires of the rights declared in Part I thereof.' This establishes the Ombudsman's dual role, and it is worth considering more deeply. Part I is sufficiently clear; as has been seen above, it refers to the citizens' basic rights and duties. Regarding the provisions of article 103.1, however, we should simply quote them here: "The Public Administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law." The Organic Act Regarding the Ombudsman also specifies that the office's functions extend to the activity of

government ministers, administrative authorities, civil servants, and any other person acting on behalf of a public administration.

Anyone may address a complaint to the Ombudsman, since there are no restrictions in terms of nationality, place of residence, gender, age, legal incapacity, being held in prison or any other detention centre, or any special relationship of subordination to or dependence on a Public Administration or authority. The law places no condition other than having a legitimate interest. It also specifies that individual members of parliament or senators may individually request the investigation of events, decisions or conduct affecting a private citizen or group of citizens, as may parliamentary investigations committees and committees related to the general or partial defence of civil liberties and rights. The only restriction is that no administrative authority may present a complaint to the Ombudsman concerning matters under its jurisdiction. In all cases, all of the Ombudsman's activities are free of charge to those presenting the complaints, and all investigations carried out by the institution, including procedural matters, should be considered classified information and fully confidential.

The Ombudsman's activity, during the five-year term, shall not be interrupted in the event that Parliament has been dissolved for early elections, or its mandate has expired; under such circumstances, the Ombudsman's Institution shall address the Standing Committees of both Chambers. Not even a state of emergency or siege may interrupt the Ombudsman's work.

Regarding the scope of his competencies, the law specifies three aspects: issues involving Spain's regional governments, justice, and the military. The Ombudsman

may supervise autonomous regional administrations, even if the region in question has its own Regional Ombudsman. The Ombudsman may coordinate with them or ask for their cooperation, but he may not delegate (according to the Ombudsman Regulations) his competencies regarding the defence of basic rights. Any complaints he receives regarding the administration of justice should be sent to the Public Prosecutor, or referred to the General Council of the Judiciary, depending on the kind of complaint involved. Complaints concerning the military administration may not involve any kind of interference in the command of National Defence.

Regarding complaints procedure, the law specifies that complaints must be signed by the complainant, providing a name and address in a document stating the grounds for the complaint, and within a maximum of one year from the time of the events in question. All written complaints are to be acknowledged in writing, regardless of whether they are later accepted or rejected. All anonymous complaints are rejected, and the Ombudsman may reject the following: those in which he perceives bad faith, lack of grounds or an unfounded claim; and those for which the investigation might imply harm or tort to a third party. As mentioned above, the Ombudsman may not investigate complaints regarding matters that are before the courts pending a judicial decision, although this does not impede him from investigating general problems posed by such cases. All of these investigations must be carried out with the utmost discretion, insofar as both individuals and public institutions are concerned, regardless of any considerations that the Ombudsman may consider appropriate for inclusion in his reports to Parliament.

In order for the work of investigating and supervising public administrations to be effective, the law states that all public authorities are under an obligation to give preference and priority to assisting the institution. The Ombudsman, his Deputies, or any other person authorised by him may enter any offices or facilities of any public administration to verify any data needed to carry out any investigation related to either a complaint or an ex officio initiative. He may also ask public officials for any documents that he considers necessary for carrying out his work, even those legally classified as secret.

Persisting in a hostile attitude or one that obstructs the Ombudsman's investigations may be the subject of a special report, and also highlighted in the annual report. Any civil servant who shows a hostile or obstructive attitude shall be guilty of an offence of contempt.

Article 502 of Spain's Penal Code (Organic Act 10/1995) determines the penalties for those who obstruct the work of the Ombudsman or the Parliamentary Commissioners for Administration of Spain's regional assemblies, by refusing to provide, or unduly delaying, any reports requested, or by obstructing access to the records or administrative documents necessary for their investigations.

### *Decisions*

Although he is not empowered to overrule the public administration's actions and decisions, the Ombudsman may suggest modifications in the guidelines followed. If, as a result of his investigations, he should reach the conclusion that rigorous compliance with a regulation may lead to situations that are unfair or harmful to those

persons thereby affected, he may suggest legislative changes. However, as a result of his work, the Ombudsman usually provides public authorities and civil servants with a series of rulings, which may be grouped generally into the following categories:

- recommendations on reviewing or taking certain administrative actions, modifying criteria or instructions on applying current regulations, or modifying such regulations;
- suggestions to reconsider or adopt certain administrative actions that affect a specific case;
- reminders of the obligation to fulfil their legal duties;
- warnings that a de facto or practical situation exists which requires improvement.

In all cases, a report on the results of the Ombudsman's investigations is sent to the interested party, as well as to the public authorities involved in the case.

#### *Personnel and financial resources*

The Ombudsman may freely appoint the staff required to run the institution. The staff, including the Deputies, are automatically dismissed when a new Ombudsman takes office, and they are considered bound by incompatibilities similar to those affecting the Ombudsman and his Deputies. Article 35.1 of the Organic Act indicates that these staff members, while in the service of the Ombudsman, are considered to be working for Parliament,

although in practice, and hierarchically, they only report to the Ombudsman (and this applies to the whole staff: departmental consultants, technical consultants, administrative personnel and their subordinates). No member of staff, therefore, is on a permanent contract (although this continues to be a matter under discussion), due to the legislature's desire to give the Ombudsman the highest possible degree of autonomy and independence.

The Act defines that the institutions financial resources will be an item in the Parliamentary Budget, and fall under the same general regulations (regarding accounting, audits, budgetary structure, payment system and so on).

## How the institution functions

### *Investigation procedures. Complaints*

The Ombudsman's day-to-day work principally revolves around complaints. In fact, they define the general public's perception of the institution. People talk of making a complaint or complaining to the Ombudsman. This custom of defining the Ombudsman's work through these complaints is logical, since an expression had to be coined with which the new institution and its most practical purpose could be identified, which is its relationship with citizens. The concept of a complaint is substantially different from the concepts of claim or petition, although it has something in common with both.

A claim should properly be presented by the citizen to the Authority, and the latter has its systems for receiving, answering and resolving it. Any unsatisfied claim (or a claim that was handled improperly, delayed unnecessarily, or the subject of discrimination, etc.) may in turn be the subject of a complaint sent to the Ombudsman, at which point it ceases to be a claim. On the other hand, a petition is presented within a parliamentary framework, as we have seen some pages back, to Parliament's Petitions Committee. Somewhere between a claim and a petition, a complaint to the Ombudsman is handled with a speed and efficiency, an informality and immediacy, which the others lack.

A complaint, therefore, is the most common mechanism by which a citizen may address the Ombudsman. It is a letter signed by the interested party, providing his or her full name and postal address, stating the reasons for this request for the Ombudsman to intervene, and including any documents that may have a bearing on the case. A member of the public may consult the Ombudsman's Institution directly, whether in person or by telephone, to receive advice. In any case, he or she should be aware that processing a complaint will under no circumstances change legally defined deadlines for appeals, whether administrative or judicial, or halt the implementation of the rulings, judgements or actions in question.

Once the complaint is presented to the Ombudsman's Institution, it is registered and the signatory is sent an acknowledgement of receipt. Within the office, the registrar sends the complaint to the relevant department, where it is studied to determine whether an infringement of rights or maladministration has occurred. If the issue raised falls within the scope of the Ombudsman's jurisdiction and there is evidence of such infringement or administrative irregularity, an investigation is launched. Otherwise, the complainant is informed in writing of the rejection and the reasons, and if possible, of the most appropriate channels for vindicating his or her rights. Regarding this point, it should be noted that the acceptance or rejection of a complaint, i.e., the verification of whether or not it needs to be investigated, is a key aspect of the Ombudsman's work. Thus, when a complaint is rejected, information is usually sent to the citizen involved.



Once a complaint has been accepted, the Ombudsman then begins his investigation as appropriate, informing the complainant of this fact and requesting information from the relevant administrative body or office. Refusal to comply with the Ombudsman's request, or negligence in doing so, whether on the part of a civil servant or his or her hierarchical superiors, shall be considered by the Ombudsman as a hostile and obstructive act. In this process, the Ombudsman is not empowered to overrule or modify the public administration's actions or decisions, but he may suggest modifications to the guidelines followed. We have already seen that the Ombudsman has the authority, after completing an investigation, to make warnings, recommendations, reminders of legal obligations, and suggestions for adopting new measures.

In parallel with receiving citizens' complaints, the Ombudsman may initiate *ex officio* investigations of possible infringements of rights or administrative regularities that may come to his attention. It has already been mentioned that, in the institution's day-to-day work, these investigations are called 'ex officio complaints', although strictly speaking they are not started because of a complaint, but because the Ombudsman becomes aware of possible irregularities or infringements of rights.

The Ombudsman's Institution also regularly inspects and visits public installations of various types. Specifically, the Ombudsman regularly visits every prison in the country, in addition to those occasions when he does so expressly because a particular prisoner has presented a complaint. He also visits the internment centres for undocumented immigrants. Visits to other kinds of public installations, such as military or civil guard barracks,

hospitals, or schools are usually the result of specific investigations.

### *Reports and studies*

The Ombudsman's obligation to inform Parliament of his actions, stated in article 54 of the Constitution, is further detailed in article 32 of the Organic Act. The latter states that there must be an annual report, supplemented by special reports "when the seriousness or urgency of the situation makes it advisable to do so". The annual report is presented to Parliament's Joint Committee, where the political parties may discuss its contents with the Ombudsman. The Ombudsman later presents an oral summary to both Houses, which may then open debate on the report without the Ombudsman's presence in the Chamber.

Certain aspects of the content of the annual report have been laid down: they must always include the number and type of complaints presented, specifying which have been rejected and why, as well as those that have been accepted, indicating their results and specifying the recommendations and suggestions accepted by the Administration. The law also lays down that the report should never include personal information that may make it possible to publicly identify the interested parties, and it is also understood that this confidentiality should be extended to the civil servants whose actions are the subject of an investigation. The report must also include an appendix containing a detailed account of the Ombudsman's budget for that year.

In addition to this description of the annual reports, the special reports must also be considered. On the one hand, there are reports on the Ombudsman's ongoing work in prisons. This work is definitely not limited to receiving complaints from prisoners, as it also involves regular visits to every prison in the country. Although the Ombudsman reports on this everyday prison work in every annual report, he also periodically undertakes investigations – of the whole of the service or a part or aspect of it – that are later presented as special reports. To date, three have been published: *Situación penitenciaria en España* (1988) (The State of Prisons in Spain, 1988), *Situación penitenciaria en Cataluña* (1990) (The State of Prisons in Catalonia, 1990) and *Situación penitenciaria y depósitos municipales de detenidos 1988-1996* (1997) (The State of Municipal Holding Facilities and Remand Prisoners 1988-1996, 1997).

Another field of investigations revolves around issues involving minors: *Menores (Estudio sobre la situación del menor en centros asistenciales y de internamiento y recomendaciones sobre el ejercicio de las funciones protectora y reformadora)* (1991) (Minors in Community Homes and Young Offender Institutions, with recommendations as to their protective and reformatory functions, 1991), *Seguridad y prevención de accidentes en áreas de juegos infantiles* (1997) (Safety and Accident Prevention in Children's Playgrounds, 1997), *Violencia escolar: el maltrato entre iguales en la educación secundaria obligatoria* (2000) (Violence in Schools: Peer-group Violence in Compulsory Secondary Education, 2000). *El primer año de vigencia de la ley reguladora de la responsabilidad penal de los menores* (2002) (The First Year of Operation of the Law on the Criminal Responsibility of Minors, 2002), *La escolarización del alumnado* (2003) (Educational Provision, 2003), *Daño cerebral sobrevenido en España: un acercamiento*

*epidemiológico y sociosanitario* (2006) (Brain Injuries in Spain: Epidemiological, Public Health and Healthcare Approaches, 2006), *Centros de protección de menores con trastornos de conducta y en situación de dificultad social* (2009) (Centres for Minors with Behavioural or Social Problems, 2009), *Programación y contenidos de la televisión e Internet: la opinión de los menores sobre la protección de sus derechos* (2010) (Television and Internet Content and Programs: Opinions of Minors on the Protection of Their Rights, 2010), *La presencia de los valores democráticos en el proceso educativo* (2011) (The Presence of Democratic Values in the Educational Process, 2011), *¿Menores o adultos?* (2011) (Minors or Adults?, 2011). The Ombudsman's Institution has also devoted two special reports to the elderly: *Residencias públicas y privadas de la tercera edad* (1990) (Public and Private Care Homes for the Elderly, 1990) and *La atención sociosanitaria en España: perspectiva gerontológica y otros aspectos conexos* (2000) (Health and Social Care in Spain: Gerontological Perspectives and Related Aspects, 2000).

