

# THE OMBUDSMAN OF SPAIN



SUMMARY OF THE REPORT TO  
PARLIAMENT **YEAR 2009**

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# Summary

**Rise in the number of *ex officio* complaints and also in the number of complaints submitted individually due to economic and social concerns**  
Page 5

## STATISTICS

Individual complaints and *ex officio* enquiries have grown, while collective complaints have declined

Page 14

Year-end status of complaints filed in 2009

Page 24

3,626 collective complaints

Page 30

269 *ex officio* complaints

Page 33

85 recommendations and 82 suggestions admitted

Page 36

173 recommendations, 219 suggestions

Page 38

Suggestions accepted

Page 40

Reminders of legal duties

Page 43

Warnings

Page 52

Appeals of Unconstitutionality

Page 54

Administrations that failed to comply or have notably delayed their responses to the Ombudsman's official notifications requesting information

Page 55

Administrations that have not replied in 2009, after the third request

Page 55

## MANAGEMENT SUMMARY

Individual complaints lodged through the institutional website increased

Page 60

## SUPERVISION OF PUBLIC ADMINISTRATION

### Justice

The Ministry of Justice accepts a recommendation to improve psychosocial services at all courts, an issue involved in many complaints addressed to the Ombudsman

Page 64

### Prisons

The number of inmates in the Spanish prison system continued to rise in 2009, but this growth appears to have been moderate

Page 69

### Citizenship and Public Safety

The Ombudsman designated the National Mechanism for the Prevention of Torture

Page 73

### Immigration and Alien Affairs

The Ombudsman calls for reliable legislative frameworks that can adapt to an economic, social and political environment in constant flux

Page 78

### Educational Administration

In anticipation of a social pact on education, the economic crisis represents a major obstacle to integration into the European Higher Education Area

Page 88

### Health Care

Twenty-three years after passage of the General Law on Healthcare: the right to medical treatment has yet to be fully guaranteed

Page 92

### Social Affairs

The Ombudsman presents a report on "Shelters for the Protection of Minors with Behavioural Disorders and Social Problems"

Page 96

### Taxes and Duties

The Ombudsman received numerous complaints regarding what citizens consider to be an excessive increase in Real Estate Property Tax (IBI)

Page 102

**Economic Activity**

The State Secretariat for Telecommunications accepts the recommendation that broadband Internet service should be considered a universal service

[Page 104](#)

**Housing and Urban Planning**

The public administrations show a willingness to increase the stock of state-subsidised housing, but their commitment to the underprivileged is scant

[Page 111](#)

**Environment**

Steady rise in number and complexity of complaints related to the environment

[Page 115](#)

**Civil Servants**

Noteworthy increase in complaints related to staff selection processes during 2009

[Page 120](#)

**Other Affairs**

Co-official language status

[Page 124](#)

**INSTITUTIONAL RELATIONS**

[Page 127](#)

## Rise in the number of *ex officio* complaints and also in the number of complaints submitted individually due to economic and social concerns

**In the current context of economic crisis, the robustness of our social structures and the quality of our administrative capacity—the focal point of the Ombudsman’s supervisory activities—have been put to the test. Economic issues have also given rise to a very significant number of complaints. The Ombudsman’s unflagging pursuit of stronger protection for basic rights and freedoms has intensified as a result of the risks associated with the prevailing crisis. Moreover, it has become more critical than ever to defend and ensure all types of rights—especially those of a social and economic nature, which tend to be the most vulnerable under the current circumstances—without hampering the enormous efforts made to resolve issues related to the effectiveness of the most basic political and civil rights as well as the third-generation rights.**

In keeping with this ongoing pursuit to safeguard all rights, the passage at the end of 2009 of an amendment to Law 3/1981 of April 6, governing the Ombudsman Institution, was received with satisfaction. Thanks to a nearly unanimous decision by the Spanish Parliament, the Ombudsman’s mission has been expressly expanded to include the prevention of any behaviour or activity by public servants and authorities which could give rise to any form of torture, abuse, or mistreatment, in accordance with what is contained in the United Nations Convention on the matter as well as in the relevant Optional Protocol, legal instruments ratified by Spain.

Statistical data referring to the Ombudsman’s activities in 2009 presented an overall picture similar to previous years. It must be stressed that underlying each and every one of the thousands of complaints received are issues that have an impact on thousands of citizens. They are sometimes merely declarations of disagreement with what they consider to be excesses in government action. In other cases, they represent allegations of inappropriate behaviour that must be elucidated or are worthy of a full investigation into every facet involved in the complex and wide-reaching relationship between citizens and the Administration.

Although the overall number of complaints has gone down, the most salient factor is the rise in individual complaints, which is the most common and best-known type of complaint. Compared to 15,804 in 2008, the 18,392 individual complaints received in 2009 represent the greatest number on record for all periods of the Ombudsman’s activity. Individual complaints represent the main indicator of efforts made on behalf of citizens. Although such cases involve an individual analysis of the problem in question, even the most specific complaints can lead to conclusions, suggestions, and recommendations whose impact may have a very wide scope.

Regarding collective complaints—those for which an enquiry is undertaken into a certain administrative activity in response to the express interest of a large number of citizens—a total of 3,626 new cases were opened in 2009, fewer than in the previous year.

There were 269 *ex officio* enquiries initiated by the Ombudsman, more than in 2008, and, as was the case regarding



Presentation to the President of Congress, José Bono, the Annual Institutional Report for the year 2009 by the Ombudsman, Enrique Múgica. Photo: Povedano.

individual complaints, this figure represented the largest amount ever recorded in any period of Ombudsman activity. This increase reflects a growing effort by the Ombudsman to keep an ever-watchful eye on any circumstances that might suggest the occurrence of administrative malfeasance, and to tackle any such issues promptly even before any complaints are actually submitted by citizens. These *ex officio* actions sometimes stem as well from conclusions reached in private enquiries undertaken by citizens.

Most of the complaints received came from the most heavily populated autonomous communities. Complaints sent from abroad were quite few in number, including referrals from the Ombudsmen of other countries or from the European Ombudsman’s Office.

The parliamentary commissioners of the autonomous communities submitted nearly nine percent of overall complaints received, demonstrating collaborative effort between the Ombudsman Institution and its regional counterparts.

By sector of activity, it is worthwhile to note the large number of complaints submitted on financial matters covering a vast array of areas, such as taxes and fees, telecommunications, general economic and financial regulations, or infrastructure and transport, as well as those involving social policy issues, health, labour, and social security. The Administration of Justice or the

Administration of Urban Planning and Housing were also the subject of a considerable number of complaints, particularly individual ones, as were those involving immigration issues.

## Processing Status

In this 2009 report, as was done in the 2008 report, the processing status for complaint cases initiated prior to the year of the report is provided. In other words, in addition to providing the relevant figures for complaints admitted and recorded during the calendar year covered by the report, further details are provided with respect to the processing status of cases already opened and recorded in prior years (representing a total of 13,784 complaints), which were subject to resolution or follow-up in 2009 at the same time new cases were being initiated.

The overall rate of admission for complaints filed in 2009 was 38 percent, whereas 52 percent were rejected and the remaining 10 percent remained pending a final decision as of 31 December due to either insufficient information from the applicant or because the case was still in the review phase. These data, similar to previous years, show the interest citizens' have in presenting their particular issues to the Ombudsman even when it is not within the Ombudsman's legal authority to proceed with an enquiry, in which case the aim is to offer guidance to citizens so that they might find the most appropriate and effective channel to address their legitimate concerns, be it through the relevant administrative office or via a court of law.

One common reason why a complaint may be rejected is that it has been submitted without having first sought intervention by an administrative authority, which logically precludes the possibility of exercising administrative oversight. However the most common explanation for rejection stems from administrative performance assessments when these are deemed to have been reasonable and lawful. Once all of the data supplied by the citizen has been gathered, the Ombudsman often finds in many cases that sufficient evidence exists to determine that no misconduct has occurred, and the citizen concerned is informed accordingly. 3,133 complaints were declared inadmissible in 2009 for this reason. But far from considering such citizen complaints as useless, one must remember that the mere fact of expressing disagreement with administrative action represents an exercise of democratic rights and a means of expression of free speech guaranteed to citizens. Furthermore, if the Ombudsman's rejection of such complaints also offers the citizens involved the information they need to better understand their problem and to direct their complaints through the proper channels, one may consider these types of rejected cases to have been handled successfully and effectively.

In many cases (1,510 of them in 2009), citizens lodge complaints referring to matters that have already been investigated in the past and resolved by the Ombudsman under nearly identical circumstances. In such cases, the citizen is duly informed of the conclusions reached in the earlier enquiries.

Of the 6,694 individual and *ex officio* cases admitted and processed in 2009, most involved the departments and offices of the General State Administration (2,733), and in lower

number (1,894) dealt with regional and municipal administrations. Given the complexity of governmental organization in Spain as well as the diverse duties and responsibilities assigned at the various administrative levels, the proper processing of many complaints often requires that information and assistance be requested from several public authorities at the same time, which can prolong the procedure. Nonetheless, the ultimate goal is to provide citizens with a comprehensive response that addresses every facet of their problem irrespective of such distribution of powers. This often enables the Ombudsman to offer citizens and public officials a full overview of the issues at hand so that they might be handled in the most favourable way for all parties concerned.

## Supervisory Effectiveness

When approaching the end of an enquiry regarding a complaint, the Ombudsman Institution assesses all of the information gathered and communicates its opinion as to the legality of any actions and decisions taken by the Administration. It may be argued that the action was proper even though initial indications suggested some type of malfeasance, or, on the contrary, that the authorities had indeed committed wrongdoing in one or more of their decisions and in violation of the rights and interests of the claimants. This determination is then sent to the appropriate authority so that they may take into consideration said arguments, and, were it deemed necessary, offer an alternative solution to remedy or mitigate any adverse consequences that may stem from the situation.

In light of aforementioned, the conclusion of a case may be expressed as a resolution under different names, the most common of which are: *recommendations*, *suggestions*, *reminders of legal duty*, and, less often, *warnings*. In 2009, the Ombudsman made 553 of these resolutions, broken down as seen in the section on general activity data. Recommendations and suggestions are those that elucidate more clearly the *auctoritas* pertaining to institutions charged with guaranteeing basic rights and freedoms. The Ombudsman often recommends or suggests that public authorities do the following: adopt a different set of criteria when interpreting current regulations, amend a specific resolution that may have been reached without having considered all of the circumstances involved, or take the time and effort required to reach a decision to which the citizen or group of citizens are entitled. Such resolutions ultimately aim to perpetually adapt democratic administrations so that they conform to the ever-changing needs of society.

Sometimes a recommendation by the Ombudsman may reveal the need to adopt legislative reform, and in that regard, it is expected of the Administrations involved to offer the motivation necessary so that the appropriate legislative amendments may put into effect, provided that the legislature subsequently adopts them. The Ombudsman bases such recommendations on the Law, and, above all, on an independent and impartial approach on how to best to ensure citizens' rights.

If we study the status of recommendations and suggestions as of 31 December, a high acceptance rate is observed that rises

still further as replies are received outside the period of the calendar year covered by the annual report. Particularly noteworthy are the acceptance rates as of the end of 2009 that refer to recommendations and suggestions made in 2007 and 2008, reaching averages of 75.6 percent and 60.2 percent respectively. These values show a positive response from the various administrations regarding the Ombudsman's arguments, even though delays continue to hamper the submission of responses.

## Administration of Justice

Year after year, all complaints referring to irregularities in the Administration of Justice are studied in detail, because only through the effectiveness of the work of judges and courts may democratic harmony be ensured. Cases admitted are those that can be processed via the channels of collaboration established in Organic Law 3/1981 of 6 April, on the Ombudsman, and decisions are taken on suggestions and recommendations deemed useful in striving for the overarching objective of modernizing the entire judicial system.

The Ombudsman's persistent concern, evident in all reports to Parliament, has also very likely helped to spread awareness of the urgent and undeniable need for a broad national consensus on establishing a judicial system equipped for modern times as well as for the circumstances present in a complex, developed, and highly-demanding democratic society. In April 2009, steps were taken in this direction. The Congress of Deputies passed a proposal declaring the urgency of a social pact in the area of justice, and, in September, the Government approved the Strategic Plan for the Modernization of the Justice System 2009-2012. The nationwide agreement aims to bring together representatives from the Judiciary, executive branch members of national and regional government, the spokespersons of all political groups, as well as members of institutions representing legal professionals and the society as a whole.

A wide-reaching agreement to improve the administration of justice must manifest itself in the adoption of legal amendments and in the allocation of sufficient funding to make the transformation of the infrastructure that supports such a system feasible. This necessitates commitment from all parties concerned and a consensus on practical objectives to be achieved, of which the principal must be to ensure the legitimate exercise of democratic rights.

In terms of commitments toward legislative reform, the Ombudsman agreed with the State Attorney General as to the need to establish updated regulations for investigative court procedures, to name a specific aspect of the Administration, without dismissing the study of a new law that addresses criminal proceedings in light of historical and constitutional developments in Spain. In terms of funding measures and effective improvement of Spanish judicial system, the Ombudsman has long recommended that more material and human resources be made available, such as the bolstering of psychosocial services in family courts, the effective implementation of an online data communication system project that would permit real-time updates of information among the

various courts, or the building of new fully-equipped court-houses.

As for criminal jurisdiction, attention and protection for crime victims must have top priority among the concerns of public officials. However, the pain of those suffering from such crimes, widely reported in certain cases involving a great deal of media attention, must not be allowed to redefine the spirit of our democratic system of justice by raising or adopting proposals for reform which, in the heat of the moment, might fundamentally alter the essence of the Constitutional framework on punishment.

In line with this notion it is worthwhile to discuss the supervision of administrative resources used to enforce judicial rulings for crimes committed by minors. In 2009, the Ombudsman continued to visit juvenile detention facilities in several regions of Spain, the most noteworthy of which involved an investigation into serious incidents at the Badajoz Facility, carried out at the administration's request and with the Attorney General in order to shed light on the circumstances involved in the matter. At the same time, another *ex officio* enquiry continued in order to determine why legal assistance for juvenile inmates there was being hindered.

As for the fight against domestic violence, the Ombudsman expressed once again the need to adopt standardized regulations for the entire country in certain areas such as the establishment of family meeting points or the running of women's shelters. Regarding the latter, an example of positive development is the collaboration agreement among leaders from six autonomous communities to pool their resources for providing assistance to battered women.

Recommendations made with regard to updating human resources at civil registries have once again underscored the chronic deficiency in this area, a situation that may improve via implementation of the Justice System Modernization Plan and particularly through establishment of a Centralized Civil Registry for Spain.

## Prison Administration

The nation's response to crime must be firm, but it must also strive to ensure both the rights of those who have perpetrated such crimes as well as those pertaining to their victims. Punishments involving incarceration must be tempered with the need to strike a balance that respects the basic rights of prisoners and that could eventually lead to their successful reintegration into the community.

The size of the prison population continued to grow throughout 2009, surpassing 76,000 inmates. Compared to other countries, living conditions in Spanish prisons are not particularly bad, though it should be noted that steady growth in the number of inmates and deficiencies at certain facilities may cause circumstances to deteriorate if the monitoring of the operation of these penal institutions fails to address the legitimate needs of both inmates and prison staff.

Visits to prisons (nearly twenty) and complaints handled in 2009 indicate a continuation of problems already examined



The President of Congress, José Bono, with the Ombudsman, Enrique Múgica Herzog, his First Deputy M<sup>a</sup> Luisa Cava de Llano and his Second Deputy, Manuel Aguilar, the day of the presentation of the Annual Report in Congress. June 22.

Photo: Povedano.

in previous years, with slight variations. Specifically, circumstances at psychiatric hospitals in Seville and Alicante prison deserve special attention in this report. Other institutions visited included Alcalá de Guadaira (Seville Women's Correctional), Algeciras, Alhaurin de la Torre, Bonxe, Brieve, Cáceres, Ceuta, Córdoba, Herrera de la Mancha, Huelva, Murcia, Santa Cruz de la Palma, Santander, Tenerife, Teruel and Topas.

Aspects such as psychosocial services, healthcare, and improvement of the living conditions in prison cells continue to be common sources of complaint, and in each case the Ombudsman attempts to confirm the willingness of prison authorities to rectify deficiencies reported. For example, the enhancement of telemedicine services through an in-depth implementation of new technologies in all regions so as to ensure adequate healthcare assistance for prisoners while at the same time obviating impediments involved in transferring prisoners outside of correctional facilities or in arranging visits there with medical professionals. With respect to overcrowding issues involving the use of cells for two or as many as three inmates as well as collective bunk rooms wherever they might still be in use, a recommendation was made for a study to be conducted into the impact of these factors on the peaceful coexistence of prisoners. The Administration accepted the recommendation and carried out the study, but unfortunately they refused to attend to its conclusions, which defies a logical explanation.

The Ombudsman has long supported the establishment and maintenance of "Room for Respect" facilities that, fortunately, continue to spread and are already functioning at 37 prisons with participation by more than 7,000 inmates. Visits to these facilities have confirmed the success of these experiences in common living, reflected not only in the superior conditions of areas used for such purposes but also in the level of satisfaction and commitment shown by inmates.

## Public Safety

In late 2009 the Parliament amended Organic Law 3/1981 of April 6, regulating the Ombudsman, by which Spanish state expressly places the Ombudsman in charge of the duties set forth in the Optional Protocol to the United Nations

Convention against Torture. This new legislative mandate explicitly establishes a mission that the Ombudsman has in fact been performing since its inception, calling attention to and preventing any circumstances that may involve wrongdoing or abuse mainly by public authorities and officers of the Security Forces and Corps. Upon entry into force of this amendment and as per the contents of the new provision, the Ombudsman must enhance its usual activities in this area and form a technical and legal advisory board in compliance with the provisions of the United Nations Protocol.

The Security Forces and Corps, including the National Police and Civil Guard and regional and local police, must perform the difficult task of striking a delicate balance between preserving public order while at the same time avoiding undue interference in the everyday lives of citizens to whom they must render whatever services may be required under a variety of circumstances. Living in close proximity, particularly in large cities, often involves conflict, and myriad natural or social issues may require law enforcement intervention at any time. Citizen complaints involving misconduct by officers of these security forces are uncommon, but they can have a significant qualitative impact because they can lead to social unrest when the perspective of citizens regarding collective security issues appears to be questioned.

In general, recommendations and specific suggestions to the various administrations, particularly to town councils, the Ombudsman has long stressed the need in all cases for strict adherence to disciplinary procedures set forth by law, and even more so when the disciplinary conduct issues involved are classified as serious or very serious. Whenever the incidents involved may potentially be classified as crimes or misdemeanours, the courts handle such cases swiftly with all of the safeguards afforded by our judicial process. But the Administration responsible for the officers involved must be equally swift in order to prevent such wrongful conduct from going unpunished. Both citizens as well as officers must be able to see a degree of commitment among the public authorities that inspires confidence in the system as a whole without allowing cracks to appear that might undermine democratic stability.

In reports in recent years, the Ombudsman has highlighted the difficulties encountered by citizens in applying for a national identity card or passport. Certain aspects of this issue have shown improvement. For example, in response to a recommendation by the Ombudsman, the validity period of birth certificates obtained for the purpose of processing National Identity Card (DNI) applications has been extended to six months.

The delay in approving the new law for the protection of victims of terrorism must emphatically be pointed out. If the top priority of the State is to protect and safeguard the interests of crime victims, it must act with even greater diligence to mitigate the suffering of those living under the constant threat of terrorism. More effective handling of such matters would emerge from passage of said legislation.



## Immigration and Alien Affairs

In 2009, the two main laws governing migration issues were either passed or amended: Law 12/2009, of 30 October, governing the right of asylum and additional protection, was adopted, and the text of the 2000 Aliens Act was partially revised. European Union legislation was drafted into the text of both laws, and adaptations to international agreements, commitments, and jurisprudence were incorporated as well. With respect to the Alien Act, this represents the fourth major revision in a decade, which warrants a call for legislation that would establish an acceptable degree of stability for such an important issue. The prevailing socio-economic circumstances have led to a reduction in the influx of immigrants. If this trend continues, this would be the most opportune moment to standardize administrative capacity and resources so that the arrival, stay and departure of foreigners in Spain may be handled efficiently now as well as in the future.

As in previous years, the Ombudsman continued to strive to attend to the varied and complex circumstances discovered in complaints and general information. A wide variety of different government alien affairs agencies and offices were visited across the country. Starting with border checkpoint facilities, noteworthy visits include inspections of space available at airports in Barcelona and Madrid for persons subject to expulsion and deportation proceedings as well as scrutiny of land border checkpoint facilities in Irun-Biarritz, La Jonquera and Portbou.

Follow-up visits were conducted at temporary detention centres in Ceuta and Melilla, and it was recommended that separate family quarters be set up to house entire families whose stays are occasionally protracted. Regarding emergency services for unaccompanied minors located in the Canary Islands, the reduction in cayuco boats and the transfer of minors to other autonomous communities have alleviated the situation. With regard to alien detention facilities, as is the case for Malaga, additional funding must be allocated to prevent further deterioration of the facilities and to ensure minimum living standards are met for those living there.

Coordination among the various administrations involved in immigration matters is all the more vital due to the extreme vulnerability of foreigners attempting to adapt to life and work in Spain. The lack of coordination is apparent in such areas as the entry of Spanish minors accompanied by their foreign-born parents, the processing of visas in consular offices, cases of expulsion or deportation (especially those involving unaccompanied minors), or services and resources available at alien affairs offices.

## Education

Calls for social and political consensus regarding education invariably appear in the Ombudsman's annual reports. It may be said that the main problems affecting the educational system in Spain at present and the future are the following: high failure and dropout rates, poor national and international testing scores, low social regard for professional training, and insufficient numbers of essential degrees in the production system. On top of

this may be added the lack of sufficient funding to ensure the quality of the education system as a whole and to restructure the university system to meet the requirements of the European Higher Education Area.

Regarding early childhood education, the shortage of places or inadequacy of school facilities are issues that continue to stand out in the complaints received. When learning between 0 and 6 years is deemed to be fully educational in nature, the government is duty-bound to ensure the basic right to education and to provide the wherewithal to make it effective. On the other hand, persistent problems in the handling of new student admissions at schools underscore the need for a degree of flexibility with respect to certain criteria and standards, because strict, impersonal adherence to them can have serious consequences for parents suffering the greatest hardship. At the same time, an appropriate and reasonable degree of objectivity should always be fostered.

University life has become infused with a certain degree of tension as a result of the gradual implementation of the European Higher Education Area during an economic recession. The success of the adaptation process of the Spanish University to the agreed-upon EU standards depends upon the government's ability to adapt budgets accordingly so as to meet the objectives of this process (for example, complying with established class-size limits, implementing new technologies and monitoring students' personal work as per the new guidelines, or providing sufficient high-quality scholarships). Adequate funding is essential, and cost-cutting and streamlining measures by the universities are needed as well.

## Healthcare

Full universality of health care has not yet been reached in Spain 23 years after passage of the General Healthcare Law, which highlights the fact that the entire system remains incomplete, although a very high level of advancement has indeed been achieved.

Along with a growing perception by citizens that the public healthcare system is clearly in decline, there has been a noteworthy tendency toward outsourcing of services by healthcare administrations that claim to seek modernization and efficient use of existing resources. Despite the deregulatory measures put into practice in various regions, the fact remains that there is a clear lack of effective measures to address certain structural problems, among which are long waiting lists for diagnostic procedures.

The handling of healthcare complaints is discussed in the relevant section of this report, but attention should be called at this point to the persistent problem of waiting lists—a symptom of the problems that plague a healthcare system starving for proper attention to human resources and materials. It is worthwhile to offer amongst the conclusions in this section a set of examples, which is by no means exhaustive, but, rather, indicative of the many deficiencies found by the Ombudsman in 2009: three and a half years to perform drug allergy tests at the Hospital Principe de Asturias in Alcala de Henares; more than a



**Presentation of the Annual Report 2009 in the Senate.** From left to right, the First Deputy M<sup>a</sup> Luisa Cava de Llano, the Ombudsman, Enrique Múgica Herzog; the President of the Senate, Javier Rojo; and the Second Deputy, Manuel Aguilar. Photo: Povedano.

year and a half to perform an electromyogram at the Hospital Universitario Insular de Las Palmas de Gran Canaria (Canary Islands); fifteen and thirteen months, respectively, in the trauma unit and vascular surgery unit of Miguel Servet Hospital of Saragossa; ten months (electromyogram) in the Hospital Puerta de Hierro in Madrid; ten months in the coronary care unit (echocardiogram) at Hospital Ramon y Cajal in Madrid; nine months in the cardiology unit (cross-consultation) at Hospital Doctor Negrin in Las Palmas de Gran Canaria; more than eight months to provide care on a preferential basis in the ophthalmology department of the Centro de Especialidades Gerona in Alicante; eight months in the coronary care unit (Holter) Hospital La Fe in Valencia; eight months in the trauma unit of the Centro de Especialidades Coronel de Palma in Mostoles; seven months in the endocrinology unit at Hospital Puerta de Hierro in Madrid; seven months in the endoscopy unit (colonoscopy with sedation) at Hospital Gregorio Marañón in Madrid; more than six months in the radiology unit (electromyogram) at Hospital Clínico in Valladolid; six months in the nuclear medicine unit (PET) at Hospital Puerta de Hierro in Madrid; six months in the urology unit at the Centro de Especialidades Emigrantes in Madrid; six months in the coronary care unit (stress test) at Hospital Principe de Asturias in Alcala de Henares; five months in the gynecology unit at Hospital Infanta Sofia in Madrid; five months in the endoscopy unit at Hospital Virgen de las Nieves in Granada; more than four months wait to receive care in the pain unit at Hospital General Universitario in Valencia; more than four months wait in the trauma unit at the Hospital de Fuenlabrada in Madrid; four months wait (abdominal ultrasound) at Hospital Doctor Negrin in Las Palmas de Gran Canaria; three-month wait for an urgently prescribed rehabilitation treatment at Hospital del Henares in Madrid; and two months wait for mammograms on a preferential basis at the Fundación Jiménez Díaz in Madrid. As can be seen, no mention has been made herein of any healthcare facility in the Autonomous Community of Catalonia, as intervention by the Ombudsman has been temporarily prohibited there by the government of that region pending a judgement by

the Constitutional Court regarding Catalonia's Statute of Autonomy.

Problems were also observed with respect to medical files and data (within an "ethical action model"), and others related to the scope and extent of healthcare services (new therapies, resource management), primary and specialized care (bureaucratization, staffing shortages), and patient safety.

## Social Affairs and Labour Administration

During the first quarter of 2009, the Ombudsman presented a special report to Parliament regarding conditions at Centres for the Protection of Minors with Behavioural Disorders and Social Difficulties. A follow-up is provided in the annual report with regard to certain issues discussed in that special report and to the recommendations made to the various administrations. It may be concluded that stemming from this type of activity, interest has risen in society and government to verify and coordinate efforts to protect these children. This is related to the fact that the situation was not handled properly in the past, as demonstrated by the deficiencies found at many shelters often as a result of poor supervision by public authorities who are ultimately responsible for health and welfare of those under their guardianship. Truly tragic situations have arisen that have led some of the young residents at the centres to attempt or even commit suicide, and these further underscore the urgent need to coordinate all administrative measures and to establish general standards of governance for the proper operation of such shelters.

Shelters for people with greater or lesser degrees of mental disability were also inspected in 2009, with particular regard to human resources and quality of care provided at those located in the Community of Madrid. These investigations, as with those involving minors, lend themselves to the notion that need for administrations to take professional charge of such particularly vulnerable members of society is absolutely imperative.



**The First Deputy M<sup>a</sup> Luisa Cava de Llano, the Ombudsman Enrique Múgica Herzog, the President of The Senate, Javier Rojo, and the Second Deputy, Manuel Aguilar, speaking the day of the presentation of the Annual Report in the Senate. June 22.** Photo: Povedano.

The implementation of dependency care services in compliance with the new law must not be subject to further delay. The large number of complaints received in 2009 highlights the serious backlogs that have accumulated in the application processes for certification, approval for individual care programs, and the granting of benefits. Many cases have remained pending for over two years since the initial application date for dependents or their families, and authorities have failed to show due diligence in protecting the rights to which these citizens are entitled. Some of the larger autonomous communities, such as Valencia or Madrid, are particularly noteworthy for their delays. At the date of filing of this report, the contents of a recent government ruling were made public. This ruling affects applicants for dependent aid whose claims have been filed and who are awaiting payment of the corresponding benefits. The Ombudsman is concerned that this may lead to the curtailment of legitimate *de jure* rights. It should be borne in mind that a right that has been recognised as such cannot be transformed into a right that is subject to approval, as would appear to be the case on the basis of the above pending regulatory changes.

With respect to the Labour Administration, the number of complaints in 2008 regarding problems in the processing of unemployment benefits was remarkable. This increase continued in 2009 as a direct effect of the dramatic rise in the number of unemployed people due to the economic crisis, and there has been a rise in the number of enquiries into complaints involving employment offices and the measures and programs intended to foster employment and job placement. The need to effectively address this issue in order to mitigate any hardship suffered by unemployed persons seeking a new occupation must be approached in view of previously achieved goals toward balancing work and family life and establishing higher quality jobs—particularly in light of the circumstances described in many complaints involving distortion of regulations intended to govern family conciliation and hiring practices.

## **Taxation and General Economic Activity**

Citizen complaints regarding the handling of taxation and fee issues rose in 2009, focusing particularly on aspects such as poor information, breakdowns in the liquidation of income tax payments, or disagreement with increases in certain taxes. With respect to the latter, complaints included the rise in property tax rates, in reference to which one must recall previous consideration as to the feasibility of introducing a tax exemption for taxpayers over 65 years of age and for minimum wage earners whose only property is their main place of residence. The Ombudsman already submitted such a recommendation in 2008, but the government has not yet embraced it.

In light of these difficult economic times, demands must be intensified toward financial institutions, which represent the main players in general economic activities and are particularly responsible for many of the problems now being faced by citizens and families around the world. Throughout 2009, several enquiries were undertaken with the Bank of Spain in an attempt

to persuade the country's financial authority to remind these financial entities of their duty, firstly, to abide by specific legislation, and, secondly, to uphold the basic principles of fairness required to legitimise their important role in society. The inclusion or execution of unfair terms in mortgage contracts must be closely monitored in view of the exceptional circumstances that currently prevail.

Changes that have occurred in recent years with respect to legislation governing electric utilities and the regulation of household electricity fees led to the introduction of the social fee rate as an additional layer of protection for vulnerable groups amongst the population. Citizen complaints in this area referred to processing problems with the electric companies regarding this rebate amount. Other cases involved pension benefits for family members or orphans' pensions that meet objective requirements but are not contemplated in existing legislation.

## **Transport and Communications**

Enquiries in this area looked into deficiencies in maritime transport, particularly regarding ferry service between Ceuta and Algeciras. Responses to requests for information from the relevant authority stated that the recent suspensions and cancellations of service were due to *force majeure*, such as adverse weather conditions breakdowns or stranded vessels.

Deficiencies in civil aviation services are noted year after year in this report, either with respect to the problems arising at airports or regarding disputes between passengers and airlines. As air travel represents a truly complex endeavour, the Ombudsman understands that the extensive use of this form of transport supposes a greater risk that things may go wrong. This risk factor must be acknowledged and accepted, first and foremost, by those who wield administrative power in this sector; and at the same time by airlines that provide a service that must be rendered with maximum guarantees.

Telecommunications management issues have been giving rise to complaints for many years. Digital communications have invaded the daily lives of people and many activities rely upon their use. The Ombudsman has repeatedly pointed out the need to include broadband Internet access as a facet of universal telecommunications service. The latest national and EU agreements may provide a solution to this problem, making it all the more urgent to ensure that the right to universal access is effectively guaranteed.

## **Environment, Urban Planning and Housing**

One aspect where the Ombudsman must remain particularly vigilant involves respect and fulfilment of regulations governing the right of access to environmental data, as this is unfortunately not the line followed by many administrations with authority in such matters.

The Ombudsman has been obliged to remind the administrations, in this and in previous reports, of the duty of all public authorities to foster a healthy, sustainable environment. The

widespread existence of departments responsible for conducting and approving environmental quality assessments does not diminish the duty of other departments responsible for projects that alter the physical environment to strictly comply with basic regulations on environmental protection.

Many complaints also refer to noise pollution issues throughout the country. The problems arising in airport noise abatement areas and conflicts in town and city centres stemming from a permissive attitude by authorities toward noise pollution continue to represent aspects of enormous concern to citizens, and, thus, to the Ombudsman. The adoption of appropriate legislation cannot fully safeguard the rights of individuals if it is not backed by the concerted and firm effort of mayors, regional authorities, and the Public Administration itself.

As the special report on water management and its impact on regional planning issues was nearly finished in 2009, albeit presented in early 2010, reference may be made herein regarding its specific contents in light of the fact that it represents an important source of information for assessing the general development of Spain.

Regarding housing and urban planning issues, apart from the details included in the main body of this report, it is worthwhile to note the processing of many complaints involving deficiencies in the program to encourage the independence of young people by promoting housing rentals. One must also remember that the urgently needed revitalization of the housing sector in Spain should be undertaken in light of the principles of long-term sustainability. Moreover, decisions at the three levels of government should be coordinated in order to more effectively pursue the goal of ensuring the right of citizens to obtain decent housing that meets their most basic needs.