Three special reports have focussed on various issues involving the disabled: *Situación jurídica y asistencial del enfermo mental en España* (1991) (Legal and Health Care Situation of Mental Patients in Spain, 1991), *Atención residencial a personas con discapacidad y otros aspectos conexos* (1996) (Residential Care for Disabled Persons, and Related Aspects, 1996), and *Presente y futuro de la fiscalidad del discapacitado* (2000) (Present and Future Tax Treatment for the Disabled, 2000). The Ombudsman's Institution has also produced reports on other issues considered an essential part of its work: the *Situación jurídica y asistencial de los extranjeros en España* (1994) (Legal Situation and Welfare of Foreigners in Spain, 1994), *La violencia doméstica contra las mujeres* (1998) (Domestic Violence Against Women, 1998), *La gestión de los residuos*

*urbanos en España* (2000) (Urban Waste Management in Spain, 2000), *Listas de espera en el Sistema Nacional de Salud* (2003) (Waiting Lists in the National Health System, 2003), *Contaminación acústica* (2005) (Sound Pollution, 2005), *Informe sobre asistencia jurídica a los extranjeros en España* (2005) (Report on Legal Aid to Foreigners in Spain, 2005), *Agua y ordenación del territorio* (2010) (Water and Land Management, 2010), *Trata de seres humanos en España* (2013) (Human trafficking, 2013). There have also been reports on the effects of the recent financial crisis, including *Crisis económica y deudores hipotecarios* (The Financial Crisis and Mortgage Debtors) and *Realidad catastral en España* (True Situation of the Property Register in Spain), both published in 2012.

In recent years a series of studies have been made of very specific questions – much more specific than the special reports listed above. In 2013: *Participaciones preferentes* (Preference Shares), *Viviendas protegidas vacías* (Empty Subsidized Housing), *Crisis económica y deudores hipotecarios* (Financial Crisis and Mortgage Debtors), *La trata de seres humanos en España* (Human trafficking in Spain), *Gratuidad de los libros de texto* (Free School Books) and *Crisis económica e insolvencia personal* (Financial Crisis and Personal Bankruptcy). In 2014: *La escucha y el interés superior del menor* (The Process of Hearing and the Best Interests of the Child), *Los partes de lesiones de las personas privadas de libertad* (Injury Reports on People Deprived of their Liberty) and *Telecomunicaciones: demandas y necesidades de los ciudadanos* (Telecommunications: the Needs and Demands of the Public). In 2015: *La situación de los presos españoles en el extranjero* (The Situation of Spanish Prisoners Abroad), *La escucha del menor, víctima o testigo* (Listening to the Child, Whether Victim or Witness), *Seguridad y accesibilidad en las*

*áreas de juego infantil* (Children's Playground – Safety and Access) and *Tramitación de Licencias Urbanísticas* (Processing Planning Permission). Also in 2015 a study was prepared jointly with the Ombudsman of the Autonomous Regions: *Las urgencias hospitalarias en el Sistema Nacional de Salud* (Emergency Treatment in the National Health Service). In 2016: *El asilo en España* (Asylum in Spain) and *Los derechos de las víctimas de ETA* (The Rights of the Victims of ETA). And *La situación de las personas con enfermedad celíaca en España* (The Situation of People with Coeliac Disease in Spain), elaborated at the beginning of 2017.

All of these special reports, after having been presented to, and debated in, the Houses of Parliament, have been published as books or pamphlets, and many have become the basis for legal reforms. They can be consulted and downloaded from the Ombudsman's web portal.

### *Appeals for unconstitutionality*

A task that has been of the utmost concern to the holders of the post of Spanish Ombudsman is the power to make appeals for unconstitutionality to the Constitutional Court against laws that have been passed by Parliament. This is evidently not part of his everyday work, but appeals for unconstitutionality have a political impact – often a very timely one – that focuses a great deal of attention on this particular aspect of the Ombudsman's work.

When presenting one of his first reports to the Houses of Parliament, in 1984, the Ombudsman made some very specific comments regarding the connotations involved in his being empowered to present this type of appeal. It is

worth considering them for a moment. He began by pointing out the difference between being authorised to present an appeal for relief and an appeal for unconstitutionality: the former, said the Ombudsman, does not have the same special political or social connotations as the latter, because, with very few exceptions, all citizens have recourse to the Constitutional Court, just as the Ombudsman himself does.

However, the power to present appeals for unconstitutionality against laws already approved by the Houses of Parliament or by the parliaments or legislative assemblies of Spain's autonomous regions "has political and ethical implications of indisputable importance", in the Ombudsman's words. He added that he had thought long and hard about the fact that by making use of this power, the Parliamentary Commissioner for Administration had become transformed into a 'Defender of the Constitution vis-à-vis the legislative branch, not only by reaffirming his autonomy in the face of any binding mandate, or even instructions from any authority (as stated in article 6 of the Organic Act), but he goes one step beyond, setting himself up as a prosecutor of the constitutional legitimacy of a law emanating from Parliament, which assumes or represents the sovereignty of the people. This reflection, he added, does not mean that he is inhibited in taking action against any legal measure that he considers unconstitutional, although, he concluded, "no one can fail to understand the overwhelming responsibility involved in exercising such a serious prerogative".

This led to the need to draw up 'rational guidelines' for conduct in these matters. He therefore explained, in the said 1984 report, that he had taken action against laws passed by the legislative branch in those cases in which he

found solid legal reasons for doing so; however, when he failed to find grounds for such action, he explained this to those who had asked for such an appeal, and preferred to use his power to propose to the Government or the Houses of Parliament the recommendations or suggestions that he deemed appropriate. It can be said, in the light of the Ombudsman's actions over the following years as described in the institution's annual reports, that these criteria have been consistently maintained in dealing with the various requests for appeals for unconstitutionality received since then.

### *Regional scope*

Article 12 of the Organic Act Regarding the Ombudsman states that this institution may receive complaints about, or investigate *ex officio*, the activities of Spain's different regional administrations, with the same mandate as for other public administrations. It is obvious that, in this article, the law was already looking ahead to similar institutions being established in several autonomous regions, and indeed at the time when the Organic Act was passed, several Regional Statutes were already in force, and their parliamentary commissioners for administration would be implemented through specific legislation over the following years. The second section of article 12 therefore states that: "For the purposes of the previous paragraph, bodies similar to the Ombudsman for the Autonomous Communities [i.e. Spain's regions] shall coordinate their functions with the Ombudsman, and the latter may request their cooperation."



In practice, therefore, the Ombudsman's authority extends to all of the territorial administrations in the entire country, including regional ones, whereas the sphere of action of regional parliamentary commissioners is restricted to the administration of their own autonomous regions. To the extent that these commissioners are established by their respective parliaments, and given the similar configuration of their laws, we could say that they are true Ombudsmen. That said, it is worth pointing out that, as regional Ombudsmen, they differ from the national Ombudsman in that the mandate of the latter covers not only the Administration, but also the decisions of the legislative, executive, and judicial branches – as determined by the Act that established the Ombudsman.

Relations between the Ombudsman and similar regional institutions are regulated by a specific law (36/1985). That law establishes that, in cases of irregularities regarding non-regional public administrations that are presented before a Regional Parliamentary Commissioner for Administration, he or she shall notify the national Ombudsman of any infractions or irregularities observed, so that the Ombudsman may intervene. Similarly, when supervising the activity of the national administrative bodies operating within an autonomous region, the national Ombudsman may ask for the cooperation of the corresponding Parliamentary Commissioner in order to carry out his duties more efficiently.

In those cases in which the public administration involved is a regional one, the law merely determines that the national Ombudsman and the regional Parliamentary Commissioner should cooperate on everything that involves the competencies of Spain's regions as established in the Constitution and in the relevant Regional Statutes.

In other words, it is up to the institutions themselves, national and regional, to agree on how to proceed when doubts arise.

In practice, the Ombudsman has reached cooperation and coordination agreements with each of the regional parliamentary commissioners for administration, and also holds annual meetings bringing all of them together for debate and coordination.

**FIGURE 7: Regional Parliamentary Commissioners**

Autonomous Region	Institution	Established
Andalusia	Defensor del Pueblo Andaluz	1984
Aragon	Justicia de Aragón	1988
Castilla-La Mancha	Defensor del Pueblo de Castilla-La Mancha	2002-2011
Castilla y León	Procurador del Común de Castilla y León	1994
Catalonia	Síndic de Greuges de Catalunya	1984
Valencian Community	Síndic de Greuges de la Comunitat Valenciana	1993
Galicia	Valedor do Pobo	1990
Balearic Islands	Síndic de Greuges	Pending
Canary Islands	Diputado del Común	1986
La Rioja	Defensor del Pueblo Riojano	2006-2013
Navarre	Defensor del Pueblo de Navarra	2001
Basque Country	Ararteko	1989
Principality of Asturias	Procurador General del Principado de Asturias	2005-2013
Region of Murcia	Defensor del Pueblo de la Región de Murcia	2008-2012

# Implementation and new competencies

## *Establishment and first steps*

As we have seen, the institution of the Ombudsman was established in the Constitution of 1978, although it was three years later, on 24 March 1981, that Parliament passed the General Act of Parliament regulating its activities (Organic Act 3/1981 of 6 April). One year later, on 28 December 1982, in response to a proposal made by the Joint Committee for Relations with the Ombudsman, the Congress of Deputies accepted the candidacy of Joaquín Ruiz-Giménez (after rejecting him on a first-round vote) as Spain's first Ombudsman; the Senate ratified this decision the following day.

The Regulations Regarding the Organization and Operations of the Ombudsman were passed on 6 April of the following year, and then Álvaro Gil-Robles y Gil-Delgado and Margarita Retuerto Buades were named as his First and Second Deputies.

For the first few months, the recently appointed Ombudsman and his secretaries were provisionally installed in an annex to the Congress, while the rest of his staff was provisionally installed in rented offices on Calle Alfonso XI. At the end of 1983, all of the Ombudsman's Institution was moved to Calle Eduardo Dato 31. This building, formerly the palace of the Marquis de Bermejillo has been the Ombudsman's headquarters ever since; the building's history and architecture are described in detail

later in this book. In 2005 the institution took over another building, close to the first one. A detailed historic and architectural description of both buildings is given in the second part of this book.

### *The First Annual Report to Parliament*

Since the Ombudsman was a newly established institution which was, by definition, somewhat special and atypical, the first steps taken after it was established were very decisive for its later development. These first steps are described in the first annual report to Parliament and in the resulting debate.

This first report on the activities in 1983, was published in the *Official State Gazette* on 17 May 1984, and was debated in plenary sessions of both Chambers in September and October of that same year. The report begins with this significant declaration of intentions: "As we look to the future, we reaffirm our aspiration to make this institution ever more complete and fruitful, and into an instrument for dialogue, communication, and deeply-felt solidarity in the life of our people." The report itself shows a keen awareness that it was marking, to a large extent, the path that the institution would take after its first months in action. Thus, its first lines refer to the "interpretative criteria applied to its actions".

It goes on to stress that the concept of a complaint has been approached with the maximum possible degree of flexibility and economy of action, so that the institution could avoid, as far as possible, the danger of formal paperwork preventing a full and in-depth vision of the issues raised by the citizens. The criteria for a complaint to

be considered unacceptable were therefore reduced to only those cases in which the law specifically required rejection (private legal cases, non-existence of irregular action on the part of the Administration, and situations in which the matter was already the subject of a bill in Parliament or before the courts).

In this first report, the complaints were classified into the working areas used during that first term of the Ombudsman: residence, foreign affairs, defence and home affairs, justice, economic issues, territorial administration, labour, health, social security, public works, city planning, housing, transportation, tourism, communications, education and culture, and general issues.

The report concludes with some final considerations to stimulate future reforms. They are restated here as a testament to the spirit in which Spain's Ombudsman Institution began its work:

- create a more flexible relationship between citizens and the administration;
- coordinate the different public administrations;
- objectivity in reviewing administrative actions;
- non-execution or delay in executing judicial decisions;
- consideration of civil court rulings as legal precedents, to be applicable to persons in the same situation as those whose rights have already been recognised by such a ruling;
- non-expiration of the right to social assistance, and fulfilment of article 14 of the Constitution.

The parliamentary debate following the presentation of this first report – to the committees, and then in both

Chambers – centred on a matter that has become a common theme in later debates: the need for more fluid, frequent contacts between Parliament and its High Commissioner for Administration. This is something, one should add, that has been implemented through the presentations and debates of the special reports, as well as the occasions on which the Ombudsman has been called by various parliamentary committees to debate specific issues to which he or she could contribute the institution's experience.

At the start of 1984, Spain's Ombudsman became a full member of the International Ombudsman Institute, and a few months later presented his first annual report to Parliament, on his activities in 1983. In June of that year, as his first international action, he participated in the 3rd Ombudsman Conference, held in Stockholm.

### *The Ombudsman as the National Mechanism for the Prevention of Torture*

Since 2009, the Ombudsman has acted as the National Mechanism for the Prevention of Torture (NMP), after Spain ratified the Optional Protocol to the UN Convention against Torture and other and Other Cruel, Inhuman or Degrading Treatment adopted by the UN Assembly in New York on 18 December 2002. After Spain signed the Protocol, Parliament appointed the Ombudsman as the National Mechanism for the Prevention of Torture in Organic Act 1/2009, of 3 November, which introduces a single final provision into the Organic Act Regarding the Ombudsman.

On assuming these functions, the institution has added a relatively new characteristic to the day-to-day work carried out to date. It is particularly new in that, in its strictly defined role as Ombudsman its work has been predominantly reactive, while as NMP it has taken on an additional role which is preventive and proactive.

The objectives of the National Mechanism for Prevention are as follows:

- carry out regular unannounced inspections of places of detention;
- provide certificates of inspection and reports on each visit;
- make recommendations to the authorities;
- make proposals and comments on the legislation in force and on any draft laws on the matter;
- promote and protect human rights.

As the NMP, the Ombudsman makes preventive visits to all types of places of detention that report to, or are supervised by, Spain's public authorities. The purpose of these visits is to check that Spain's public authorities and their staff act in accordance with the criteria required by Spanish and International Law applicable to this type of institution, in order to prevent any conditions that could facilitate abuse or torture.

The following types of facilities are subject to these regular inspections:

- prisons;
- National Police stations;
- Civil Guard stations and barracks;
- Regional Police stations;

- Local Police stations;
- military establishments: barracks, naval bases, air force bases, military training centres, hospitals, etc.;
- municipal holding facilities;
- judicial holding facilities;
- young offenders centres;
- internment centres for foreigners;
- border control centres with police facilities in airports, ports, and at land borders;
- hospitals (custody units);
- psychiatric hospitals;
- care homes for the elderly;
- buildings where stowaways are held;
- transportation used by the Security Forces to transfer persons being held in custody;
- vehicles used to carry persons being held in custody (vans, planes, etc.);
- and any other type of detention centre that meets the conditions laid down in the Optional Protocol to the UN Convention against Torture and other and Other Cruel, Inhuman or Degrading Treatment.

In exercising this preventive function, the Ombudsman may also collect, from the Spanish authorities, whatever documents and reports he or she considers necessary.

All this work is reported annually in a report that is presented to Parliament and to the United Nations Committee against Torture, which is based in Geneva.

The National Mechanism for the Prevention of Torture has been set up as an independent unit within the structure of the Ombudsman's Institution. This unit is composed of



a manager, five technical experts and two administrative clerks who do not work for any other unit. Two coordinators combine working for the unit with other tasks within the Ombudsman's Institution, and it may occasionally be supported, when making inspection visits, by technical experts from other related units.

The institution also works with outside professionals with proven experience and training in areas such as medicine, psychiatry and psychology, who accompany members of the unit in their visits, thus contributing to a full multidisciplinary evaluation of the custody facilities and places of detention that are visited.

This National Mechanism, as provided for under the law governing it, includes an advisory board, conceived of as a body to ensure technical and legal cooperation. This board is made up of the Ombudsman, his or her two Deputies and a maximum of 10 members: one proposed by the General Board of Spanish Barristers and Solicitors; another designated by the Organization of Spanish Medical Colleges; the third proposed by the General Board of Spanish Psychologists Colleges; up to two representatives of institutions with which the Ombudsman has signed collaboration agreements, and, finally, there are five members designated from among candidates presented as individuals or representing organisations or associations that are representative of civil society.

### *International activity and actions overseas*

In addition to its activities of coordinating with similar institutions in other countries (whether they are called a *Defensor del Pueblo*, Ombudsman or National Human Rights

Commissioner), the Spanish Ombudsman's Institution has extended its international activities to other fields.

One of these is that, for several years, it has participated in several European projects to create similar institutions in nearby countries, or contribute to strengthening those that already exist, as it did in the past in Latin American countries, as mentioned above.

The basic principle of these European projects is to offer support in harmonising the policies of the beneficiary countries with the 'EU *acquis*' (accumulated legislation, legal acts, and court decisions which constitute the body of European Union law). They also aim to share best practices and to promote and strengthen relations between administrations in EU countries and those outside the EU. There are several types of projects that share these characteristics, although the best known is usually referred to as *Twinning*. This concept was launched by the European Commission in 1998 as an instrument for EU assistance to countries in Central and Eastern Europe that were candidates for EU membership. The aim is to assist candidates for EU membership to modernise their administrative structures and train their staff for incorporating their political and administrative systems into the EU *acquis*.

In many cases, these projects are developed in collaboration with another EU institution. To date, the Spanish Ombudsman has participated in four projects: Kazakhstan (2006), Armenia (2009-2011), Macedonia (2011-2012) and Turkey (2014-2016). The first of these aimed to support that country's Human Rights Institution, and was carried out in collaboration with the Greek Ombudsman. The other three supported the recently created Ombudsman Institutions in those countries and

were carried out in collaboration with the French Ombudsman.

These programmes, wholly financed by the European Union, were implemented by signing a Twinning agreement between the member state providing the technical assistance (Spain in this case) and the candidate country that was to be the beneficiary of that assistance (Kazakhstan, Armenia, Macedonia and Turkey).

The most notable characteristics of this cooperative mechanism include:

- exclusively used for institution-building projects directly related to the EU acquis in the relevant sector (in this case, the institutionalisation of fundamental rights);
- the proposals for projects are presented by public institutions, whether national, regional, or local;
- the projects are chosen by the competent authorities of the candidate country;
- after selection, the Twinning Contract is negotiated by the two administrations (the member state and the candidate country);
- in each project, a civil servant from the member state moves to the office of the beneficiary country, and will work there for the duration of the project.

There is, however, another important overseas activity. Law 2/2014, regarding actions and service overseas has defined certain specific international functions that the Ombudsman's office had not previously undertaken, giving it responsibility for facilitating the monitoring of human rights in Spain by international bodies. It also

establishes that the Government may require the Ombudsman to undertake missions to international meetings on human rights.

This legal definition has reinforced the position of the Ombudsman's Institution as the National Human Rights Institution in Spain.

### *Transparency*

Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance, which came fully into force in 2014, is the subject of special consideration by the Ombudsman. Firstly, because supervising the activity of the Administration, which, as has been pointed out, is part of the mandate implicitly assigned to the institution, already implies ensuring the transparency of such public authorities. This can be said that to have been applied since the institution was implemented, since it places special emphasis on the citizens' right to access information on a very wide range of subjects, including education, health, the environment, the civil service, etc. Any failure to answer 'quickly and satisfactorily' letters and requests from members of the public has been grounds for ongoing investigation by the Ombudsman's Institution since its creation, and this has been reflected in all its annual reports.

In 2013, the Ombudsman made a recommendation to the Ministry of Justice that was very directly related to transparency. Specifically, it dealt with squandering public money and characterising such behaviour as a crime. The recommendation, extending suggestions made by the institution on previous occasions, requested that measures

be adopted to extend the description of the crime of breaches of transparency, access to public information, and good governance regarding public accounts and the fight against tax fraud and social security fraud to other criminal conduct regarding decisions on public spending, such as starting projects without the necessary ongoing budgetary allocations or the relevant evaluation of their social rates of return (Recommendation 89/2012, of 23 August).

As another example, it should be pointed out that the previous year's annual report also included the study prepared at the time entitled *Financial Crisis and Mortgage Debtors: the Ombudsman's actions and proposals*. That report insisted on the need to establish transparency mechanisms in the government agencies that control financial institutions.

In 2013, the Ombudsman appeared before the Constitutional Committee of the Congress of Deputies, to report on what was then a draft law on 'transparency, access to public information, and good governance'. In her presentation, the Ombudsman explained the fact that the institution she led had, itself, taken on board the principle of transparency, and pointed out that it was necessary that the general principle that should inspire the draft law on transparency, in relation to the citizens and what they expected from transparency, is that the Administration should obey such a law.

She also requested that the draft law clarify how the relationship between the National Agency for Transparency and the Ombudsman's Institution would be established, and reminded those present that, since 1995, the Penal Code had classified any refusal to provide any reports requested by the Ombudsman or undue delay in

providing them, as the offence of contempt, describing how that had been enforced to date.

There are several aspects of the transparency law that affect the Ombudsman's Institution. The first of these is that, although it is not a part of the Public Administration, the law applies the duties of transparency to it (as well as to the royal household, the Congress of Deputies and the Senate, the Constitutional Court, etc.). In her presentation to Parliament, the Ombudsman had indicated her agreement with this (in the Preamble and article 2f).

Moreover, the law establishes that the President of the Council of Transparency and Good Governance shall inform the Ombudsman of any rulings it makes that have previously been the subject of a complaint or appeal (article 24.5). Finally, articles 34 and 35 create the Council of Transparency and Good Governance, which has, as its objectives, to promote transparency in government activity, ensure that the obligations to disclose are complied with, safeguard the right to access public information and ensure that the provisions of good governance are adhered to. This Council's committee includes a representative of the Ombudsman – its General Secretary has taken on this responsibility. The committee also includes the president of the Council, a member of the House of Deputies, a Senator, a representative of the Court of Auditors, a representative of the Spanish Data Protection Agency, a representative of the Office of the Secretary of State for Public Authorities and a representative of the Independent Authority for Fiscal Responsibility).

As has been said, the Ombudsman's institution applied transparency guidelines before this law was enacted. For example, since the 2012 annual report, in addition to the

statistics on case management and the actions and investigations the institution carried out, a section on its budget has been included, with a breakdown by the main headings and stating the inter-annual change, while also indicating the actions taken during the previous year.

Moreover, since 2014, the Ombudsman has provided a new service on its website, allowing complainants to consult the status of their complaints. Complainants are provided with a personal password so that, at any time and from anywhere, they can check on the status of their case; this system maintains the highest level of confidentiality. The web portal therefore includes the information as to the actions taken – whether by the Ombudsman or by the administration or body from which the complainant is expecting a reply – with the results. The only information that cannot be accessed is the content of the communications between the Ombudsman and the public bodies, since these communications are subject to the duty of confidentiality laid down in the Organic Act that governs their operations.

This mechanism requires greater effort from all the administrations and public bodies, including the Ombudsman, in ensuring that they report clearly, within a reasonable time, on whatever the complainant was concerned about.

The Ombudsman's web portal, in applying the abovementioned law, implements certain aspects of the Ombudsman's transparency. One of these is the requirement for active disclosure on the following matters: organisational, institutional, financial, budgetary, statistical or of legal significance. The other aspect implemented is its recognition of the right to access public information

and the creation of a procedure to exercise that right. For the first of these, the following menu options are included:

- 'About us': detailed description of the origin of the Institution, the regulations that govern it and its activities.
- 'Budget': the figures and an explanation of how they have changed over the years since 2009.
- 'Structure': senior positions and complete organisation chart.
- 'Technical infrastructures'.
- 'Entertainment expenses, vehicles and official visits': Entertainment expenses, allowances and other work-related benefits; official vehicles for the use of the Ombudsman; official visits.
- 'Current contracts': ongoing hiring procedures; contracts.
- 'Agreements': collaboration agreements with other bodies and institutions.