## Public Administration Personnel

The effects of the prevailing severe economic downturn are having a clear impact in the complaints and supervisory tasks that the Ombudsman is entrusted to perform in the area of public service. Thousands of citizens, in the midst of a harsh job market, opt to compete in the selection process for government jobs at a time when town halls are forced to cut back in order to balance their budgets, so deficiencies in selection processes can be particularly harmful. The Ombudsman continues to stress the need to scrupulously ensure that all procedures comply with existing regulations, firmly upholding the basic rights of applicants and the concepts of fairness and good practices as well as the principles of merit and skill that must underpin such processes.

In addition to complaints involving selection processes and access to civil service, problems related to administrative work such as the balance of family and professional life, mobility, workplace harassment, and violence against health professionals and educators became frequent causes of complaint in 2009. The Military Career Law and the need for regulations to govern fundamental rights and civil liberties in the armed forces also led to numerous complaints. As for the latter, hundreds of soldiers expressed their concern regarding the absence of said legislative framework, and this concern is fully shared by the Ombudsman.

Other issues of enormous importance to thousands of government employees were also monitored by the Ombudsman, such as those referring to the equivalency plan involving pharmaceutical care issues between the special plan for retired public servants and the general social security system, the merging of systems of rank for prison staff corps, or the enforcement of various provisions of the Basic Statute for Civil Servants with regard to Administration of Justice personnel.

# STATISTICS



## Individual complaints and *ex officio* enquiries have grown, while collective complaints have declined

The number of complaints filed in 2009 totalled 22,287, a figure that represented a slight decline of 6.75%. In all, 79,386 citizens called upon the Ombudsman, and although the number of collective complaints fell, that of individual complaints rose, as did *ex officio* enquiries. Over half of the complaints received by the Institution came from Madrid, Catalonia and Andalusia.

We can draw a significant conclusion from the data in the following tables: in 2009, citizens filed 3,626 collective complaints, i.e., 4,216 fewer than in 2008, and although this represented a drop of 53.76%, the total number of cases handled did not decline significantly since there were 2,588 more individual and 16 more *ex officio* complaints.

The total number of citizens filing complaints in 2009 was 79,386, a figure that was somewhat lower than that for 2008, as shown in Table 1.

**TABLE 1**  
Citizens who have filed collective as well as individual complaints, 2009 to 2007

	2009	2008	2007
Total citizens	79,386	92,388	38,738

Despite this decrease, the number of citizens who brought their complaints to the attention of the Institution in 2009 remained steady and was, in fact, slightly above average based on recent years. This was because in 2008 citizens filed an unusually high number of collective complaints.

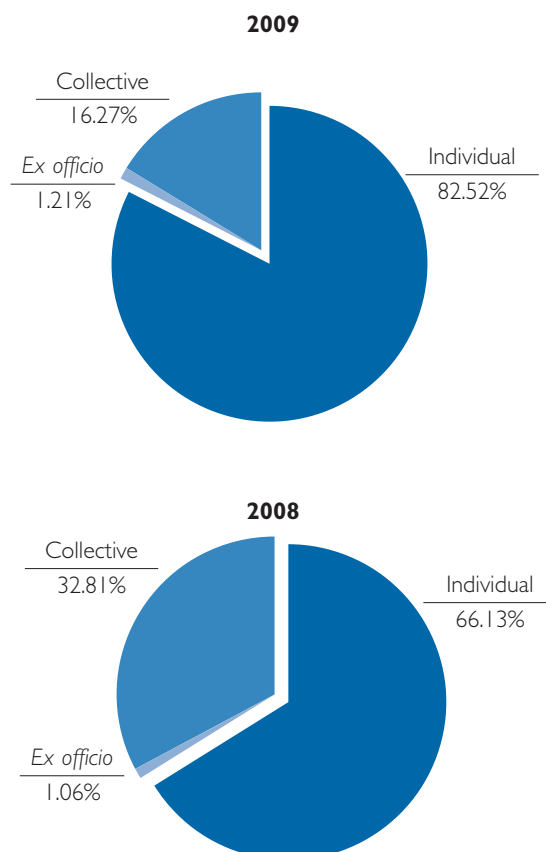
2009 brought a total of 22,287 cases, including both those having their origin in individual or collective complaints by citizens, and those initiated by the Institution itself, *ex officio*. Thus, 1,612 fewer cases were dealt with in 2009 than in 2008, which translated into a slight decline, in percentage terms, of 6.75%. Table 2 shows clearly the year-on-year fluctuation in the total number of cases, which is closely linked to the nature of the cases and which specifically reflects the change in the number of collective complaints, which was lower with respect to 2008 but which was still significantly higher than in 2007.

The table also shows that individual complaints increased, both against 2008, by 16.38%, and against 2007, by 29.03%. The figure shown, 18,392, was the highest in the history of this Institution. Cases brought as a result of *ex officio* investigations, of which a total of 269 were initiated in 2009, were also higher than in both 2007 and 2008. Their number, 6.32% higher than in 2008, was also the greatest we have seen.

**TABLE 2**  
Complaints filed and *ex officio* investigations, 2009 to 2007

	2009	2008	2007
Collective	3,626	7,842	2,857
Individual	18,392	15,804	14,254
<i>Ex officio</i>	269	253	262
<b>Total</b>	<b>22,287</b>	<b>23,899</b>	<b>17,373</b>

**FIGURE 1**  
Breakdown by percentage of complaints filed and *ex officio* investigations opened in 2008 compared to 2007





As for the origin of the complaints in 2009, Figure 1 reveals that a majority—82.52% of the total—stemmed from individual complaints, and also that, compared to 2008, individual complaints increased as a proportion of the total because the

percentage of collective cases went from 32.81% to just 16.27%.

Table 3 shows complaint cases filed since 2006 broken down by the gender of the claimant.

**TABLE 3**  
**Complaints filed by gender, 2009 to 2006**

	2009	2008	2007	2006
Men	62%	61%	59%	57%
Woman	38%	39%	41%	43%

### Breakdown of complaints by geographical origin

The 22,018 complaints filed in 2009, not counting *ex officio* enquiries, can be broken down by geographical origin. Thus,

21,693 (98.52%) complaints were of national origin and 325 (1.48%) originated abroad. In the following tables and charts, a more detailed picture emerges, shown by autonomous community and by province.

**FIGURE 2**  
**Breakdown of complaints by autonomous community, 2009**



**TABLE 4**  
**Breakdown of complaints of national origin, by province and autonomous community,**  
**2009 and 2008**

Provinces and autonomous communities	Number		% autonomous community		% total	
	2009	2008	2009	2008	2009	2008
<b>Basque region</b>						
Álava	61	76	12.30	11.24	0.28	0.33
Guipúzcoa	168	146	33.87	21.60	0.77	0.63
Vizcaya	267	454	53.83	67.16	1.23	1.94
<b>Total</b>	<b>496</b>	<b>676</b>	<b>100.00</b>	<b>100.00</b>	<b>2.29</b>	<b>2.90</b>
<b>Catalonia</b>						
Barcelona	2,699	1,751	78.32	76.70	12.44	7.52
Girona	349	179	10.13	7.84	1.61	0.77
Lleida	136	106	3.95	4.64	0.63	0.46
Tarragona	262	247	7.60	10.82	1.21	1.05
<b>Total</b>	<b>3,446</b>	<b>2,283</b>	<b>100.00</b>	<b>100.00</b>	<b>15.89</b>	<b>9.80</b>
<b>Galicia</b>						
A Coruña	550	814	49.95	49.01	2.54	3.49
Lugo	138	229	12.53	13.79	0.64	0.98
Ourense	81	225	7.36	13.55	0.37	0.97
Pontevedra	332	393	30.15	23.66	1.53	1.69
<b>Total</b>	<b>1,101</b>	<b>1,661</b>	<b>100.00</b>	<b>100.00</b>	<b>5.08</b>	<b>7.13</b>
<b>Andalusia</b>						
Almería	173	238	6.20	8.63	0.80	1.02
Cádiz	399	449	14.29	16.29	1.84	1.93
Córdoba	244	239	8.74	8.67	1.12	1.03
Granada	352	297	12.61	10.77	1.62	1.28
Huelva	105	157	3.76	5.69	0.48	0.67
Jaén	157	210	5.62	7.62	0.72	0.90
Málaga	564	577	20.20	20.93	2.60	2.48
Sevilla	798	590	28.58	21.40	3.68	2.53
<b>Total</b>	<b>2,792</b>	<b>2,757</b>	<b>100.00</b>	<b>100.00</b>	<b>12.87</b>	<b>11.84</b>
<b>Asturias</b>						
<b>Total</b>	<b>459</b>	<b>500</b>	<b>100.00</b>	<b>100.00</b>	<b>2.12</b>	<b>2.15</b>
<b>Cantabria</b>						
<b>Total</b>	<b>247</b>	<b>225</b>	<b>100.00</b>	<b>100.00</b>	<b>1.14</b>	<b>0.97</b>
<b>La Rioja</b>						
<b>Total</b>	<b>174</b>	<b>184</b>	<b>100.00</b>	<b>100.00</b>	<b>0.80</b>	<b>0.79</b>



TABLE 4 (cont.)

Provinces and autonomous communities	Number		% autonomous community		% total	
	2009	2008	2009	2008	2009	2008
<b>Murcia</b>						
<b>Total</b>	<b>490</b>	<b>699</b>	<b>100.00</b>	<b>100.00</b>	<b>2.26</b>	<b>3.00</b>
<b>Community of Valencia</b>						
Alicante	906	970	38.67	34.83	4.18	4.16
Castellón	215	265	9.18	9.52	0.99	1.14
Valencia	1,222	1,550	52.16	55.66	5.63	6.66
<b>Total</b>	<b>2,343</b>	<b>2,785</b>	<b>100.00</b>	<b>100.00</b>	<b>10.80</b>	<b>12.96</b>
<b>Aragón</b>						
Huesca	80	138	13.54	20.60	0.37	0.59
Teruel	47	47	7.95	7.01	0.22	0.20
Zaragoza	464	485	78.51	72.39	2.14	2.09
<b>Total</b>	<b>591</b>	<b>670</b>	<b>100.00</b>	<b>100.00</b>	<b>2.72</b>	<b>2.88</b>
<b>Castilla-La Mancha</b>						
Albacete	112	666	14.81	43.22	0.52	2.86
Ciudad Real	159	171	21.03	11.10	0.73	0.73
Cuenca	75	288	9.92	18.69	0.35	1.24
Guadalajara	124	95	16.40	6.16	0.57	0.41
Toledo	286	321	37.83	20.83	1.32	1.38
<b>Total</b>	<b>756</b>	<b>1,541</b>	<b>100.00</b>	<b>100.00</b>	<b>3.48</b>	<b>6.62</b>
<b>Canary Islands</b>						
Las Palmas	504	598	56.44	59.98	2.32	2.57
Santa Cruz de Tenerife	389	399	43.56	40.02	1.79	1.71
<b>Total</b>	<b>893</b>	<b>997</b>	<b>100.00</b>	<b>100.00</b>	<b>4.12</b>	<b>4.28</b>
<b>Navarra</b>						
<b>Total</b>	<b>199</b>	<b>196</b>	<b>100.00</b>	<b>100.00</b>	<b>0.92</b>	<b>0.84</b>
<b>Extremadura</b>						
Badajoz	210	350	55.56	59.73	0.97	1.50
Cáceres	168	236	44.44	40.27	0.77	1.02
<b>Total</b>	<b>378</b>	<b>586</b>	<b>100.00</b>	<b>100.00</b>	<b>1.74</b>	<b>2.52</b>
<b>Balearic Islands</b>						
<b>Total</b>	<b>437</b>	<b>402</b>	<b>100.00</b>	<b>100.00</b>	<b>2.01</b>	<b>1.73</b>

TABLE 4 (cont.)

Provinces and autonomous communities	Number		% autonomous community		% total	
	2009	2008	2009	2008	2009	2008
<b>Community of Madrid</b>						
<b>Total</b>	<b>5,098</b>	<b>5,092</b>	<b>100.00</b>	<b>100.00</b>	<b>23.50</b>	<b>21.86</b>
<b>Castilla y León</b>						
Ávila	55	76	3.86	5.13	0.25	0.33
Burgos	200	215	14.04	14.51	0.92	0.92
León	314	415	22.04	28.00	1.45	1.78
Palencia	158	82	11.09	5.53	0.73	0.35
Salamanca	186	152	13.05	10.26	0.86	0.65
Segovia	87	73	6.11	4.93	0.40	0.31
Soria	34	39	2.39	2.63	0.16	0.17
Valladolid	315	372	22.11	25.10	1.45	1.60
Zamora	76	58	5.33	3.91	0.35	0.25
<b>Total</b>	<b>1,425</b>	<b>1,482</b>	<b>100.00</b>	<b>100.00</b>	<b>6.57</b>	<b>6.36</b>
<b>Ceuta</b>						
<b>Total</b>	<b>77</b>	<b>100</b>	<b>100.00</b>	<b>100.00</b>	<b>0.35</b>	<b>0.43</b>
<b>Melilla</b>						
<b>Total</b>	<b>114</b>	<b>107</b>	<b>100.00</b>	<b>100.00</b>	<b>0.53</b>	<b>0.46</b>
<b>Unspecific origin</b>						
<b>Total</b>	<b>177</b>	<b>348</b>	<b>100.00</b>	<b>100.00</b>	<b>0.82</b>	<b>1.48</b>
<b>Total</b>	<b>21,693</b>	<b>23,291</b>				

As tends to be the case, a significant number of complaints, both individual and collective, originated in those autonomous communities with the largest populations. The Community of Madrid (23.50%) occupied the top position, followed by the Communities of Catalonia (15.89%), Andalusia (12.87%) and Community of Valencia (10.80%) (see Table 4).

**TABLE 5**  
**Individual and collective complaints and their distribution by percentage, filed by autonomous community, 2009 and 2008**

Autonomous communities	Individual				Collective			
	Number		% total		Number		% total	
	2009	2008	2009	2008	2009	2008	2009	2008
Basque Region	400	382	2.21	2.47	96	294	2.65	3.75
Catalonia	2,322	1,875	12.85	12.13	1,124	408	31.06	5.21
Galicia	882	810	4.88	5.24	219	851	6.05	10.87
Andalusia	2,393	1,845	13.24	11.93	399	912	11.03	11.65
Asturias	402	365	2.22	2.36	57	135	1.58	1.72
Cantabria	220	201	1.22	1.30	27	24	0.75	0.31
La Rioja	162	136	0.90	0.88	12	48	0.33	0.61
Murcia	437	434	2.42	2.81	53	265	1.46	3.38
Community of Valencia	2,056	1,794	11.38	11.60	287	991	7.93	12.65
Aragón	462	445	2.56	2.88	129	225	3.56	2.87
Castilla-La Mancha	674	579	3.73	3.75	82	962	2.27	12.28
Canary Islands	766	771	4.24	4.99	127	226	3.51	2.89
Navarra	163	167	0.90	1.08	36	29	0.99	0.37
Extremadura	353	308	1.95	1.99	25	278	0.69	3.55
Balearic Islands	398	332	2.20	2.15	39	70	1.08	0.89
Community of Madrid	4,650	3,794	25.73	24.54	448	1,298	12.38	16.58
Castilla y León	1,061	990	5.87	6.40	364	492	10.06	6.28
Ceuta	58	38	0.32	0.25	19	62	0.53	0.79
Melilla	102	93	0.56	0.60	12	14	0.33	0.18
Unspecified origin*	113	101	0.63	0.65	64	247	1.77	3.17
<b>Total</b>	<b>18,074</b>	<b>15,460</b>	<b>100.00</b>	<b>100.00</b>	<b>3,619</b>	<b>7,831</b>	<b>100.00</b>	<b>100.00</b>

\* Complaints received by e-mail, origin undetermined.

## Complaints originating abroad

The total number of complaints that originated abroad in 2009 was 325. This represents a decrease compared to each of the previous three years, as shown in Table 6.

**TABLE 6**  
**Breakdown of complaints originating abroad, by country,**  
**2009 to 2006**

Country of origin	2009	2008	2007	2006
Algeria	1	1	0	8
Andorra	1	4	3	3
Argentina	18	37	44	32
Australia	1	1	1	0
Austria	2	3	3	0
Belgium	15	10	13	10
Bolivia	2	5	7	3
Bosnia-Herzegovina	0	0	0	2
Brazil	10	15	14	6
Bulgaria	2	0	0	0
Burkina Faso	1	0	0	0
Canada	0	4	1	2
Chile	2	5	10	5
Colombia	17	23	16	6
Costa Rica	4	1	1	4
Cuba	16	11	11	8
Cyprus	1	0	0	0
Czech Republic	1	1	0	2
Denmark	2	1	2	0
Dominican Republic	5	3	6	2
Ecuador	11	9	5	9
Egypt	1	1	0	0
El Salvador	0	0	1	1
Equatorial Guinea	1	1	0	0
Ethiopia	0	0	1	0
Finland	1	1	2	0
France	26	26	25	59
Gabon	1	0	0	0
Germany	25	21	21	20
Greece	5	0	1	1
Guatemala	1	0	1	0
Holland	8	6	6	2
Honduras	1	3	3	0
Hungary	0	0	2	1
India	1	0	0	0
Indonesia	1	0	0	0
Ireland	0	1	2	3
Israel	0	1	2	0
Italia	11	4	10	9
Japan	0	2	0	0
Jordan	0	0	0	1
Kyrgyzstan	0	0	1	0
Latvia	1	0	1	0
Libya	1	0	0	0
Liechtenstein	0	1	0	0
Luxemburg	0	2	2	0
Malta	0	1	0	1
Mexico	2	12	11	9
Mongolia	0	0	1	0
Morocco	15	25	27	24
Nicaragua	0	3	2	1
Norway	1	3	0	0
Pakistan	0	0	2	1
Panama	2	1	4	2
Paraguay	0	1	0	0
Peru	12	17	12	17
Poland	4	3	0	1
Portugal	7	9	11	14
Puerto Rico	1	1	1	0
Russia	0	0	2	0
Saudi Arabia	1	0	0	0
Senegal	2	0	0	0
Slovakia	2	1	0	3
South Africa	1	0	0	1
Sweden	1	1	2	1
Switzerland	9	5	3	7
Taiwan, province of China	0	0	1	0
Turkey	1	0	1	1
Ukraine	2	3	1	1
United Arab Emirates	1	0	0	0
United Kingdom	38	38	21	28
United States	15	17	57	18
Uruguay	5	3	2	5
Venezuela	6	5	6	11
Western Sahara	0	2	0	0
<b>Total</b>	<b>325</b>	<b>355</b>	<b>385</b>	<b>345</b>

## Breakdown of complaints by filing method

Complaints can be classified according to the method used to submit them to the Office of the Ombudsman (see Table 7). Of the complaints originating from the offices of the Parliamentary Commissioners of the autonomous communities, the largest number originated from the Galician Ombudsman (Valedor do Pobo), followed by the Andalusian

Ombudsman, the Valencian Ombudsman (Síndic de Greuges) and the Ombudsman of Castilla y León (Procurador del Común, respectively (See Table 8). Among complaints filed by "Other public institutions and organisations" there was a noteworthy increase in those filed by municipal offices (either municipal consumer information offices or actual local councils). This is shown in Table 9.

**TABLE 7**  
**Origin of complaints submitted according to filing method, 2009**

Filing method	Number	%
Direct (individual and collective)	19,963	90.67
Via Ombudsmen in Autonomous Parliaments	1,976	8.97
Via other entities and organisms	79	0.36
<b>Total</b>	<b>22,018</b>	<b>100</b>

**TABLE 8**  
**Complaints received via Ombudsmen of Autonomous Communities and their percentages, 2009 and 2008**

Origin	Number		%	
	2009	2008	2009	2008
Ararteko, Basque Region	57	62	2.88	2.74
Síndic de Greuges, Catalonia	143	195	7.24	8.62
Valedor do Pobo, Galicia	325	581	16.45	25.67
Ombudsman of Andalusia	332	274	16.80	12.11
General Procurer of Asturias	34	41	1.72	1.81
Síndic de Greuges, Community of Valencia	293	260	14.83	11.49
Justicia de Aragón	155	141	7.84	6.23
Ombudsman of Castilla-La Mancha	41	135	2.07	5.97
Ombudsman of La Rioja	65	70	3.29	3.09
Diputado del Común, Canary Islands	161	184	8.15	8.13
Ombudsman of Navarra	61	84	3.39	3.71
Ombudsman of Murcia	66	0	3.34	0.00
Procurador del Común, Castilla y León	237	236	11.99	10.43
<b>Total</b>	<b>1,976</b>	<b>2,263</b>	<b>100.00</b>	<b>100.00</b>

**TABLE 9**  
**Complaints received via diverse entities and organizations, displayed with their percentages, 2009 and 2008**

Origin	Number		%	
	2009	2008	2009	2008
Government Delegations	2	1	2.53	1.33
Autonomous organizations	14	7	17.72	9.33
City Halls	7	2	8.86	2.67
Municipal Ombudsman offices	18	41	22.78	54.67
Municipal Consumer Information Offices	23	9	29.11	12.00
Foreign Ombudsmen	15	15	18.99	20.00
<b>Total</b>	<b>79</b>	<b>75</b>	<b>100.00</b>	<b>100.00</b>

## Breakdown of complaints by sector

Table 10 sets out information relating to the subject matter of complaints filed in 2009, broken down into the eight management areas used by this Institution. The specific subject matter of the individual, collective, and *ex officio* complaints is outlined. Looking at all of the complaint cases filed by citizens, the largest number relates to Economic Administration, followed by those relating to Health and Social Issues, Justice and Domestic Violence, and Land Management, which also includes Environmental Issues. As for the issues in which the changes have been greatest, since the previous year, most noteworthy is

the increase in individual complaints relating to Labour and Social Security and the overall increase in Defence and Home Affairs, Justice and Domestic Violence, Immigration and Foreign Affairs, and Education and Culture. Conversely, there were fewer cases relating to Economic Administration, Civil Service and Public Employment, and Land Management.

The greatest number of *ex officio* investigations were those relating to Health and Social Policy, Education and Culture, Economic Administration, Civil Service and Public Employment, Land Management and the Environment, and Justice and Domestic Violence, in that order.

**TABLE 10**  
**Breakdown of complaints filed by management area and subject matter, 2009**

Sectors	Collective	Individual	Ex-officio	Total
<b>Economic Administration</b>				
Internal Revenue and Taxes	989	868	2	1,859
Economic management	707	1,102	2	1,811
Telecommunications and postal services	29	1,098	—	1,127
Transportation infrastructure	43	520	10	573
Industry, energy and commerce	12	513	21	546
Being studied	—	271	—	271
Agriculture, livestock, and fishing	—	33	—	33
<b>Total</b>	<b>1,780</b>	<b>4,405</b>	<b>35</b>	<b>6,220</b>
<b>Health and Social Issues</b>				
Labor and Social Security	22	1,203	1	1,226
Social policy	—	807	69	876
Health	103	604	19	726
Consumer affairs	—	267	2	269
Being studied	—	70	—	70
<b>Total</b>	<b>125</b>	<b>2,951</b>	<b>91</b>	<b>3,167</b>
<b>Civil Servants and Public Employment</b>				
Personnel from the Armed Forces and security corps and forces	972	257	5	1,234
Civil servants and personnel from General Administration, Social Security, and autonomous and local administrations	162	934	24	1,120
Being studied	—	132	—	132
Judges and Magistrates, Attorney Generals, personnel at the service of the Justice Administration and Penitentiary Institutions	—	67	—	67
Member of autonomous parliament	—	1	—	1
<b>Total</b>	<b>1,134</b>	<b>1,391</b>	<b>29</b>	<b>2,554</b>

TABLE 10 (cont.)

Sectors	Collective	Individual	Ex-officio	Total
<b>Justice and Domestic Violence</b>				
Justice Administration	191	1,523	18	1,732
Registry Offices	–	544	5	549
Victims of crimes	31	67	–	98
Being studied	–	34	1	35
Public Notary	–	23	–	23
Religious freedom	–	13	–	13
<b>Total</b>	<b>222</b>	<b>2,204</b>	<b>24</b>	<b>2,450</b>
<b>Land management</b>				
Zoning and housing	58	1,486	24	1,568
Environment	6	553	3	562
Being studied	107	153	–	260
Land management and planning	–	5	–	5
<b>Total</b>	<b>171</b>	<b>2,197</b>	<b>27</b>	<b>2,395</b>
<b>Defense and Home Affairs</b>				
Citizen and road security	99	1,111	1	1,211
Prison Administration	–	569	10	579
Home Affairs	66	311	3	380
Being studied	–	12	–	12
Defense	–	9	–	9
<b>Total</b>	<b>165</b>	<b>2,012</b>	<b>14</b>	<b>2,191</b>
<b>Education and Culture</b>				
Education	–	804	19	823
Organization and legal system of local administrations	29	248	–	277
Communication media	–	174	18	192
Data protection and intellectual property	–	180	–	180
Other issues	–	104	–	104
Administrative procedure, patrimonial liability and official publications	–	86	–	86
Right of assembly, electoral system and statistics	–	69	–	69
Culture and sports	–	50	1	51
Being studied	–	16	–	16
<b>Total</b>	<b>29</b>	<b>1,731</b>	<b>38</b>	<b>1,798</b>
<b>Immigration and Foreign Affairs</b>				
Residence permits and immigration	–	1,370	6	1,376
Foreign Affairs	–	54	–	54
Being studied	–	45	5	50
Emigration	–	23	–	23
Racism and xenophobia	–	9	–	9
<b>Total</b>		<b>1,501</b>	<b>11</b>	<b>1,512</b>
<b>Total</b>	<b>3,626</b>	<b>18,392</b>	<b>269</b>	<b>22,287</b>

## Year-end status of complaints filed in 2009

The following table shows the processing status as of 31 December 2009 of complaints filed in 2009.

**TABLE 11**  
**Processing status of complaints filed and ex officio investigations in 2009, as of 31 December**

Status	Ex-officio		Individual		Collective		Total	
	Number	%	Number	%	Number	%	Number	%
Admitted for processing	261	97.03	6,433	34.98	1,766	48.70	8,460	37.96
Being processed	160	59.48	3,310	18.00	1,575	43.44	5,045	22.64
Concluded	101	37.55	3,115	16.94	191	5.27	3,407	15.29
Suspended	0	0.00	8	0.04	0	0.00	8	0.04
Not admitted for processing	0	0.00	9,879	53.71	1,709	47.13	11,588	51.99
Pending information lacking from complainant	1	0.37	636	3.46	0	0.00	637	2.86
Being studied	7	2.60	1,444	7.85	151	4.16	1,602	7.19
<b>Total</b>	<b>269</b>	<b>100.00</b>	<b>18,392</b>	<b>100.00</b>	<b>3,626</b>	<b>100.00</b>	<b>22,287</b>	<b>100.00</b>

Regarding complaints that are rejected, we must reiterate that all of them are considered carefully, and that those that incur in one or more of the legal justifications for rejection as outlined in Organic Law 3/1981, which governs the Ombudsman's Office, they are classified as inadmissible. Furthermore, in all cases, without exception, information is promptly sent to claimants regarding the reasons for rejection,

in accordance with Article 17 of the aforementioned law, and they are given any additional information that might help them to resolve their problem, along with suggestions for possible courses of action.

The reasons for rejection of individual complaints in 2009 are shown in Table 12.

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**Fortuny, 22 Madrid - SPAIN**

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**TABLE 12**  
**Causes of non-admission of individual complaints, 2009**

Causes of non-admission	Number
Administrative authority regarding issues within its own jurisdiction	14
Lack of basis	90
Personal conflict unrelated to the Administration	314
Waiver of complaint	30
Inexistence of claim	24
Intervention by Autonomous Parliamentary commissioner	161
Judicial intervention	953
No previous administrative action	1,493
No action involving public authorities	458
No answer to resolvable defects	35
No answer to request for information	475
No formal complaint, information sent	200
No formal complaint, information requested	239
No evidence of administrative irregularity	3,133
No legitimate interest	43
Unfulfilled requirements for the admission of an appeal	7
Without basis to impose an appeal	28
Several concurrent reasons for non-admission	1,828
Third party bias	6
Period over a year	22
Anonymous complaint	1
Resolved without Ombudsman's intervention	151
Irreversible sentence	174
<b>Total</b>	<b>9,879</b>

### Individual complaint cases

The greatest number of individual complaints and *ex officio* enquiries filed before the public administrations were those concerned with the General State Administration, followed by those in which no specific investigation was necessary. The latter referred to complaints that, upon being submitted for

processing, were seen to have already been investigated with respect to other cases which had presented similar problems. These were followed by those directed at the Administrations of the Autonomous Communities and the Local Administration (see Table 13).

**TABLE 13**  
**Individual and *ex officio* enquiry complaints filed with government bodies in 2009**

Administrations	Being processed	Concluded	Suspended	Total
General State Administration	1,387	1,341	5	2,733
Autonomous community administrations	554	482	0	1,036
Local Administrations	539	317	2	858
Attorney General's Office	98	88	0	186
Other public entities	38	59	0	97
Miscellaneous administrations	187	86	1	274
Investigation unnecessary	667	843	0	1,510
<b>Total</b>	<b>3,470</b>	<b>3,216</b>	<b>8</b>	<b>6,694</b>

Tables 14 and 15 set out complaints, both individual and *ex officio*, filed in 2009 before the General State Administration and before organisations belonging to the various Autonomous Communities. Once more, it can be seen that the largest number of files processed related to the

Ministry of the Interior; mainly because its functions include supervision of penitentiary services, together with those related to the Ministry of Justice, and, to a lesser degree, the Ministry of Equality, the Ministry of Culture, and the Office of the Prime Minister.