The website also includes a form for exercising the right to access public information, and, along the same lines, approval was given at the end of 2014 to create an information unit in the secretary-general's office to reply to requests for information as they occur.

### *The Ombudsman's Web Portal*

In order to make it more accessible to the general public, the Ombudsman's Institution has continually been incorporating new technologies into its day-to-day work. Very early on, it sought to use the internet to provide more



immediate and simpler access to information, as well as setting up the options of making complaints online. The decisions taken, ex-officio activities and other significant actions can now be consulted online as well as by reading the institution's regular publications (annual reports, special reports and case studies, books of rulings and decisions).

This digital updating of the Ombudsman's Institution has led to a more direct and personal dialogue with members of the public and a reorientation of many of the services and fields in which this institution works. As a result, new services have been created and new fields addressed that reflect the vital concerns of the public. This process has also promoted transparency, by making it possible to inform the public about the work of the institution as a whole, about the actions taken by the Ombudsman's Institution and the results of its work.

In June 2015, the Institution's website was completely redefined and redesigned, in order to reach different types of users and audiences – from a person who wishes to make a complaint, to a lawyer who wishes to use a recommendation made by the Ombudsman as part of legal proceedings. The website's level of compliance with accessibility guidelines for persons with disabilities was also improved.

For its role as the National Mechanism for the Prevention of Torture (NMP), the Ombudsman's Institution web portal offers the option of consulting information about the ongoing programme of visits to places of detention by clicking on the location in a map of Spain:

- The process of making complaints online has been simplified. The decisions are published 15 days after they have been sent to the competent Authority, and the information published can also be searched by fields of action and social groups.
- Information is published on the recruitment processes for hiring new staff and processes for purchasing equipment and subcontracting.
- Up-to-date statistical data is provided on the numbers of complaints received and decisions made. This information is updated every Monday.
- The names of those authorities or administrations that have not replied to a third request for information within thirty days are published on the website, giving the following details: the name of the authority, the subject, the date the last letter was sent and the number of days passed without a reply.
- Average response times can be consulted, both for the Ombudsman's Institution and for authorities and administrations. The data is published by ministry, autonomous region, and province.

## A kind of summary

The success of this institution, which really had no true predecessors in Spain, nor in a significant part of Europe, was relatively unforeseeable. However, having been created, as we have seen, during the transition to democracy that led to the Constitution of 1978, the Ombudsman has been one of the institutions that has had the most impact on the democratic system born of that Constitution.

Proof of this came very soon after its implementation, because the expectations that it aroused were demonstrated by the overwhelming number of complaints received during its first year – a number that has yet to be matched in any subsequent year – although many of them fell outside its mandate. We should also bear in mind here the lack of awareness regarding the scope of the Ombudsman's mandate during this first, foundational period. Today, the Ombudsman's Institution is deeply rooted in the nation.

Moreover, as we have also pointed out, Spain's Ombudsman was, from the beginning, one of the Ombudsman institutions that put the most emphasis on the mission of protecting fundamental rights, above – and as an underlying motivation for – its other task, that of controlling and supervising the public administration. This is why, all around the world, Spain's Ombudsman is now one of the most respected, due to the institution's special characteristics, and over 30-year history.



## Basic bibliography

The literature on the Ombudsman in Spain and throughout the world has started to become rather extensive and specialist in nature. A bibliography of some of the most relevant and complete works, covering only books and certain magazine monographs, is included. A complete bibliography can be found in the previous edition of this very same *Libro del Defensor del Pueblo*/The Ombudsman Book (2016).

Álvaro Gil-Robles y Gil-Delgado, *El Defensor del Pueblo (Comentarios en torno a una proposición de Ley Orgánica)*, Madrid, Civitas, 1979.

Fernando Garrido Falla, *El control parlamentario de la Administración (El Ombudsman)*, Madrid, Instituto Nacional de Administración Pública, 1981 (2<sup>nd</sup> ed.).

Víctor Fairén Guillén, *El Defensor del Pueblo-Ombudsman*, 2 vols., Madrid, Centro de Estudios Constitucionales, 1982-1986.

María Pérez-Ugena y Coromina, *Defensor del Pueblo y Cortes Generales*, Madrid, Congreso de los Diputados, 1996.

Juan Francisco Carmona y Choussat, *El Defensor del Pueblo Europeo*, Madrid, Instituto Nacional de Administración Pública, 2000.

- Linda C. Reif, *The ombudsman, good governance and the international human rights system*, Leiden, Boston, Martinus Nijhoff Publishers, 2004.
- VVAA, *The ombudsman in South-Eastern Europe*, Atenas, Ant. N. Sakkoulas, 2005.
- Gerardo Carballo Martínez, *La mediación administrativa y el Defensor del Pueblo*, Cizur Menor (Navarra), Thomson-Aranzadi, 2008.
- VVAA, *Defensorías del Pueblo en Iberoamérica*, Cizur Menor (Navarra), Aranzadi, 2008.
- Lucrecio Rebollo Delgado, *La institución del «Ombudsman» en España*, Madrid, Dykinson, 2013.
- José Julio Fernández Rodríguez, *Defensorías del pueblo en España: una visión prospectiva*, Alcalá de Henares, Madrid, Universidad de Alcalá, Servicio de Publicaciones and Defensor del Pueblo, 2014.
- Milan Remác, *Coordinating ombudsmen and the judiciary: a comparative view on the relations between ombudsmen and the judiciary in the Netherlands, England and the European Union*, Cambridge, Intersentia, cop. 2014.
- Fernando Luis de Andrés Alonso, *Los defensores del pueblo en España*, Madrid, Reus, 2017.

## **Appendix**

Declaration of Human Rights (1948)

Paris Principles (1993)

Spanish Constitution of 1978, article 54 and article 162.1

Organic Act 3/1981, April 6<sup>th</sup>, Regarding the  
Ombudsman

Organizational and functioning regulations of the  
Ombudsman, April 18<sup>th</sup> of 1983





# Declaration of Human Rights

The Declaration was adopted and proclaimed by the United Nations General Assembly in the resolution on the 10th of December 1948.

## PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of

friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

## THE GENERAL ASSEMBLY

Now Therefore

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of

society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

#### **Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### **Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### **Article 3**

Everyone has the right to life, liberty and security of person.

#### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### **Article 6**

Everyone has the right to recognition everywhere as a person before the law.

#### **Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

#### **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

Everyone has the right to freedom of movement and residence within the borders of each state.

Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**

Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16**

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal

rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### **Article 17**

Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

#### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### **Article 20**

Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

#### **Article 21**

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right of equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in

circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

Everyone has the right freely to participate in the cultural life of the community, to enjoy the

arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

#### **Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

#### **Article 29**

Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations

as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### **Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

# Paris Principles

## **Principles regarding the Statute for National Institutions**

General Assembly resolution A/RES/48/134, adopted in the 85th plenary session, of 20 December 1993.

The Paris Principles were defined in the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris on 7-9 October 1991. Since they were adopted by the United Nations Commission on Human Rights (Resolution 1992/54, of 1992), and reaffirmed by the General Assembly (Resolution 48/134 of 1993), these principles have been the framework that internationally defines the status and functions of National Human Rights Institutions (including National Human Rights Commissions and the *Defensores del Pueblo*/ Ombudsman Institutions).

## **Competence and Responsibilities**

1. A national institution shall be vested with competence to

promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- ii) Any situation of violation of human rights which it decides to take up;
- iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) To cooperate with the United Nations and any



other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights,

particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

a) Non- governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

b) Trends in philosophical or religious thought;

c) Universities and qualified experts;

d) Parliament;

e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without

which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

Within the framework of its operation, the national institution shall:

- a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- e) Establish working groups from among its members as

necessary, and set up local or regional sections to assist it in discharging its functions;

f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsman, mediators and similar institutions);

g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

### **Additional principles concerning the status of commissions with quasi-judicial competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases

may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.



# Spanish Constitution of 1978

## TITLE I Concerning Fundamental Rights and Duties

### CHAPTER FOUR

#### *Concerning the Guaranteeing of Fundamental Rights and Liberties*

#### **Article 54.**

An organic act shall regulate the institution of Defender of the People (*Ombudsman*), who shall be a high commissioner of *Cortes Generales*, appointed by them to defend the rights contained in this Title; for this purpose he may supervise Administration activities and report thereon to the *Cortes Generales/Parliament*.

## TITLE IX The Constitutional Court

#### **Article 162.1.**

The following are entitled to:

- a) Lodge an appeal of unconstitutionality: the President of the Government, the Defender of the People, fifty Members of Congress, fifty Senators, the Executive body of a Self-governing Community and, where applicable, its Assembly.
- b) Lodge an individual appeal for protection (*recurso de amparo*): any individual or body corporate with a legitimate interest, as well as the Defender of the People and the Public Prosecutor's Office.

---

The name of the Ombudsman in Spanish is «Defensor del Pueblo» (The Defender of the People).

The name of the Spanish Parliament is «Cortes Generales» (the General Assembly); it comprises a Lower House, the Congress, and an Upper House, the Senate.



# Organic Act 3/1981, April 6th, Regarding the Ombudsman

(*Boletín oficial del Estado* [Official State Bulletin] No. 109, of 7 May)

Modified by Organic Act 2/1992, dated March 5<sup>th</sup> (BOE N° 57, of 6 March)

## PART I

### Appointment, functions and term of office

#### CHAPTER ONE

##### *Nature and Appointment*

#### **Article 1.**

The Ombudsman is the High Commissioner of Parliament appointed by it to defend the rights established in Part I of the Constitution, for which purpose he may supervise the activities of the Administration and report thereon to Parliament. He shall exercise the functions entrusted to him by the Constitution and this Act.

#### **Article 2.**

1. The Ombudsman shall be elected by Parliament for a term of five years, and shall address it through the Speakers of the Congress and the Senate, respectively.

2. A Joint Congress-Senate Committee shall be appointed by Parliament, to be responsible for

liaison with the Ombudsman and for reporting thereon to their respective Plenums whenever necessary<sup>1</sup>.

3. This Committee shall meet whenever so jointly decided by the Speakers of the Congress and the Senate and, in all cases, in order to propose to the Plenums the candidate or candidates for the Ombudsman. The Committee's decisions shall be adopted by simple majority<sup>2</sup>.

4. Once the candidate or candidates have been proposed, a Congressional Plenum shall be held once no less than ten days have elapsed in order to elect him. The candidate who obtains the favourable vote of three-fifths of the Members of

---

<sup>1</sup> Drafted according to Organic Act 2/1992, March 5<sup>th</sup>, amending Organic Act 3/1981 Regarding the Ombudsman, for the purpose of establishing a joint Congress-Senate Committee for liaison with the Ombudsman.

<sup>2</sup> Drafted according to Organic Act 2/1992, dated March 5<sup>th</sup>.

Congress, and is subsequently ratified by the Senate within a maximum of twenty days and by this same majority, shall be appointed.

5. Should the aforementioned majorities not be obtained, a further meeting of the Committee shall be held within a maximum of one month in order to make further proposals. In such cases, once a three-fifths majority has been obtained in Congress, the appointment shall be made when an absolute majority is obtained in the Senate.

6. Following the appointment of the Ombudsman, the Joint Congress-Senate Committee shall meet again in order to give its prior consent to the appointment of the Deputy Ombudsman proposed by him.

### **Article 3.**

Any Spanish citizen who has attained legal majority and enjoys full civil and political rights may be elected Ombudsman.

### **Article 4.**

1. The Speakers of the Congress and the Senate shall jointly authorize with their signatures the appointment of the Ombudsman, which shall be published in the Official State Bulletin.

2. The Ombudsman shall take office in the presence of the

Procedures Committees of both Houses meeting jointly, and shall take oath or promise to perform his duties faithfully.

## CHAPTER II

### *Dismissal and Replacement*

#### **Article 5.**

1. The Ombudsman shall be relieved of this duties in any of the following cases:

- 1) Resignation.
- 2) Expiry of this term of office.
- 3) Death or unexpected incapacity.
- 4) Flagrant negligence in fulfilling the obligations and duties of his office.
- 5) Non-appealable criminal conviction.

2. The post shall be declared vacant by the Speaker of Congress in the event of death, resignation or expiry of the term of office. In all other cases it shall be decided by a three-fifths majority of the Members of each House, following debate and the granting of an audience to the person concerned.

3. Upon the post becoming vacant, the procedure for appointing a new Ombudsman shall be commenced within one month.

4. In the event of the death, dismissal or temporary or permanent incapacity of the Ombuds-



man, and until Parliament makes a subsequent appointment, the Deputy Ombudsman, in order of seniority, shall fulfil his duties.

### CHAPTER III

#### *Prerogatives, Immunities and Incompatibilities*

##### **Article 6.**

1. The Ombudsman shall not be subject to any binding terms of reference whatsoever. He shall not receive instructions from any authority. He shall perform his duties independently and according to his own criteria.

2. The Ombudsman shall enjoy immunity. He may not be arrested, subjected to disciplinary proceeding, fined, prosecuted or judged on account of opinions he may express or acts he may commit in performing the duties of his office.

3. In all other cases, and while he continues to perform his duties, the Ombudsman may not be arrested or held in custody except in the event of in *flagrante delicto*; in decisions regarding his accusation, imprisonment, prosecution and trial the Criminal Division of the High Court has exclusive jurisdiction.

4. The aforementioned rules shall be applicable to the Deputy Ombudsman in the performance of their duties.

##### **Article 7.**

1. The post of Ombudsman is incompatible with any elected office; with any political position or activities involving political propaganda; with remaining in active service in any Public Administration; with belonging to a political party or performing management duties in a political party or in a trade union, association or foundation, or employment in the service thereof; with practising the professions of judge or prosecutor; and with any liberal profession, or business or working activity.

2. Within ten days of his appointment and before taking office, the Ombudsman must terminate any situation of incompatibility that may affect him, it being understood that in failing to do so he thereby rejects his appointment.

3. If the incompatibility should arise after taking office, it is understood that he shall resign therefrom on the date that the incompatibility occurs.

CHAPTER IV  
*The Deputy Ombudsman*

**Article 8.**

1. The Ombudsman shall be assisted by a First Deputy Ombudsman and a Second Deputy Ombudsman to whom he may delegate his duties and who shall replace him, in hierarchical order, in their fulfilment, in the event of his temporary incapacity or his dismissal.

2. The Ombudsman shall appoint and dismiss his Deputy Ombudsman, following approval by both Houses, in accordance with their Regulations.

3. The appointments of the Deputies shall be published in the Official State Bulletin.

4. The provisions contained in Articles 3, 6 and 7 of this Act regarding the Ombudsman shall be applicable to his Deputies.

**PART II  
Procedure**

CHAPTER ONE  
*Initiation and Scope of Investigations*

**Article 9.**

1. The Ombudsman may instigate and pursue, ex officio or in response to a request from the party concerned, any investigation conducive to clarifying

the actions or decisions of the Public Administration and its agents regarding citizens, as established in the provisions of Article 103.1 of the Constitution and the respectful observance it requires of the rights proclaimed in Part I thereof.

2. The Ombudsman has authority to investigate the activities of Ministers, administrative authorities, civil servants and any person acting in the service of the Public Administration.

**Article 10.**

1. Any individual or legal entity who invokes a legitimate interest may address the Ombudsman, without any restrictions whatsoever. There shall be no legal impediments on the grounds of nationality, residence, gender, legal minority, legal incapacity, confinement in a penitential institution or, in general, any special relationship of subordination to or dependence on a Public Administration or authority.

2. Individual Deputies and Senators, investigatory Committees or those connected with the general or partial defence of public rights and liberties and, especially, those established in Parliament to liaise with the Ombudsman, may, in writing and stating their grounds, request the

intervention of the Ombudsman to investigate or clarify the actions, decisions or specific conduct of the Public Administration which may affect an individual citizen or group of citizens and which fall within his competence<sup>3</sup>.

3. No administrative authority may submit complaints to the Ombudsman regarding affairs within its own competence.

#### **Article 11.**

1. The activities of the Ombudsman shall not be interrupted in the event that Parliament is not in session, has been dissolved, or its mandate has expired.

2. In the circumstances described in the previous paragraph, the Ombudsman shall address the Standing Committees of the Houses of Parliament.

3. The declaration of a state of emergency or siege shall not interrupt the activities of the Ombudsman, nor the right of citizens to have access to him, without prejudice to the provisions of Article 55 of the Constitution.

## CHAPTER II

### *Scope of Competence*

#### **Article 12.**

1. The Ombudsman may in all cases, whether ex officio or at the request of a party concerned, supervise the activities of the Autonomous Communities, within the scope of competence defined by this Act.

2. For the purposes of the previous paragraph, Autonomous Community bodies similar to the Ombudsman shall coordinate their functions with the latter, who may request their cooperation.

#### **Article 13.**

Whenever the Ombudsman receives complaints regarding the functioning of the Administration of Justice, he must refer them to the Public Prosecutor to allow the latter to investigate their foundation and take appropriate legal action, or else refer them to the General Council of the Judiciary, according to the type of complaint involved, independently of any reference that he may make to the matter in his annual report to Parliament.

#### **Article 14.**

The Ombudsman shall protect the rights proclaimed in Part I of the Constitution in the

---

<sup>3</sup> Drafted according to Organic Act 2/1992, dated March 5<sup>th</sup>.

field of Military Administration, without however causing any interference in the command of National Defence.

### CHAPTER III *Complaints procedure*

#### **Article 15.**

1. All complaints submitted must be signed by the party concerned, giving his name and address in a document stating the ground for the complaint, on ordinary paper and within a maximum of one year from the time of becoming acquainted with the matters giving rise to it.

2. All action by the Ombudsman shall be free of charge for the party concerned, and attendance by a lawyer or solicitor shall not be compulsory. Receipt of all complaints shall be acknowledged.

#### **Article 16.**

1. Correspondence addressed to the Ombudsman from any institution of detention, confinement or custody may not be subjected to any form of censorship whatsoever.

2. Nor may the conversations which take place between the Ombudsman or his delegates and any other person enumerated in the previous paragraph be listened to or interfered with.

#### **Article 17.**

1. The Ombudsman shall record and acknowledge receipt of the complaints made, which he shall either proceed with or reject. In the latter case, he shall do so in writing, stating his reasons. He may inform the party concerned about the most appropriate channels for taking action if, in his opinion, these exist, independently of the fact that the party concerned may adopt those it considers to be most pertinent.

2. The Ombudsman shall not investigate individually any complaints that are pending judicial decision, and he shall suspend any investigation already commenced if a claim or appeal is lodged by the person concerned before the ordinary courts or the Constitutional Court. However, this shall not prevent the investigation of general problems raised in the complaints submitted. In all cases, he shall ensure that the Administration, in due time and manner, resolves the requests and appeals that have been submitted to it.

3. The Ombudsman shall reject anonymous complaints and may reject those in which he perceives bad faith, lack of grounds or an unfounded claim, and in addition those whose investigation might infringe the

legitimate rights of a third party. His decisions may not be appealed.

**Article 18.**

1. Once a complaint has been accepted, the Ombudsman shall begin appropriate summary informal investigations to clarify the allegations contained therein. In all cases he shall report the substance of the complaint to the pertinent administrative agency or office for the purpose of ensuring that a written report be submitted within fifteen days by its director. This period may be extended if, in the opinion of the Ombudsman, circumstances so warrant.

2. Refusal or failure on the part of the civil servant or his superiors responsible for sending the initial report requested may be considered by the Ombudsman as a hostile act which obstructs his functions. He shall immediately make such an act public and draw attention to it in his annual or special report, as the case may be, to Parliament.

CHAPTER IV

*Obligatory Cooperation of Bodies  
Requested to do so*

**Article 19.**

1. All public authorities are obliged to give preferential and urgent assistance to the Ombud-

man in his investigations and inspections.

2. During the stage of verifying and investigating a complaint or in the case of proceedings initiated ex officio, the Ombudsman, his Deputy, or the person delegated by him may present himself at any establishment of the Public Administration or attached thereto or responsible for a public service, in order to verify any necessary information, hold relevant personal interviews or examine pertinent records and documents.

3. In the pursuit of this objective he may not be denied access to any administrative record or document related to the activity or service under investigation, without prejudice to the provisions of Article 22 of this Act.

**Article 20.**

1. Should the complaint to be investigated concern the conduct of persons in the service of the Administration in connection with the duties they perform, the Ombudsman shall so inform them and the immediate superior or body to which the former are attached.

2. The persons concerned shall reply in writing, supplying whatever documents and supporting evidence they may consi-

der appropriate, within the period established, which in no case may be less than ten days and which may be extended at their request by half the period originally granted.

3. The Ombudsman may verify the veracity of such documents and propose to the civil servant concerned that he be interviewed, in order to furnish further details. Civil servants who refuse to comply may be required by the Ombudsman to submit to him in writing the reasons justifying their decision.

4. The information a civil servant may furnish through personal testimony in the course of an investigation shall be treated as confidential, subject to the provisions of the Criminal Procedure Act regarding the reporting of acts which may constitute criminal offences.

#### ***Article 21.***

Should a hierarchical superior or entity forbid a civil servant under his orders or in its service from replying to a demand from the Ombudsman or from holding an interview with him, he or it must state such prohibition in writing, justifying such action, both to the civil servant and to the Ombudsman himself. The Ombudsman shall thereafter direct whatever investigatory procedures may be necessary to

the aforesaid hierarchical superior.

## CHAPTER V *Confidential Documents*

### ***Article 22.***

1. The Ombudsman may request the public authorities to furnish all the documents he considers necessary to the performance of his duties, including those classified as confidential. In the latter case, the failure to furnish said documents must be approved by the Council of Ministers and accompanied by a document attesting to their approval of such refusal.

2. The investigations and relevant procedures conducted by the Ombudsman and his staff shall be performed in absolute secrecy, with respect to both private individuals and offices and other public bodies, without prejudice to the considerations that the Ombudsman may consider appropriate for inclusion in his reports to Parliament. Special measures of protection shall be taken concerning documents classified as confidential.

3. Should he be of the opinion that a document declared to be confidential and not made available by the Administration could decisively affect the progress of his investigation,

he shall notify the Joint Congress-Senate Committee referred to in Article 2 of this Act<sup>4</sup>.

## CHAPTER VI

### *Responsibilities of Authorities and Civil Servants*

#### **Article 23.**

Should the investigations conducted reveal that the complaint was presumable the result of abuse, arbitrariness, discrimination, error, negligence or omission on the part of a civil servant, the Ombudsman may request the person concerned to state his views on the matter. On the same date he shall send a copy of this letter to the civil servant's hierarchical superior, accompanied by any suggestions that he may consider appropriate.

#### **Article 24.**

1. Persistence in a hostile attitude or the hindering of the work of the Ombudsman by any body, civil servants, officials or persons in the service of the Public Administration may be the subject of a special report, in addition to being stressed in the appropriate section of his annual report.

2. (Repealed)<sup>5</sup>.

---

<sup>4</sup> Drafted according to Organic Act 2/1992, dated March 5<sup>th</sup>.

#### **Article 25.**

1. If, in the performance of the duties of his office, the Ombudsman should obtain knowledge of presumably criminal acts or behaviour, he must immediately notify the Attorney-General.

2. The above notwithstanding, the Attorney-General shall inform the Ombudsman

---

<sup>5</sup> Repealed in accordance with sub-section 1.f of the Sole Repeal Provision of Organic Act 10/1995, dated November 23<sup>rd</sup>, which establishes the following in its article 502 (Hindering the enquires by House Committees and investigative bodies), points 1 and 2:

«1. Anyone who, having been properly requested in law with due warning, fails to put in an appearance before an Investigative Committee of Parliament or a Legislative Assembly of a Regional Community shall be punished for being guilty of the offence of disobedience. If the party so found guilty were a public authority or a public servant, an additional sentence of suspension from the position or public office held for a term of form six months to two years will be imposed.