**TABLE 14**  
**Breakdown of case processing handled by the General State Administration, 2009.**  
**Individual and *ex officio* enquiry complaints**

Ministries	Being processed	Concluded	Suspended	Total
Prime Minister	3	1	0	4
Prime Minister's Office	91	98	5	194
Ministry of Foreign Affairs and Cooperation	122	105	0	227
Ministry of Science and Innovation	3	3	0	6
Ministry of Culture	2	1	0	3
Ministry of Defense	27	18	0	45
Ministry of Economy and Finance	138	87	0	225
Ministry of Education	59	52	0	111
Ministry of Public Works	145	119	0	264
Ministry of Equality	0	1	0	1
Ministry of Industry, Tourism and Trade	87	24	0	111
Ministry of the Interior	229	294	0	523
Ministry of Justice	220	122	0	342
Ministry of Environment, Rural Areas and Marine Areas	30	7	0	37
Ministry of Health and Social Policy	14	12	0	26
Ministry of Labor and Immigration	85	141	0	226
Ministry of Housing	44	131	0	175
Peripheral administrations	1	10	0	11
Miscellaneous Ministry Departments	87	115	0	202
<b>Total</b>	<b>1,387</b>	<b>1,341</b>	<b>5</b>	<b>2,733</b>

**TABLE 15**  
**Breakdown of case processing handled by the Autonomous Community Administrations, 2009.**  
**Individual and ex officio enquiry complaints**

Autonomous communities	Being processed	Concluded	Suspended	Total
Catalonia	4	2	0	6
Basque Region	9	3	0	12
Galicia	23	16	0	39
Cantabria	14	15	0	29
Asturias	18	21	0	39
Andalusia	56	48	0	104
Murcia	18	16	0	34
Aragón	11	12	0	23
Castilla-La Mancha	20	17	0	37
Community of Valencia	56	52	0	108
La Rioja	7	4	0	11
Extremadura	17	16	0	33
Canary Islands	50	13	0	63
Castilla y León	29	39	0	68
Balearic Islands	15	13	0	28
Community of Madrid	182	188	0	370
Navarre	7	4	0	11
Ceuta	5	0	0	5
Melilla	11	3	0	14
Miscellaneous administrations	2	0	0	2
<b>Total</b>	<b>554</b>	<b>482</b>	<b>0</b>	<b>1,036</b>

**TABLE 16**  
**Types of conclusions in individual and ex officio enquiry cases, by administration, 2009**

Administrations	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
General State Administration	672	425	66	178	1,341
Autonomous Community Administrations	170	140	29	143	482
Local Administrations	168	97	13	39	317
Attorney General's Office	65	9	2	12	88
Other public entities	49	4	2	4	59
Miscellaneous Administrations	22	29	6	29	86
Investigation unnecessary	496	134	97	116	843
<b>Total</b>	<b>1,642</b>	<b>838</b>	<b>215</b>	<b>521</b>	<b>3,216</b>

**TABLE 17**  
**Breakdown of types of conclusions for individual and ex officio complaints received**  
**in relation to the General State Administration, 2009**

Ministries	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
Prime Minister	0	0	1	0	1
Prime Minister's Office	40	36	2	20	98
Ministry of Foreign Affairs and Co-operation	66	18	5	16	105
Ministry of Science and Innovation	1	1	0	1	3
Ministry of Culture	0	1	0	0	1
Ministry of Defense	12	2	1	3	18
Ministry of Economy and Finance	38	33	3	13	87
Ministry of Education	23	24	0	5	52
Ministry of Public Works	59	28	29	3	119
Ministry of Equality	1	0	0	0	1
Ministry of Industry, Tourism and Trade	19	2	0	3	24
Ministry of the Interior	175	73	11	35	294
Ministry of Justice	73	34	3	12	122
Ministry of Environment, Rural Areas, and Marine Areas	2	2	2	1	7
Ministry of Health and Social Policy	5	1	0	6	12
Ministry of Labor and Immigration	57	48	6	30	141
Ministry of Housing	62	68	0	1	131
Peripheral administrations	6	3	0	1	10
Miscellaneous Ministry departments	33	51	3	28	115
<b>Total</b>	<b>672</b>	<b>425</b>	<b>66</b>	<b>178</b>	<b>1,341</b>

## OMBUDSMAN PUBLICATIONS IN 2009

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**TABLE 18**  
**Breakdown of types of conclusions for individual and ex officio complaints received, listed by Autonomous Community Administrations, 2009**

Autonomous communities	Proper procedure	Corrected action	Uncorrected action	Undermined	Total
Catalonia	0	0	0	2	2
Basque Region	2	0	0	1	3
Galicia	3	7	2	4	16
Cantabria	7	5	0	3	15
Asturias	6	1	3	11	21
Andalusia	21	11	2	14	48
Murcia	7	5	0	4	16
Aragón	5	4	0	3	12
Castilla-La Mancha	9	3	0	5	17
Community of Valencia	13	21	5	13	52
La Rioja	0	0	0	4	4
Extremadura	5	2	1	8	16
Canary Islands	5	4	0	4	13
Castilla y León	14	10	3	12	39
Balearic Islands	8	0	0	5	13
Community of Madrid	63	67	12	46	188
Navarre	0	0	0	4	4
Melilla	2	0	1	0	3
<b>Total</b>	<b>170</b>	<b>140</b>	<b>29</b>	<b>143</b>	<b>482</b>

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## 3,626 collective complaints

The collective complaints handled in 2009 generated a total of 3,626 cases. Shown below are complaints that were filed by a significant number of citizens, along with a summary of the issue involved:

- 125 members of the Spanish Civil Guard voiced their objection to the fact that the Silver Cross of the Order of Merit of the Civil Guard Corps has no pension benefits attached.
- 107 citizens filed a complaint regarding progress of the project for the so-called High-Speed Atlantic Axis.
- 2,952 citizens, through the various pertinent administrations, demanded that the professions of Computer Technician and Computer Engineer receive official recognition.
- 1,241 citizens, full-time staff of the health services, filed a complaint relating to the early retirement scheme set out in Article 26.4 of Law 55/2003, of 16 December, governing the Framework Statute on full-time employees of the health services.
- 464 persons expressed their disagreement with the seventh transitional provision under Law 39/2007, of 19 November, on the Military Profession, on grounds of its alleged discrimination against military personnel currently serving in the Armed Forces.
- 144 Armed Forces personnel expressed their disagreement with the tenth additional provision of Law 39/2007, of 19 November, on the Military Profession, on grounds of its alleged discrimination against other military personnel.
- 340 members of the Association of Users of Swaps and Financial Derivatives (ASUAPEDEFIN) expressed their disagreement with various resolutions adopted by the Bank of Spain in this regard.
- 695 members of the Unified Association of Spanish Military Personnel (AUME) filed a complaint regarding the absence of a legal framework to regulate the expression of specific fundamental rights and public liberties by members of the Armed Forces.
- 120 persons complained about a recruitment process for nursing staff having been interrupted due to an appeal that was filed before the High Court of Justice of Castilla y León.
- 100 citizens demand that the necessary changes be made to enable hearing-impaired people to take the tests needed to obtain their driver's licence.
- 989 persons denounced inheritance tax laws in force in the Autonomous Community of Catalonia as being discriminatory against the citizens of that Community vis-à-vis the rest of the State.
- 9,353 users filed a complaint regarding changes made when applying cheaper so-called "night rates" for electricity consumption.
- 238 citizens demanded that consumer and user telephone help lines set up by public and even private organisations include numbers with the local dialling code, in addition to the existing 901 (shared-cost) and 902 (fixed-cost) prefixes.
- 415 persons expressed their opposition to bullfights and demanded that the competent authorities forbid them.
- 401 candidates involved in a personnel recruitment process for hospital orderlies based on competitive exams complained about the questions included in the exams by the Health Authority of Community of Valencia.
- 225 citizens drew up a manifesto in defence of primary schooling.
- 8,343 persons led by the representative of the ELÍN Association denounced the conditions of a group of people who left the Temporary Reception Centre for Immigrants in Ceuta because they were afraid of being deported from the country.
- 461 citizens denounced the situation of a minor purportedly kidnapped by his grandmother.
- 5,511 resident of Ajo (Cantabria) filed a complaint against the demolition of a hotel establishment in that locality.
- 271 residents of the parish of Nantón, in the municipality of Cabana de Bergantiños (A Coruña) demanded more complete information on the possibility of installing and using ADSL lines in their homes.
- 191 residents of Buenaventura (Toledo) demanded more complete information on the possibility of installing and using ADSL lines in their homes.
- 1,021 citizens filed a generic complaint regarding linguistic aberrations in Spanish within the scope of the dual official language system that exists in Catalonia.
- 111 female public servants belonging to the Corps of Assistants in Penitentiary Institutions, filed a complaint regarding their professional status following the unification of work categories pursuant to Organic Law 3/2007, of 22 May, governing effective equality of men and women.
- 1,751 persons subscribed a manifesto by the Forum for Development and Progress relating to changes in legislation regarding voluntary interruption of pregnancy.
- 211 workers of La Paz Hospital in Madrid expressed their complaints in a letter to the Health Councillor of that Autonomous Community regarding professional development.
- 573 members of various associations for temporary reception of foreign minors expressed their disagreement with Instruction 5/2008, of 6 November, by the Directorate General for Children and Families of the Autonomous Government of Andalusia.
- 4,216 members of the Commission for Parties Affected by the Water Purification Plant of Lagares, Vigo, headed by its spokesperson, expressed their opposition to the installation of this facility within their municipality.
- 337 residents of San Luciano street, in Madrid, filed a complaint regarding the construction of a building within a "green" zone.
- 321 assistant nurses working for the Vall d'Hebron hospital in Barcelona filed a complaint regarding salary discrimination

stemming from the different assessment systems used with regard to their professional qualifications.

- 916 residents of Berango (Vizcaya) complained about a change in the classification of land previously intended for sports facilities in order to use it for residential construction.
- 5,336 residents of Pinto (Madrid) denounced the significant cutback in the number of places in a home for the elderly due to be built in the municipality.
- 5,008 residents of Sagunto (Valencia) denounced the potentially grave environmental impact that would, in their opinion, ensue from executing the Beach-Port Remodelling Project in that locality.
- 19,010 persons filed a complaint relating to medical treatment received at the Vascular Surgery Department of the Mateu Orfila hospital in Menorca.
- 165 users of the Elderly Care Centre in Usera, Madrid, presented complaints regarding various deficiencies in the service provided there.
- 127 citizens filed a complaint regarding changes in the regime of custody of a minor.
- 273 amateur gymnasts from various clubs in the Region of Murcia denounced actions by the Murcia Gymnastics Federation that favour members of only certain clubs.
- 293 members of staff at the Cam Misses hospital (Balearic Islands) set out their disagreement with the Health Services of that Autonomous Community on account of unfair treatment received in the course of a competitive examination to fill several job openings for nursing assistants.
- 187 workers of the Public Sector Employment Service (SEPE) complained about the lack of information by this autonomous body of the Ministry of Labour and Immigration, with regard to the possible transfer of powers relating to active employment policies to the Autonomous Community of the Basque Country.
- 321 residents of Vilecha, belonging to the Local Council of Onzonilla (León), complained about deficiencies in the Spanish Postal Service.
- 274 members of the Balearic Cerebral Palsy Association (ASPACE) expressed their concern regarding the incorrect effective application, within the scope of the Balearic Islands, of Law 39/2006, of 14 December, to promote the personal autonomy and care of dependent persons.

**TABLE 19**  
**Breakdown of collective complaint processing**  
**as of 31 December 2009**

Situation	Number	%
Admitted for processing	1,766	48.70
Being processed	1,575	43.44
Concluded	191	5.27
No admitted for processing	1,709	47.13
Being studied	151	4.16
<b>Total</b>	<b>3,626</b>	<b>100.00</b>

The reasons for rejection of certain collective complaints in 2009 are set out in Table 20:

**TABLE 20**  
**Causes for rejection of collective**  
**complaints, 2009**

Reasons for non-admission	Number
Lack of basis	87
Lack of previous administrative action	89
No evidence of administrative irregularities	66
Miscellaneous reasons for non-admission	1,467
<b>Total</b>	<b>1,709</b>

As with individual complaints, collective complaints taken before the various Public Administrations in 2009 are shown in Tables 21, 22 and 23, broken down by organisation or public institution.

**TABLE 21**  
**Collective complaint cases processed, by**  
**Administration, 2009**

Administrations	Being processed	Concluded	Total
General State Administration	753	35	788
Autonomous Community Administrations	22	45	67
Local Administrations	29	0	29
Attorney General's Office	120	0	120
Other public entities	337	0	337
Miscellaneous Administrations	313	12	325
Investigation unnecessary	1	99	100
<b>Total</b>	<b>1,575</b>	<b>191</b>	<b>1,766</b>

**TABLE 22**  
**Breakdown of collective complaints handled**  
**by the General State Administration, 2009**

Ministries	Being processed	Concluded	Total
Ministry of Defense	721	0	721
Ministry of Industry, Tourism and Trade	0	29	29
Ministry of Housing	32	0	32
Miscellaneous Ministry departments	0	6	6
<b>Total</b>	<b>753</b>	<b>35</b>	<b>788</b>

**TABLE 23**  
Breakdown of collective complaints handled  
by autonomous administrations, 2009

Autonomous communities	Being processed	Concluded	Total
Andalusia	22	0	22
Canary Islands	0	27	27
Community of Madrid	0	18	18
<b>Total</b>	<b>22</b>	<b>45</b>	<b>67</b>

Table 24 shows the collective complaints filed in 2009, broken down by outcome.

**TABLE 24**  
Types of conclusions for collective complaints, by administration, 2009

Administrations	Proper procedure	Corrected action	Uncorrected action	Total
General State Administration	29	6	0	35
Autonomous Community Administrations	45	0	0	45
Miscellaneous Administrations	0	0	12	12
Investigation unnecessary	99	0	0	99
<b>Total</b>	<b>173</b>	<b>6</b>	<b>12</b>	<b>191</b>

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## 269 *ex officio* complaints

The Ombudsman handled 269 *ex officio* investigations in 2009, an increase of 6.32% vis-à-vis 2008. As their name indicates, *ex officio* actions are those that the Ombudsman's Office undertakes of its own initiative if it learns of facts that it deems worthy of investigation. These enquiries, which are carried out under the auspices of Article 12.1 of the Organic Law 3/1981, of 6 April, are set out in Table 25, which also shows the status of each enquiry as of 31 December 2009, as well as the Administration handling them. The Table does not include eight cases that were in the preparatory stages as of that date.

**TABLE 25**  
***Ex officio* investigations in relation to different administrations, 2009**

Administrations	Being processed	Concluded	Total
General State Administration	32	21	53
Autonomous Community Administrations	104	61	165
Local Administrations	13	14	27
Attorney General's Office	2	1	3
Miscellaneous Administrations	8	4	12
Investigation unnecessary	1	0	1
<b>Total</b>	<b>160</b>	<b>101</b>	<b>261</b>

### Justice

*Ex officio* enquiries initiated in 2009 by the Ombudsman with regard to Justice-related matters were numerous and varied. Foremost among these were those relating to excessive case-load, such as the investigation open at the Secretariat of State for Justice relating to measures that were planned in order to resolve the grave deficiencies detected in over seventy single-judge administrative law courts; or the investigation at the Ministry of Justice relating to the need for more magistrates at the Administrative Law Court of the Superior Court of Andalusia.

Several *ex officio* cases were also initiated relating to lack of means. Such was the investigation carried out at the General Council of the Judicial Branch, the State Attorney General, and Office of the President, Justice, and Home Affairs of the Autonomous Community of Madrid, relating to the repeated suspension of so-called "fast-track" trials owing to the lack of interpreters; or that initiated at the Ministry of Justice and the State Attorney General, relating to the need to finish implementing the Information System at the Public Prosecutor's

Office. Similarly, an *ex officio* complaint was filed before the General Council of the Judicial Branch, the State Attorney General and the Department of Justice of the Autonomous Community of Andalusia, regarding the suppression of transportation services for civil servants of the centralised service of process to carry out their professional duties.

Undue delays in the administration of justice led to filing of an *ex officio* complaint with the State Attorney General owing to procedural delays at the Court of First Instance no. 1 in Eivissa where, eight years after being initiated, the date for the related hearing has still to be set.

The corresponding *ex officio* investigations were also opened before the Secretary of State for Justice following the receipt of numerous complaints about operating deficiencies at the Civil Registries of Manacor and Inca, both in the Balearic Islands.

Juvenile detention centres were also the object of several *ex officio* investigations. One such case was the La Jara Centre, in Alcalá de Guadaira (Seville), with regard to deficiencies found there, and the Marcelo Nessi Centre, in Badajoz, relating to the purported use of inappropriate methods to control one young inmate. Similarly, the Department of Justice of the Autonomous Community of Andalusia was requested to provide information on the need to set up a new juvenile holding centre in the province of Huelva. And, with regard to underage offenders, an investigation was also undertaken vis-à-vis the Ministry of Justice with relation to the lack of specific measures applicable to minors under 14 years of age who engage in criminal acts.

### Prisons

The Ombudsman launches an *ex officio* enquiry whenever a prisoner dies. In 2009, three cases were opened for this reason with the Secretary General for Penitentiary Institutions of the Ministry of the Interior; and one more relating to statistical data on prison deaths. Furthermore, a case of self-inflicted wounds by an inmate of the Dueñas (Palencia) penitentiary and an attempted suicide of a prisoner at the Sevilla II penitentiary were also investigated.

*Ex officio* enquiries were also launched regarding the psychiatric centres at the prisons of Seville and Alicante, the alleged aggression by an inmate against two prison guards at the Málaga penitentiary, and possible overcrowding of the prison in Topas (Salamanca).

### Citizens and Public Safety

Several cases of alleged mistreatment and police brutality were looked into in 2009. Thus, a complaint was filed against the Directorate General of Police and Civil Guard of the Ministry of the Interior following the death of a young immigrant who was being held at the Vía Layetana police station in Barcelona. Information was also requested on a purported aggression against a citizen by plainclothes policemen, and on the treatment

of a Canadian citizen by several Civil Guard at Madrid Barajas airport.

Parking metres also triggered two *ex officio* complaints to the Madrid Mayor's Office.

## Immigration and Alien Affairs

In 2009, staff from the Office of the Ombudsman visited the police border posts at El Prat airport in Barcelona and Barajas airport in Madrid. They also visited the Alien Detention Centre in the Free Trade Zone of Barcelona, the alien facilities and services at the police station in Irún (Guipúzcoa), the reciprocal transfer post in Biriattou, the joint French-Spanish police station in Hendaye, the alien facilities and services in the border posts of Portbou (Girona) and La Junquera, and the joint French-Spanish police station located at Le Perthus. Furthermore, the Ombudsman carried out an *ex officio* inspection of detention facilities for undocumented aliens in Motril (Granada), the Alien Internment Centre in Málaga, the Initial facilities Service (UPA) of the Centre for Mothers and Children in Oviedo (Asturias), and the Emergency Mechanisms for the Reception of Unaccompanied Aliens in the Canary Islands (DEAMENAC), La Esperanza 1 and 2.

An investigation was also launched with the Directorate General for Consular Matters and Assistance of the Ministry of Foreign Affairs and Co-operation, regarding the status of 18 Spanish inmates being held prisoners in Meknes, Morocco. Information was requested on the arrest of several employees of the police department relating to alleged fraud against immigrants, and a complaint was filed on the purported denial of residence visa on exceptional grounds for the father of a Spanish minor who had suffered an accident with long-term consequences following the fall of a municipal structure owned by the Local Council of Vigo (Pontevedra).

## Economic Administration

In this section, various complaints referred to the electricity system. An investigation was launched in all of the Autonomous Communities as well as the cities of Ceuta and Melilla for possible errors by the electric utility companies with regard to the electricity rates applied in December 2008 and January 2009. An enquiry was also initiated before the Secretariat of State for Energy of the Ministry of Industry, Tourism, and Trade, owing to the confusion and uncertainty among many domestic and small business customers following the announcement of deregulation of electricity rates and its possible repercussion in the form of a significant increase in rates. A power outage that affected over 7,000 customers in the provinces of Málaga and Granada was also looked into.

Two *ex officio* complaints were filed before the Secretariat of State for Transportation of the Ministry of Public Works, regarding delays and cancellations of dozens of flights—and the ensuing damages and losses for travellers—as a result of diverse reasons at Barajas airport in Madrid. Another investigation was initiated before the National Public Airport Authority (AENA) as a result of complaints from several users regarding the

reasons for a 2-hour shutdown of Es Codolar de Eivissa airport in the Balearic Islands.

Furthermore, the practices of several airline companies who use customer service numbers beginning with 807, which are very expensive for the consumer compared to other possible alternatives, were investigated; information was also requested of the Secretariat General for Transportation of the Ministry of Public Works regarding Air Comet's suspension of operations. A enquiry was opened on air transportation before the Secretariat General for Transportation of the Ministry of Public Works for repeated complaints by non-EU citizens who are residents of the Balearic Islands, the Canary Islands, Ceuta and Melilla, but who are not eligible under the provisions of Royal Decree 1316/2001, of 30 November, which regulates air and sea travel subsidies to and from those destinations for local residents. A complaint was also filed with the State Agency for Aviation Safety (AESA), which reports to the Ministry of Public Works, regarding the rights of people with disabilities, non-discrimination and accessibility to air transportation, following the publication of a Ruling 211/2009, of 6 May, by the Provincial Court of Madrid, which condemned two airline companies for discriminating against hearing-impaired passengers who were not allowed to board their flights.

Enquiries were also made with the Ministry of Industry, Tourism and Trade, and the Directorate General for Consumer Affairs of the Ministry of Health and Social Affairs, regarding alleged price increases by several auto dealers following the announcement of new direct subsidies for car purchases, which would effectively cancel out the above-mentioned subsidies.

An investigation was also undertaken vis-à-vis the Sub-secretariat of Economy and Finance relating to numerous complaints denouncing possible irregular practices by several debt-collection agencies.

## Educational Administration

Among the *ex officio* complaints relating to education, foremost among those filed in 2009 were those with the Secretary of State for Education and Professional Training of the Ministry of Education and with various Autonomous Communities on account of repeated complaints of inadequate educational attention for students with dyslexia.

An investigation was also launched in all 17 Autonomous Communities plus the autonomous cities of Ceuta and Melilla to ascertain the safeguards and protection of the rights of minors vis-à-vis television programming and Internet content.

Furthermore, the Madrid City Council was asked about public complaints about closures at many of Madrid's municipal libraries over the Christmas holidays. Likewise the Department of Education of the Community of Madrid, regarding budget cuts by the public universities within the region, as denounced by the Board of Provosts.

## Health Care

In 2009, the Office of the Ombudsman filed a case with all of the Autonomous Communities in order to assess the degree of

compliance with the recommendations made by the Institution in its monographic report on stroke.

Another *ex officio* investigation was launched further to public manifestations made by many citizens with regard to saturation of the emergency rooms of the hospitals in the Community of Madrid. An enquiry was also made into the death of a baby at Gregorio Marañón hospital in Madrid as a result of a mistake in the method of administering food.

## Social Affairs

Once again, social issues were at the top of agenda in 2009. Delays in handling applications for assessment of dependent situations and in approving the requisite Individual Attention Programmes led to the initiation of the corresponding *ex officio* investigations before the Councillor for Family and Social Affairs of the Community of Madrid and before the Councillor for Social Welfare of the Community of Valencia. *Ex officio* complaints were also sent to the qualified organisations in the rest of Spain in order to request information on application of the provisions in Law 39/2006, of 14 December, which regulates the Promotion of Personal Autonomy and Attention to Dependent Persons. Similarly, an enquiry was initiated before the Councillor for Family and Social Affairs of the Community of Madrid, with regard to a published article on failure to assess the degree of dependence of a minor with cerebral palsy because the condition of the minor was not yet stable.

In 2009, we also undertook *ex officio* investigations throughout Spain in order to monitor progress with regard to the recommendations set out in the Institution's monographic report on *Juvenile Protection Centres for Minors with Behavioural Disorders and Social Problems*. In 2009, there were several other *ex officio* complaints relating to minors, such as that initiated before the Councillor for Health and Social Welfare of the Autonomous Community of Castilla-La Mancha and before the State Attorney General, relating to the death of a minor during her transfer to an admission centre in Azuqueca de Henares (Guadalajara). There is also an enquiry open with the Board of Health and Social Welfare of the Autonomous City of Melilla relating to the transfer of minors who are being held in a shelter, owing to the serious state of disrepair of the facilities. Another complaint was motivated by alleged irregularities in the treatment of minors being held at Isabel de Castilla Children's Residence, which is under the supervision of the Board of Family and Social Affairs of the Community of Madrid.

Other social issues on which *ex officio* investigations were opened included the existence of 582 places for persons with psychological disabilities at ten Community of Madrid centres which lay vacant due to lack of funding; delays in the handling and resolution of pension cases of citizens of countries with bilateral agreements with Spain, especially certain Latin American countries; or the repeated finding of food beyond its sell-by date at the Dos de Mayo centre for the mentally disabled.

## Environment

Investigations relating to the environment included the Ministry of Public Works and the Ministry of Industry, Tourism, and Trade relating to the potential environmental impact of the projected layout of several infrastructures in the Sierra de Aracena and in Doñana Park, both in Andalusia. An *ex officio* complaint was also filed against the Madrid Mayor's Office relating to the reduction in the number of monitoring stations, and assessment of factors contributing to pollution in areas of high road traffic density in the capital.

## Housing and Urban Planning

Numerous complaints were received by this Institution regarding the lack of information on the tax liability of persons receiving the Basic Subsidy for Emancipation of young people, prompting us to file several nationwide *ex officio* complaints before the corresponding organisations. Similarly, also in relation to the Basic Emancipation Subsidy, a case was opened against the General Technical Secretariat of the Ministry of Housing due to repeated complaints about problems relating to the direct debit rental payment scheme.

Other issues that prompted the Institution to launch investigations included the situation of the Cañada Real Galiana in Madrid due to the social, educational, public health and security problems arising in this settlement where over 40,000 citizens live, poor conditions in the Cabezo de la Fuensantilla de Cieza (Murcia) neighbourhood, and the failure to receive housing rental payments reported by persons who were forcibly evicted from their homes as a result of works to be carried out on the Madrid M-50 ring road, as well as the unsuitability of some of the new homes to the needs of people with disabilities.

## Civil Servants

The Ombudsman opened *ex officio* investigations of all of the autonomous communities as well as the Secretary and Sub-secretary of State for Education and Professional Training of the Ministry of Education regarding criteria for combining work and family life in nationwide transfers of non-university teaching staff.

The shortage of personnel to deal with the caseload at the Civil Registries of Madrid, Alcalá de Henares, Torrejón de Ardoz and Granada motivated several *ex officio* complaints filed with the Ministry of Justice and the competent Departments of Madrid and Andalusia. A complaint was also filed following the closure of a Criminal Court in Valencia due to lack of civil service staff to handle the caseload. Two further complaints were lodged with the Madrid Mayor's Office and with the Councillor to the Office of the President, Justice and Home Affairs of the Autonomous Community of Madrid relating to staff of the fire brigade.

Lastly, the Ombudsman also launched an *ex officio* investigations of the progress being made on the sole final provision in Royal Decree 1314/2005, of 4 November, which approved the Remuneration Scheme for Armed Forces personnel, of the need to draw up a set of regulations in order to enforce that set out in Article 55.2 of Law 42/1999, of 25 November; on the Regime for Personnel in the Civil Guard Corps, and of various matters relating to the Basic Statute of Public Sector Employees.

## 85 recommendations and 82 suggestions admitted

As a result of the individual, collective and *ex officio* complaints filed in 2009, 553 resolutions were passed with regard to the various Public Administrations (See Table 26). Tables 27, 28 and

29 set out in greater detail the resolutions passed by the Ombudsman, broken down by type of resolution and by Administration to which presented.

**TABLE 26**  
**Resolutions made during 2009**

Resolutions	Accepted	Rejected	Pending	Total
Recommendations	85	29	59	173
Suggestions	82	36	101	219
Reminders of legal duties	–	–	–	150
Warnings	–	–	–	11

**TABLE 27**  
**Recommendations according to the Administration to which they were presented, as of 31 December 2009**

Administrations	Accepted	Rejected	Pending	Total
General State Administration	50	17	20	87
Autonomous Community Administrations	16	4	28	48
Local Administrations	18	8	12	37
Other organizations	1	0	0	1
<b>Total</b>	<b>85</b>	<b>29</b>	<b>59</b>	<b>173</b>

**TABLE 28**  
**Suggestions according to the Administration to which they were presented, as of 31 December 2009**

Administrations	Accepted	Rejected	Pendientes	Total
General State Administration	45	22	54	121
Autonomous Community Administrations	12	3	14	29
Local Administrations	25	10	33	68
Other organizations	0	1	0	1
<b>Total</b>	<b>82</b>	<b>36</b>	<b>101</b>	<b>219</b>

**TABLE 29**  
**Reminders of legal duties sent in 2009, according to the Administration to which they were presented**

Administrations	Total
General State Administration	50
Autonomous Community Administrations	53
Local Administrations	43
Other organizations	4
<b>Total</b>	<b>150</b>

Looking at the reactions of the various Administrations to the Ombudsman's resolutions, it is easy to see their degree of efficiency. Tables 30 and 31 set out the actual acceptance or

rejection of recommendations and suggestions made in the two preceding years. As can be seen, these percentages vary within a very narrow range.

**TABLE 30**  
**Recommendations 2008 and 2007. Data as of 31 December 2009**

Recommendations	2008		2007	
	Total	%	Total	%
Accepted	96	76.19	117	75.00
Rejected	25	19.84	35	22.44
Pending	5	3.97	4	2.56
<b>Total</b>	<b>126</b>	<b>100.00</b>	<b>156</b>	<b>100.00</b>

**TABLE 31**  
**Suggestions 2008 and 2007. Data as of 31 December 2009**

Suggestions	2008		2007	
	Total	%	Total	%
Accepted	119	62.63	118	57.84
Rejected	51	26.84	78	38.24
Pending	20	10.53	8	3.92
<b>Total</b>	<b>190</b>	<b>100.00</b>	<b>204</b>	<b>100.00</b>

## OMBUDSMAN PUBLICATIONS IN 2009

2009 saw the publishing of *Recomendaciones y Sugerencias 2008* [*Recommendations and Suggestions 2008*], *Informe de Gestión 2008 y sus debates parlamentarios* [*2008 Report and corresponding parliamentary debates*], as well as The Summary of that report in Spanish and English. These publications can be consulted on the website [www.defensordelpueblo.es](http://www.defensordelpueblo.es)



# 173 recommendations, 219 suggestions

During 2009, the Ombudsman made a total of 173 recommendations and 219 suggestions. At the close of the annual report, 85 recommendations and 82 suggestions had been accepted, as seen in Tables 26 to 28. In addition, 11 warnings were issued. A summary of the recommendations and suggestions that were accepted can be found below. Rejected and pending cases can be found in the full report published on the Ombudsman's website at: [www.defensordelpueblo.es](http://www.defensordelpueblo.es)

## DESCRIPTION OF ACCEPTED RECOMMENDATIONS

### General State Administration

#### Ministry of Foreign Affairs and Cooperation

To the **Directorate General of Consular Assistance and Affairs** on the processing of proceedings for family reunification in the consulates.

#### Ministry of Economy and Finance

To the **State Taxation Agency** on administrative notifications sent to Post Office boxes.

Recommendation to the **National Securities Market Commission** on requirements to be taken into account in selection processes.

Recommendation to the **Directorate General of Land Registry** on modification of the computer system used for land registry management, in order to respect citizens' language rights.

#### Ministry of Industry, Tourism and Trade

To the **Secretary of State for Telecommunications and the Information Society** on access to ADSL Internet broadband as a universal service.

#### Ministry of the Interior

To the **General Secretary for Penitentiary Institutions** on the need to investigate whether there are cells in which the windows are blocked by metal plates. Recommendation regarding the increase in guarantees with respect to evidence that the prisoners in penitentiary institutions have presented petitions. Recommendation regarding the right of those referred to as "prisoners in transit" to use a telephone. Recommendation regarding certain rights of visitors to inmates in penitentiary institutions. Recommendation regarding entry tests for applicants for tests organised by Penitentiary Institutions.

Recommendation to the **Directorate General of Security Matters and Infrastructures** on speeding up the bureaucratic processes for constructing a new local police station for the National Police Force.

Recommendation to the **Directorate General of the Police and Civil Guard** on car races that may result in certain residents being cut off, or put their security at risk.

Recommendation on temporary actions to be taken while a new police station for the National Police Force is constructed. Recommendation regarding the correct way to apply the legal mechanisms provided for cases of foreign women who are victims of human trafficking. Recommendation regarding the disciplinary responsibility of National Police Force officers.

Recommendation regarding the requirements for a Police summons.

Recommendation regarding the need to facilitate the issuing of the electronic national identity card to people with disabilities.

Recommendation regarding the criterion that, if there is any doubt as to the illegality of conduct in traffic matters, no sanction should be applied. Recommendation regarding the training of Civil Guard agents in the treatment of persons who are in a detoxification process ("in detox"). Recommendation regarding the forces assigned to renewing national identity cards and passports.

Recommendation regarding the increase in mobile units and personnel for attending to renewals of national identity cards and passports in Arganda del Rey (Madrid).

Recommendation regarding requirements for administrative rulings.

Recommendation regarding checking judicial rulings that affect the suspension of implementation of an expulsion order when this is received by the Internment Centres for Foreign Nationals (CIE). Recommendation regarding initiating proceedings to deny entrance to foreign minors accompanied by adults.

Recommendation to the **Directorate General of Traffic** on persons with disability being able to obtain driving licenses. Recommendation on the coordination between the Directorate General of the Police and Civil Guard and the Directorate General of Traffic, as to complaints of identity theft.

Recommendation regarding the increase in material and human resources in order to provide telephone assistance, in the Alicante Provincial Traffic Headquarters.

Recommendation regarding the increase required in material and human resources in order to resolve citizens' complaints against the administrative decisions of the Directorate General of Traffic.

#### Ministry of Justice

Recommendation regarding the psycho-social teams assigned to the courts responsible for Family Law.

Note: in the summary of the resolutions in this report personal data that would identify those affected by an investigation has not been included in order to guarantee confidentiality, as required by the Organic Law that regulates the Ombudsman's actions.



Recommendation regarding the Tax Ministry's information system. Recommendation regarding providing an adequate number of judges for the work load of the Chamber for Administrative Appeals Proceedings of the Andalusian High Court.

Recommendation to the **Secretary of State for Justice** on the operation of the Logroño Civil Registry Office.

### Ministry of the Presidency

Recommendation regarding the selection of the staff making up the psycho-social teams for the courts responsible for Family Law.

Recommendation to the **Secretary of State for Public Administration** regarding the creation of a new Integrated Immigration Unit in Ibiza and Formentera.

Recommendation to the **Government Delegation in the Community of Castilla y León** regarding grounds for complaints related to carrying forbidden types of knives.

Recommendation to the **Government Delegation in the Autonomous Community of the Balearic Isles** regarding the reorganisation of the immigration services and the adoption of a series of measures to improve management of the corresponding proceedings.

Recommendation to the **Government Delegation in the Community of Madrid** regarding criteria to be applied when issuing residence permits to minors.

Recommendation to the **Government Sub-delegation in Granada** regarding the content of the rulings on returning foreigners which are given on an individual basis.

Recommendation to the **Directorate for the Islands of the General State Administration in Ibiza-Formentera** regarding measures intended to improve the management of immigration proceedings.

### Ministry of Labour and Immigration

To the **National Social Security Institute** on administrative notifications sent to Post Office boxes.

### Ministry of Housing

To the **General Technical Secretary** regarding changes to the decree regulating the basic income subsidy enabling young people to leave home. Recommendation regarding the requirements demanded of beneficiaries of the basic income subsidy enabling young people to leave home.

Recommendation regarding the content of the information provided to those applying for the basic income subsidy enabling young people to leave home.

### Autonomous Administration

#### Andalusia

To the **Department of Equality and Social Welfare** regarding the revision of the procedures for informing police services when unaccompanied foreign minors come of age.

### Canary Isles

To the **Department of Health** regarding the need to eliminate delays in carrying out electromyography (EMG) tests.

### Community of Castilla y León

To the **Department of Agriculture and Livestock** on subsidies for ecological agriculture.

### Galicia

To the **University of A Coruña** regarding bringing administrative actions into line with the norms laid down in Law 30/ 1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

### Community of Madrid

To the **Department of Education** regarding the adoption of measures intended to correct the unequal distribution of pupils with specific needs for remedial education.

Recommendation to the **Department of Health** on the need to adopt appropriate measures to reduce the extraordinary delay in admitting mentally disturbed patients to medium- and long-stay institutions.

Recommendation regarding the application of "in vitro" fertilisation.

### Region of Murcia

To the **Department of the Presidency and Public Administration** on workplace bullying.

### Basque Region

To the **University of the Basque Country** regarding the repetition of entry tests by a different method than that undergone in the sixth form pre-university studies.

### Local Administration

**City Hall of Algete (Madrid):** regarding the need to respect the bidding terms in selection processes.

**City Hall of Antequera (Málaga):** regarding the regulation on re-pedestrianisation of streets and the rights of the town's residents.

**City Hall of Bullas (Murcia):** regarding the assigning of specific allowances.

**City Hall of Cudillero (Asturias):** on the grounds for, and minimum content of, declarations on environmental impact.

**City Hall of Cuenca:** regarding the publicity for selection processes.

**City Hall of Cullera (Valencia):** on the way police investigate complaints against infringements not directly witnessed by the local police officers.

**City Hall of Getafe (Madrid):** on the right of those purchasing homes from the Getafe Municipal Land and Housing Company (Empresa Municipal del Suelo y la Vivienda de Getafe (EMSV)) to claim compensation for the latter's failure to comply with its obligations.

**City Hall of Isla Cristina (Huelva):** regarding the preparation of the bidding terms in selection processes.

**City Hall of Madrid:** on compliance with the duty of inspecting, conserving and restoring areas encroached upon by urban planning violations.

Recommendation regarding checking whether the relevant rate has been paid and the resident's sticker has been displayed before processing proceedings to impose fines related to regulated parking areas in Madrid.

Recommendation regarding the outrageous nature of a clause that obliges a purchaser of publicly developed housing to subrogate the loans contracted for constructing the housing.

Recommendation regarding the appropriateness of informing interested parties as to why the home assistance services for old or disabled persons have been revised.

Recommendation regarding complying with ordinances on disturbing noise levels.

**City Hall of Móstoles (Madrid):** on the obligation to apply the current regulations to any urban planning violations.

**City Hall of Ogijares (Granada):** regarding carrying out census registration and deregistration and any other changes to the census, in terms that comply with the regulations in current legislation on local government.

**City Hall of Valencia:** regarding how the disciplinary misconduct of municipal police officers should be investigated in Valencia City Hall.

**City Hall of Zamora:** regarding a court case as to whether a street is publicly or privately owned.

**Island Council of Fuerteventura (Las Palmas):** regarding strengthening controls on individual educational projects at two centres for foreign minors.

### Various administrations

**Ministry of Justice and the Department of Justice and Public Administration of Andalusia:** regarding how the Granada Civil Registry Office operates.

**Ministry of Justice and the Department of the Presidency, Justice and the Interior of Community of Madrid:** regarding how the Sole Madrid Civil Registry Office operates. Recommendations regarding how the Civil Registry Office in Torrejón de Ardoz (Madrid) operates. Recommendations regarding how the Civil Registry Office in Torrejón de Ardoz (Madrid) operates. Recommendations regarding how the Civil Registry Office in Parla (Madrid) operates.

**Ministry of Justice and the Department of Justice and Public Administration of the Community of Valencia:** regarding how the Valencia Civil Registry Office operates. Recommendations regarding how the Civil Registry Office in Elche (Alicante) operates.

### Others

**Málaga Solicitor's Association:** regarding bringing administrative actions into line with the norms laid down in Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

## DESCRIPTION OF ACCEPTED SUGGESTIONS

### General State Administration

#### Ministry of Foreign Affairs and Cooperation

To the **Directorate General of Consular Assistance and Affairs** in order that a review is made of the processing of a visa for family reunification for a parent handled by the Spanish Consulate in Quito (Ecuador), and a new ruling is issued, and if the visa is denied, the ruling must clearly specify the justification for that decision.

Suggestion that the rulings issued by the Spanish Consulate in Quito that deny visas for family reunification to parents and/or grandparents be revoked and the visas requested should be granted.

Suggestion that a check is made as to whether the interested party's right to permanent residence in Spain had been recognised when he left his country and, if that is the case, that the ruling denying him a visitor's visa issued by the consular office in Dakar (Senegal) should be revised.

Suggestion that the Spanish Consulate in Lagos (Nigeria) revises and completes the processing of a family reunification visa for a spouse and, if there are no objective reasons showing that there has been misrepresentation, the requested visa should be issued.

Suggestion that the Spanish Consulate in Rabat (Morocco) makes ineffective the decisions denying family reunification visas requested by the children of the interested party, and concedes them.

To the **Cervantes Institute** regarding an express and justified resolution of the complaint presented by an interested party.

### Ministry of Defence

To the **Secretary of State for Defence** regarding a citizen's right to locate, consult and obtain copies of the summary of the military court proceedings against his/her maternal grandfather during the Civil War.

To the **Under-secretary of State for Defence** regarding the need to identify the civil servant in the Defence Department who handled the proceeding initiated by the interested party, in accordance with the citizens' right, as recognised in Article 35.b) of Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

### Ministry of Economy and Finance

To the **Burgos Land Registry Department** regarding correcting the erroneous attribution of the ownership of certain buildings in the Land Registry database, setting as the effective date the one corresponding to the asset's declaration of registration.

To the **Pontevedra Land Registry Department** regarding a ruling on the request to register a plot of land in the land registry database and the issuing of the consequent certificate, which is required for the plot to be registered in the Property Register.



## Ministry of Public Works

To the **National Air Safety Agency** (AESA) regarding an express reply to the complaint presented by an interested party.

Regarding the obligation to issue, and give notice of, a ruling in a proceeding to grant administrative authorisation, as provided for in Article 30 of Decree 584/1972, of the 24th of February, on aeronautical rights of way.

## Ministry of the Interior

To the **Secretary of State for Security** regarding compensation for damages caused to a citizen and his/her family due to erroneous information in the Ministry of the Interior's website, with respect to the documents required to cross borders, which prevented them making a journey abroad, resulting in a financial loss.

To the **Directorate General of the Police and Civil Guard** regarding the unwarranted treatment of a citizen residing in Madrid, by the National Police Force.

Suggestion regarding revoking, *ex officio*, a sanction on a traffic-related matter.

Suggestion that measures should be increased to improve resident's security in the Valle de Guerra neighbourhood within the city limits of San Cristóbal de La Laguna (Santa Cruz de Tenerife).

Suggestion regarding the behaviour of some Guardia Civil officers towards a citizen.

Suggestion regarding speeding up the renewal of a citizen's renewing national identity card.

Suggestion on the need to bring the behaviour of certain Civil Guard officers, stationed in Los Barrios (Cádiz), into line with the basic principles of Organic Law 2/1986, of the 13th of March, on the Security Forces.

Suggestion as to the need to increase supervision measures at a specific point on the M-40 in Madrid.

To the **Directorate General of Traffic** so that it changes, *ex officio*, the ownership of an auctioned vehicle, thus complying with what was agreed in the Order of the 17th of July 2000, by Central Magistrate's Court number 4 of the National Assembly.

Suggestion as to the need to give an express reply to a letter presented by a citizen.

Suggestion regarding a request to assess, *ex officio*, the nullification of punitive proceedings.

Suggestion on revoking a traffic fine imposed on the interested party, since the notifications were not sent to the address in the Vehicle Register.

Suggestion regarding annulling, *ex officio*, the registration of the ownership of a vehicle.

## Ministry of Justice

Suggestion regarding parents exercising their freedom to give a new-born child whatever name they consider appropriate, within the limits contained in Articles 54 of the Law of the 8th of June 1957, on the Civil Registry Office, and 192 of the Decree of the 14th of November 1958, approving the Civil Registry Office Regulations, which are justified by respect for

the dignity of the new born and the need to avoid confusion of identity.

Suggestion regarding the registration of the birth in Spain of minors as the children of two Spaniards, although the artificial reproduction techniques used in another country for their conception is not permitted by our laws.

## Ministry of the Environment, Rural Areas and Marine Areas

To the **Hydrographic Confederation of the Júcar River** regarding the obligation to provide an express reply to the memorandum sent to it by other public administrations.

## Ministry of the Presidency

To the **Government Delegation in the Community of Madrid** in order that the renewal of a residence permit is taken to have been granted, since, in this procedure, administrative silence legally indicates approval.

Suggestions that the legal guardian of the four interested parties, as unaccompanied foreign minors, is required to report on their progress, and, if appropriate based on these reports, a decision is taken to grant them residence due to exceptional circumstances.

Suggestion that steps are urgently taken to revoke the ruling to expel the interested party, given his position as the husband and father of Spanish citizens.

Suggestion that, unless there are reasons of public order or security, the expulsion of the interested party is urgently revoked, and either the case is dismissed or the expulsion order is replaced by a fine.

Suggestion that, unless there are reasons of public order or security, the request to revoke the expulsion ruling on the interested party is urgently ruled in his favour, since he is the father of two minors who have Spanish Nationality.

To the **Government Delegation in the Murcia Region** that it should halt the return of the interested party, in order that complementary tests may be carried out to determine his age, and inform the Prosecutor's Office of the result, so that it can issue the appropriate order.

To the **Government Delegation in the Community of Valencia** regarding the return of an amount incorrectly charged to the interested party, due to a fee for conceding an administrative authorisation having been charged twice.

To the **Government Sub-delegation in Burgos** that it should revoke, *ex officio*, the ruling given on a request involving an unaccompanied foreign minor; and give another ruling that, given the date on which he was put in the care of the relevant protection service, he should be granted a residence permit and first renewal.

Suggestion that it should revoke, *ex officio*, the ruling given on a request involving an unaccompanied foreign minor; and give another ruling that, given the date on which he was put in the care of the relevant protection service, he should be granted a residence and work permit, and first renewal.

To the **Government Sub-delegation in Barcelona** that it should revoke the denial of a European Union family member

residency card to the spouse of an EU resident and it should be granted, unless there are reasons of public order, security or health that would prevent it.

To the **Government Sub-delegation in Cadiz** to revoke an expulsion ruling.

To the **Government Sub-delegation in Cuenca** to grant a request for residence due to exceptional circumstances (length of residence) and the existence of a prior sanction should not be a reason for refusing to process it, since the sanction was a fine, and not expulsion.

To the **Government Sub-delegation in Valencia** that the expulsion order for the interested party is urgently revoked, and either the case is dismissed or the expulsion order is replaced by a fine.

### Ministry of Labour and Immigration

To the **National Social Security Institute (INSS)** that it should give the relevant instructions in order that the Provincial Directorate for Alicante notifies the interested party, in the correct manner, of an express ruling.

### Autonomous Administration

#### Andalusia

To the **Department of Justice and Public Administration** regarding correcting deficiencies in the facilities of the La Jara Internment Centre for Minors, in Alcalá de Guadaira (Sevilla).

#### Principality of Asturias

To the **Department of Social Welfare and Housing** that a new express ruling should be made, in line with the law, setting out the individualized programme of attention for the interested party.

#### Canary Isles

To the **Department of Education, Universities, Culture and Sports**, regarding the non-payment of amounts arising from a contract for services provided.

To the **Department of Health** that the relevant offices of the Canary Island Health Service give the appropriate instructions to ensure that the interested person is informed of the date or time period in which it is expected that the planned diagnostic test will be carried out.

#### Community of Castilla y León

To the **Department of Agriculture and Livestock** on revising and estimating the various requests for subsidies for ecological agriculture made by the interested party.

To the **Department of Education** regarding the obligation to correct the deficiencies they have been warned of in the building to be used for the Burgos Conservatory of music and dance.

#### Community of Madrid

**Department of Environment, Housing and Land Management:** suggestion to the **Housing Institute of Madrid**, regarding the administrative silence with respect to the request for a rent allowance for a large family.

**Department of the Presidency, Justice and the Interior:** suggestion to the **Management of the Madrid Forensic Medicine Clinic**, that it should consider the possibility of bringing forward the appointment for a medical examination given to the petitioner, given the person's age and the seriousness of the injuries suffered in a traffic accident.

Suggestion to the **Department of Health** that it give the appropriate instructions to ensure that a patient diagnosed with schizophrenia is admitted to a long stay public or government subsidized facility.

Suggestion to the **Sub-department of Health Services**, regarding the use of the "in vitro fertilisation" technique to persons suffering from infertility and who fulfil the conditions laid down in law.

### Region of Murcia

To the **Department of the Presidency and Public Administration** on an express ruling.

### Community of Valencia

To the **Department of the Environment, Water, Town Planning and Housing** regarding the definitive rating of a building as protected and the consequent processing of the request for the subsidy for restoring buildings and homes.

### Local Administration

**City Hall of Antequera (Málaga):** regarding a citizen's access to his home using his vehicle.

**City Hall of Benicàssim (Castellón):** that it should observe the procedures for ensuring suitable publicity and information for the public about the procedures to approve municipal works and to contract the contractors to implement them, and takes the necessary measures to provide the information requested to the association appearing before it.

**City Hall of Carcaixent (Valencia):** regarding the application of legislation against noise pollution to the club houses of the associations involved in the "Fallas".

**City Hall of Cercedilla (Madrid):** regarding recovery of municipal property and compensation for damage or loss.

Suggestion regarding the municipality's technical inspection of the noise level made by a commercial property which had generated a complaint, and the action of taking necessary measures to correct the situation.

**City Hall of Cullera (Valencia):** regarding revoking a sanction for destroying urban materials.

**City Hall of El Villar de Arnedo (La Rioja):** regarding the return of the deposit for renting municipal housing when the contract expires.

**City Hall of Logroño:** regarding the calling of a meeting with the National Highway Demarcation Board for La Rioja in order to propose solutions to the noise caused by traffic on highways and municipal roads.

**City Hall of Madrid:** regarding the immediate implementation of an order to demolish an unauthorised construction, once a final sentence has been passed.

Suggestion regarding the need to remove a road sign in the La Florida development that has become obsolete.

Suggestion regarding immediately halting an annoying activity and initiating proceedings to issue a fine.

Suggestion regarding starting personal liability proceedings due to the interested party deregistering from the Permanent Register of those applying for housing.

**City Hall of Málaga:** regarding the need to guard against and issue fines for certain behaviour in on a public street in the city.

**City Hall of Manacor (Balearic Islands):** regarding adopting measures to bring the waste water treatment into line with current legislation.

**City Hall of Móstoles (Madrid):** regarding revoking a sanction on a traffic-related matter.

Suggestion regarding the obligation to give an express ruling stating relevant legal grounds, to an appeal made by an interested party.

Suggestion on immediately starting proceedings to penalise the owner of illegal construction works.

**City Hall of Murcia:** regarding an injunction to totally or partially halt an activity that causes a disturbance due to noise.

**City Hall of Oviedo:** regarding revoking a sanction on a traffic-related matter.

**City Hall of Plasencia (Cáceres):** regarding taking measures to inspect, issue injunctions against, or penalise an activity causing annoyance.

**City Hall of Prádena (Segovia):** regarding the suitable location for a facility causing an annoyance and of the application of legal measures.

**City Hall of Santander:** regarding immediately starting proceedings to penalise the owner of construction works that should not have been carried out.

**City Hall of Totana (Murcia):** regarding taking corrective sound insulation measures in an establishment that is open to the public.

**City Hall of Valencia:** regarding investigating the disciplinary misconduct of a municipal police officer.

**City Hall of Villamartin (Cádiz):** that it should pay the amounts owed to the interested party arising from a contractual relationship with the City Hall, and calculating the corresponding interest due for late payment, as laid down in Article 200 of Law 30/2007, of the 30th of October, on Public Sector Contracts.

## REMINDERS OF LEGAL DUTIES

During 2009, the Ombudsman issued 150 Reminders of Legal Duties, 50 to the General State Administration, 53 to the Autonomous Administrations and 47 to local and other organizations (see Table 29).

### General State Administration

#### Ministry of Foreign Affairs and Cooperation

To the **Directorate General of Consular Assistance and Affairs** regarding the legal obligation that requests for study visas be processed in accordance with the provisions of Article 33 of

Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, and articles 85 et seq. of the Royal Decree 2393/2004, of the 30th of December; approving the Regulations of the Organic Law 4/2000, of the 11th of January.

Regarding the legal duty incumbent upon it to register all the requests presented to it pursuant to article 35.c) of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

Regarding the legal duty incumbent upon it to provide adequate justification for rulings denying residence visas for family reunification.

Regarding the legal obligation to specify, in rulings denying visitor's visas, the legal norms on which they are based, in accordance with the provisions of the applicable formula provided for in the Common Consular Instructions.

#### Ministry of Defence

Regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them and answer any questions or petitions raised, in accordance with Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and Common Administrative Procedures, and also that their actions should be governed by the criteria of efficiency and providing a service to citizens.

#### Ministry of Economy and Finance

To the **Regional Economic-Administrative Court of Madrid** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them.

#### Ministry of Public Works

To the **Directorate General of Civil Aviation** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and of Common Administrative Procedures.

To the **National Highway Demarcation Board for Murcia** regarding the legal duty incumbent upon it to act in accordance with article 71 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and Common Administrative Procedures, which lays down that if the request to initiate does not include the requirements demanded by the applicable legislation, the interested party shall be requested to correct this fault within 10 days, indicating that, if he does not do so, he will be understood to have renounced his request, after the corresponding ruling.

#### Ministry of the Interior

To the **General Secretary for Penitentiary Institutions** Regarding the legal duty incumbent upon it to resolve, quickly and satisfactorily, the complaints and requests presented to it, in

the terms laid down by Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

To the **Directorate General of the Police and Civil Guard** regarding the legal duty incumbent upon it to inform interested parties as to the proper appeals processes, since, in accordance with the provisions of article 58.2 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures, all notifications must contain the full text of the ruling, indicating whether or not it is definitive under administrative proceedings, state the proper appeals processes, the body to which they must be presented, and the period available for presenting them, without prejudice to the interested parties exercising, where applicable, any other appeals process that they consider relevant.

Regarding the legal duty incumbent upon it, in accordance with the provisions of article 19 of the Constitution, not to restrict in any way the right of any Spanish citizen to enter Spain.

Regarding the legal duty incumbent upon it to scrupulously respect the content of article 40 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures, stating that citizens must be notified in writing of appointments to appear in public offices, and the place, date, hour and purpose of the appearance must be expressly stated, as well as the effects of not attending.

To the **General Department on Alien Affairs and Borders** regarding the legal obligation that requests for study visas be processed in accordance with the provisions of Article 33 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, and articles 85 et seq. of the Royal Decree 2393/2004, of the 30th of December; approving the Regulations of the Organic Law 4/2000, of the 11th of January. And also that the requests to interested parties for remediation of documentation satisfy the provisions of Articles 71 and 76 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

Regarding the legal duty incumbent upon it to comply with the provisions of Article 62.3 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, in requests for internment of minors.

To the **Provincial Police Station in Málaga** regarding the legal duty incumbent upon it to immediately comply with the orders agreeing that injunctions should be adopted, in accordance with the provisions of Article 134.1 of the Law on the Jurisdiction of Administrative Appeals, and to inform the Magistrate's Court which authorised the internment, of any circumstance relating to the situation of the foreigner detained, pursuant to the provisions of Article 153.6 of Royal Decree 2393/2004, of the 30th of December.

## Ministry of Justice

To the **Secretary of State for Justice** regarding the legal duty to give grounds for rulings, so that when the Spanish Consulate in

Bogota (Colombia) rejects a request to register a marriage, the specific causes and circumstances why this registration is not authorised are expressly stated in the ruling, since it is only if the grounds for each case are given that the citizens affected by these decisions will be able to fully exercise their right of defence through an appeal.

## Ministry of the Environment, Rural Areas and Marine Areas

To the **Under-secretary** regarding the legal duty incumbent upon him to respect the bidding terms governing selection processes, and to take into account that the bidding terms are binding not only on those taking part in a selection process but also on the Administration and the tribunals, and the merits must be justified in accordance with these terms. Additionally, proportional points must be awarded to the tender phase that will not, under any circumstances determine, in and of themselves, the result of the selection process.

To the **Hydrographic Confederation of the Duero** regarding the legal duty incumbent upon it to adopt, if irregular discharges persist, the precautionary measures provided for in Article 119.2 del Royal Legislative Decree 1/2001, of the 20th of July, approving the consolidated text of the Water Law, which are necessary to prevent the infractions continuing, and to contact, in accordance with the principle of collaboration and support that should govern relationships between administrations, the autonomous and local administrations for them to decree that the activity producing the discharges is suspended or definitively halted.

Regarding the legal duty incumbent upon it to quickly and satisfactorily decide upon and notify an express ruling, stating relevant legal grounds, on any requests submitted by interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and Common Administrative Procedures.

Regarding the legal duty to act diligently with respect to managing the housing it is responsible for administering.

To the **Hydrographic Confederation of the Guadiana** regarding the legal duty incumbent upon it to resolve proceedings related to water usage within the maximum period provided for in the sixth additional provision of Royal Legislative Decree 1/2001, of the 20th of July approving the consolidated text of the Law on Waters.

Regarding the legal duty incumbent upon it to demand that all public water concession holders and holders of usage rights due to any operating permit install and maintain measuring systems ensuring precise information on the amounts of water actually taken from the river:

To the **Hydrographic Confederation of the Júcar** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures.

Regarding the legal duty to initiate punitive proceedings as quickly and diligently as possible, in order to prevent any infringements of waters in the public domain continuing over time.

### **Ministry of the Presidency**

To the Government Delegation in the Autonomous Community of Andalusia regarding the legal duty incumbent upon them to be guided by the principles of efficiency and service to citizens when carrying out their actions, as the citizens should not be affected by any existing deficiencies, in accordance with the provisions of Law 30/1992 of the 26th of November, on the Legal System for the Public Administrations and on Common Administrative Procedures, modified by Law 4/1999 of the 13th of January.

To the **Government Delegation in the Principality of Asturias** regarding the legal duty incumbent upon it to comply with the provisions of Article 35.5 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, in respect of the use of data collected when registering unaccompanied minors, in that such data must only be used for the purposes provided for in the said order:

To the **Government Delegation in the Community of Madrid** regarding the legal duty to process a request for a hearing with the interested parties before making a ruling, and also the obligation to include in the negative rulings an individualised evaluation of the circumstances that, in each case, determine the denial of the request.

Regarding the legal duty incumbent upon it to register all the requests presented to it pursuant to article 35.c) of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

Regarding the legal duty incumbent upon it to give an express ruling on all the proceedings raised with it, thus complying with the provisions of article 42.2.c) of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

Regarding the legal duty incumbent upon it to accept for processing and concede any requested residence permits, to foreign minors under the guardianship of the Autonomous Community who can accredit their compliance with the requirements provided for in the said article, whatever the remaining period until the interested parties come of age, under article 35 of la Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society.

On the legal duty incumbent upon this body to make the effects of the residence permits for foreign minors under its guardianship retroactive to the time when they were put under the guardianship of the Autonomous Community's protection services, in compliance with the provisions of article 35.4 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society.

Regarding the legal duty incumbent upon it to quickly and satisfactorily make an express ruling on any requests and appeals, in accordance with what is established in Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and Common Administrative Procedures.

To the **Government Delegation in the Autonomous City of Ceuta** regarding the legal duty incumbent upon it to carry out the proceedings to return foreigners in the terms demanded by Articles 58 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, and article 157 of the Royal Decree 2393/2004, of the 30th of December, approving the Regulations of the Organic Law 4/2000, of the 11th of January, and ensure that the foreigner is given a hearing in order to guarantee him the option of making a request for asylum.

On the legal duty incumbent upon this body to comply with the provisions of article 35.4 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, on making the effects of the residence permits for foreign minors under its guardianship retroactive to the time when they were put under the guardianship of the protection services, issuing documentation in line with the appropriate type of residence permit.

To the **Government Delegation in the Autonomous City of Melilla** regarding the legal duty incumbent upon it to submit to current laws and therefore guarantee the rights of unaccompanied foreign minors who have come of age, in proceedings to cancel their residence permits, especially with respect to granting a hearing and providing notification.

To the **Government Sub-delegation in Alicante** regarding the legal duty incumbent upon it to submit to current laws, complying with the rules regulating administrative proceedings in Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

To the **Government Sub-delegation in Barcelona** regarding the legal obligation incumbent upon it to terminate the interested party's European Union Residency Permit via a resolution stating relevant legal grounds, as well as the legal obligation to formally notify the interested party of the said termination.

To the **Government Sub-delegation in Cádiz** regarding the legal duty incumbent upon it to accept for processing and concede any requested residence permits, to foreign minors under the guardianship of the Autonomous Community who can accredit their compliance with the requirements provided for in the said article, under article 35 of la Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society.

To the **Government Sub-delegation in Guipúzcoa** on the legal duty incumbent upon it to comply with the provisions of Article 35.4 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, on making the effects of the residence permits for foreign minors under its guardianship retroactive to the time when they were put under the guardianship of the relevant



protection services, and on the legal duty to issuing the permits for the period provided for in the rules.

To the **Government Sub-delegation in Málaga** regarding the legal duty incumbent upon it, in compliance with Article 106.1 of the Constitution to submit its action to the legal control of the tribunals and to ensure that whatever the tribunals agree with respect to preventive measures and injunctions is put into effect.

Regarding the legal duty incumbent upon it to immediately comply with the orders to take preventive measures or injunctions, in accordance with the provisions of Article 134.1 of the Law on the Jurisdiction of Administrative Appeals.

To the **Government Sub-delegation in Pontevedra** on the legal duty incumbent upon this body to comply with the provisions of article 35.4 of Organic Law 4/2000, of the 11th of January, on the rights and freedoms of foreigners in Spain and their integration into society, on making the effects of the residence permits for foreign minors under its guardianship retroactive to the time when they were put under the guardianship of the protection services, issuing documentation in line with the appropriate type of residence permit.

To the **General Mutual Benefit Fund for Civil Servants (Muface)** regarding the legal duty incumbent upon it to expressly inform the beneficiaries of agreements signed by the said mutual fund with private insurance companies that may affect them and which will allow them to ensure continued support by the private health service when they lose their right to the Muface health service.

## Ministry of Labour and Immigration

To the **Directorate General of the Public Employment Services** regarding the legal duty incumbent upon it, in accordance with Articles 41 and 42 of Law 30/1992 of the 26<sup>th</sup> of November on the Legal System for the Public Administrations and on Common Administrative Procedures, to expressly resolve, in a timely manner; whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings.

To the **National Social Security Institute (INSS)** regarding the legal duty incumbent upon it that the notification of the rulings made on temporary disability proceedings in which a certificate of discharge is issued, should be made within ten days, in accordance with the provisions of article 58 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures, in order to prevent interested persons being financially affected.

Regarding the legal duty to issue an express ruling on any complaints and requests submitted by citizens, and to notify them, in accordance with the provisions of Article 42.1 of Law 30/1992, of the 26<sup>th</sup> of November; on the Legal System for the Public Administrations and Common Administrative Procedures.

## Ministry of Housing

To the **General Technical Secretary** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed, with respect to processing requests for, and payment of, the basic income subsidy enabling young people to leave home, thus complying with Article 103 of the Constitution.

## Autonomous Administration

### Andalusia

To the **Education Department** regarding the legal duty incumbent upon it to resolve, quickly and satisfactorily, the complaints and requests presented to, it in the terms laid down by Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

To the **Department of Innovation, Science and Enterprise** regarding the legal duty incumbent upon it, to bring administrative actions into line with the principle of effectiveness recognised by Article 103 of the Constitution and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, thus complying with the provisions of Article 41 of Law 30/1992 of the 26<sup>th</sup> of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

## Principality of Asturias

To the **Department of Social Welfare and Housing** regarding the legal duty incumbent upon it, to bring administrative actions into line with the principle of effectiveness recognised by Article 103 of the Constitution and to comply with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings.

Regarding the legal duty incumbent upon it, to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, thus complying with the provisions of Article 41 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

To the **Education Department** regarding the legal duty incumbent upon it to make an express ruling on the complaint presented, in accordance with the provisions of Article 42 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

## Autonomous Community of Cantabria

To the **Department of the Presidency and Justice** regarding the legal duty incumbent upon it to ensure that the Court Clerk's Office and other organs responsible for carrying out the assumption of office of interim civil servants, registers its workers in the Social Security on the same day as the assumption of office took place.

To the **Directorate General of Commerce and Consumer Affairs** regarding the legal duty incumbent upon it, to bring administrative actions into line with the principle of effectiveness recognised by Article 103 of the Constitution, and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, thus complying with the provisions of Article 41 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

## Community of Castilla y León

To the **Education Department** regarding the legal duty incumbent upon it to act in a coordinated manner, especially in areas affected by intra-municipal activities, but also in the area of City Hall-Autonomous Community relationships, to bring its actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution.

## Extremadura

To the **Department of Equality and Employment** regarding the legal duty incumbent upon it, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens; to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings; and to comply with the citizens' right to be informed, at all times, of the status of the administrative procedures in which they are interested parties in accordance with Articles 35, 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures, .

To the **Department of Industry, Energy and the Environment** regarding the legal duty incumbent upon it to give sufficient grounds for any documents limiting subjective rights or legitimate interests, making reference not only to the legal norms on which they are based, but also to the reasons why these said norms impose the ruling that is made, in compliance with Article 54.1a) of Law 30/1992, of the 26th of November, on the Legal System for Public Administrations and Common Administrative Procedures.

To the **University of Extremadura** regarding the legal duty incumbent on the Rector to ensure that the regulatory and legal rules regulating the activity of the University, of which he is the highest academic authority, are strictly complied with.

## Galicia

To the **Department of the Environment, Land and Infrastructures** regarding the legal duty incumbent upon it to start punitive procedures for town planning infractions, and to process them in accordance with the principle of effectiveness included in Article 103.1 of the Constitution and Article 3 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures, modified by Law 4/1999 of the 13th of January.

To the **University of A Coruña**: the Rector is reminded, in letters sent on the 2nd of February and 24th of November 2009, of the legal duty incumbent on him to ensure that the University complies with various legal and constitutional rules in carrying out its activity.

## Balearic Islands

To the **Department of Commerce, Industry and Energy** regarding the legal duty incumbent upon it to diligently exercise its powers under the law in order to physically close, by sealing and/or closing down unauthorised facilities that are dangerous to the environment.

To the **Department of Health and Consumer Affairs** regarding the legal duty arising from Article 42 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures, to provide an express reply to any requests, complaints and appeals submitted by citizens.

## Community of Madrid

To the **Department of Culture and Tourism** regarding the legal duty incumbent on the Directorate General of Tourism to conform with Article 41 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures, with respect to the responsibility, of the heads of administrative departments and personnel working for the Public Administrations in charge of ruling on or handling cases, for processing them and protecting tourism users, in compliance with Article 4.b) of Law 1/1999, of the 12th of March, on the Management of Tourism, of the Community of Madrid.

To the **Department of Education** regarding the legal duty incumbent upon it to adopt such measures as are necessary in order to prevent classifications of schools being prepared, both in carrying out external evaluation tests and diagnostic tests on the education system, and in protecting and informing of the results.

To the **Department of Employment and Women** regarding the legal duty incumbent upon it, to bring administrative actions into line with the principle of effectiveness recognised by Article 103 of the Constitution and to comply with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by

citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings.

To the **Department of Families and Social Affairs** regarding the legal duty incumbent upon them to expressly resolve any letters or complaints submitted by the interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and on Common Administrative Procedures.

Regarding the legal duty incumbent upon it, with respect to a procedure to request help for families who are looking after dependant senior citizens, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, in compliance with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

To the **Department of Health** regarding the legal duty incumbent upon it to demand compliance with the provisions of Law 28/2005, of the 26th of December; on health measures to combat smoking and regulate the sale, supply, consumption and advertising of tobacco products.

To the **Department of Environment, Housing and Land Management** regarding the legal duty incumbent upon it, when a request is presented for environmental information which is not under its control to send it on to the public authority or authorities which possesses the information, informing the petitioner of this fact. This is in compliance with the provisions of Article 10.2.b) of Law 27/2006, of the 18th of July, regulating rights to access information, to public participation, and access to justice on environmental matters.

To the **Directorate General of Housing and Restoration** regarding the legal duty incumbent upon it to act as fully subject to the Law and Justice in accordance with Article 103.1 of the Constitution, and in line with the principles of effectiveness established in the said Article 103 of the Constitution and Article 3.1 of Law 30/1992, of 26th November; on the Legal System for the Public Administrations and on Common Administrative Procedures.

Regarding the legal duty incumbent upon it to organise its services in order to speed up the processing and ruling on requests for basic income subsidy enabling young people to leave home, presented by the interested parties, in compliance with what is established in Article 41 of Law 30/1992, of the 26<sup>th</sup> of November; on the Legal System for the Public Administrations and on Common Administrative Procedure.

Regarding the legal duty incumbent upon it to process and execute punitive processes on protected housing, in accordance

with the principle of effectiveness and as fully subject to the Law and Justice, in accordance with Article 103 of the Constitution.

Regarding the legal duty incumbent upon it to bring administrative actions into line with the principle of legitimate expectations, when providing information to citizens on the Autonomy's housing plans.

To the **Housing Institute of Madrid** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed, with respect to the delay of 24 years in recovering the amount of several invoices for water supply.

## Region of Murcia

To the **Department of Social Policy** regarding the legal duty incumbent upon it, in accordance with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings.

To the **Directorate General of Land and Housing** regarding the legal duty incumbent upon it to bring administrative actions into line with the principle of effectiveness contemplated in Article 103 of the Constitution and Article 3.1 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures.