2. The same penalties will be imposed on any civil servant or public authority obstructing an investigation by the Ombudsman, Auditing Tribunal or equivalent organs of a Regional Community by refusing to send or unduly delaying the dispatch of reports requested or by hindering access to the administrative records or documents necessary for such investigation».

periodically, or whenever so requested by the latter, of the proceedings instituted at his request.

3. The Attorney-General shall notify the Ombudsman of all possible administrative irregularities with which the Public Prosecutor becomes aware in the performance of his duties.

**Article 26.**

The Ombudsman may, ex officio, bring actions for liability against all authorities, civil servants and governmental or administrative agents, including local agents, without needing under any circumstances to previously submit a written claim.

CHAPTER VII

*Reimbursement of Expenses to  
Individuals*

**Article 27.**

Expenses incurred or material losses sustained by individuals who have not themselves lodged a complaint but are called upon by the Ombudsman to provide information shall be reimbursed; such expenses will be met from the latter's budget once duly justified.

**PART III  
Decisions**

CHAPTER ONE

*Content of Decisions*

**Article 28.**

1. Although not empowered to modify or overrule the acts and decisions of the Public Administration, the Ombudsman may nevertheless suggest modifications in the criteria employed in their production.

2. If as a result of this investigations he should reach the conclusion that rigorous compliance with a regulation may lead to situations that are unfair or harmful to those persons thereby affected, he may suggest to the competent legislative body or the Administration that it be modified.

3. If action has been taken in connection with services rendered by private individuals with due administrative authorization, the Ombudsman may urge the competent administrative authorities to exercise their powers of inspection and sanction.

**Article 29.**

The Ombudsman is entitled to lodge appeals alleging unconstitutionality and individual appeals for relief, as provided by the Constitution and the Organic



Act Regarding the Constitutional Court.

**Article 30.**

1. The Ombudsman may, in the course of this investigations, give advice and make recommendations to authorities and officials in the Public Administration, remind them of their legal duties and make suggestions regarding the adoption of new measures. In all cases such authorities and officials shall be obliged to reply in writing within a maximum period of one month.

2. If within a reasonable period of time after such recommendations are made appropriate steps are not taken to implement them by the administrative authority concerned, or if the latter fails to inform the Ombudsman of its reasons for non-compliance, the Ombudsman may inform the Minister of the Department concerned, or the highest authority of the Administration concerned, of the particulars of the case and the recommendations made. If adequate justification is not forthcoming, he shall mention the matter in his annual or special report, together with the names of the authorities or civil servants responsible for this situation, as a case in which although the Ombudsman

thought that positive solution was possible, it was not however achieved.

CHAPTER II

*Notifications or Communications*

**Article 31.**

1. The Ombudsman shall inform the party concerned of the results of his investigations and operations, and similarly of the reply from the Administration or civil servants involved, except in the event that on account of their subject matter they should be considered confidential or declared secret.

2. Should his intervention have been initiated under the provisions of Article 10.2, the Ombudsman shall inform the Member of Parliament or competent committee that requested investigation of the matter and, upon its completion, of the results obtained. Equally, should he decide not to intervene he shall communicate his decision, giving his reasons.

3. The Ombudsman shall communicate the results of his investigations, whether positive or negative, to the authority, civil servant or administrative office in respect of which they were initiated.

CHAPTER III  
*Reports to Parliament*

**Article 32.**

1. The Ombudsman shall inform Parliament annually of the action that he has taken in an annual report submitted to it when meeting in ordinary session.

2. When the seriousness or urgency of the situation makes it advisable to do so, he may submit a special report that he shall present to the Standing Committees of the Houses of Parliament, if these latter are not in session.

3. The annual reports and, when applicable, the special reports, shall be published.

**Article 33.**

1. The Ombudsman shall give an account in his annual report of the number and type of complaints filed, of those rejected and the reasons for their rejection, and of those investigated, together with the results of the investigations, specifying the suggestions or recommendations accepted by the Public Administrations.

2. No personal data that enables public identification of the parties involved in investigation proceedings shall appear in the report, without prejudice to the provisions of Article 24.1.

3. The report shall include and appendix, directed to Parliament, detailing the settlement of the budget of the institution during the corresponding period.

4. An oral summary of the report shall be presented by the Ombudsman to the Plenums of both Houses. It shall be open to debate by the parliamentary groups in order that they may state their positions.

**PART IV**  
**Human and Financial**  
**Resources**

CHAPTER ONE  
*Staff*

**Article 34.**

The Ombudsman may freely appoint the advisers necessary for the execution of his duties, in accordance with the Regulations and within budgetary limits<sup>6</sup>.

**Article 35.**

1. Persons in the service of the Ombudsman shall, while so remaining, be deemed as being in the service of Parliament.

---

<sup>6</sup> See the Regulations on the Organisation and Functioning of the Ombudsman, Chapter VIII, Staff in the Ombudsman's service.

2. In the case of civil servants from the Public Administration, the position held by them prior to joining the office of the Ombudsman shall be reserved for them, and the time served with the latter shall be taken into consideration for all purposes.

**Article 36.**

Deputy Ombudsman and advisers shall automatically be relieved of their duties when a new Ombudsman, appointed by Parliament, takes office.

CHAPTER II  
*Financial Resources*

**Article 37.**

The financial resources necessary for the operation of the institution shall constitute an item of the Parliamentary Budget.

TRANSITIONAL PROVISION

Five years after the coming into force of this Act, the Ombudsman may submit to Parliament a detailed report containing the amendments that he considers should be made thereto.

SOLE FINAL PROVISION<sup>7</sup>

*National Mechanism for the  
Prevention of Torture*

**One.** The Ombudsman shall perform the duties of the National Mechanism for the Prevention of Torture in accordance with the Constitution, this Act and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Two.** An Advisory Board is created as a technical and legal cooperation body for the performance of the duties inherent to the National Mechanism for the Prevention of Torture and shall be chaired by the Deputy to whom the Ombudsman delegates the duties set out in this provision. The Regulation shall determine the structure, composition and operation of the Board.

---

<sup>7</sup> Introduced by art. 3 Organic Law 1/2009, 3rd November, supplementary to the Act for the reform of the procedural legislation for the establishment of the new Judicial Office, amending Organic Law 6/1985, 1 July, on the Judiciary (BOE No. 266, of 4 November 2009).



# Organizational and functioning regulations of the Ombudsman

(Boletín Oficial del Estado [Official State Bulletin] No. 92, of 18 April)

Modified by Resolutions of the Committees of the Congress of Deputies and of the Senate on 21 April 1992, 26 September 2000 and 25 January 2012 (BOE N° 99 of 24 April 1992, N° 261 of 31 October 2000 and N° 52 of 1 March 2012)

The Procedures Committees of Congress and Senate, in their joint meeting of 6 April 1983, approved, at the proposal of the Ombudsman, the Organisational and Functioning Regulations of this latter Institution under the terms inserted hereinafter:

## I. GENERAL PROVISIONS

### *Article 1.*

1. The Ombudsman, as High Commissioner of Parliament for the defence of the rights included in Part I of the Constitution, shall be able to supervise the activities of the Administration and report thereon to Parliament.

2. The Ombudsman shall perform the duties of the National Preventive Mechanism against Torture, foreseen on the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punish-

ment, adopted in New York on 18 December 2002, and shall have responsibility for his activities to Parliament and the Subcommittee on Prevention of Torture of the United Nations.

3. The Ombudsman shall not be subject to any imperative mandate whatsoever. He shall receive instructions from no authority and shall undertake his duties with autonomy and in accordance with his judgement.

4. He shall exercise the duties entrusted to him by the Constitution and his Organic Act<sup>8</sup>.

### *Article 2.*

1. The Ombudsman shall enjoy immunity, and he may not be arrested, disciplined, fined, persecuted or tried on account of

---

<sup>8</sup> Article drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

the opinions he formulates or the acts he undertakes in the exercise of the powers inherent to his office.

2. In other cases, and while he remains in the exercise of his duties, the Ombudsman may not be held in custody except in the event of in *flagrante delicto*.

The decision on accusation, prison, prosecution and trial falls exclusively to the Criminal Courtroom of the Supreme Court.

3. The above rules shall be applicable to Deputy Ombudsman in the performance of their duties.

4. The above points shall be expressly noted in the official document to be issued by Parliament accrediting his status and office.

### **Article 3.**

1. The Ombudsman has sole responsibility to Parliament for his management.

2. The Deputies are directly responsible to the Ombudsman for their management and also to the Joint Congress-Senate Committee for liaison with the Ombudsman<sup>9</sup>.

### **Article 4.**

The election of Ombudsman and of the Deputies shall be done in accordance with the provisions contained in his Organic Act and in the Regulations of Congress of Deputies and of Senate, or of Parliament, as appropriate.

### **Article 5.**

1. The governing and administrative functions of the institution of Ombudsman correspond to the holder of that office and to Deputies within the scope of their respective authorities.

2. For the exercise of his duties, the Ombudsman shall be assisted by a Coordination and Internal Regime Board.

### **Article 6.**

The appointment of Ombudsman or of the Deputies shall, if they are public civil servants, imply that they go over to a situation of special leave or equivalent in the Profession or Staff from whence they came.

### **Article 7.**

1. The Ombudsman and the First and Second Deputies shall have the treatment that corresponds to their constitutional category. The Regulations of Parliament shall determine as appropriate with regard to their

---

<sup>9</sup> Article drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate in 21 April 1992.

participation and order of precedence in official acts of the Houses or of Parliament.

2. Otherwise, it shall as established by general legislation in the subject.

## II. ON THE OMBUDSMAN

### ***Article 8.***

In addition to the basic competencies established in the Organic Act, it falls to the Ombudsman:

- a) To represent the institution.
- b) To propose Deputies, so that the Joint Congress-Senate Committee for liaison with the Ombudsman can grant its conformity prior to the appointment and resignation of them.
- c) To maintain direct liaison with Parliament via the Speaker of the Congress of Deputies, and with both Houses via their respective Speakers.
- d) To maintain direct liaison with the President and Vice-Presidents of the Government, Ministers and Secretaries of State, and with the Delegates of the Government in the Autonomous Communities.
- e) To maintain direct liaison with the Constitutional Court and with the General

Council of the Judiciary, likewise via their Chief Justice and Chairman, respectively.

- f) To maintain direct liaison with the Attorney General.
- g) To maintain direct liaison with the Presidents of the Executive Councils of the Autonomous Communities and with similar bodies of Ombudsman that might be set up in those Communities.
- h) As for the National Preventive Mechanism, to nominate the President of the Advisory Council between his Deputies and nominate the Members that make it up, pursuant to the proceedings established in these Regulations.
- i) To convene and determine the agenda for meetings of the Coordination and Internal Regime Board and to direct its discussions.
- j) To establish the staff and proceed with the appointment and resignation of the General Secretary and personnel of the Institution's service.
- k) In accordance with the general guidelines set by the Committees of Congress and Senate, to approve the draft budget for the Institution and to agree to its being

sent to the Speaker of Congress, for its final approval by those Committees and its incorporation into the budgets of Parliament.

l) To set the guidelines for the enforcement of the budget.

m) To exercise disciplinary powers.

n) To approve the bases for the selection of staff and the contracting of works and supplies, pursuant to that established in articles 31 and 42 of these Regulations.

ñ) To approve instructions of an internal nature that are issued for the better organisation of the services.

o) To supervise the functioning of the Institution<sup>10</sup>.

### **Article 9.**

1. The Ombudsman shall resign from his office for the reasons and in accordance with that set down in articles 5 and 7 of the Organic Act.

2. In these events, the Deputies shall carry out his duties, on an interim basis, and in their order of seniority.

---

<sup>10</sup> Drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

### **Article 10.**

1. The Ombudsman shall be able to be assisted by a Technical Office, under the direction of one of the Advisors, which shall be freely appointed and dismissed.

2. It falls to the Technical Office to organise and manage the private Secretariat of the Ombudsman, conduct studies and reports assigned to them and exercise the functions of protocol.