## Basque Region

AI **Department of Education, Universities and Research** regarding the legal duty incumbent upon it to give an express ruling on the request presented by the interested party and inform her of the reasons why it is not possible to issue the certificate requested. This being in accordance with Article 42 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

## Community of Valencia

To the **Department of Social Welfare** regarding the legal duty incumbent upon it, with respect to a proceeding to evaluate the a citizen's situation of dependence, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, in compliance with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

Regarding the legal duty incumbent upon it to process notifications of rulings on the individual attendance programme



within ten days as from the date on which the ruling was made, in the terms provided for in Articles 58 and 59 of Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

Regarding the legal duty incumbent upon it, with respect to the approval of an individualised programme to support a dependent citizen, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, in compliance with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

Regarding the legal duty incumbent upon it, with respect to a proceeding to evaluate the a citizen's situation of dependence, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, in compliance with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

Regarding the legal duty incumbent upon it, with respect to a proceeding to evaluate the a citizen's situation of dependence, to expressly resolve, within the times laid down, whatever requests, complaints and appeals are presented by citizens and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, in compliance with Articles 41 and 42 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

To the **Department of Justice and Public Administration** regarding the legal duty to exercise its disciplinary power and take all necessary measures to prevent the malfunctions that led to a citizen continuing to be deprived of his liberty due to a delay in the notification of a Writ of Release.

To the **Department of Health** regarding the legal duty arising from Article 42.1 of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures, to provide an express reply to any requests and appeals submitted by interested parties, despite the deadline for ruling expressly provided for in Article 43.1 of the said Law 30/1992, of the 26th of November having expired.

### **Autonomous City of Melilla**

To the **Department of Social Welfare and Health** regarding the legal obligation to act as fully subject to the Law and Justice, for which it will have to adopt the relevant provisions and carry out

the appropriate actions in order to comply with norms and deadlines for documentation.

Regarding the legal duty incumbent upon it to respect the provisions of Article 276 of the Civil Code and declare that the interested party is no longer in a state of abandonment only when one of the conditions for terminating guardianship established in the said rule is present.

### **Local Administration**

**City Hall of Alcalá de Xivert (Castellón):** regarding the legal duty imposed by judicial order to quickly and satisfactorily decide upon and notify an express ruling, stating relevant legal grounds, on any requests submitted by interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and on Common Administrative Procedures.

**City Hall of Arrecife (Las Palmas):** regarding the legal duty incumbent upon them to reply to any requests and appeals submitted by interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and of Common Administrative Procedure, and also the obligation to collaborate with and assist, preferentially and urgently, the Ombudsman in his investigations and inspections.

**City Hall of Avilés (Asturias):** regarding the legal duty imposed by judicial order to give, quickly and satisfactorily, an express response to any requests and letters submitted by interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and on Common Administrative Procedures.

**City Hall of Bárcena de Cicero (Cantabria):** regarding the legal duty incumbent upon it to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Burgos:** regarding the legal duty incumbent upon it to act in a coordinated manner, especially in respect of intra-municipal activities, but also in the area of City Hall-Autonomous Community relationships, to bring its actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and in Article 3 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and on Common Administrative Procedures.

**City Hall of Colmenar Viejo (Madrid):** regarding the legal duty incumbent upon it, in exercising its responsibilities with respect to activities causing annoyance, to respond to or react appropriately to well-grounded complaints made by citizens.

**City Hall of Cudillero (Asturias):** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and of Common Administrative

Procedures, and the legal duty to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Cullera (Valencia):** Regarding the legal duty incumbent upon it to quickly and satisfactorily give an express ruling on all the proceedings raised with it, thus complying with the provisions of article 42 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

**City Hall of Daimiel (Ciudad Real):** regarding the legal duty incumbent upon it to comply with, as the highest priority, the regulations on waste water treatment and the rulings issued in this respect by the regulating body for the river basin.

**City Hall of Deleitosa (Cáceres):** regarding the legal duty incumbent upon it to quickly and satisfactorily decide upon and notify an express ruling, stating relevant legal grounds, on any appeals and complaints submitted by interested parties, in accordance with the provisions of Article 42 of Law 30/1992, of the 26th of November; of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of El Boalo (Madrid):** regarding the legal obligation to rule on requests for first occupation licenses for homes in accordance with current legislation.

**City Hall of El Ejido (Almería):** regarding the legal duty incumbent upon it to preferentially and urgently assist this Institution in its investigations, independently of any administrative or jurisdictional actions which may assist citizens in their relationships with the administrations, in accordance with the provisions of Article 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of El Molar (Madrid):** regarding the legal obligation to rule on requests for first occupation licenses for homes in accordance with current legislation.

**City Hall of El Perelló (Valencia):** Regarding the legal duty incumbent upon it to quickly and satisfactorily give an express ruling on all the proceedings raised with it, thus complying with the provisions of article 42.c) of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

**City Hall of Fermoselle (Zamora):** regarding the legal duty incumbent upon it to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Huércanos (La Rioja):** regarding the legal duty incumbent on this City Hall's authorities and civil servants to act with confidentiality, maintaining due discretion about the matters they have knowledge of because of their posts, and to maintain confidentiality with respect to the information provided to them, in compliance with the provisions of Articles 53.12 of Law 7/2007, of the 12th of April on the Basic Statute for Public Employment, and 16.3 of Royal Decree 2568/1986, of the 28th

of November; approving the Regulations for the Organisation, Operation and Legal Framework for Local Government Bodies.

**City Hall of León:** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures, and the legal duty to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Lliria (Valencia):** regarding the legal duty incumbent upon it, to act in accordance with the principle of effectiveness recognised by Article 103 of the Constitution, and to remove any obstacles that might impede, hinder or delay the concerned parties' exercise of rights or respect for their legitimate interests, providing whatever is necessary to avoid and eliminate any irregularity in the processing of proceedings, thus complying with the provisions of Article 41 of Law 30/1992 of the 26th of November on the Legal System for the Public Administrations and on Common Administrative Procedures.

**City Hall of Madrid:** regarding the legal duty to ensure that natural resources are used rationally, as provided for in Article 45 of the Constitution, which establishes that all have the right to enjoy a suitable environment.

Regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures, and the legal duty to quickly and satisfactorily give an express ruling, stating relevant legal grounds, on the proceedings, thus complying with the provisions of article 42 of the said Law 30/1992, of the 26th of November.

Regarding the legal duty imposed by judicial order to, quickly and satisfactorily, decide upon and notify an express ruling, stating relevant legal grounds, on any requests submitted by interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and on Common Administrative Procedures.

Regarding the legal duty incumbent upon it to issue those reports it considers necessary in order to resolve the administrative procedure, by the usual deadlines, and under the conditions laid down in article 83.c) of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

To the **Municipal Land and Housing Company (EMVS):** regarding the legal duty incumbent upon it to bring its actions into line with the principle of effectiveness contemplated in Articles 103 of the Constitution, Article 3 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures,

and 6.1 of Law 7/1985, of the 2nd of April, on the Regulations for the Foundation of Local Government.

**City Hall of Marbella (Málaga):** regarding the legal duty incumbent upon it to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Mazcuerras (Cantabria):** regarding the legal duty incumbent upon it to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Medina del Campo (Valladolid):** regarding the legal duty incumbent upon it to comply with, as the highest priority, the regulations on waste water treatment and the rulings issued in this respect by the regulating body for the river basin.

**City Hall of Móstoles (Madrid):** regarding the legal duty to recognise that, in accordance with the law, reports on traffic matters are not valid if they do not state on the report form the reason why they were not delivered by hand.

Regarding the legal duty to quickly and satisfactorily decide upon and notify an express ruling, stating relevant legal grounds, on any appeals and complaints submitted by interested parties, in accordance with the provisions of Article 42 of Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

Regarding the legal duty incumbent upon it to quickly and satisfactorily give an express ruling on the requests and appeals raised with it, thus complying with the provisions of article 42.c) of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures.

**City Hall of Palma de Mallorca:** Regarding the legal duty incumbent upon it to bring municipal actions into line with the principles of effectiveness, economy and speed, and quickly and satisfactorily decide upon and notify an express ruling, stating relevant legal grounds, on any requests submitted by interested parties, in accordance with what is established in Articles 3 and 42 of Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Plasencia (Cáceres):** regarding the legal duty arising from Article 42.1 of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures, to provide an express reply to any requests and appeals submitted by interested parties.

**City Hall of Pozo Alcón (Jaén):** regarding the legal duty to quickly and satisfactorily decide upon and notify an express ruling, stating relevant legal grounds, on any requests submitted by interested parties, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and on Common Administrative Procedures.

**City Hall of Rivas-Vaciamadrid (Madrid):** regarding the legal duty incumbent upon it to bring administrative actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November, on the Legal System for the Public Administrations and of Common Administrative Procedures, and the legal duty to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Santa María de la Alameda (Madrid):** regarding the legal duty incumbent upon it to preferentially and urgently assist this Institution in its investigations, sending the requested obligatory reports within the maximum period of 15 days, in accordance with the provisions of Articles 18.1 and 19.1 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

**City Hall of Santander:** regarding the legal duty incumbent upon it to ensure that legality is observed in town planning matters, by making use of the mechanisms provided for by legislation on land and town planning management in order to effectively re-establish legality when it is infringed, in accordance with the principles of effectiveness, economy and speed.

Regarding the legal duty to make developers comply with their duties under Article 100 of Law 2/2001, of the 25th of June, on Land Management and the Town Planning Framework of Cantabria and, if they do not, to initiate and process punitive proceedings due to a serious infringement of Town Planning Laws.

**City Hall of Santos Martas (León):** regarding the legal duty incumbent upon them to resolve, quickly and satisfactorily, any complaints and requests submitted to them and answering any questions or petitions raised, in accordance with Law 30/1992, of the 26th of November, of the Legal System for the Public Administrations and of Common Administrative Procedure.

**City Hall of Son Servera (Balearic Islands):** regarding the legal duty arising from Article 42.1 of Law 30/1992, of the 26th of November, on the Legal System for Public Administration and Common Administrative Procedures, to provide an express reply to any requests and appeals submitted by interested parties, despite the ruling deadline expressly provided for in Article 43.1 of the aforementioned Law 30/1992, of the 26th of November.

**City Hall of Tielmes (Madrid):** regarding the legal obligation to rule on requests for first occupation licenses for homes in accordance with current legislation.

**City Hall of Valdemoro (Madrid):** regarding the legal duty imposed on it by judicial order; to respond to requests for town planning information made by the interested parties, within the deadlines laid down by Law, thus complying with the provisions of Article 10.2.c) of Law 27/2006, of the 18th of July, regulating rights to access information, to public participation, and access to justice on environmental matters.

**City Hall of Valencia:** regarding the legal duty incumbent upon it to bring municipal actions into line with the principles of effectiveness, economy and speed contemplated in Article 103 of the Constitution and Article 3 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and of Common Administrative Procedures, for which it is essential to comply with the times stipulated in current regulations.

**City Hall of Vigo (Pontevedra):** regarding the legal duty incumbent upon it to ensure that legality is observed in town planning matters, by making use of the mechanisms provided for by legislation on land and town planning management in order to effectively re-establish legality when it is infringed, in accordance with the principles of effectiveness, economy and speed.

**Resident's Council of Ubierna (Burgos):** regarding the legal duty incumbent upon them to respond to the request for information presented by the interested party, on the regulated procedure for executing a forced exchange, in accordance with the provisions of Articles 35 and 42 of Law 30/1992, of the 26th of November; of the Legal System for the Public Administrations and of Common Administrative Procedure.

#### Others

**Cantabria Bar Association:** regarding the legal duty of the lawyers included among the state-appointed lawyers of the Jurisdiction of Minors, to comply with the obligations laid down in Law 1/1996, of the 10th of January, on Free Legal Aid and Representation, with respect to truly and effectively carrying out their functions of assistance and defence until the process in the court ends and, where appropriate, the enforcement of the judgement, taking into account the special characteristics laid down for these judicial proceedings in Organic Law 5/2000, of the 12th of January, regulating the criminal liability of minors.

**Palencia Bar Association:** regarding the legal duty to apply the provisions of Article 63 of Law 30/1992, of the 26th of November; of the Legal System for the Public Administrations and of Common Administrative Procedures, with respect to whether actions by the Administration which infringe in any way on the judicial order can be annulled.

**Official Spanish College of Geologists:** Regarding the legal duty incumbent upon them to expressly, and in the times laid down, resolve any requests, complaints and appeals submitted by citizens, in accordance with what is established in Article 42 of Law 30/1992, of the 26th of November; on the Legal System for the Public Administrations and on Common Administrative Procedure.

**Irrigation Community of Logroño:** Regarding the legal duty incumbent upon it to notify the interested parties, in writing of any rulings and administrative documents that affect their rights and interests, in accordance with Articles 55 and 58 of Law 30/1992, of the 26th of November; on the Legal System for Public Administration and Common Administrative Procedures.

## WARNINGS

### General State Administration

#### Ministry of Defence

To the **Armed Forces Housing Institute (INVIFAS):** a warning regarding the criteria used when processing administrative proceedings for eviction from military housing.

#### Ministry of Public Works

To the **National Air Safety Agency (AESA):** a warning regarding the obligation to be liable for any damages caused to the interested party as a consequence of the delay in processing the granting of an administrative authorisation.

#### Ministry of the Presidency

To the **Government Sub-delegation in Santa Cruz de Tenerife:** a warning that the lack of response to the Ombudsman's repeated requests for specific data with respect to a possible contradiction, may involve an unjustified failure to collaborate and be specially mentioned in the Annual Report to Parliament.

#### Ministry of Housing

To the **Sociedad Pública de Alquiler, S.A. (Public Company for Rental Housing ):** a warning that the company's legal representative is obliged to provide and sign the report obtained by the Ombudsman. A warning is likewise given that persisting in the hostile attitude detected by the Ombudsman, or a failure to attend to this request, obstructing the Ombudsman's supervisory function, may result in a special mention in the Annual Report to Parliament, in accordance with Article 18 of Organic Law 3/1981, of the 6th of April, on the Ombudsman.

### Autonomous Administration

#### Galicia

To the **Department of the Environment, Land and Infrastructures:** in a letter of the 24th of April 2009, addressed to the former Department of Housing and Land, a warning is given about the legal obligation to enforce the ruling made in a punitive proceeding.

### Local Administration

**City Hall of Alboraya (Valencia):** a warning about the discrepancy between the information now supplied by this City Hall with respect to the breadth of the shore protection easement zone, and that in the Ombudsman's dossier; and about the need to clarify this.

**City Hall of Arganda del Rey (Madrid):** a warning that if it persists in failing to cooperate with this Institution by not complying with our request for documentation, its attitude will be considered a hindrance.

**City Hall of Madrid:** a warning about the obligation to regularly provide general and accessible information on the environmental quality of air in Madrid.

**City Hall of Segovia:** a warning about the obligation to suitably and completely respond to requests for information send

by the Ombudsman and, if this is not done, of the possibility of considering this Corporation to be hostile and a hindrance to the Ombudsman in fulfilling the functions constitutionally entrusted to that office.

**Island Council of El Hierro (Santa Cruz de Tenerife):** a warning that the lack of response to the Ombudsman's repeated requests for specific data with respect to a possible contradiction, may involve an unjustified failing to collaborate and be specially mentioned in the Annual Report to Parliament.

#### Others

**District Office of the Official Association of Architects of Castilla-La Mancha in Guadalajara:** a warning that, if it persists in failing to cooperate with this Institution by not responding to our request for documentation its attitude will be considered a hindrance, taking into account that the activities of corporations of public law, in accordance with their judicial nature, which is recognised by the legal rules for the creation of professional associations, are subject to Administrative Law and therefore subject to supervision by the Ombudsman.

## OMBUDSMAN PUBLICATIONS IN 2009

2009 saw the publishing of *Recomendaciones y Sugerencias 2008* [*Recommendations and Suggestions 2008*], *Informe de Gestión 2008 y sus debates parlamentarios* [*2008 Report and corresponding parliamentary debates*], as well as The Summary of that report in Spanish and English. These publications can be consulted on the website [www.defensordelpueblo.es](http://www.defensordelpueblo.es)



# Appeals of Unconstitutionality

The Ombudsman is authorised to impose appeals of unconstitutionality and legal protection, as expressed in the Organic Law of the Constitutional Courts. In 2009, the Ombudsman was asked to consider seven laws for appeal of unconstitutionality but did not accede to any of the requests.

## Requests for Intervention

All filers were informed of the basic aspects of the resolutions adopted, whose entirety may be consulted in the full report which is published by the Ombudsman, and put on its website ([www.defensordelpueblo.es](http://www.defensordelpueblo.es)). It is also published by Parliament.

The laws that the Ombudsman was asked to consider for appeal of unconstitutionality were the following:

- Law 2/2008, of 23 December, on the General State Budget for 2009.
- Law on the Autonomous Community of the Basque Region 19/2008, of the 29th of December, approving the General Budget for the Autonomous Community of Euskadi for 2009.
- Law of the Valencian Community 16/2008, of the 22nd of December, on Fiscal Measures, Administrative and Financial Management and the Organisation of the Generalitat.

- Law of the Madrid Community 3/2008, of the 29th of December, on Fiscal and Administrative Measures.
- Law of the Galician Autonomous Community 18/2008, of the 29th of December, on Housing in Galicia.
- Law of the Aragon Autonomous Community 6/2009, of the 6th of July, on High Capacity Leisure Centres in Aragon.
- Law of the Catalan Autonomous Community 12/2009, of the 10th of July, on Education.

## Appeals for Legal Protection

Over the course of 2009, express requests were received soliciting the intervention of a legal protection appeal which manifestly did not comply with the requisites stipulated in Article 44 of the Organic Law 2/1979, of the 3rd of October on the Constitutional Court, either because they had not exhausted all other methods of legal recourse stipulated by the processing regulations relevant to the particular case, nor commenced formal legal proceedings, where possible, on discovery of the violation of Constitutional Law, or they had solicited the appeal outside the deadline for the intervention provided for in that Law.

## OMBUDSMAN PUBLICATIONS DRAFTED IN COLLABORATION WITH OTHER INSTITUTIONS IN 2009

In 2009, Volume One of Cuadernos Democracia y Derechos Humanos [Handbook on Democracy and Human Rights] was published in collaboration with the Faculty of Democracy and Human Rights at the University of Alcalá under the title “*los derechos sociales como una exigencia de la justicia*” [“*Social Rights as a Requirement of Justice*”]. The front cover is shown here.





# Administrations that failed to comply or have notably delayed their responses to the Ombudsman's official notifications requesting information

The following sections list the organizations and departments of the various administrations that failed to take appropriate action regarding the Ombudsman's requests or official notifications. They thus neglected to fulfil the duty of all public authorities to collaborate "in a swift and preferential manner" with this Institution, in accordance with article 19 of the Organic Law 3/1981. In such cases, article 18.2 of the aforementioned Organic Law authorizes the Ombudsman to declare the organization or administrative department in question to be "hostile or a hindrance to its functions", and also to inform Parliament of this fact via publication in the annual report, or, if appropriate, a special report. As per the aforementioned precepts, actions that took place in 2009 with an unsatisfactory outcome are described below. The first section identifies those administrations whose actions are considered uncooperative, having either hampered or even blocked the work of the Ombudsman altogether; whether systematically or stubbornly, in the course of an investigation. The second section lists the administrations which, for one or more investigations, have not responded to a request for information, after having been notified of the request three times. The third section, which can be consulted in the full report, indicates those administrations that only responded to the Ombudsman's requests for collaboration after the third such demand had been made.

## Uncooperative administrations

### Local Administration

- **City Hall of Abegondo (A Coruña)**, regarding the failure to notify the interested party as to whether his report that works were being carried out without a license had resulted in sanction proceedings being initiated.
- **City Hall of Amorebieta-Etxano (Vizcaya)**, regarding the residents of a building being disturbed by noise, vibrations, and air pollution resulting from a florist's business.
- **City Hall of Castellanos de Moriscos (Salamanca)**, regarding works being carried out without a license and the storage of materials on publicly owned land.
- **City Hall of Castrocontrigo (León)**, regarding damage caused to private land due to works being undertaken to improve the channelling of the Codes river.
- **City Hall of El Ordial (Guadalajara)**, regarding the irregular processing of a request for a license for construction work.
- **City Hall of Garciotún (Toledo)**, regarding the irregular processing of a license to open a poultry farm.
- **City Hall of Gordoncillo (León)**, regarding disturbances caused by a livestock farm.

- **City Hall of Herrera de Pisuergra (Palencia)**, regarding the fact that land zoned as a public road has been occupied.
- **City Hall of Huércanos (La Rioja)**, regarding a formal complaint about the town hall's lack of action when a public right of way was blocked.
- **City Hall of Jarandilla de la Vera (Cáceres)**, regarding disturbances caused by an open-air drinking session.
- **City Hall of Navajas (Castellón)**, regarding irregularities in plot re-allocations proceedings.
- **City Hall of Peñíscola (Castellón)**, regarding the annoyance caused by the noise and rubbish produced by a supermarket.
- **City Hall of Pola de Laviana (Asturias)**, regarding the disturbance caused by the noise produced by extractor fans installed in the garage of a dwelling.
- **City Hall of Puerto de la Cruz (Santa Cruz de Tenerife)**, regarding the resistance shown to taking disciplinary action on a member of the local police force, in spite of a sentence having been passed for wilful offences.
- **City Hall of Vitigudino (Salamanca)**, regarding a claim that a pedestrian path should be constructed in order to connect a housing development to the village.
- **City Hall of Yepes (Toledo)**, regarding annoyance caused by noise coming from leisure premises.

## Administrations that have not replied in 2009, after the third request

### General State Administration

- **Ministry of Foreign Affairs and Cooperation**  
To the **Directorate General of Consular Assistance and Affairs**, regarding the lack of any reply by the Consulate in Islamabad to a request for family reunification made by a Pakistani citizen.
- **Ministry of Public Works**  
To the **National Highway Demarcation Board for Western Andalusia**, regarding the lack of any response to a letter dated the 26th of May 2006 requesting that the planned works to construct a noise-reduction screen be undertaken, and also that the work to asphalt the service lane in the "Rincón de la Victoria-Algarrobo section of the Málaga-Nerja Mediterranean Expressway" be completed, so that the interested party will be able to live in his home.
- **Ministry of Industry, Tourism and Trade**  
To the **Secretary of State for Telecommunications and the Information Society**, by reason of the contracting of a telephone line with Ya.com on January 29, 2008 for the purpose of making telephone calls, as this request has yet to materialise.

Regarding the fact that a communication was sent, in its day, to that Secretary of State, but to date no decision has been obtained on the matter that was raised.

- **Ministry of the Environment and for Rural and Marine Resources**

To the **Secretary of State for Rural and Water Resources**, regarding the refusal to provide information on water savings.

- **Ministry of the Presidency**

To the **Delegation of Government in the Autonomous Community of Andalusia**, regarding the delay in replying to a request for help made by a Spanish citizen with respect to an airplane accident in which several members of his family died. Regarding the lack of any response to a letter dated 9 November 2006, or to successive repetitions of the request, asking for assistance as a consequence of the fires which took place in Conil de la Frontera (Cadiz) in the summer of that year, 2006.

## **Autonomous Administration**

- **Canary Isles**

To the **Department of Education, Universities, Culture and Sports**, regarding the inadequate educational attention received by students affected by dyslexia, with the aim of checking on the conditions under which these students are given specific educational support.

- **Community of Madrid**

To the **Department of Transport and Infrastructure**, regarding the plan to remodel the Los Rosales Avenue in the Villaverde district of Madrid.

- **Community of Valencia**

To the **Department of the Environment, Water, Town Planning and Housing Resources**, regarding the sale of a publicly developed home.

## **Local Administration**

- **City Hall of Alboraya (Valencia)**, regarding buildings in the protected shore zone.
- **City Hall of Aranjuez (Madrid)**, regarding the annoyance caused by the noise from bars.
- **City Hall of Badajoz**, regarding waste water treatment.
- **City Hall of Bedia (Vizcaya)**, regarding the interested party's request for plans of the municipal sewage system.
- **City Hall of Bollullos Par del Condado (Huelva)**, regarding the delay in approving the General Plan for Urban Zoning.
- **City Hall of Bormujos (Sevilla)**, regarding non-compliance with the Road Cleaning Ordinance.
- **City Hall of Brenes (Sevilla)**, regarding the annoyance caused to residents by a park which, since it is open 24 hours a day, is used at unsuitable hours by groups of young people on mopeds and quad bikes.
- **City Hall of Briones (La Rioja)**, regarding the concentration of fragmented plots in Ollauri, carried out in 2000, in which certain properties in the Briones municipality were transferred.

- **City Hall of Burguillos de Toledo (Toledo)**, regarding construction works which are not in accordance with a special plan for renovating the town (PERI).

- **City Hall of Castro Urdiales (Cantabria)**, regarding measures to be taken by the Town Hall in order to ensure that the land required in order to complete a road and its urban infrastructures is obtained.

- **City Hall of Ciudad Real**, regarding open-air drinking sessions in the Torreon area.

- **City Hall of Colmenar Viejo (Madrid)**, on a formal complaint regarding the construction of a house and the enclosure of the plot.

- **City Hall of Deià (Balearic Islands)**, regarding the dumping of waste on some vacant lots.

- **City Hall of El Escorial (Madrid)**, regarding the fact that a demolition order was not carried out.

- **City Hall of Fresnedillas de la Oliva (Madrid)**, regarding payments of the tax on rural real estate.

- **City Hall of Gandía (Valencia)**, regarding the construction work carried out that has significantly affected, and halted, the postal delivery service for residents in the Marxuquera district.

- **City Hall of Karrantza Harana/Valle de Carranza (Vizcaya)**, regarding the charging of drainage rates in an area where there is no sewage network and regarding the quality of the running water for drinking, which, according to a report by the Health Department of the Basque Government, has aluminium levels well above the usual levels.

- **City Hall of La Pernía (Palencia)**, regarding the existence of a large plaque to the Franco regime on the facade of the state school in San Salvador de Cantamuda, and the fact that the name of the school refers to a general in Franco's army who was Civil Governor during the years following the Civil War.

- **City Hall of Langreo (Asturias)**, regarding a request for a home.

Regarding the fact that there has been no reply to several letters presented to the City Hall's Registry on the 25th of March 2008.

- **City Hall of Las Palmas de Gran Canaria**, regarding the ongoing neglected state of the street on which the interested party lives, which does not even have pavements.

Regarding the transfer, by the City Hall of Las Palmas de Gran Canaria, to the Island Council of Gran Canaria, of a claim for damage to the claimant's house due to certain construction works, this obligation arising from compliance with the principles of efficiency and service to the citizen that should govern all administrative actions.

- **City Hall of León**, regarding certain construction works having been carried out without a license.

Regarding the lack of supervision in a park in the El Ejido neighbourhood which is used daily by dogs, including some dangerous breeds which neither wear muzzles nor are on leads, despite the fact that there is a sign at the entrance saying that it is forbidden to have dogs in the park.

- **City Hall of Llanes (Asturias)**, regarding the disturbance due to noise suffered by residents in the centre of the town.



- **City Hall of Manzanares el Real (Madrid)**, due to the fact that real estate taxes are being charged based on incorrect land register data.
- **City Hall of Molinaseca (León)**, regarding the lack of any reply to several letters requesting information.
- **City Hall of Móstoles (Madrid)**, regarding a formal complaint about infractions of town planning regulations.
- **City Hall of Motilla del Palancar (Cuenca)**, related to the payment by the claimant, since 1999, of incorrectly calculated real estate taxes. Particularly emphasising the high number of claims presented to both the City Hall and the Cuenca Land Register Department, with no result whatsoever.
- **City Hall of Murcia**, on the fact that a first occupation license for a home was not granted.
- **City Hall of Murillo de Río Leza (La Rioja)**, regarding the appeal for repositioning made by the interested party against the City Hall's agreement as to certain construction carried out for which special local taxes were established, no response to the appeal having been received.
- **City Hall of Pedrezuela (Madrid)**, regarding disagreement with an order to suspend works that do not comply with the license.
- **City Hall of Rivas-Vaciamadrid (Madrid)**, regarding unpleasant smells from the Valdemingómez facilities.
- **City Hall of Robledo de Chavela (Madrid)**, on the failure to reply to a request for town planning information.
- **City Hall of San Miguel de Abona (Santa Cruz de Tenerife)**, regarding the ownership, according to the land register, of a plot belonging to the complainant, currently involved in a double registration process filed for by another resident of the town.
- **City Hall of San Pedro del Pinatar (Murcia)**, regarding claims for several payments of the tax on real estate which have already been paid, made against the replacement fee-payer.
- **City Hall of Santa Margalida (Balearic Islands)**, regarding the annoyance caused by a car park and a henhouse.
- **City Hall of Tui (Pontevedra)**, about the fact that a building license was not granted.
- **City Hall of Valleseco (Las Palmas)**, regarding certain construction works without a license.
- **City Hall of Vera (Almería)**, regarding irregularities in carrying out town planning works.
- **City Hall of Vigo (Pontevedra)**, regarding the specific way in which a notification of a traffic report was made, in which all

the personal data and information on the traffic offence that was committed were stated on the rear of the notification, considering that the disclosure of personal data infringes the right to privacy.

- **City Hall of Villamiel (Cáceres)**, regarding the City Hall's refusal to provide public lighting and sewage services to the house owned by the complainants in this town.
- **City Hall of Villamuriel de Cerrato (Palencia)**, regarding the presentation of a letter requesting that discrepancies be corrected, sent to the Palencia Land Register Department on the 13th of March 2007.
- **Cabildo Insular de Tenerife**, on the obligation to take action due to subrogation in the resolution of a claim presented about the lack of suitable nursing provision or a First Aid box adequate for providing First Aid in case of accident or sudden illness, in a theme park located in Puerto de la Cruz (Santa Cruz de Tenerife), as well as the fact that there were no complaint sheets.
- **Rural parish of Corollos, La Fenosa, Villeirín and Orderias (Asturias)**, regarding the fact that the Resident's Assembly has not been called by the President of the Rural Parish since 1995, which is a clear non-compliance with the legal provisions with respect to the operation of the Parish as an open council.

## Others

- **Badajoz Bar Association**, regarding the professional performance of the state appointed lawyer.
- **Huelva Bar association**, regarding the professional performance of two lawyers who were designated to the interested party.
- **National College of Doctors and Graduates in Political Sciences and Sociology**, regarding the fact that only Spaniards and citizens of other member states of the European Union can become members.

## Administrations that have replied to the third notification

Due to lack of space we have not included here the list of those Administrations which answered the Ombudsman's third request. The list of Ministries, Autonomous Communities and Local Administrations, and other public organizations that fall into this category can be found in the complete version of this report.



## MANAGEMENT SUMMARY



## Individual complaints lodged through the institutional website increased

The most important actions undertaken by the General Secretary during the course of 2008 are briefly listed below, as well as the information pertaining to attending the public and the financial and budget management. It must be mentioned that because of the very nature of the General Secretary's duties, mainly providing support to the entire Institution, there is a great degree of coordination which makes the Ombudsman's Office management orderly and efficient.

### The Citizen Service Department and Internal Regulations

Construction projects were carried out in both buildings to improve and preserve them; among these were the installation of new fire detection system and a centralized fire protection network supervision and management system, to improve building safety. The security and theft detection systems were also updated.

Management was also noticeably improved with the digitalization of documents from the General Registry through the purchase of new, more advanced technical equipment.

### Financial and Budget Management

At the close of 2009, budget implementation reached 94.32%. Moreover, we managed to reach a percentage increase of the available balance by 13.86%, compared to 2008.

### Studies and Modernization

Apart from drawing up the Annual Report for Parliament, in matters regarding collaboration agreements the Ombudsman signed a total of 7 agreements in 2009 with the following institutions: The Complutense University, The Autonomía University and The Pontificia de Comillas University, The Ombudsman of Ecuador, UNICEF, The Ombudsman of the Region of Murcia and the Valsaín Foundation.

Regarding training, the Ombudsman's office runs a course at the Complutense University on *"Protecting the rights of minors with behavioral disorders and social problems"*; language courses, the INAP (National Institute of Public Administration) courses, computer training courses, an online Master in Human Rights, Rule of Law and Democracy and a Master in the International Protection of Human Rights.

Regarding external relations and international cooperation, we must especially mention our participation in the activities promoted by the FIO (Ibero-American Federation of Ombudsmen) and, in particular, organizing the XIV Congress, which took place in Madrid from the 27th to 30th of October 2009; attending the different delegations that visited the Institution throughout the year; coordinating and managing

the activities involved in awarding and publicizing the III King of Spain Human Rights Awards; and technical assistance, in collaboration with the AECID (Spanish Agency for International Cooperation and Development), to the Egyptian National Committee on Human Rights and the Ombudsman of Montevideo (Uruguay).

Regarding the Institution's public information activities, we attended a total of 23 groups or collectives that came to inform themselves on the Institution.

Regarding the documentation service, more than 24,000 visitors consulted the Documentation Center section in our website, with a total of 91,000 pages visited. The most consulted document was the Annual Report 2008.

### Department of Information Technology

Firstly, we must highlight the renovation of our IT infrastructure and the migration of the old system to the new one (data, codes, procedures, programs, etc.). The redesign of the new system allows the possibility of developing new functions of visualization and execution of tasks, which will improve the workflow.

Another important innovation worthy of mention is the use of a new control panel where the heads of the Institution can view the processing of reports and the evolution of statistical data in real time. This lets us analyze the evolution of the tendencies in the content of the complaints lodged as well as other aspects derived from our daily activity, and simplifies the writing of specific reports on different matters that may be of interest. This system will also provide more qualified information from the statistical data, which could enrich the content of the Annual Report.

In 2009, the project to digitalize documents in the Institution's historical archives came to an end. The Project began in 2008.

Lastly, regarding our technology infrastructure, it is also important to mention the end of the SARA communications network project, promoted in collaboration with the Ministry of Public Administrations, with the acceptance of several certificates in the signing process for our website and drawing up a new security document in order to comply with the current data protection law.

### Attending the public

Regarding service to the public, the number of incoming complaints processed in 2009 increased by 4.7% with 48,150 processed, while outgoing complaints increased by 12.5%, with 67,242 processed. Service via telephone also increased by 9.8%

through the standard switchboard as well as our 900 number; which increased the volume of calls by 7.6%. The amount of physical visits did not vary greatly from 2008. Last year, we received 2,846, while in 2008 we reached a total of 2,901 visits.

The following tables and graphs show the number of complaints according to the manner received in 2009, compared to 2008, and the number of calls and visits received in 2009, compared to 2008.

Throughout 2009, use of the Institution's webpage consolidated itself in lodging complaints. There was a steady in-

crease in the individual complaints lodged through the complaint form included in the website, which reached 48.86% of all the complaints received.

The following table shows the visits to the institutional website together with the total pages visited in 2009, compared to 2008.

A comparison of the information in the previous table shows a considerable increase in the visits to the Ombudsman's website, and a spectacular increase in the pages visited in 2009, compared to 2008.

**TABLE 32**  
**Breakdown of complaints according to the way in which they were received in 2009, compared with 2008**

Complaints received via	2009		2008	
	Number	%	Number	%
E-mail	1,550	7.04	785	3.32
By post	7,754	35.22	9,773	41.33
Fax				
Burofax	16	0.07	23	0.10
Printed fax	771	3.50	879	3.72
Web page				
With certificate	275	1.25	381	1.61
Without certificate	10,483	47.61	11,004	46.54
In person	1,168	5.30	801	3.39
Telegram	1	0.00	0	0.00
<b>Total</b>	<b>22,018</b>	<b>100.00</b>	<b>23,646</b>	<b>100.00</b>

**TABLE 33**  
**Number of calls and visits received in 2009 with the objective of offering services to citizens, compared to 2008**

	2009	2008
In person	2,845	2,901
Telephone	9,313	8,404
900 Line	4,979	4,603

**TABLE 34**  
**Visits to the Ombudsman's website**

	2009	2008
Visits	253,845	143,002
Pages visited	3,716,460	1,317,157

**For more information:**  
[www.defensordelpueblo.es](http://www.defensordelpueblo.es)

The gradual increase in the use of the Institution's website by the public is explained by the increasingly greater use of this technology and the increase in informative content in the site such as "The Ombudsman in your class", which contains educational material for schools related to human rights and the Ombudsman's work in protecting and defending them. These contents provide information for teachers on the subject, as is shown in the following table:

**TABLE 34**  
**Visits to the Ombudsman's website**

	2009	2008
defensordelpueblo.es	226,671	3,589,873
premioddhh.defensordelpueblo.es	3,689	24,498
concursodibujos.defensordelpueblo.es	550	2,595
enclase.defensordelpueblo.es	22,935	99,494
<b>Total</b>	<b>253,845</b>	<b>3,716,460</b>

Lastly, at the beginning of 2009 we launched a monthly Newsletter with a total of 558 subscribers by the end of the year. These included associations, government representatives, the Mixed Committee of Relations with the Ombudsman, the government and the central administration, other institutions, the Parliament, deputy government representatives, diverse institutions and associations and the mass media.

## OMBUDSMAN PUBLICATIONS IN 2009

2009 saw the publishing of *Recomendaciones y Sugerencias 2008* [Recommendations and Suggestions 2008], *Informe de Gestión 2008 y sus debates parlamentarios* [2008 Report and corresponding parliamentary debates], as well as The Summary of that report in Spanish and English. These publications can be consulted on the website **[www.defensordelpueblo.es](http://www.defensordelpueblo.es)**



# **SUPERVISION OF PUBLIC ADMINISTRATION**



## The Ministry of Justice accepts a recommendation to improve psychosocial services at all courts, an issue involved in many complaints addressed to the Ombudsman

Frequent and undue delays continued in 2009, and for that reason the Ombudsman has maintained several ongoing enquiries into this matter. Recommendations made by the Ombudsman to the Ministry of Justice regarding the psychosocial services at Family Law Courts were accepted. Another recommendation accepted by the Ministry of Justice dealt with the need to streamline implementation of an information system and electronic communications network for the Office of the Public Prosecutor, essential, nowadays, to fulfilling the constitutional and legal duties in their charge, and also to the performance of the inspection and oversight functions entrusted to the State Attorney General. The Ombudsman made several recommendations in 2009 to the Ministry of Justice, as well as to various Councils of the Autonomous Communities with jurisdiction in the matter, to reinforce staff at Civil Registry offices where substandard operation has been observed in order that they would be fully equipped to handle existing caseloads, and to ensure that these Registries possess the personnel and material and technological resources they need to provide swift and efficient service.

### Undue delays

In 2009, a total of 550 complaints arising from unnecessary delays were handled, of which 237 referred to Civil Courts, 226 to Criminal Courts, 33 to Social Courts, and 54 to Administrative Courts.

### Civil Jurisdiction

The latest data available for 2009 on Spanish civil courts comes from the General Council of the Judiciary, referring to the first three quarters of that year. This data indicates a significant rise in caseloads. In spite of an increase in the resolution of cases, the situation appears to have deteriorated significantly with respect to the previous year.

The Ombudsman received a number of complaints regarding enforcement procedures. The main reasons for these delays, in light of the various reports submitted by the Attorney General for the enquiries undertaken are, apart from the workloads handled by the court, the difficulties in locating debtors and their assets, excessive caseloads, and lack of debtor or third party cooperation. These circumstances lead to the conclusion that our legal system still offers too many opportunities for delays to hamper the enforcement of rulings.

Also handled were complaints regarding delays in special proceedings, particularly those dealing with the distribution of inheritances. Similarly, complaints were received regarding delays in appeals court. It was observed that a large number of these complaints took two years to be resolved after the appeal had been filed.

Nevertheless, the most common complaints are those concerning the excessive duration of eviction notices. In most

cases examined, delays occur in summons procedures, and particularly in measures to determine the whereabouts of defendants either because they have abandoned the rental unit or because they steadfastly avoid being located.

### Criminal Jurisdiction

In their 2009 report, the Attorney General pointed out that the instruction model set forth in the existing Criminal Prosecution Act turns out to be incompatible in many ways with the principle of legal certainty. The Ombudsman shares the opinion of the Attorney General in this regard as well as the need to enact a new Law on Criminal Prosecution that conforms to the requirements of the existing Constitution and modern Spanish society.

An example of unreasonable delays are those occurring before the Court of First Instance and Instruction No. 1 of Eivissa in the preliminary investigation into the events that allegedly constitute the crime of damages due to recklessness.

The Ombudsman opened an *ex officio* investigation after learning in media reports that two people had gone on a hunger strike in January 2009 because no hearing date had yet been set for a judicial investigation into the collapse in January 2001 of the building where they had been living. Subsequent to the collapse, neighbours and business owners were unable to return to their homes and places of business in spite of the fact that they were obliged to continue to make their mortgage payments. The Attorney General reported on 30 January 2009 that the procedure had been initiated and Criminal Court No. 1 in the same city set the hearing date for 18 to 22 and 25 and 26 January.



In the Criminal Courts, the most worrisome situation arose in the area of penal enforcement. As discussed in the 2008 report, an *ex officio* enquiry was opened with the Ministry of Justice and the General Council of the Judiciary on the general state of pendency at Spanish Criminal and Enforcement Courts in light of the backlogs hampering the enforcement of rulings.

In January 2009, the President of the General Council of the Judiciary sent a report prepared by the Council's Inspection Service to the Ombudsman regarding the monitoring of the activities of Criminal Courts specialised in enforcement issues. Among other conclusions and observations, the Inspection Service reckons that staff duties should be reorganised so as to form teams specialised in the handling of enforcement issues, and that existing procedural management systems should be streamlined and made more compatible. Additionally, the report detailed the support measures adopted, such as the appointment of substitute judges and clerks as well as the expanding of timetables for judges and court clerks.

Among the planning priorities of the Ministry of Justice for 2009 is the establishment of 22 new Criminal Courts, with new courthouses in Jaen, Seville, Aviles, Saragossa, Santa Cruz de Tenerife, Santander, Barcelona, Sabadell, Terrasa, Alicante, Caceres, Cartagena, Murcia, Pamplona, two new courthouses in Malaga and in Madrid, and three new courthouses in Valencia.

In December 2009 the President of the General Council of the Judiciary, informed the Ombudsman that a new report with more up-to-date information is being prepared so as to assess the situation with a view to adopting new measures, and that this report would be delivered to the Ombudsman as well.

## Domestic violence

Since the entry into force of Organic Law 1/2004 of 28 December, on Comprehensive Safeguards against Gender Violence, all incidents and failures stemming from its enforcement—by the various public authorities, state security forces and corps, judges, prosecutors and lawyers—have been subjected to monitoring by the Ombudsman. It should be noted that in 2009 very few complaints were received that stemmed from undue delays in proceedings for such crimes.

Regarding the provision of psychosocial services at Gender Violence Courts, an enquiry remains under way with the Offices of the Presidency, Justice and Interior Affairs of the Community of Madrid, arising from a complaint submitted by a citizen because psychosocial services Courts are only available at the Community of Madrid from 8:00 AM to 3:00 PM and women needing assistance outside these hours might not find it. Recently, the Department informed the Ombudsman of their intention to take steps toward the implementation of an out-of-hours service of the psychosocial team in Gender Violence Courts.

Another general complaint that remains under way in the Family Law section refers to the establishment of family meeting

points and the need to draft standard nationwide operating guidelines for them without encroaching upon the authority of Autonomous Communities in this matter.

With respect to the operation of “shelters” for battered women and their children, it was found that six Autonomous Communities (Aragon, Andalusia, Catalonia, Castile and Leon, Valencia and the Balearic Islands) had signed a collaborative agreement in Valladolid on February 23, 2009. This agreement aimed to pool all of the resources available to shelters for battered women, and it entered into force on 1 January 2010.

Apparently, and according to various media reports, each administration would be responsible for handling admissions based on the principles of swiftness, safety, and confidentiality, and the community of origin would be notified by telematic means. In this way, female victims of gender violence would be better protected from aggressors, and the need for physical separation from the abuser would be addressed straight away, allowing these women to begin rebuilding their lives away from their former physical and geographical environment.

Generally speaking, and in light of the evolution of complaints submitted to the Ombudsman, enforcement of the Law on Comprehensive Safeguards against Gender Violence has shown positive results because it has led to:

- Better information and improved awareness among victims regarding their rights, which resulted in a steady rise in complaints about abuse that had previously been kept secret and was being suffered in silence by its victims.
- Increased efficiency in the investigation and prosecution of crimes.
- Better coordination between the courts and the shelters set up by the Autonomous Community concerned, which led to the creation and implementation of the Central Registry for the Protection of Victims of Gender Violence.
- The establishment of Victims Protection Units at governmental offices and branches, which represent an important facet of that protection, while streamlined data exchange and effective coordination among the Central Registry for the Protection of Victims of Gender Violence, the Social Security Administration, and the Ministry of Economic Affairs and Finance may prevent undesirable outcomes when issuing pensions or other social benefits.

Nonetheless, figures offered by the various organisations continue to raise concern despite the fact that the 55 women who died as a result of gender violence in 2009 represented a 27.6% drop compared to similar cases in 2008. The number of women killed by their partners or ex-partners was reduced by 8.7% since the entry into force of the law, according to a report published by the State Observatory on Violence against Women, taking into account facts and figures dating back to 2003.

## Juvenile offenders

Several events related to serious crimes whose alleged perpetrators included minors who were under 14 years of age again raised controversy over whether or not to amend Organic Law 5/2000 of 12 January, governing the criminal liability of minors, with the aim of lowering the minimum age at which minors involved in criminal conduct may be held responsible.

The Ombudsman, notwithstanding consideration that a debate in Spanish society is needed, reckons that in principle it would be inadvisable to change this law, first and foremost based on the argument that law is general by nature and it should not be rewritten to address isolated events, however unfortunate and reprehensible these may be.

What is of great concern to the Ombudsman is the vagueness of measures referred to in Organic Law 1/1996, on the Legal Protection of Minors, applicable to minors under 14 years of age, as well as the lack of a list of concrete measures that may and should be adopted in cases involving offenders under 14 years of age, leading to the ineffectiveness of public entities and the failure to fulfil their lawfully appointed duties. This lack of concrete measures is alarming not only because of the fact that victims may be left in defenceless circumstances, but also because alleged perpetrators may be made vulnerable as well because it may not be possible to clarify all events and the minor's participation in them if judicial proceedings are not fully carried out. This implies a degree of legal uncertainty for the victim (whose rights may be infringed upon), for the public entity (which must strive to apply measures proportional to the seriousness of the acts or personal circumstances of the minor), for the minor involved (who should be reformed in order to prevent future criminal conduct), and, generally speaking, for society as a whole.

In light of all of the aforementioned points, the Ombudsman made a recommendation to the Ministry of Justice to consider forming a task force of experts to conduct an in-depth study on this matter; in case legislative reform is deemed appropriate to address issues arising from the vagueness of measures applicable to perpetrators of criminal acts who are under 14 years of age in Organic Law 1/1996 on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act.

In response to this recommendation, the Ministry of Justice informed the Ombudsman that the forming of said Task Force was an option that could be given serious consideration in light of the level of public interest in this issue. Nevertheless, they did not deem it advisable to proceed hastily with a reform of such magnitude as that which the Ombudsman was proposing, and, consequently, said Task Force would not be formed for the moment.

Additionally, the Ombudsman received word through the media that, on 28 July 2009, a young detainee at the Marcelo Nessi Juvenile Facility in Badajoz may have been subdued in an excessively violent manner by three security guards there. A video of the incident uploaded to the Internet appeared to

confirm facts reported by the youth, claiming he had been "subjected to physical assault" by a guard while both he "and his colleagues violently attempted to subdue him". According to various media reports, the complaint was handled at the facility itself on 10 August 2009, and the Juvenile Prosecutor's Office in Badajoz had also opened an investigation into the matter.

Referring to the same facility, it was also reported that another minor had been bound, beaten and sedated and had even attempted suicide by slitting his wrists. His family had not been notified even though the minor had to be treated by medical staff.

In light of this information, the Ombudsman sent a writ to the General Director for Children and Families of the Council of Extremadura requesting a report on the following elements of the case: what internal measures were followed at the Juvenile Facility from the moment when the minor had been subdued and, if they took place, on what dates and what communications were made with the doctor, the court, or the Juvenile Prosecution Office; what measures had been taken to restrain and subsequently to provide medical care to the second minor; and why said restraint and sedation were deemed necessary. Additionally, an explanation was requested as to why the family had not been informed of the minor's attempted suicide, and why they were not allowed access to medical reports made with regard to medical treatment rendered. Lastly, once the aforementioned questions could be clarified, the Ombudsman asked if measures had been adopted or were about to be adopted in light of these issues, confirming the transfer of one of said guards to another department at the same Facility.

Likewise, the Public Prosecutor was asked to inform the Ombudsman regarding actions and enquiries undertaken in response to the aforementioned incidents, as well as the procedure followed by the directors of the Facility to produce the mandatory reports required following the employment of restraint techniques.

The Attorney General's Office stated that, subsequent to due diligence, the judge had issued a ruling on 20 November describing said events as a misdemeanour assault as of Article 617 of the Penal Code, naming the accused, the security guard of the Facility as the perpetrator. He also stated that Public Prosecutor's Office had abided by said order.

With regard to the case involving the second youth, the Attorney General opened investigative proceedings that were then transferred to the Superior Criminal Court to initiate preliminary proceedings. The Ombudsman asked the Public Prosecutor to continue to provide information until the aforementioned procedures were completed. A new request was also submitted to the Directors of the Facility in order to ascertain which measures had been adopted or were under consideration with respect to this guard in view of what was contained in the aforementioned judicial decision. No report has yet been received by Director General for Children and Families of the Council of Extremadura.

It should be pointed out that the Ombudsman had already visited this Juvenile Facility in 2008, and found that not a single visit had been made by court appointed lawyers from the Badajoz Bar Association. This situation led to the opening of an *ex officio* enquiry into the lack of professional attention by court-appointed lawyers for minors held there.

Consequently, the Ombudsman addressed the Bar Associations of Cáceres and Badajoz in order to present a Reminder of Legal Duties so that court appointed lawyers for juvenile cases would perform the duties set forth in Act 1/1996, on Free Legal Assistance, and fulfil their obligation to provide real and effective assistance and protection throughout the entire judicial process as well as during the enforcement of the ruling. The Provincial Bar Association of Cáceres sent a written statement in acceptance of this Reminder. Additionally, the Badajoz Bar Association stated that the Reminder of Legal Duties had been published on their website.

Throughout 2009, visits were made to the Juvenile Detention Facilities of "The Montañeta" (Las Palmas de Gran Canaria), "La Jara" and "El Limonar" in Alcalá de Guadaira (Seville), "Altamira", "Brea de Tajo" and "Los Rosales" (Madrid), and "Bay of Cadiz" in El Puerto de Santa Maria (Cadiz).

During visits made by Ombudsman advisers, no noteworthy irregularities in operation were found, and confidential interviews conducted with minors gave no indication of any abuse or improper conduct by staff at these facilities.

Finally, the regular Magistrate Judge of the Juvenile Court of Huelva informed the Ombudsman that said province lacks a facility where confinement measures may be enforced, which seriously compromises their ability to supervise the execution of sentences handed down for minors under their regional jurisdiction and prevents said minors from maintaining their social and family ties. For this reason, an *ex officio* enquiry was initiated with the Department of Justice and Public Administration of the Council of Andalusia, in order to clarify the facts and to determine which measures might be adopted to address these issues, as Huelva is the only province of Andalusia that lacks such a facility. No further information has yet been received on this subject.

## Family Law: Psychosocial Services

The Ombudsman maintains an ongoing enquiry in which a recommendation was made to the Ministry of Justice in May 2009, after having gathered reports from the Autonomous Communities with jurisdiction in the matter, as well as from the General Council of the Judiciary, the State Attorney General, the General Council of Official Psychologists Associations, and the Ministry of Justice itself.

This recommendation called for the following: that steps should be taken to provide psychosocial teams with whatever human and material resources they need to render services at all family law courts nationwide; that candidates' specializations in forensic psychology should be taken into account during personnel selection processes at both the

state and regional level and that appropriate levels of certification and training should be required; that refresher courses and ongoing training should be offered whenever possible; that the Central Administration should work with the relevant authorities of the Autonomous Communities to carry out a study of existing guidelines and protocols in the different regions and seek ways to standardise them; that the time required to complete reports should be assessed and steps should be taken to streamline the process wherever possible so that they may be prepared without excessive delays and so as to ensure that this is done with the best safeguards and transparency for citizens, particularly in light of the fact that minors are involved in the process.

The response of the Ministry of Justice to the Ombudsman's recommendation offered details regarding, among other aspects, the number of people currently comprising these technical teams, and reported that a potential increase in psychosocial services staff was under consideration.

Additionally, they have provided a full report regarding the training given to these professionals, the protocols employed, and the need for reports to be prepared swiftly while safeguarding the rights of citizens. They also state that no knowledge of any specific deficiencies in the rendering of these services exists, understanding that as professionals serving the Administration of Justice who work closely with judges and their reports and activities in general, they must abide by the principles of trust and objectivity.

Regarding personnel selection processes, in light of the Ministry of Justice's report that this matter is now handled by the Ministry of the Presidency, and given that talks were under way with the Directorate General for Civil Service for the purpose of intervening in the process of establishing application requirements and future topic lists for civil service examinations, the same recommendation was made to the Minister of the Presidency while urging that such talks with the Ministry of Justice be expedited as much as possible.

## Civil Registry

The Justice Modernization Plan announced by the Ministry of Justice aims to transform the current model for civil registries and create a National Civil Registry in Spain that is electronically accessible by citizens regardless of their place of residence and that offers swift and effective public service. To achieve this objective, set for the second half of 2012, the Ministry has put together a draft bill on the Spanish National Civil Registry (fourth quarter of 2009), announcing the passage of the Civil Registry Services Charter.

They also announced in 2009 that the digitalization of the books at the municipal civil registries as well as at the Main Civil Registry would be concluded in the first half of 2010. The full digitalization of all Civil Registry records would likewise be pursued.

The Ombudsman reckons that these reforms should not be subjected to any further delays, because, as has been repeatedly declared in previous years' annual reports, both the

Main Civil Registry and the municipal and consular registries provide very substandard service—evidenced by the large number of complaints received in this area.

In 2009, 509 complaints were received with respect to the functioning of said civil registries. These complaints tended to repeat the same types of issues and irregularities discussed in previous years: delays in issuing certificates, long waiting times suffered by citizens with simple requests due to the avalanche of applicants seeking Civil Registry services, assignment of appointments several months or even years later to begin processing cases, delays in registering marriages between Spaniards and foreigners or in recording international adoptions, substandard conditions and inadequacy of facilities as well as errors in processing cases and in recording entries and notations in general, which seriously infringe upon the rights and interests of citizens.

The State Secretary for Justice has been informed that the Ombudsman seeks and desires that a general improvement in civil registry operations be achieved as soon as possible for the benefit of all citizens.

### **Other complaints pertaining to the Administration of Justice**

From all of the aforementioned points, it can be concluded that the main problem affecting the justice system in general terms is essentially the excessive procedural delays that prevent or infringe upon the constitutional right provided for in Article 24 of the Spanish Constitution, to receive swift and effective judicial protection.

The Ombudsman agrees with all legal workers that modernization of justice represents an urgent task because the administration of justice is closely associated with the rights of citizens.

On 18 September 2009, the Council of Ministers passed the 2009-2012 Strategic Plan for Modernization of the Justice System, which contains full details on the policy reforms, organizational changes and technological improvements to be sought over the next three years so as to develop a justice system that fulfils its duties and whose performance would be on par with the most advanced public services.

This plan was supported by the Plenary Session of the Congress of Deputies, which approved a proposition on 2 April 2009 declaring the urgency of achieving a social agreement on justice that includes all parliamentary groups, encourages consensus among government and legal representatives, and provides a timeline with a concrete plan of action and a specified budget. The General Council of the Judicial

Branch joined this consensus, as did the Autonomous Communities.

Regarding activities carried out by the Ombudsman with respect to the Administration of Justice, collaboration by the Attorney General is essential. Nevertheless, in practice, relations between the Ombudsman's Office and the Attorney General often turn out to be slow and of limited effectiveness. The path established in existing regulations is as follows: Ombudsman > Attorney General > relevant provincial prosecutor > prosecutor assigned to the case > jurisdictional court, and the corresponding path back. This entire process requires at least three or four months, a timeframe far too long to gather the information needed to evaluate the Ombudsman's own intervention into an issue raised by a citizen. This situation is even worse when there is a matter that requires urgent attention, or when the specific cause for complaint involves unreasonable delays that arise in any other types of procedures.

Based on the solid cooperative relationship between both of these institutions, the directors and their respective collaborators held a meeting on 3 July 2009 at the headquarters of the Attorney General to try to resolve this issue and to expedite the preparation and delivery of reports.

In view of what was discussed at that meeting, it has become clear that the biggest obstacle to effective communication between the two organizations in the processing of cases is the inadequate technical and computer resources employed by the Attorney General. This situation prevents them from receiving status updates and reports on incidents that arise in all types of procedures, and hampers the very efforts of the Ombudsman Institution itself in dealing with complaints that refer to the Administration of Justice.

Consequently, the Ombudsman sent a recommendation to the Minister of Justice to urge that all steps be taken, without further delay and using whatever personal, technical and budgetary means necessary, to implement the Public Prosecution Information System, and, particularly, the management software application known as SICC (Data Management and Retrieval System) as a centralized control panel. This system is designed to provide reliable information that would enable the Attorney General to analyse caseload volumes, time spent at various processing stages, the performance of prosecuting attorneys and the prosecution offices, and changes in indicators, among other items.

In September 2009, the Ministry of Justice informed the Ombudsman that talks were under way with the Attorney General's Office in order to prioritize the most salient projects.

## The number of inmates in the Spanish prison system continued to rise in 2009, but this growth appears to have been moderate

**As of 25 December 2009, there were 76,090 inmates in Spanish prisons. This population had earlier peaked at 76,786 inmates on 4 December—the highest figure in the history of the Spanish democracy. On 2 January 2009, at the beginning of the year, the figure stood at 73,481 inmates. Thus, the Spanish prison population rose by 2,609 inmates throughout the course of 2009, which represents an increase of 3.55 percent.**

By way of comparison with figures for 2008, the numerical increase then represented 6,492 inmates, or 9.67 percent. As such, the amounts and percentages for 2009 represent a significant reduction from the previous year's data, although one recent year in particular did show a lower percentage of increase: 2005 (2.72 percent).

However, these figures merely reflect the magnitude of the challenge facing the prison administration: to provide for a constantly growing number of inmates in accordance with the Constitution and the General Penitentiary Law.

### Significant rise in inmate population

#### Inmates

Beginning of 2004	End of 2009
56,016 inmates	76,090 inmates
20,074 more inmates in six years	

	02-01-2009	25-12-2009	Percentage of increase
Male	67,531	70,054	3.73%
Female	5,950	6,036	1.44%

It should also be noted that the Ombudsman conducted visits to the following prisons in 2009: Alcala de Guadaira (Sevilla, Female), Algeciras, Alhaurin de la Torre, Bonxe, Brieve, Caceres, Ceuta, Cordoba, Herrera de la Mancha, Huelva, Murcia, the Alicante Correctional Psychiatric Hospital, the Seville Correctional Psychiatric Hospital, Santa Cruz de la Palma, Santander, Tenerife, Teruel and Topas. Based on Organic Law 1/2009 of 3 November (BOE of 4 November), these visits were also made by the Ombudsman Institution in its capacity as National Torture Prevention Mechanism pursuant to the Optional Protocol of the UN Convention for the Prevention of Torture. Specifically, the prisons of Santa Cruz de la Palma (17 November) and Tenerife (18 November) were visited shortly after the cited Law entered into force.

### Prison Deaths

Tendencies with regard to prison deaths—due to both natural causes as well as suicide—have represented a subject of concern to the Ombudsman.

#### Prison deaths-Figures provided by the General Secretariat for Correctional Institutions

	2005	2006	2007	2008
Overall number of deaths	201	218	202	225
Ratio per 1,000 inmates	3.8	4.0	3.57	3.70
Suicides	33	25	27	19

With respect to suicide figure trends, the Ombudsman has acknowledged the efforts made by the Secretariat General for Prisons to reduce the number of suicide deaths occurring in prisons, which has shown clear results both in absolute and relative terms (suicide rates per overall inmate population). This favourable recognition does not rule out the need for constant reminders to stay focused on this aspect of prison management. The significance of the basic right at stake, which is none other than life itself, behoves the Ombudsman to remain particularly vigilant in this area.

As for suicides themselves, the Correctional Institutions of Zaragoza, A Lama and the Alicante Psychiatric Prison were found to have higher incidences of suicides (three facilities holding 4% of the prison population in 2008 had 36% of all suicides). This fact led the Ombudsman to call for an in-depth enquiry into the potential causes underlying this situation.

### Abuse

In the previous year's report, a detailed account was provided regarding a serious incident that had taken place at the prison of Picassent (Valencia). While training in the prison gym, an inmate was ordered to box with a guard, and in the course of the ensuing sparring the guard kicked the inmate in his testicles. The inmate had to be taken to a hospital, and lost a testicle as

a result of the severe injuries he suffered. This unconscionable behaviour led to the intervention of Justice.

The Ombudsman maintains a constant and careful watch over this issue in order to properly address responsibilities. In 2009, the Ombudsman learned that legal proceedings remained under way, but that the trial had not yet been held. Additionally, the classified information shall be held “contingent upon” the outcome of court proceedings.

If, as the saying goes, “justice delayed is justice denied”, it is deplorable that this issue remained unresolved three years after the incident took place on 5 September 2006. Such acts must be dealt with swiftly, which would boost the level of trust in the legal system.

## Treatment

### Conditions at Correctional Psychiatric Hospitals

In 2009, the Ombudsman continued to investigate conditions at Correctional Psychiatric Hospitals in Seville and Alicante. This was done not only in line with the unwavering interest that the Ombudsman has always had regarding conditions affecting those held in such facilities, but also stemming from the concerns of relatives of inmates at the Correctional Psychiatric Hospital of Alicante (who had been interviewed) and a letter sent by Congressman Llamazares Trigo to the Ombudsman to discuss conditions at these facilities. Additionally, advisors from the Ombudsman's office conducted an inspection at both Correctional Psychiatric Hospitals in March 2009.

Upon visiting the Correctional Psychiatric Hospital in Seville, it was observed that, ever since the opening of this facility, it has been plagued by a severe lack of space—especially in light of the highly therapeutic functions that these facilities must perform. This deficiency has been mitigated to a certain extent by the addition of a new space at the back of the facility that has been equipped for use by inmates. The hospital is divided into four wards and has an independent kitchen (disused, except for the refrigerator) and laundry room. It lacks an infirmary in the strictest sense of the term (instead there is a well-equipped clinic with two cells and a shower). There is also a multipurpose hall, which is too small for the activities held in it: conferences, religious services, computer courses (only one has been taught, and it has not been used again for this purpose), cinema, and even an attempt at videoconferencing. An occupational workshop area has also been set up in one part of this room. The complex also includes a small gym and several occupational workshops, one per ward. In general free space is quite limited. Cells are shared (many of which are triples, with some quadruples), except in ward 2 where inmates stay in single cells owing to their profiles.

About eight months prior to release—or later in cases subject to imminent release—the administration initiates a resource search protocol with both the courts and the various mental health organisations pertaining to the Council of Andalusia. The purpose of this protocol is to ensure that housing is available to those who are released from the psychiatric hospital and have

no family on whom to rely. Such arrangements are rarely achieved upon release. Rather, it is not infrequent that, as the patient's release date approaches without the request being fulfilled—even in cases where requests had been made in a timely fashion—no alternative remains but to seek involuntary confinement from the civil court under Article 763 of the Civil Procedure Act. In such cases where involuntary confinement is allowed in a hospital belonging to the national healthcare network, usually in the acute care ward, it is not uncommon for a patient who is unable to care for himself to be discharged without having given consideration to his or her potential disability. The lack of family support and scarce public resources tend to thwart proper treatment for such people. They sometimes become repeat offenders who are sent back to correctional psychiatric facilities.

With respect to Alicante, among other aspects, three psychiatrists were found in full-time positions. One of them was a permanent staff member and two held temporary positions. Additionally, five psychiatrists had been hired part-time (two days a week, three hours each day). One of them dealt exclusively with psychiatric evaluations. Although psychiatric services and care were not available 24 hours per day, there was 24-hour medical care covered both by the psychiatrists as well as four general practitioners on staff at the facility. The fact that specialized psychiatric care was not available 24 hours a day was not deemed by those who spoke with the Ombudsman's advisors to represent a serious issue of concern because, they argued, the medical doctors on night duty when there are no psychiatrists have more than enough expertise to implement existing protocols if needed. Nonetheless, this accuracy of this conclusion should be questioned as it seems reasonable to assume that a psychiatric hospital should have full-time psychiatric staff with permanent government contracts on duty at all times.

The female ward housed 29 patients who had not been subject to any kind of separation according to type of illness, so that patients live together who suffer from a wide variety of mental disorders that put them in an institution of this kind, such as schizophrenia, drug-induced psychosis, organic mental disorders, or those suffering from bipolar disorder or mental disability.

The most serious drawback to having all of these patients live together in the same limited space is that it hampers effective treatment of their respective conditions and imbues the entire centre with an air of disorganization that is unbefitting of a facility ideally suited to the kind of therapeutic care these people need. An air of chaos reigns at this facility.

Since 2005, it has been reported that heavy investment has been made in the following areas: purchase of fire-retardant items (mattresses), installation of smoke detectors, acquisition of independent, fire-suppression systems, installation of an industrial-strength smoke extractor and surveillance cameras to monitor cells (there are ten)—smoking has been prohibited in the cells except by psychiatric prescription.

In spite of the improvements cited, the Correctional Psychiatric Hospital of Alicante was the site of a fire caused by an “acutely-ill patient” in possession of a lighter. After piling his



belongings against the door; he blocked it with a mattress and set everything on fire. This was a patient with borderline personality disorder who was occasionally held in the acute care unit. He later died of smoke inhalation as a result of the fire. Apart from the ensuing legal action to determine criminal and administrative liability, this death obliged the hospital to bolster certain protocols in this area. Specifically, they have implemented the following: periodic staff refresher courses and training in the use of fire suppression equipment, weekly material checks, acquisition of a new smoke extractor; etc.

All in all, while acknowledging the efforts made by the administration and professionals involved, the Ombudsman reckons that the living conditions and treatments provided for these patients can be improved even further, both in Seville and Alicante.