3. The Ombudsman shall be able to establish a Press and Information Office under his immediate dependency or that of the Deputy in whom he delegates this task. And he shall be able to set up any other assistance body that he considers necessary for the exercise of his duties.

### **Article 11.**

1. The annual report which, according to articles 32 and 33 of the Organic Act of the Ombudsman, the latter must provide for Parliament, shall be previously submitted to the Joint Committee for liaison with the Ombudsman.

2. Notwithstanding that report, and any extraordinary reports that he might present to the Standing Committees of the Houses when so advised by the gravity or urgency of events, the Ombudsman shall also be able to



inform that Committee periodically of his activities in relation to a particular period or a specific topic, and the Committee shall be able to obtain information from him.

3. The Ombudsman shall prepare specific reports on his activity as National Preventive Mechanism. Such reports shall be submitted to Parliament through the Joint Committee for liaison with the Ombudsman and to the Subcommittee on Prevention of Torture of the United Nations<sup>11</sup>.

### III. THE DEPUTY OMBUDSMAN

#### *Article 12.*

1. The following powers shall fall to the Deputy Ombudsman:

- a) To perform the duties of Ombudsman in cases of delegation and substitution provided for in the Organic Act.
- b) To direct the processing, checking and investigation of complaints that are brought and of actions that are instigated *ex officio*, proposing to the Ombudsman as appropriate the

admission for processing or the rejection of the complaints and the decisions that are considered proper, and carrying out the relevant actions, communications and notifications.

c) To collaborate with the Ombudsman in liaison with Parliament and the Procedures Committee in it constituted for the purpose and in supervising the activities of the Autonomous Communities and within them, coordination with similar bodies that exercise their functions within this scope.

d) To collaborate with the Ombudsman in the exercise of his duties as National Preventive Mechanism.

e) To prepare and propose to the Ombudsman the draft of the annual report and others reports that must be submitted to Parliament or to the Subcommittee on Prevention of Torture of the United Nations.

f) To take on the remaining duties entrusted to them by law and by the regulating provisions in force.

2. The demarcation of the respective scopes of duties of the two Deputies shall be drawn by the Ombudsman, who shall give notice of this to the Procedures Committee constituted in

---

<sup>11</sup> Drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

Parliament with regard to the said Ombudsman. For this purpose, each Deputy shall be responsible for the areas assigned to him.

Notwithstanding that established in article 8 of these Regulations, the First Deputy shall take on the coordination of the services coming under the Ombudsman, and also the ordinary business of the General Secretary. In his absence, these duties shall be performed by the Second Deputy.

3. The Deputy in which the Ombudsman delegates the duties of the National Preventive Mechanism shall assume the presidency of its Advisory Council.

4. The final acceptance or rejection and, as the case might be, the ultimate decision on complaints that are brought, falls to the Ombudsman or to the Deputy in whom this is delegated or who stands in for him.

5. The Ombudsman shall, having first listened to the Coordination and Internal Regime Board, be able to ask for a hearing, management or treatment of any complaint or investigation that it falls to the

Deputies to deal with<sup>12</sup>.

### **Article 13.**

1. The Deputies shall be proposed by the Ombudsman via the Speaker of Congress, for which purpose, the Joint Congress-Senate Committee in charge of liaison with the Ombudsman shall grant its prior conformity to that appointment.

2. Within a period of fifteen days, the proposal for appointment of Deputies shall proceed to take place, as provided for in the Organic Act and in these Regulations.

3. Having obtained conformity, the corresponding appointments shall be published in the Official State Bulletin.

### **Article 14.**

The Deputies shall take possession of their post before the Speakers of both Houses and the Ombudsman, giving oath or promise to observe the Constitution and to carry out their duties faithfully.

### **Article 15.**

1. Within ten days of their appointment and before taking

---

<sup>12</sup> Drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

office, the Deputies must terminate any situation of incompatibility that may affect them, it being understood that in failing to do so they thereby reject their appointment.

2. If the incompatibility should arise after taking office, it is understood that he shall resign therefrom on the date that the incompatibility occurs.

**Article 16.**

1. The Deputy Ombudsman shall be relieved of their duties in any of the following cases:

- a) Resignation
- b) Expiry of their term of office.
- c) Death or unexpected incapacity.
- d) Flagrant negligence in fulfilling the obligations and duties of their office. In this case, removal shall require a reasoned proposal from the Ombudsman, which must have been approved by the Joint Congress-Senate Committee, in accordance with the same procedure and majority required for granting prior conformity to their appointment, and after having heard the concerned

party<sup>13</sup>.

e) Non-appealable criminal conviction.

2. The relief of Deputies shall be published in the Official State Bulletin and in those for both Houses.

IV. ON THE  
COORDINATION AND  
INTERNAL REGIME BOARD

**Article 17.**

The Coordination and Internal Regime Board shall be composed of the Ombudsman, the Deputies and the General Secretary, who shall act as Secretary and attend its meeting with voice and without vote.

**Article 18.**

1. In order to perform its duties, the Coordination and Internal Regime Board shall have the following powers:

- a) To inform on matters affecting the determination of the staff, and on the appointment and relief of personnel in the service of the Institution.
- b) To know and be informed on the possible filing of writs of relief and appeals of

---

<sup>13</sup> Drawn up in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 21 April 1992.

unconstitutionality before the Constitutional Court.

c) To know and be informed on any matters corresponding to the drawing up of the draft budget and its enforcement, as well as its settlement formulated by the General Secretary, prior to its referral by the Ombudsman to Parliament.

d) To discuss proposals for works, services and supplies.

e) To assist the Ombudsman in the exercise of its powers with regard to personnel and economic-financial matters.

f) To cooperate with the Ombudsman in the work of coordinating the activities of the different areas and in the best performance of the services.

g) To know the drafts of those reports that shall be submitted to Parliament or to the Subcommittee on Prevention of Torture of the United Nations and assist the Ombudsman in the direction and approval of them.

h) To know and report on the appointment and relief of the General Secretary.

i) To inform on the designation of members of the Advisory Council of the National Preventive Mechanism.

j) To report and advise on the project for reforming these Regulations.

k) To advise the Ombudsman on whatsoever questions that he considers are appropriate for being submitted to his consideration.

**2.** Meetings of the Coordination and Internal Regime Board shall be able to be attended by the area managers, for the purposes of information and having been duly summoned by the Ombudsman.

Likewise, any other person considered appropriate by the Ombudsman shall be able to attend for the purposes of information and for the better resolution of the matters subject to his consideration.

**3.** The topics forming the object of deliberation shall be noted in the Agenda of the summons, and the agreements adopted by the Coordination and Internal Regime Board shall be communicated to all its members<sup>14</sup>.

---

<sup>14</sup> Drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January. 2012.

V. ADVISORY COUNCIL OF  
THE NATIONAL  
PREVENTIVE MECHANISM  
AGAINST TORTURE<sup>15</sup>

**Article 19.**

1. The Advisory Council is the technical and legal cooperative organ of the National Preventive Mechanism.

2. The Advisory Council shall comprise the Ombudsman's Deputies, as ex officio members, and a maximum of ten Members.

3. The Deputy in which the Ombudsman delegates the duties of the National Preventive Mechanism shall assume the presidency of its Advisory Council and be replaced by the other Deputy in case of absence or vacancy.

4. The Members shall be designated among people of legal age in full possession of their civil and political Rights, with an indebted experience in the defence of Human Rights or in spheres somehow related to the treatments of people deprived of freedom.

5. The designation of the Members shall be made in accordance to the following distribution:

a) A Member designated through the proposal of the General Council of Lawyers of Spain.

b) A Member designated through the proposal of the Medical Association.

c) A Member designated through the proposal of the General Council of Official Psychology Associations of Spain.

d) A maximum of two members designated through the mutual proposal of the organizations and institutions that subscribed collaboration agreements with the Ombudsman to develop the duties of the National Preventive Mechanism, if foreseen in those agreements. The proposals shall not contain more than one representative per entity.

e) Five Members elected among the candidacies that, in a personal capacity or on behalf of organizations or associations representative of the civil society, may be submitted to the Ombudsman in accordance with the designation proceeding established in these Regulations.

6. The secretary shall be the General Secretary of the Institution.

---

<sup>15</sup> Introduce by Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

**Article 20.**

1. The Members of the Advisory Council shall be designated for a four-year period and be renewed by half every two years.

2. The designation proceeding shall begin through public notice. The candidacies to cover the membership referred to in letter e) of the fifth paragraph of article 19 shall be received within 15 natural days following to the public notice and shall meet the formal requirements established therein.

3. Designating the Members and ending their functions are the Ombudsman's duties.

4. Once the period referred to in the first section of the current article is fulfilled, the withdrawing members shall continue exercising their duties until the designation of new members.

5. The members of the Advisory Council shall not receive economic compensation for the exercise of their duties but those which may arise from the application of the legal regulation on indemnities concerning the service.

**Article 21.**

1. The Advisory Council of the National Preventive Mechanism shall reunite at least twice a year.

2. To the sessions of the Advisory Council may attend the staff in the service of the Ombudsman, representatives of Human Rights international organizations or others summoned by its President.

**Article 22.**

The Advisory Council of the National Preventive Mechanism shall have the following duties:

a) To make proposals to visit places where people deprived of freedom are located.

b) To make proposals for the improvement of visiting arrangements and for its monitoring.

c) To draw up those reports requested by the Ombudsman on the legal backgrounds of the situation of people deprived of freedom.

d) To propose training programs and specialization courses in preventing torture and other cruel, inhuman or degrading treatment or punishment.

e) To follow up the reports made by the National Preventive Mechanism and by the Subcommittee on Prevention of Torture of the United Nations.

f) Other duties of his consideration.

## VI. ON THE GENERAL SECRETARY<sup>16</sup>

### **Article 23.**

1. The General Secretary shall have the following powers:

- a) The governing and disciplinary system of all personnel, exercising the powers not specifically attributed to the Ombudsman, the Deputies or the Coordination and Internal Regime Board.
- b) Directing the services coming under the General Secretariat.
- c) Preparing and presenting to the Coordination and Internal Regime Board the proposals for the selection of Advisors and other personnel, for their report and subsequent decision by the Ombudsman.
- d) Preparing the draft Budget and bringing it before the Coordination and Internal Regime Board.
- e) Administrating credits for expenses of the Ombudsman's Budget.

f) Drawing up minutes and giving notification of the resolutions of the Coordination and Internal Regime Board.

g) Summoning the Advisory Council of the National Preventive Mechanism when ordered by the President and taking the minutes of its meetings.

2. In the event of vacancy, absence or illness, the General Secretary shall be replaced on an interim basis by the Manager designated by the Ombudsman, after hearing the Coordination and Internal Regime Board<sup>17</sup>.

### **Article 24.**

The General Secretariat shall be structured into two services: the Economic Regime and the Internal, Studies, Documentation and Publications Regime.

An Advisor shall be able to assist the General Secretary in his duties.

### **Article 25.**

The Economic Regime Service shall be structured into the following units:

- a) Economic Affairs and Accounting Section.

---

<sup>16</sup> Chapter and articles renumbered in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 25 January 2012.

---

<sup>17</sup> Article drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

- b) Authorisations Section.
- c) Personnel and General Affairs Section.

**Article 26.**

1. Coming under the Internal, Studies, Documentation and Publications Regime Service shall be a General Registry and an Information Office.

All letters written to the Ombudsman shall be received via the Registry Office, where they shall be examined and classified.

The General Secretary, by virtue of being in charge of the Registry, shall inform the First Deputy or otherwise the Second Deputy, of the number and nature of letters written to the Office of the Ombudsman, for the appropriate purposes.

2. The Archives Section shall be set up under the direct responsibility of the General Secretary. The appropriate measures shall be adopted in order to protect and safeguard confidential or secret documents, in accordance with the provisions of article 22 of the Organic Act and article 30 of these Regulations.

3. The Information Office, which shall be headed by an Advisor, shall inform people who so request in relation to the powers of the Ombudsman, and it shall provide guidance on the

manner and means of filing a complaint with him.

The library, which shall include all means of reproduction of documents, shall also come under this Service.

VII. PRESENTATION,  
INSTRUCTION AND  
INVESTIGATION OF  
COMPLAINTS<sup>18</sup>

**Article 27.**

1. In the exercise of the powers inherent to the Ombudsman and the Deputies, as well as in the processing and investigation of complaints, the provisions contained in the Organic Act and in these Regulations shall be abided by.

2. The presentation of a complaint before the Ombudsman, and its later admission as appropriate, shall in no case suspend the appeal periods provided in Law, whether via administrative or jurisdictional routes, nor the enforcement of the resolution or act concerned.

---

<sup>18</sup> Chapter and articles renumbered in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 25 January 2012.



**Article 28.**

1. For the better exercise of the duties attributed to him by the Organic Act, the Ombudsman shall, with respect to all Public Administrations, exercise top-level coordination between his own powers and those attributed to similar bodies which might be set up in the Autonomous Communities, without prejudice to the autonomy corresponding to them in monitoring the activity of the respective autonomous administrations.

2. In the exercise of his own powers, the Ombudsman shall be able to request the collaboration and assistance of similar bodies of the Autonomous Communities.

3. The Ombudsman may not delegate to similar bodies of the Autonomous Communities the powers attributed to him by article 54 of the Constitution regarding the defence of the rights contained in its part one.

**Article 29.**

1. When the Ombudsman receives complaints referring to the functioning of the Administration of Justice, these must be passed on to the Attorney General's Office so that it can investigate into their reality and adopt the appropriate measures pursuant to the Law or pass

them on the General Council of the Judiciary, depending on the type of complaint it concerns.

2. In ex officio actions, the Ombudsman shall act in coordination with the Chairman of the General Council of the Judiciary and with the Attorney General, as the case might be, to whom he shall report the result of his investigations.

3. The actions that might be undertaken in relation to the Administration of Justice and the result of them shall be reported by the Ombudsman to Parliament in his periodical reports or in his Annual Report.

**Article 30.**

1. Only the Ombudsman and, as appropriate, the Deputies and the General Secretary shall have knowledge of documents officially classified as secret or confidential.

2. Such documents shall be duly safeguarded under the Ombudsman's direct responsibility.

3. The Ombudsman shall order that which is appropriate with regard to the classification of "confidential" for documents of an internal nature.

4. In no case may reference be made to the content of secret documents in the Ombudsman's reports or in his replies to persons who have presented a

complaint or asked for his intervention.

5. References to confidential documents in reports to Congress and Senate shall be appraised with prudence by the Ombudsman.

## VIII. STAFF IN THE OMBUDSMAN'S SERVICE<sup>19</sup>

### **Article 31.**

1. The staff in the service of the Ombudsman shall have the consideration of being staff in the service of Parliament, without prejudice to the organic and functional dependence of the Ombudsman.

2. When staff coming from other public administrations join the Ombudsman's service, they shall be in the situation provided for in article 35.2, of the Organic Act.

3. The selection of staff in the Ombudsman's service shall be freely made by him, in accordance with the principles of merit and ability. In making these appointments, the aim shall be to

give priority to public civil servants.

4. Other staff who do not meet the conditions of being career servants of the public administrations shall have the nature of being temporary civil servants in the Ombudsman's service.

### **Article 32.**

Staff in the service of the Institution of the Ombudsman shall be composed of Area manager advisors, Technical advisors, clerks, assistants and subordinates.

### **Article 33.**

1. The Advisers shall provide the Ombudsman and Deputies with the technical and juridical cooperation they need for carrying out their duties.

2. They shall be freely appointed and relieved by the Ombudsman, in accordance with the provisions of these Regulations and shall in all cases be relieved when the provisions of article 36 of the Organic Act occur.

### **Article 34.**

All persons in the service of the Ombudsman are subject to the obligation to maintain strict confidentiality in relation to the matters being dealt with as part of that service. Breach of this

---

<sup>19</sup> Chapter and articles renumbered in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 25 January 2012.

obligation shall be sanctioned in accordance with the provisions of these Regulations.

**Article 35.**

1. The system for the rendering of services shall be full-time for all staff.

2. The position of advisor to the Ombudsman shall also be incompatible with any representative mandate, with any public office or the exercise of managerial duties of a political party, trade union, association or foundation and with employment at the service of the same; and also with the exercise of whatsoever other professional, liberal, mercantile or labour activity. Nevertheless, with prior acknowledgement of compatibility granted in accordance with the provisions contained in the Statute of Institution Staff, advisors to the Ombudsman shall be able to be contracted for carrying out teaching or research duties in universities or other academic institutions having a similar nature and ends. In all cases, such activities shall be carried out on a part-time basis and they may not impair the rendering of services to the Ombudsman. Those wishing to obtain acknowledgement of compatibility must present an application, which shall be accompanied by all necessary

data so that a pronouncement can be made. The Ombudsman, having heard the Coordination and Internal Regime Board and with a prior report from the General Secretary, shall decide as appropriate<sup>20</sup>.

IX. DISCIPLINARY  
REGIME<sup>21</sup>

**Article 36.**

1. Staff in the service of the Ombudsman shall be able to be sanctioned for committing disciplinary offences as a result of breach of their duties in accordance with Law.

2. The offences may be minor, serious or very serious.

3. Minor offences shall have a prescription of two months; serious ones, six months; and very serious ones, one year. The same periods shall apply to the prescription on sanctions, starting from the day on which the decisions that are imposed

---

<sup>20</sup> Drawn up in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 26 September 2000.

<sup>21</sup> Chapter and articles renumbered in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 25 January 2012.

become definite, or their enforcement is violated.

**Article 37.**

1. Sanctions shall be imposed and shall accord with the greater or lesser severity of the offence, and shall be as follows:

- a) For minor offences, those of warning and suspension of employment and salary for between one and ten days.
- b) For serious offences, suspension of employment and salary for a period of up to six months.
- c) For very serious offences, suspension or employment and salary or dismissal from the service, for between six months and six years.

**Article 38.**

1. Sanctions for minor offences shall be imposed by the hierarchical superior of the civil servant, they shall not lead to the opening of proceedings, though the offender must in all cases be heard.

2. Sanctions for serious and very serious offences shall be imposed by virtue of proceedings opened for the purpose and which consist of the procedures of charge sheet, evidence as the case might be, and proposed decision, with the civil servant

having to be allowed to formulate pleadings in them.

3. The instigation of proceedings and the imposition of sanctions fall to the General Secretary. Nevertheless, the sanctions of suspension and dismissal from the service may only be imposed by the Ombudsman.

4. Notes made in the service sheet relating to sanctions imposed may be cancelled at the request of the civil servant once a period has passed equivalent to the prescription of the offence, always provided that no new proceedings have been instigated against the civil servant giving rise to a sanction. Cancellation shall not prevent the appraisal of re-occurrence if the civil servant again commits an offence; in this case, the cancellation periods shall be double the duration.

X. ECONOMIC SYSTEM<sup>22</sup>

**Article 39.**

1. The budget for the Institution of the Ombudsman shall be included in the budgetary section of the budget for

---

<sup>22</sup> Chapter and articles renumbered in accordance with the Resolution of the Procedures Committees of the Congress of Deputies and Senate of 25 January 2012.

Parliament as a further service of the same.

2. The accounting and auditing system that shall apply in the Ombudsman shall be that of Parliament.

3. The Auditor of Parliament shall perform the critical and auditing function in conformity with the rules applicable to Parliament.

#### **Article 40.**

1. The structure of the budget for the Institution of the Ombudsman shall be accommodated to the budget for Parliament.

2. The rules applying in Parliament for the transfer of credits among budgetary items shall apply.

3. Authorisation for transfers shall be made by the Ombudsman, with a report from the Auditor of Parliament.

#### **Article 41.**

The powers with regard to the ordering of payments shall correspond to the Coordination and Internal Regime Board; to the Ombudsman and to the General Secretary depending on the amount and the manner in which this is determined by said Board, at the proposal of the Ombudsman.

The ordering of the payment corresponds to the Ombudsman.

#### **Article 42.**

The system of contracting and of acquisition in general in the Ombudsman shall be that which governs for Parliament.

#### ADDITIONAL PROVISION

The Ombudsman shall propose the reform of these Regulations, as appropriate, to the competent bodies of Parliament, via the Speaker of Congress.

#### TRANSITORY PROVISION<sup>23</sup>

Two years after the first Advisory Council of the National Preventive Mechanism takes office, the Members that have to be renewed shall be determined at random. If there were nine Members in the Council, four of them shall be renewed.

#### FINAL PROVISION

These Regulations shall be published in the Official Bulletin of Congress, in the Official Bulletin of Senado and in the Official State Bulletin, and they shall come into force on the day

---

<sup>23</sup> Drawn up in conformity with the Procedures Committees of the Congress of Deputies and Senate on 25 January 2012.

following their publication in the  
latter.

# Index

[the figures in bold redirect the user to documents in the appendix]

administration, maladministration, 27ff, 59, 61-63

Institution of the Ombudsman/*Defensor del Pueblo*

expansion in democratic countries following the Second World War, 36ff

origins and history, 33ff, 57-58

origins and development in Scandinavian Europe, 34ff

other institutions

National Human Rights Commissions, 57

Parliamentary Commissions, the right to petition, 55-57

types and limits, 50ff

mediator, 53

ombudsman for general or sectorial issues, 52-53

regional ombudsman, 54-55

Institution of the Ombudsman/*Defensor del Pueblo* in Spain

Attachments, 86-89, 93-94, 113, **146, 161ff**

scope and competencies, 83-84, **159-161**

distant historical background, 77ff

constitution, 78ff, 83ff, **141**

constitutionality, unconstitutionality, 80-81, 102-104, **141, 152, 163-164**

performance, 87ff, 93-94, **146ff**

implantation and progress of the institution, 107ff

reports and studies, 98, 107-110, **154**

international: international activity and action, 113ff

organic law, 83ff, **143ff**

National Preventive Mechanism against Torture (NPM), 110ff, **155, 165-166**

human and material resources, **154, 167-168**

origin and context, 77ff

profile and election, 84ff, **143ff, 158ff**

initial stages, 107ff

procedure for proceedings, 89ff, 95ff, **146ff**

complaint, complaints, 91-92, 95-98, **146ff, 168ff**

organisation and performance regulations, 88, 107, **157**

resolutions, resources, 79, 92-93, 102-103, **152-153**

transition to democracy, 43ff

transparency, 116ff

Constitutional Court (*Tribunal Constitucional*), 79-80, 102-104, **141**, **148**, **152-153**, **159**, **163-164**

European Ombudsman, 30-31, 59ff

Regional offices of the Ombudsman, 43-44, 104ff

democracy, transitions, 36ff, 43ff  
in Spain, 43-44, 78ff  
in Ibero-America, 45-46, 71ff  
in Eastern Europe and Russia, 47ff  
following the Balkan Wars, 50

human rights  
historical declarations, 13ff  
universal declaration (1948), 17ff, **129ff**  
concept, 11, 13ff  
institutionalisation, 12, 13ff, 20ff  
origins, 13ff  
The Paris Principles, 21ff, **135ff**  
International Criminal Court, 22ff

international coordination organisations  
Worldwide, 67-69  
in Europe, 70-71  
in Ibero-America, 71-73





## THE *pocket* OMBUDSMAN BOOK

The *Defensor del Pueblo* is an institution that began in Europe. It has its origins in Nordic countries, specifically Sweden, in the early 19th century and it is from here that the internationally - recognised name - Ombudsman - originates.

The Office of the Ombudsman in Spain is a parliamentary institution provided for in the Constitution of 1978 and it is responsible for defending fundamental rights and supervising activity within the Administration.

Its role consists of non-judicial, non-binding control of the civil service. It does not judge nor legislate but recommends and suggests. It is what has come to be referred to as a judge of opinion and persuasion and, as such, is known basically for its *auctoritas*: its activity is one of influence, never one of politics nor, as indicated above, one of law. Any person, irrespective of age, nationality or even if he or she has been deprived of liberty, may turn to the Institution of the Ombudsman.

The Institution receives complaints from the country's citizens and begins initiatives of its own accord, as well as carrying out a prevention role. It delivers an annual report that is presented to the Spanish Parliament (*las Cortes Generales*) where it is debated. It also writes reports of varying kinds.

It also includes a regulatory appendix.