The General Secretariat of Correctional Institutions has provided details in exhaustive reports regarding various improvements that have been implemented at both places, and in light of the "Strategic Action Plan on Correctional Psychiatric Hospitals". It has also established and supported a task force to conduct an in-depth analysis of operations at the two prison psychiatric hospitals so as to seek qualitative improvements in the care provided to patients. The aim is to lay down a plan of action that would identify existing opportunities to enhance operations at these facilities.

This is doubtlessly a good road to follow: a full and complete overview of existing problems along with the adoption of whatever measures are deemed necessary to improve services and quality of life for these patients. The Ombudsman will continue to closely monitor these facilities, and, as it has done up to now, it will continue to handle individual complaints from patients and their relatives.

## **"Room for Respect" Program**

During 2009, the program known as "Room for Respect" continued to be promoted. The objective of this program is to establish common living areas ("modules") with strict demands placed on inmates, who are subject to expulsion from the program for failure to abide by the rules. The results include areas inside the prisons where order, cleanliness or the activities performed reach a high level of quality, as has been confirmed during on site visits to these prisons by Ombudsman advisors. Whereas in 2008 this program reached 5,705 inmates assigned to 64 modules at 28 prisons, in 2009 figures continued to rise considerably with 7,453 inmates assigned to 75 modules located at 37 different prisons. These modules represent one of the best outcomes of personalized services, and the Ombudsman shall continue to monitor developments in this area and to encourage their progressive and steady expansion.

## **Inmate Rights**

### **Impact of Cell Sharing**

The failure to comply with the principle established in the general penitentiary law that there should be one inmate per prison cell is not deemed harmless from the standpoint of

individual treatment and prisoner rights. As such, the Ombudsman maintains an ongoing enquiry into the effects of cell sharing, for which a recommendation was made at the time to prepare a report on the impact of such conditions. This recommendation was accepted and the study was carried out.

With regard to this matter, the most up-to-date information shows that after issuing the report cited, the Administration does not intend to carry out some of the recommendations that were proposed in it. As a result, the Ombudsman addressed the General Secretariat for Correctional Institutions to state that such a decision was regrettable, but it could not be opposed because it is within the purview of the Administration to decide whether they should be bound by the recommendations contained in studies conducted. Nevertheless, attention must certainly have been drawn to the concern raised by the Ombudsman regarding the rise in the number of cells originally meant for one person that at some point were occupied by two inmates and where a third bunk bed has been installed. Additionally, the need for specific action has been called for with respect to the conditions in collective dormitories located at facilities that still employ them. The Correctional Institution of Santa Cruz de la Palma, which was recently visited by Ombudsman advisors (17 November 2009) offers an example of this type of housing, whose continued existence and substandard living conditions came as a particular surprise to those conducting the visit.

This case, as mentioned earlier, remains open pending a report prepared by the General Secretariat for Correctional Institutions.

## **Telemedicine**

As repeatedly pointed out by the Ombudsman, promoting telemedicine in prisons for cases where it is therapeutically advisable via intensive use of new technologies is needed to mitigate the difficulties that commonly arise in transporting doctors to prisons and prisoners to hospitals.

Along these lines, the latest information available indicates that telemedicine and health management tools function effectively at the facilities located in the Autonomous Communities that have implemented them under the auspices of their own health services. The rest are considered pilot projects, and they operate with many technical problems and professional difficulties at the hospitals in question. Additionally, prison authorities are setting up telephone lines for data transmission to prison infirmaries in order to provide access to such services, and digital radiology equipment along with the computer equipment needed to use it are also being procured.

## **Female Inmates with Children**

With respect to conditions for children who live with their mothers in prison, there has been a gradual decline in the use of Units for Inmate Mothers with Dependent Children as a result of a rise in the number of decisions to grant third degree status to female inmates with children. In this way, although the number of minors living with their mothers in the Spanish prison system has remained steady in recent years (just over 200), the number of

children in the Units for Inmate Mothers with Dependent Children has fallen by about 30 percent. Additionally, the gradual entry into operation of the aforementioned Units for Inmate Mothers aims to allow mothers with children under three years of age to meet outside of prison. It is worthwhile to note that the Plan for the Construction and Utilization of Prisons of 2 December 2005 provides for five new External Units for Inmate Mothers, and the first one was inaugurated in Palma de Mallorca on 14 January, 2009 in the presence of the First Deputy to the Ombudsman, Maria Luisa Cava de Llano. A great deal of responsibility is required of mothers who seek to reside in these External Units, and admission to them is voluntary and subject to compliance with the terms set forth in the so-called "therapeutic contract" drawn up beforehand.

A report was recently requested on the number of children under three years of age who currently live with their mothers in Dependent Units pertaining to the penitentiary administration, with details regarding the institution and type of facilities as well as a copy of the therapeutic contract proposed by the Administration as a condition for residence in External Units for Inmate Mothers with Dependent Children.

### **Compliance with Punishments Involving Obligatory Community Service**

The punishment known as "obligatory community service" or TBCs ("*trabajos en beneficio de la comunidad*" in Spanish) represents an alternate legal outcome for crimes instead of incarceration, and its use should be encouraged for the following reasons: it permits a certain degree of flexibility and gradualism in criminal law; it properly addresses certain offences and types of criminal behaviour; and it dovetails well with plausible interpretations of criminal policy regarding the Constitution and the General Law on Correctional Institutions, and so on. It is highly advisable; therefore, that the administration should ensure that TBCs are effectively carried out in all cases in which they are imposed by judges, which is much more challenging from a practical standpoint than ensuring the enforcement of prison sentences.

The Ombudsman initiated an *ex officio* enquiry in response to news reports regarding the noteworthy lack of obligatory community service spaces available in the Spanish penitentiary system. Subsequent to an amendment made in December 2007 with respect to punishments for serious cases of reckless driving, it became difficult to meet the demand for spaces for this type of punishment, which meant that there was a genuine risk that the statute of limitations might expire on many of the sentences handed down.

The last report received from the Administration on this matter stated that it was impossible to ascertain whether the number of spaces currently available to enforce community service punishments could adequately meet demand based on the number of this type of convictions handed down in Spain. They also reported to the Ombudsman that it was not possible to determine or even estimate the potential scope of growth for such convictions. The only statistic provided referred to the 119,466 convictions handed down through the third

quarter of 2009. It was also impossible to offer precise data regarding the number of spaces managed by the prison system in order to enforce obligatory community service punishments because the supplying Administrations do not commit to providing any specific number of them, and, hence, available spaces may not be reliably calculated.

Regarding these arguments, the Ombudsman may only acknowledge the significant effort that the Secretariat General of Correctional Institutions has been making in recent years so that penological innovation (such as Obligatory Community Service sentences) may be welcome in the Spanish penitentiary system. In light of this, it has been necessary to take on new staff and to adapt administrative plans in order to more effectively address this issue, although such efforts have not been sufficient. As such, a legislative amendment was recently published that imposes new obligations on collaborating administrations, while at the same time streamlining administrative procedures that had previously hindered the fulfilment of sentences by those convicted. Briefly, the enforcement procedure has been amended. New, unofficial types of obligatory service for such convictions are being admitted as well, equating participation in driver safety activities with their effective enforcement. Amendments have also been made with regard to deferrals of sentences.

The Ombudsman reckons that all of the necessary measures should be taken to allow this type of punishment to be firmly incorporated into the Spanish prison system so as to ensure its continuity as well as its consideration by society as an effective substitute for imprisonment in cases deemed appropriate by existing legislation.

With a view to improving the situation even further, the Ombudsman reckons that a three-pronged approach must be taken primarily to prevent the dismissal of a significant amount of sentences that remain pending until the statute of limitations on them runs out, which undermines the system's credibility among society as an effective tool of criminal justice.

All in all, the Ombudsman agrees with the Administration that improvements should be made in three different areas: Firstly, adequate material and human resources should be provided. Secondly, paperwork should be simplified as much as possible and enhanced through the use of new technologies so as to foster an administrative relationship among the courts and collaborating administrations that favours the use of telematic systems and leads, wherever deemed appropriate, to the creation of common-use computer applications that streamline case handling and cut processing times. Thirdly, the burden borne by collaborating administrations in offering spaces for the enforcement of these types of sentences should be reduced to a minimum.

To sum up, insofar as the collaborating administrations currently share the perception that offering such spaces represents more of a burden than an advantage, the factors underlying this perception and the ways to improve procedures or other related aspects to allow this situation to be reversed must be studied. It would be productive to instil a sense of "positive benefit" among collaborating administrations so as to encourage them to more actively provide such positions.



## The Ombudsman designated the National Mechanism for the Prevention of Torture

**Organic Law 1/2009 of 3 November, adds a Single Final Provision to Organic Law 3/1981 of 6 April, on the Ombudsman, containing the following text: "National Torture Prevention Mechanism. First. The Ombudsman shall exercise the functions of the National Torture Prevention Mechanism in accordance with the Constitution, the present Law and the optional protocol pertaining to the convention against torture or other cruel, inhumane or degrading treatment or punishment. Second. An advisory council is hereby established to provide technical and legal assistance for the proper execution of the duties of the National Torture Prevention Mechanism, which shall be chaired by the Deputy duly appointed by the Ombudsman to perform the functions contained herein. The Regulations shall determine its structure, characteristics, and operations".**

The Ombudsman has extensive experience in visiting places where freedom is deprived (prisons, alien detention facilities, police stations, etc.) and assumes this new duty based on a commitment to fight and prevent the types of serious misconduct referred to in the aforementioned Optional Protocol, and to foster respect for basic rights among the Security Forces and Corps and other authorities and persons concerned in the performance of their duties. For this purpose, the "National Torture Prevention Mechanism Unit" was included in the Ombudsman Institution's organizational chart, and is comprised of seven advisors and assigned to the First Deputy Ombudsman.

### Victims of Terrorism

Proper attention to the victims of terrorism is and shall always be a duty of our rule of law. Terrorist acts grievously violate the basic rights of those directly affected, but also—and this is one of its defining characteristics—they attack the very democratic system and collective freedom as a whole. This type of organized crime threatens the right to organize politically without coercion and to live in peace and freedom with full respect for the basic human rights to life, physical well-being and moral integrity, security and many others. The Ombudsman is greatly concerned about any complaints that may be lodged by victims of terrorism, in the awareness that—although we may indubitably take pride in the fact that our well-established legislation offers solidarity and protection to victims—mistakes may arise in individual cases and in the honing of such legislation.

Specifically, the 2008 report referred to a motion by the Congress of Deputies on 3 June 2008 urging the Government to incorporate into the text of the new Victims of Terrorism Act being drafted that those threatened, extorted, or persecuted should be deemed as such. It also discussed the announcement of the drafting of a new law intended to expand—in other words, to polish and improve—existing rights. It should be noted, though, that by the time this report was being prepared the cited draft bill had not yet been delivered to Parliament. One must abide in the hope that it may soon be brought to light, as its contribution in both a moral and material sense to a higher quality of life for the victims of terrorism should be encouraged and praised.

Also worthy of mention is the favourable resolution of a case that became a subject of concern for the Ombudsman

some time ago. A citizen who was the daughter of a man killed in a terrorist attack explained that, at the time, her family sought to exercise their rights under Act 1/2004 of 24 May, by the *Generalitat Valenciana*, on Aid to Victims of Terrorism, by petitioning the Department of Justice and Public Administration in 2006. The Ombudsman took various steps in an attempt to put an end to the long delays besetting this request, which are, furthermore, incomprehensible due to the fact that only sixteen cases of this kind were being handled simultaneously in the entire Community of Valencia. In the end, the *Conselleria de Governació* informed the Ombudsman that on 20 March 2009, the *Consell de la Generalitat* had adopted an agreement that entitled the widow and children of the deceased victim of a terrorist attack to financial aid in the amount of 20,734.92 € for the widow and 6,911.64 € for each of the three children.

In this section, reference must also be made to a particularly sensitive issue: the continuance or withdrawal of bodyguard services for certain individuals. Following periodic risk assessments, bodyguard services are sometimes withdrawn, and this often occurs in an abrupt manner that does not allow time for the person affected to psychologically adapt to the new circumstances—leaving her or him in an extremely distressed and perplexed state. One person addressed such a case to the Ombudsman, who failed to see the reasons why bodyguard services had been withdrawn from this person when they continued to be provided to other individuals in similar circumstances. A review of this person's circumstances was requested, and a recommendation was sent to the Interior Ministry that, generally speaking, advance notice of bodyguard withdrawal should be provided in order to allow

those affected a period of time to get accustomed to their new situation and to arrange alternative security measures. The Ombudsman carried out the appropriate actions with the aforementioned Ministry, and the concerned party duly received the necessary explanations.

## Security Forces and Corps

### Abuse

The Ombudsman's efforts are well known regarding the handling of complaints involving cases of misconduct, such as abusive treatment, by members of all types of security forces: civil guard, national police, and regional and municipal police. The fight against abuse is fundamental for the Ombudsman Institution, which is entrusted by the Spanish Constitution to act as a non-judicial body for the protection of basic rights (Article 54)—the most significant of which refer to life, physical well-being and moral integrity. As such, acts of transgression against said rights are considered to be grave and deplorable, and even worse if they are at the hands of civil servants whose most basic duty is to respect the dignity of all persons regardless of background or circumstances.

Generally speaking, a report is requested from the administration involved, and this may not be submitted merely with statements made by the accused but must also contain any witness testimony if it exists. The Ombudsman demands that the accused be subject to disciplinary proceedings. Moreover, the Ombudsman approaches the Attorney General in order to monitor the progress of criminal proceedings.

With regard to requests to undertake disciplinary action for police officers accused of abuse, the following case is worthy of mention:

A citizen stated that, having submitted an application to the Civil Registry of Melilla to request Spanish citizenship based on residence, she was instructed to go to the Department of Alien Affairs and Documentation at the Melilla Police Headquarters in order to provide additional documentation needed to process her request.

Stemming from this initial appointment at the cited headquarters, according to the claimant, a police inspector had begun harassing her and making false accusations against her which led to the filing of a report for coercion and threats at Magistrates' Court No. 2 of Melilla.

In spite of the acquittal handed down by that court in favour of the accused, the plaintiff initiated an appeal at the Provincial Court of Malaga in light of the procedural irregularities that she discovered had taken place during the course of said trial.

In this matter, and upon the Ombudsman's observation that no disciplinary proceedings had been undertaken for said police inspector, the Ombudsman addressed the Directorate General for the Police and Civil Guard to remind them of the criteria applied in cases similar to the one described by the plaintiff as to the propriety of initiating confidential reports and disciplinary proceedings, notwithstanding suspension of duties

until a criminal sentence were to be handed down, so as to avoid exceeding the statute of limitations for the alleged punishable offences.

The opening of disciplinary proceedings, notwithstanding the fact that the police inspector in question had originally been acquitted by Magistrates' Court No. 2 of Melilla, would not constitute a prejudgement of his conduct, but it would prevent the possibility of exceeding the statute of limitations for the aforementioned punishable offenses in the event that it should be deemed appropriate to await a judicial ruling on the appeal under way at the Provincial Court of Malaga.

It should be taken into account that the concerned party's complaints to the Ombudsman referred to actions that could clearly be classified as serious offences or gross misconduct as per what is set forth in the Disciplinary Regulations of the National Police Force, approved by Royal Decree 884/1989 of 14 July. Furthermore, there was evidence of unlawful misconduct by that officer with regard to citizens, especially in light of the fact that two colleagues of the accused, the Police Commissioner and the Chief Inspector, personally advised the plaintiff to report the incidents to the magistrates' court.

One must consider that the previously cited legislation authorizes the actions described to be applied in the manner indicated because Article 19 of the Disciplinary Regulations of the National Police Force, approved by Royal Decree 884/1989 of 14 July, states that "In accordance with article 8, paragraph 3 of Organic Law 2/1986 of 13 March, on Security Forces and Corps, the initiation of criminal proceedings against officers of the National Police Force shall not preclude the initiation of disciplinary proceedings for the same offense. However, the final resolution of the case shall only be admissible when the final verdict on the criminal case is given, binding the Administration to a declaration of proven fact".

Consequently, the Ombudsman made the suggestion to order the initiation of disciplinary proceedings against the officer whose misconduct led to the complaint for any disciplinary issues for which he may eventually be held accountable, and to suspend its application until such time as a ruling on the appeal before the Malaga Provincial Court could be handed down.

This suggestion was accepted, and the drafting of a relevant decree was undertaken so as to open disciplinary proceedings for the officer involved. At the same time, the Directorate General of the Police and Civil Guard informed the Ombudsman of its general practices with regard to the opening of disciplinary proceedings. Specifically, whenever there is evidence of any punishable wrongdoing, a sanctioning procedure is initiated for cases of minor malfeasance, or a disciplinary investigation is undertaken for cases involving serious or gross misconduct. Cases lacking sufficient evidence to warrant disciplinary action that are also subject to a criminal proceeding are monitored, testimony or a copy of the judgment handed down is then solicited, and either disciplinary action is initiated or the case is closed based on the verdict therein. If no testimony or copy of the judgment requested to avoid exceeding the statute of limitations for potential gross misconduct is

received within twenty-two months of the date of the incident or incidents in question, disciplinary proceedings are then initiated. These proceedings remain open until such time as the courts are able to hand down a definitive judgment. All of the aforementioned steps are taken in order to safeguard both the rights of the allegedly aggrieved party as well as those pertaining to the officer who stands accused of wrongdoing.

An example of poor administrative practice occurred in the Town Hall of Puerto de la Cruz (Tenerife). After the conviction in a court of law of two local police officers for misdemeanour assault as defined in article 147 of the Penal Code, the Ombudsman enquired after the consequences of this ruling in terms of the disciplinary action taken. Stemming from a letter by the Ombudsman, the aforementioned municipality announced the opening of disciplinary case, which was closed shortly thereafter on the grounds that the statute of limitations had expired. That is, rather than opening disciplinary proceedings after the offence took place and was reported to the court (2005), they did so in 2009 at the behest of the Ombudsman after a complaint had been lodged. Moreover, it would have sufficed for said disciplinary proceedings to have been undertaken once a final judgment had been handed down, which would have precluded expiration of the statute of limitations. As such, the Ombudsman addressed said Town Hall to state that the outcome was deplorable. In spite of the victim's due diligence and timely reporting of the criminal misconduct of police officers, who were eventually convicted by a competent court of law—both before the judicial body to determine criminal liability itself and also before the Town Hall to determine administrative liability—the latter has been barred by the statute of limitations due to an irregularity repeatedly committed by the municipality of Puerto de la Cruz. Time and again they rejected arguments set forth by the Ombudsman's Office in annual reports to Parliament that, once criminal proceedings have been undertaken, an administrative procedure is opened and held in abeyance pending resolution of the criminal case, thus preventing the statute of limitations from expiring. As a result, a suggestion was made to investigate the potential liability of the convicted agents' superiors, who are responsible for overseeing their subordinates and holding them accountable for whatever punishable offences they may have committed, as well as the apparent lack of due diligence in performing their supervisory duties that may have caused the former case to be barred when the statute of limitations expired. Another recommendation was made to suggest that disciplinary action be initiated whenever criminal cases are brought against officers of the town hall, and these disciplinary proceedings should be held in abeyance until the criminal case runs its course, thereby preventing administrative liability from lapsing because of the statute of limitations.

After two requests and by the time this report was being drawn up, no reply had been received regarding this suggestion and recommendation, which is representative of the attitude frequently adopted by this Town Hall in its dealings

with the Ombudsman. For example, in a similar case, it took many years of effort and petitioning before liability issues were addressed with disciplinary action, which led to their being declared an uncooperative Administration in the 2008 Annual Report. This protective attitude toward their own municipal police is regrettable, and it appears to arise no matter what the existing circumstances may be.

A citizen stated that at 6:30 in the morning he was walking to his car parked in the neighbourhood of Tribunal, accompanied by two others. A car belonging to the National Police Force pulled up nearby and stopped. According to the claimant's report, the police officers began shouting and repeatedly hitting one of the two companions so as to knock a beer can he was holding out of his hand. The officers then asked to see their identification, and the three complied by showing their national identity cards. The claimant, having identified himself and asserting his right, asked to see the officers' identification as well because their conduct was very aggressive and intimidating, and they continued to behave in this manner despite repeated requests that they calm down. The police refused to identify themselves, so the individual attempted to note the police car's license plate number in his mobile phone, which he was unable to do because they took his mobile phone before he could finish. The officers then called for backup and when several more police cars had arrived, one of the officers, who had stated that he "had zero patience", struck the claimant in his stomach with his truncheon when the latter asked him to identify his colleagues. Then the claimant was placed up against a wall and searched, and, although nothing illegal was found, he was nonetheless held against the wall. He attempted to talk to them and to ask them to identify themselves, and when he turned his face one of the agents gave him a slap in the head that left a bloody injury on his lip. The citizen insisted that they had rights and claimed that their earlier conduct had not been out of the ordinary. When he tried to look at the license plate number of one of the police cars, another officer approached him and gave him another slap in the face, leaving fresh injuries on his mouth and retorting that he would "wipe the sweat off his balls" with their rights. Then they put a balaclava over his head and threatened the claimant's companion by warning him "not to do anything stupid" because they "knew where he lived so he should watch out". Lastly, an officer wearing a balaclava seized him by the arm and threatened to drag him aside to the entryway of a building in order to beat him up. In the end, they returned his identity card and mobile phone and let him go.

The citizen went directly to the Duty Courts in Plaza de Castilla in order to file a complaint, and then to the Hospital de la Paz to attend to his injuries.

This citizen concluded in his report to the Ombudsman with the following words: "That night we were threatened and coerced by officers of the National Police Force even though we showed no resistance and treated them with respect, and my rights were violated and I was physically assaulted and deprived of my freedom because I was held against a wall for

no reason. I'd never felt so helpless and vulnerable as I had no choice but to submit to whatever they wanted to do and say. I never realized that the national police force could treat a normal, law-abiding and respectful citizen in such an extremely disproportionate, unfair, and aggressive manner. I now view the National Police with fear and dismay, and for this reason I ask for whatever assistance you can provide me in this matter."

The first report to the Ombudsman on this matter, which was gathered from the Directorate General of the Police and Civil Guard and contained the officers' version of the incident, failed to offer an explanation regarding the moment the claimant sustained the injuries reported and that were contained in medical reports at the Hospital de la Paz. No additional forms of proof were provided which might clarify which of the conflicting versions was true. Inasmuch as priority should be afforded to the officers' version with respect to the presumption of truth, it would constitute a grievous hazard to the rule of law and could open the door to abuses of authority by certain officers if said priority were deemed sufficient without seeking any further evidence, particularly in light of the fact that witness testimony should be readily available to corroborate statements because the incident had occurred on a public thoroughfare in full view of passers-by.

As such, the Ombudsman requested a further report that would shed light on these aspects and provide the individual statements of each of the officers involved, with particular emphasis on who caused the injuries and how they had befallen the claimant.

The report subsequently received failed to provide a fully satisfactory explanation as to why no investigation had been made with whatever evidence was indeed available. For example, among other neglected options, no attempt had been made to verify whether the injuries described in the medical report were consistent with any potential bruises on the wrists or knees of the officers cited so as to either confirm or refute aspects of the conflicting versions. This could have been done rather than simply presuming that the period of time between the police intervention at 6:30 PM and the writing of the medical report 8:30 PM, after the usual emergency room wait, gave reason to believe that the aforementioned injuries may have been sustained due to reasons other than the officers' alleged misconduct.

The supporting testimony of the two other young men present, the medical case reported just two hours after the incident, and the immediate filing of a report at the courthouse together fail to constitute sufficient evidence to presume that the officers had acted unlawfully. Such a determination corresponds to the relevant judicial authority to make, as per the case. However, this evidence does indeed warrant a more complete internal investigation that would entail, on one hand, cooperation with the aforementioned judicial authority as required by law, and, on the other hand, the opening—and subsequent suspension for the duration of the trial—of whatever disciplinary measures for misconduct might be justifiable should criminal conduct be established, or irrespective of such

a ruling in the event that the incident cited is deemed to represent insufficient grounds for criminal liability.

This case, which was still open during the drafting of this report, led to a recommendation that when police are alleged to have engaged in misconduct and the report lodged is accompanied by a medical report containing injuries, an investigation should be undertaken. The purpose of this investigation, among others, should include the gathering of any and all evidence available, and due diligence should be used to obtain expert opinion on any potential bruises that one or more of the officers may have on their fists, elbows, knees or other parts of the body that can be used to cause bodily harm, as such evidence may correspond to the claimant's injuries and corroborate one or another of the conflicting versions of testimony provided by claimants and defendants.

## Documentation

In previous years, the Ombudsman has discussed in detail the serious problems affecting citizens during the implementation of the electronic National Identity Card, which can be summarized in terms of insufficient human and material resources to meet the desired objectives. The major problems have substantially been addressed, which does not mean that complaints have ceased to be lodged regarding this matter or that the Ombudsman's Office has wavered in its efforts to adopt initiatives in this area.

Also noteworthy is the fact that a recommendation by the Ombudsman, based on a complaint received, was accepted and resulted in a change in policy. Some time ago, a citizen filed a complaint detailing the hindrances encountered in applying for a National Identity Card for his son, a minor. The result of these difficulties, among other consequences, was that the birth certificate he had requested to fulfil the requirements expired before the application could be processed. This document is valid for three months. The Ombudsman reckoned that it would be reasonable to lengthen the validity period for such certificates, and made the recommendation to the Directorate General of the Police and Civil Guard that the relevant legislative amendments be drafted to extend the validity period of birth certificates required to request or renew national identity cards from three to six months. In 2009, the relevant Administration informed the Ombudsman that in view of reports by the authorities involved in this matter, the recommendation had been accepted, and the corresponding amendment was being drafted for Royal Decree 1553/2005 of 23 December, on regulating the issue of national identity cards and their electronic signature certificates. In the end, the Government complied with the acceptance of said recommendation via Royal Decree 1586/2009 of 16 October, with text revisions in paragraph a) of Article 5.1 of Royal Decree 1553/2005 of 23 December, as follows: "Literal birth certification issued by the relevant Civil Registry. The only birth certificates admissible for these purposes are those that have been issued within six months of the National Identity Card application filing date and that contain the annotation that they

were issued for the sole purpose of applying for said identity card”.

## Sanctioning Procedures

Traffic fine proceedings represent a significant number of complaints submitted to the Ombudsman every year. The Ombudsman's mission in this area is to ensure the utmost respect for existing safeguards, which, as is well known, are now governed by new regulations under Law 18/2009 of 23 November, modifying the text of the Law on Traffic, Motor Vehicle Circulation, and Road Safety, approved by Royal Legislative Decree 339/1990 of 2 March, on penalties and fines. The Ombudsman's Office is pleased by the fact that a recommendation it made in 2007, on the liability of auto repair shop owners for violations involving a vehicle being stored there, has been incorporated in the revised text of Article 69.1.e) of said law.

## Other Traffic-related Issues

### Validity of online bank receipts as proof of payment for automobile insurance

A citizen stated to the Ombudsman that he had been given a 60 € fine by a police officer for not being able to present proof of payment for mandatory motor insurance. However, this person had indeed presented proof of online payment via Internet banking printed directly from the computer screen—a very common everyday practice in today's information society. The officer had also confirmed via radio that the insurance had been paid and was valid. Nevertheless, this citizen lost the appeal filed with the General Directorate of Traffic.

With regard to this matter, the Ombudsman reckoned that there was no basis for the fine because it had been given for failure to provide proof of payment of mandatory insurance when society has regarded Internet banking statements as having the same validity as traditional bank documents for years, and so should the administration. In other words, once payment for the insurance was confirmed, imposing a fine because a receipt printed from a computer was not deemed to provide sufficient “proof” represented strict formalism that should be rectified such that the fine be waived. General Directorate of Traffic concurred with the Ombudsman's observations and waived the aforementioned fine.

## Administrative coordination in cases involving identity theft in vehicle ownership documents

A citizen addressed the Ombudsman alleging that the registration of the transfer of ownership for her vehicle was in the process of being declared invalid because said registration had been carried out without having properly verified the identity of those who had applied for registration with third-party documentation and without having confirmed that said vehicle had been reported stolen by its owner:

Article 36.1.b) of Royal Decree 2822/1998 of 23 December, governing approval of General Vehicle Regulation, establishes that in the event of theft, a vehicle shall be declared a temporary write-off upon request by the owner once proof is provided that the corresponding police report has been filed. If such a request is not made, the register lacks an entry that would prevent a transfer of ownership. This was what took place in the case in point, according to the report submitted to the Ombudsman by the General Directorate of Traffic: no information was available to determine that the vehicle had been stolen, that its registration should therefore have been written off, and that transfer of ownership could not be applied.

With regard to this issue, the Ombudsman first suggested proceeding with the lawful cancellation of the registration of ownership for the aforementioned vehicle, which was subsequently made effective. Secondly, based on information gathered by the Ombudsman in this and many other such cases, it is clear that the public is currently held liable for performing due diligence and for ascertaining existing requirements and established procedures when it would be far more reasonable to pursue better coordination among the various governmental departments involved in such cases. As such, the Ombudsman made a recommendation to adopt the measures needed to better coordinate efforts among the various authorities handling citizen complaints and records of police investigations in cases involving the impersonation of those represented in vehicle ownership documents. This coordination should take place automatically without requiring the citizen concerned to submit prior notice to traffic authorities with respect to the cancellation or suspension of a registration due to the lack of bona fide verification of the titleholder's identity. This recommendation has been accepted by the General Directorate of Traffic.

## The Ombudsman calls for reliable legislative frameworks that can adapt to an economic, social and political environment in constant flux

**The defining stamp of 2009 was legal reform. The two main laws drafted to regulate the immigration were amended—including a complete revision with respect to asylum through Law 12/2009, of 30 October, on the right of asylum and additional protection, as well as modifications regarding alien affairs in general through a partial reform of the Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, made effective via Organic Law 2/2009 of 11 December. Both revisions incorporate the new legislative reforms issued from the European Union, and they contain modifications in order to fulfil international agreements and commitments, as well as the jurisprudence of various courts.**

In light of the enactment dates of both laws, and given that at the end of the period covered by this report both were subject to appeal in the Constitutional Court, it is not necessary to enter into a detailed evaluation of their contents. Notwithstanding this situation, the Ombudsman must not fail to underscore that, apart from the requirements to conform to European Union law, the fact that such important legislation as the Alien Affairs Act has been amended four times in one decade should make one reflect upon the reasons underlying these legal reforms as well as the need for reliable and rational legislative frameworks that can adapt to ever changing economic, social and political circumstances.

### Entry into National Territory

From the moment that a procedure was established to issue letters of invitation, complaints that focus on similar problems have continued to be lodged. Generally speaking, people feel that the letter is costly to issue and requires a number of documents to be submitted that can sometimes seem unreasonable, besides having in many cases to visit the police station several times.

Complaints related to the denial of entry involving citizens whose legal residence in Spain could not be certified in accordance with police criteria led to several urgent interventions. Such was the case involving an Argentine citizen with legal residence in Spain who was denied entry at the border control post in Madrid-Barajas. The reason according to border control officers was that the traveller had failed to submit an application to renew his residency card in a timely manner and had therefore lost his right to reside in Spain. Nonetheless, it was discovered that the application had indeed been submitted before the deadline, although it could not be located in police databases, but only in the computer processing application used by the alien affairs offices. The Ombudsman's intervention caused the Provincial Government Offices in Barcelona to adopt a resolution granting said renewal so that the traveller would be allowed to enter the country.

The previous report recounted several refusals of entry involving very young Spanish children who had arrived in the company of a parent with a different nationality, as well as the Ombudsman's disagreement with such actions. Consequently, the Directorate General of the Police and Civil Guard was reminded of its legal duty not to infringe upon the right of Spanish citizens to enter Spain, as set forth in Article 19 of the Constitution.

In the course of these investigations, deficiencies were also noted in the arguments underlying the denial of entry to parents with Spanish children in their care. This led to a recommendation to instruct border control posts presented with such cases to carefully weigh the conflicting rights and interests involved before denying entry to progenitors accompanying Spanish minors. Furthermore, it was recommended that in such cases effort should be made to determine the whereabouts of the other progenitor and to place the child in that person's care in the event that she or he can be located. If it is determined that the foreigner should be denied entry once the aforementioned circumstances have been met and the child's right to enter their country has been duly safeguarded, special effort should be made to show the grounds for such denial, taking into account that the minor is returning with his or her progenitor at the parents' discretion. It was also recommended that the Public Prosecutor should be informed immediately of the presence of Spanish minor at a border control post. The aforementioned recommendation was rejected.

### Visits and activities at border control posts

Visits were made to police installations at the Madrid-Barajas and Barcelona-El Prat airports throughout 2009.

With respect to the border control installations at Madrid-Barajas, visits were made to inspect the rooms where those denied entry are held, located in Terminals 1 and 4, as well as the room for asylum seekers located in Terminal 4. The Terminal 1 returnee room, known as Room 3, has only one



main area where returnees are all held together throughout the day and where meals are given. The bedrooms are closed during the day and the only furniture in the main room consists of tables and plastic chairs. More flexible hours of access to bedrooms would seem to be appropriate. The conditions of the bedrooms are considered acceptable, although it would be advisable to maintain and paint them more often. Regarding facilities in Terminal 4, conditions are deemed to be satisfactory.

The Barcelona-El Prat border control installations at the time of the visit were found to be clean and in good condition. Their general circumstances had improved in comparison with the Ombudsman's previous visit. However, the following items should be made available: hot water in all bathrooms, hand soap, all of the showers. Work must also be done to eliminate bathroom odors, to ensure a regular supply of toiletry kits and towels for occupants, to place protective covers on mattresses, and to ensure that a functioning television is available. The installations at the new terminal, which were in the final stages of completion when the inspection took place, have better-lit common areas, although ventilation and natural light are lacking in bedrooms and bathrooms. It was positively noted that several rooms had been set aside for confidential actions and procedures.

The fact that travellers subject to denial of entry procedures at this border crossing are allowed access to their luggage is considered a good practice. Also viewed in a positive light is the measure to reduce waiting times for returns, even by moving returnees to other border control posts, and to minimize the time spent in jail cells in cases involving criminal arrests. It has also been recommended that border control officers should receive special training to identify potential victims of human trafficking, proposing the implementation of a protocol that takes into account the special degree of protection needed by such victims.

Also visited were the land border control posts of Irun-Biriatou (Guipúzcoa), La Junquera and Portbou, in the province of Girona.

### **Re-entry Permits**

In 2009, the Ombudsman occasionally intervened so that visas would be issued to foreign residents who had travelled to their country and, for a variety of reasons, lacked the documentation required for re-entry into Spain. Difficulties often arise when initiating these procedures and these can delay the process several months. In one case, the affected party had to visit the consular office on eleven separate occasions. The Ombudsman has continually made suggestions whenever such delays in the processing of visas are found to involve deleterious consequences and, particularly, the risk that residency status in Spain may be lost.

The difficulties involved in ascertaining whether a visa applicant is entitled to legal residency status have also given rise to a number of interventions. The Directorate General for Consular Affairs and Assistance has argued in several cases

that its decision to deny a visa was based on erroneous information from the National Commissioner for Alien Affairs and Borders, and, as such, the applicant must submit a new application for a visa that would be issued after a new enquiry.

## **Unauthorized Border Crossings**

### **Inspection of First Aid and Detention Facilities for Aliens**

In 2009, the Ombudsman visited the first aid and detention facilities for aliens at the port of Motril (Granada), which pertains to the National Police precinct of that municipality. These facilities were designed to hold people for just a few hours and are not suitable for overnight stays. However, the data showed that the average stay during the first half of the year was about 46 hours. The Ombudsman concluded that this complex should be closed and replaced with another similar to those in Almeria and Tenerife. If this were not feasible, a complete refurbishment of the facility should be carried out, with improvements in ventilation and installation of air conditioning systems.

The National Police was also urged to modify protocols in order to ensure the following: the continual availability of toiletry items and clean clothing for each detainee held in the facility; the use of specific containers to store and destroy clothing worn by detainees upon arrival as well as blankets that cannot be properly sanitized; the installation of a series of showers in the reception area, along with at least one shower per cell; and the installation of a sufficient number of bunk beds and an increase in the supply of blankets.

Additionally, it was urged that the practice of identifying prisoners by writing on their skin with markers should cease. It was also stated that the Public Prosecutor should be informed of the possible presence of minors, irrespective of whether they arrive alone or accompanied by adults.

### **Ongoing Inspections at the Temporary Holding Facilities for Immigrants (“CETI” in Spanish) of Ceuta and Melilla**

With respect to visits made to the two CETI's—detailed accounts of which were included in the previous year's annual report—the need for separate family modules at both centres was stressed in 2009. This conclusion is based on the average time spent on the premises, which is 285 days, in spite of the fact that facilities were never intended for long-term residential use. The Directorate General for the Integration of Immigrants reported that family modules are slated to be built at both facilities, space permitting, and also that the enlargement of the Melilla CETI will allow it to be adapted to suit different purposes such as those involved when entire families are detained. The Directorate General also reported on the works due to be carried out and the measures adopted to improve staff training in identifying and assisting potential victims of human trafficking.



## Unaccompanied Foreign Minors

### Determination of Age

In 2009 the number of complaints on this subject rose substantially. The determination of chronological age via medical tests—of which the Greulich, Pyle, and Dermijian methods are the most commonly used—represents an issue exhaustively studied from a medical and legal perspective, and there is a significant consensus that errors arising during the use of these methods raise serious technical and ethical objections. Available studies do not fully account for racial, ethnic, nutritional, environmental, psychological and cultural factors that can have a direct impact on the development and growth of subjects. As such, the scientific community has called for a revision of the bone age tables in order to adequately represent a multiethnic paediatric population.

Nevertheless, based on information gathered from complaints received by the Ombudsman and also from analyses of data provided in the 2008 Attorney General's Report, it may be concluded that the aforementioned medical tests are used on an increasingly frequent basis as the sole means of determining probable age in many cases.

Throughout 2009, complaints have often referred to foreigners in possession of a passport and even a birth certificate from their country of origin whose status as a minor is called into question due to their physical appearance. The only technical means available to the prosecutor to challenge the age stated in an official document, such as a passport, is a medical test with a wide margin of error.

Another significant area of complaint involves the situation of minors already subjected to age determining medical testing that served as the basis for the Public Prosecutor to confirm their minority status. However, subsequent to moving to another autonomous community and to being detained again by the police there, they are given another test whose results contradict those of the previous one.

In view of the situations described above, the State Attorney General was notified of the Ombudsman's concern regarding the way in which these tests are being conducted.

### Legal Residency Documentation Issues

Despite the fact that there continues to be a large number of complaints in this area, positive developments were beginning to be observed at a growing number of organisations toward the end of 2009, both in the General State Administration as well as at nearly all of the protection agencies.

Several investigations remain ongoing in order to determine the reasons why many child protection agencies failed to apply for residency permits for the children under their guardianship alleging that this was due to the lack of a passport. In such cases, the Ombudsman reiterated that missing passport issues could be resolved by using the registration card instead.

### Movement of Minors to Different Autonomous Communities and Central Registry for Unaccompanied Foreign Minors

Previous reports already referred to new situations arising due to the movement of unaccompanied foreign minors to different autonomous communities.

Throughout 2009 this issue raised numerous complaints, especially with respect to children who were wards of private organizations in Madrid despite the fact that legal guardianship continued to be held by child protection services in the Canary Islands. Many of these cases led to suggestions to the Government Delegation of Madrid that an accurate assessment should be carried out with regard to the effects of legal residence for minors in their care from the moment they are transferred from a child protection agency.

The Ombudsman also indicated to the same Government Delegation of Madrid that the practice of matching the validity period of residency permits for these minors to the day they reach legal adulthood is unlawful.

Problems have also been observed during the renewal process for residency permits that had been granted to minors by one of the Provincial Government Offices of the Canary Islands before the minors' arrival in Madrid. A variety of situations have arisen: failure to respond to applications, inability to state the reason for administrative silence regarding renewal, deeming the renewal invalid because the applicant has reached legal adulthood, or processing the renewal application as a residency request for exceptional circumstances. Given this situation, the Ombudsman sent a reminder of legal duties to said authority—which received no reply by the time this report was being drafted—noting the provisions breached with respect to both the reasoning behind administrative silence toward renewals as well as deadlines in force for processing applications. This was accompanied by several suggestions regarding individual cases studied in each complaint.

Complaints are becoming increasingly common from minors who have been subject to different custody arrangements in various autonomous communities. The attention of the Attorney General's Office was drawn to the difficulties stemming from this fact so that guidelines might be established which would achieve better overall consistency in the child protection system.

Another concern that has also been communicated to the Attorney General's Office and the Directorate General of the Police and Civil Guard, is the noteworthy inadequacy of the recently created Central Registry for Unaccompanied Foreign Minors, which represents an essential tool to achieve the level of consistency in the system that the Ombudsman has been calling for.

### Repatriation Proceedings

Even though available data shows that the number of repatriations is quite low, complaints related to irregularities in the handling and reporting of repatriation cases have not declined significantly. Additionally in 2009, no progress was made regarding

the adoption of a general protocol for repatriation procedures involving unaccompanied minors, as had been announced in January 2008 by the Directorate General for the Integration of Immigrants.

Another issue that has not yet been properly addressed regards the effectiveness of safeguards in hearings required in repatriation procedures involving children. On this subject, the Directorate General for Adults, Children and Families of the Principality of Asturias accepted the recommendation that had been made so that any and all personal data of minors and their families available should be reported as soon as possible to the Government Delegation in cases dealing with the protection of unaccompanied foreign minors. The recommendation also urges that a report for each case be drafted that, following to an assessment of the child's personal and family circumstances, would notify the General State Administration of the option that is deemed to be the most favourable for the child.

### Visits to Centres

Along with other inspections carried out in 2009, follow-up visits were made subsequent to earlier inspections from previous years, including a visit to the DEAMENAC (Spanish acronym for "Emergency Shelter for Unaccompanied Foreign Minors in the Canary Islands") called "La Esperanza" in order to follow-up on a visit made back in 2007. Upon arrival at the shelter, it was found that two independent facilities were in operation at the same location.

According to confirmed reports, the average length of stay for unaccompanied foreign minors in the DEAMENAC is approximately 18 and a half months, and the only way to reduce overcrowding at these shelters is by transferring residents to facilities in other autonomous communities.

Also noteworthy was the fact that the new facilities, which had only been in operation for less than two years, were in a state of disrepair. In fact, recent renovation work that had been undertaken on the structure in August 2007 was difficult to distinguish.

In the meeting held with the director of the child protection agency at the end of the inspection visit, it was learned that the aim of the Canary Island Regional Government was to gradually close the emergency shelters that had been set up in response to the massive influx of children in previous years. In his view, in light of the entry into force of the latest reform of Organic Law 4/2000 as well as the steady decline in the number of *cayuco* boats arriving throughout 2009, the cited emergency shelters were gradually ceasing to serve the function for which they had originally been set up.

In light of conditions at these facilities as well as official predictions, the Ombudsman reckons that would be advisable to consider developing a standardized model for housing services provided to these children. In order to effectively approach this task, better coordination is needed between the Town Councils and the Canary Island regional government so that new methods of collaboration in the protection of minors may be established.

The Oviedo Shelter for Mothers and Children was visited for the first time as well. The Initial Reception Unit (UPA, in Spanish), which currently consists of two living spaces: the Area for Minors for newborns to 3-year-olds, and the Initial Reception Unit, which admits children from 12 to 18 years of age. This shelter is not dedicated exclusively to unaccompanied foreign minors. The Facility is publicly owned and pertains to the Ministry of Social Welfare and Housing of the Principality of Asturias, through the Asturian Institute of Social Assistance for Children and Adolescents. It is located in a neighbourhood close to the downtown area of Oviedo, in an area containing private homes as well as university installations with public services and sports facilities.

The visit focused on the Initial Reception Unit located on the second floor of one of the facility's modules of the complex. It has capacity for 16 children, although it is not deemed to be suitable for residential purposes because children's stays are not to exceed 45 days.

At the time of the visit there were 14 minors present, most of whom were Moroccan, with three Spaniards and one child from the Ivory Coast. The Ombudsman was aware that during 2008 severe overcrowding had plagued the centre, although this situation was later resolved during the course of 2009. Nonetheless, problems persist with various facets of the facility's educational objectives. Specifically, measures are urgently needed to assist children who inhale solvents. To facilitate diagnoses and supervision, it would be advisable for the protection agency to hire a specialized, psychosocial team.

### Alien Internment Centres

Throughout 2009, the Ombudsman worked its way through its program of visits to alien internment centres (CIE) and other administrative agencies. These visits are intended primarily to provide constant monitoring of conditions at facilities that are highly sensitive due to the curtailment of rights that takes place in them. This task will necessarily be enhanced stemming from the Ombudsman's designation as the National Mechanism for the Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment, which was made effective by Parliament in Organic Law 1/2009 of 3 November. In 2009, CIE in Barcelona and Malaga were also visited.

The first, situated in a police complex located in the "Zona Franca" Industrial Park, has a maximum theoretical capacity of 178 beds, and average occupancy has been around 50% since 2007, the year it first entered into operation. During the visit, it was noted that the general conditions of the installations were satisfactory, although shady areas need to be created in the patios. The state of cleanliness in public areas, bedrooms and bathrooms was excellent. Also worthy of note is the deposit and storage system for inmates' belongings as well as the availability of toiletry items, which must be considered exemplary.

In the Ombudsman's opinion, security cameras should be installed in common areas where they currently do not exist, staff coverage should be increased because their presence only

three days a week is considered insufficient, and the facility should be provided with permanent medical care service.

The Alien Internment Centre of Malaga, as has been observed during other visits, fails to meet conditions for a facility of this type due to serious building deficiencies that have led to persistent darkness and weakened structural integrity. The rigidity of load-bearing walls blocks the necessary enlargement of patios, kitchens, bedrooms and visiting room, and numerous renovations have failed to improve existing circumstances. As such, the Ombudsman reckons that the building should be entirely replaced.

Nevertheless, it should also be noted that there have been some noteworthy improvements since the previous visit in May 2006, such as the following: an emergency action and evacuation plan was implemented, the walls the medical service unit were tiled, new televisions were installed, and new awnings were used to provide shade in the men's courtyard. Another positive factor was the fact that doctors for both morning and afternoon shifts had been permanently appointed, although deficiencies remained in terms of material resources available to them. A persistent issue is the fact that the centre has had no social worker for two years.

Additionally, the Ombudsman has paid particular attention to the internment of foreign minors. As such, an enquiry was opened with the Director of the CIE in Algeciras, subsequent to a complaint by an association that discussed the admittance of four sub-Saharan citizens along with their children and called into question whether the facility was suitable for housing minors. According to what was observed, the National Commissioner for Alien Affairs and Borders ordered the group to be transferred to the CIE of Barcelona, where a properly equipped module was set up to separate them from other inmates.

## Expel and Return

Organic Law 2/2009, of 11 December, added a provision to the Aliens Act that grants legal status for the protection of foreign females who are victims of gender violence. Until the present time, said provision had been contained in immigration law and was further defined in judicial rulings. The main difference is the possibility of granting a temporary residency permit to the alleged victim while criminal proceedings remain pending. Furthermore, this modification is not based on the consideration that this must necessarily stem from an administrative proceeding for undocumented status, and the Ombudsman had duly noted the usefulness of such a circumstance in the 2005 annual report.

In the last report extensive reference was made to investigations conducted in the area of human trafficking—both from the standpoint of police activity as well as from that of protection for victims as per international and EU mandates adopted by Spain. Throughout 2009, proceedings have been initiated with the Ministry of Interior, the Ministry of Equality and the State Attorney General, which demonstrate the growing commitment of public authorities in the fight against this scourge in

line with the Ombudsman's observations. Specifically, a recommendation was addressed to the General Directorate for the Police and Civil Guard in order to reinforce safeguards for those who fit the profile of human trafficking victims and also to enhance training for police staff who work in this area so as to boost the detection of potential victims. The response submitted by the aforementioned Directorate indicated a growing awareness of the situation that is taken to show their agreement, although the situation must be monitored further in order to see what specific measures actually spring from this awareness.

Additionally, as in previous years, numerous complaints were received requesting that an expulsion order be revoked and a fine be imposed instead in cases of illegal residence violations. The evaluation of each of these complaints prompted the Ombudsman to make suggestions to various government departments and branches (Alicante, Almeria, Girona, Leon, Madrid, Valencia, etc.) with a relative degree of acceptance.

Generally speaking, the Ombudsman's actions have been directed toward overseeing the proportionality of expulsion orders. In this regard, a reminder was made that case law supports the argument that the main penalty for lack of proper documentation is a fine, whereas expulsion requires a specific justification in addition to the alien's undocumented status. Under such circumstances, the alien's length of residence and family ties, such as the existence of children with Spanish nationality or a spouse or children with legal residency, are highly relevant.

## Administrative Departments

### Consular Offices

Due to various complaints regarding the difficulties involved in obtaining information by telephone on document legalization procedures and regarding the poorly functioning online appointment system via the website of the Ministry of Foreign Affairs and Cooperation, two enquires were opened with the Directorate General of Consular Affairs and Assistance. The Administration stated its aim to improve the appointment system and to avoid hoarding of timeslots by using a log of companies and individuals who request an appointment. Investigations remained under way as of the time this report was concluded because, given the complaints that are still being submitted, the circumstances affecting the central legalization service may not be considered to be resolved.

A similar situation was observed in the aforementioned service concerning telephone information. The Directorate General of Consular Affairs and Assistance reported that the number of phone calls is so high that there is not enough available staff to handle them, even though other departments collaborate in this function. According to the official report, the only way to mitigate this problem is by taking on a greater number of qualified personnel. Consequently, the Ombudsman continues to act in this area.

As for material and human resources at consular offices, last year's report described circumstances affecting the Spanish Consulate in Lima (Peru). The Directorate General for Foreign Service stated that a needed increase in personnel at this office was pending a decision by the Inter-ministerial Commission on Remuneration. This Commission reported favourably on the hiring of 75 contract staff for the entire consular network. The Ombudsman addressed the aforementioned Consulate in order to determine whether the increase in staff had mitigated the deficiencies observed, and the consulate replied that it was necessary to extend certain contracts. In the end, the Directorate General for Foreign Service authorised contract renewals via the General Personnel Office.

The Spanish Consulate in Quito (Ecuador) is in a similar situation, in spite of having received additional personnel. As indicated in previous reports, significant efforts have been made to improve overall service, and the reduced overcrowding there is related to the fact that the Consulate in Guayaquil has become fully operational. Nevertheless, according to available data, delays were minimized in 2009 with regard to the acceptance and handling of applications, which for certain types of visas required triple the amount of processing time allowed by law.

The Ombudsman must express concern regarding certain practices observed at several consulates, which constitute a breach of the duty to record all applications submitted in accordance with provisions in Law 30/1992. This is exemplified by the fact that the Ombudsman sent a reminder of legal duties to the Directorate General of Consular Affairs and Assistance with respect to certain actions taken at the Spanish Consulate in Bogotá (Colombia). Said actions were deemed to represent an infringement of the affected person's rights due to the fact that no notification was ever offered to explain why the visa had been denied, or, in her case, why her application for said visa had been rejected. The consular office merely stated that the legal representation made regarding a minor was deemed to be incorrect and she would not receive the documentation requested.

Another group of complaints that have repeatedly been referred to in the Ombudsman's annual reports deals with the scarcity or complete lack of grounds for visa denials. In 2007, a recommendation was made to the Directorate General of Consular Affairs and Assistance to suggest that denials of student visas should at least contain the information required in the sixth additional provision of Immigration Law. This recommendation was accepted and the relevant instructions were sent out to consular offices. Nonetheless, in light of persistent problems with other types of visas, the same Directorate was asked, unsuccessfully, to give instruction regarding the reasoning underlying decisions involving residency visas for family reunification with ascendants. As was confirmed, several consulates with high volumes of visa applications frequently referred to the lack of financial dependence as the only justification for denying such visas, or they merely stated that they did not deem the case for granting Spanish residency to be sufficiently certified.

The Ombudsman reminded the Directorate General for Consular Affairs and Assistance that decisions to deny such visas must be adequately reasoned since another governmental body has pronounced favourably in this regard, and, consequently, the reasoning underlying denial of requests that had previously been treated favourably must be explicitly clarified.

### **Alien Affairs Offices**

Many foreigners have approached the Ombudsman to complain about the poor service at alien affairs offices. In the province of Alicante, lengthy delays were investigated at the Denia Police Station, where they were only making appointments for EU citizens on Fridays and the situation was nearly paralyzed from overcrowding. The investigation ended once the situation was found to have returned to normal as a result of the opening of the Alien Affairs Office in Altea as well as the authorization of a police office in the municipality of Teulada to handle alien affairs issues. Nonetheless, the General Directorate for the Police and Civil Guard was informed that keeping all of the appointments on one day of the week was too rigid, especially in light of the fact that the Denia Police Station was no longer overcrowded.

The previous year's report recounted action taken with the Government Delegation of the Autonomous Community of Balearic Islands after a large number of non-governmental groups had called attention to a variety of problems such as poor access to information, case entry and recording delays, decision notification issues, application of arbitrary criteria, or impolite treatment by the staff at the Island Offices for the State Administration in Ibiza and Formentera and at the local commissary of the National Police. After evaluating the official replies received, visits were made to the aforementioned Island Offices and to the Local Branch of the National Police in Ibiza in February 2009. An additional visit was made to the Balearic Islands Alien Affairs Office in Palma de Mallorca.

As a result of these actions several recommendations were made. The Island Offices of the National Government in Ibiza and Formentera were told of the need to establish a comprehensive citizen information system for in association with the local offices of the National Police on the island. It was also deemed advisable to carry out an information campaign aimed at users of alien affairs services offered by the island government in order to shed light on the division of authority among the various departments there with respect to alien affairs issues.

A recommendation was made to the Government Delegation of the aforementioned Autonomous Community to urge that the process for delegating authority to the various departments of Island government be subject to immediate review, and that adequately staffed alien affairs offices be established within them that pertain to the Unified Office of Alien Affairs. At the same time, the need for a comprehensive alien affairs unit in Ibiza and Formentera was noted in a recommendation made previously to the State Secretariat for Public Administration, and this unit should be sufficiently staffed to

handle the existing workload and be incorporated as well into the documentation services department of the National Police Force. This organization was also told that said agreement should be accompanied by a designation for an alternate location, as the existing structure failed to meet the minimum standards needed so as to adequately provide the types of services rendered by an alien affairs office.

The first implementation phase of said unit took place several months afterward, although it still needs to be adequately staffed and other services need to be developed further.

Additionally, in light of the extremely poor conditions of the facilities at the local National Police headquarters in Ibiza and the large number of users there, the Directorate General for Infrastructure and Security Material was asked to expedite the process for construction of a new police station, urging, in this case, the appropriate administrative proceedings be undertaken so that the construction of said facility be declared a matter of public interest by the Council of Ministers. Furthermore, a document containing a detailed list of the improvements that should be urgently carried out was sent to the Directorate General for the Police and Civil Guard. Both aspects of the recommendation were taken into account.

Finally, it is worthwhile to make mention of the visit conducted at the Alien Affairs Office based in Palma de Mallorca. In general terms, the assessment was positive, although there is clearly a need to develop a model that would streamline the functioning of diverse decentralized services among a variety of island governmental departments. Moreover, it would also be opportune to implement a comprehensive online document management system that would make it possible to do following: eliminate the need to use the postal service to share information among departments, enhance information sharing, bolster the capability to conduct cross-sectional studies, and facilitate the standardization of action protocols.

The lack of a Unified Office for Alien Affairs in the Autonomous Community of Madrid translates into a scattering of the various departments responsible for immigration issues and obliges citizens to visit several different offices in order to meet bureaucratic conditions required to obtain the documents. The Ombudsman has repeatedly called for the establishment of said Office in order to ensure adequate coordination and effectiveness of administrative activities and to provide citizens with a higher quality of service by alleviating the inconveniences and hardships that currently plague it.

Regarding the Autonomous Community of Valencia, activities at the Patraix Police Station were investigated when a citizen reported that queues began forming in the early hours of the morning and the staff on hand at 8 AM was insufficient to provide service for everyone waiting outside without toilets, shelter, or even a place to sit down. The Directorate General for the Police and Civil Guard indicated that the overall user experience would soon be substantially improved as a result of the passage of a plan to renovate and refurbish the Zapadores Police Headquarters, whose bidding procedure and construction works are slated for 2010.

Lastly, mention should be made of the *ex officio* enquiries initiated in light of media reports regarding the arrest of several police officers and civil servants at the Alien Affairs Office of Almeria due to the existence of a network that allegedly cheated immigrants by expediting the processing of their cases and residency permits in exchange for money. The provincial government offices in Almeria merely stated that the matter was under police investigation. The Ombudsman reminded them— notwithstanding the fact that the Ombudsman had gathered pertinent information from the Directorate General for the Police and Civil Guard—of their duty to supervise personnel and hold staff accountable for the way they perform tasks pertaining to the Alien Affairs Office. This duty of supervision corresponds directly to the aforementioned provincial government offices, and, as such, a full report was again requested regarding exactly what took place as well as the results of the review conducted to establish the most effective safeguards to be adopted so as to prevent similar issues from arising in the future.

## Residency Procedures

### EU scheme

EU legislation and case law establish that expulsion orders from—or a denials of entry into—Schengen countries, that have been handed down against EU citizens or family members thereof, may only be imposed for reasons of public safety, public security or public health, and under no circumstances may they be based solely on previous cases of illegal residency. As such, if an existing deportation order is entered on a visa application, the consular office must request the appropriate report from the relevant governmental authority in order to ascertain the reasons why said order had been imposed. Should this entry refer merely to illegal residency, said order should be revoked and expunged from Schengen Information System (SIS) and the visa should subsequently be granted.

However, in certain cases processing snags arise that delay, hinder, or even preclude the granting of the visa. Thus, in some of the cases examined, some months may have passed from the moment the expulsion order is revoked to the moment when the denial of entry is eventually expunged from SIS. As consular offices place the issuance of visas contingent upon the expunction of the denial of entry order, this situation can lead to legally unjustifiable delays in the issuance of visas. The Directorate General for the Police and Civil Guard attributed this circumstance to the way in which relevant databases are accessed from consular offices, a factor which remains under investigation.

In other cases, the governmental authority merely issues a report in favour of granting the visa, but fails to revoke the deportation order; which, in their view, is only deemed appropriate once the applicant has entered Spanish territory and the application for an EU family member ID card has been duly submitted.

Subsequent to the Ombudsman's intervention, solutions were found for some of the issues mentioned. The Ombudsman continues to seek individual resolutions for each of the situations



discussed, and has sent pertinent information to the Directorate General of Immigration as well as to the Directorate General for Consular Affairs, so that by virtue of the authority vested in them they might issue instructions to the effect that the setbacks and hindrances observed might soon be ameliorated.

Several complaints were also received from EU citizens whose spouses were citizens from other countries and who experienced problems in obtaining a visa to enter Spain along with their EU spouses. This happened at the Spanish Consulate in Bogotá with a Colombian citizen married to a Dutch citizen, as well as at the Consulate in Buenos Aires, Argentina, with the Argentinean spouse of a German citizen. In both cases, the marriages had been performed in accordance with local law, but had never been entered in the official records pertaining to the EU citizen's country of nationality. This was deemed to represent sufficient grounds for denying the visas requested. In the end, the Directorate General for Consular Affairs and Assistance drafted instructions to the effect that when marriages need not be registered, as per the law of the relevant EU country, it shall be required to submit a certificate of acceptance from the corresponding Embassy that said marriage had been conducted in accordance with local law.

The Government Delegations of Valencia and the Balearic Islands as well as the Government Sub-delegation of Alicante have already agreed that the undocumented period of residence of an alien who subsequently marries a Spaniard is not deemed to represent sufficient grounds to deny entitlement to EU rights via the granting of an Alien Residency Card. Thus, complaints received on this subject have been addressed in a satisfactory manner.

An existing deportation order for illegal residence cannot be used as grounds to deny the EU family member card either. The Directorate General for Immigration has issued instructions by which the granting of said card supposes that an outstanding deportation order becomes invalid for that reason without the need for this order to be expressly revoked. However, complications sometimes arise which underscore the reluctance of authorities to provide citizens with the official documentation they need to certify their new legal status.

To sum up this section, it should be pointed out that the Directorate General for Immigration disagrees with the Ombudsman regarding the need to revise the 19th additional provision to the Law on Immigration and to clarify assumptions and proper procedures in applying for a residency permit for exceptional circumstances for EU and Spanish citizens' family members who are not yet beneficiaries of the EU system because, they reckon, such cases should be resolved in accordance with the general provisions set forth in Article 45 of the Law on Immigration. The Ombudsman disagrees with this position and argues that the criteria of fairness and legal certainty warrant the redrafting of the aforementioned provision.

### **General scheme on Immigration**

In the previous annual report, it was stressed that legislative measures were needed so as to standardize the reports on

adequate housing that are required by law to be submitted in family reunification cases. This is due to the fact that existing legislation in this area is inadequate and also because of the fact that said reports are prepared independently by the municipality where the resident seeking reunification lives and, as such, they are often not comparable. The Directorate General for Immigration has maintained contacts with the Ministry of Housing in order to seek an opportune degree of standardization, and the Spanish Federation of Municipalities and Provinces have set up a task force to address this issue. Nonetheless, no standardized report format has yet been produced. The Regional Government of Catalonia and representatives of the local authorities of this Autonomous Community have established criteria to streamline the coordination of activities dealing with this matter within their geographical area, but such measures continue to be inadequate. The need to standardize this process is imposed by basic notions of legal certainty, and for this purpose the Ombudsman has kept this enquiry open.

It should also be noted that Organic Law 2/2009 of 11 December has modified the text of the Law on Immigration with respect to family members eligible for reunification, and it expressly includes children over eighteen years of age who are plainly unable to provide for their own needs due to health-related causes, which is in line with the position held by the Ombudsman regarding the need to acknowledge the right to family reunification in such cases.

In last year's report, ample reference was made to the Ombudsman's disagreement with the dual control procedures established in the residency application process. Specifically, subsequent to examination by the appropriate governing authority during processing of residency permit applications, consulates carry out a second review of requirements in spite of the fact that they lack the express authority to do so.

Both the Ministry of Labour and Immigration as well as the Ministry of Foreign Affairs and Cooperation have argued, contrary to the Ombudsman's opinion, that the consular offices have the power to review what has already been examined by the relevant governmental or labour authority because they consider that said requirements may only be confirmed in the would-be immigrant's country of origin. The Ombudsman sent a recommendation to the State Secretariat for Immigration and Emigration to suggest that modifications be drafted during the next legislative revision so as to improve the overall level of consistency in activities carried out by the Administration and also to enhance the quality of the statistics gathered on the subject by the Permanent Observatory on Immigration to effect better administrative handling of such matters.

The reunification of ascendants is legally contingent upon the condition of financial dependence and other reasons that justify being granted a residency permit in Spain. As noted in previous year's reports, the Law on Immigration extends a ministerial decree in terms of the establishment of parameters to be used to determine economic dependence, but this provision has not been elaborated. As such, each consulate determines whether this requirement is met in light of the individual

financial circumstances and other factors involved in each case. The evaluation of the need for a residency permit in Spain thus involves the application of subjective criteria that is occasionally not sufficiently grounded. Such circumstances often cause criteria to be applied in an excessively rigorous fashion and a fair application of the law is, thus, not achieved.

Additionally, the lack of reliable registries in certain countries can lead consulates that handle visa applications to doubt the authenticity of the information provided in official documentation submitted by applicants, and, consequently, they may seek alternative forms of proof to ascertain the applicant's kinship with the resident requesting reunification or to confirm the underage status of the applicant. The previous year's report contained ample references to the use of DNA testing by certain consulates to dispel doubts regarding the kinship of applicants. As per what has been reported to the Ombudsman, this test is currently performed at consular offices in Lagos (Nigeria), Shanghai (China), and Santo Domingo (Dominican Republic). The Ombudsman must reiterate that the continued use of this type of testing and the potential spread of this practice to other consular offices should be preceded by consideration for the legal framework under which it may be carried out as well as its impact on the right to privacy and to a life together with one's family.

Another relevant question involves aliens who meet all of the requirements for obtaining a residency permit because of their length of stay but who are also subject to an expulsion order due to undocumented residence. In principle, the residency application should not be deemed lawfully admissible, but the Ombudsman reckons that in such cases proceedings should be undertaken to revoke the deportation order so that the application for a residency permit may be processed. Certain regional and provincial government offices, Barcelona, Cadiz, Madrid and Murcia, have taken this approach in accordance with suggestions made by the Ombudsman, whereas others, mainly the Government Sub-delegation of Alicante, have strongly opposed the revocation of expulsion orders. After several individual complaints had been processed with varying outcomes, it was decided to send the pertinent information to the Directorate of Immigration in order that they might issue instructions to standardize this practice. This Directorate concurred with the criteria of the Ombudsman and established the revocation of deportation orders as the proper procedure to follow.

## Asylum

During 2009, the Government Delegation of Ceuta was reminded its legal duty to make arrangements to deport aliens in accordance with the terms set forth in Article 58 of the Law on Immigration and Article 157 of the Law governing its enforcement, ensuring that the alien subject to deportation is duly afforded a hearing so as to safeguard the possibility that a petition for asylum may be made. The cited reminder was made well after several sub-Saharan citizens had been hasty deported without having been granted due process in 2004. The

Ombudsman found that the case had not been investigated with the degree of diligence and thoroughness it deserved in order to determine who was responsible and to establish an action protocol to prevent such circumstances from recurring. The aforementioned provincial government has accepted the reminder of legal duties submitted.

Several enquiries were opened during 2009 regarding unaccompanied minors seeking asylum. In one case, a Cameroonian boy was admitted to a children's shelter after having been tested by order of the Juvenile Prosecutor to certify his age. Subsequently, new testing was given at the children's shelter that provided evidence that the person in question was in fact an adult, which precluded guardianship and obliged the subject to leave the centre. The subject, who was in possession an asylum document as a minor could not gain access to resources for adults. At the Ombudsman's request, the General Office for Asylum arranged for this person to be immediately admitted to an adult shelter in order to protect him from vulnerability. The investigation remains open in order to establish the relevance of the information that allegedly warranted a repetition of age certification testing.

Additionally, several enquiries were opened over the course of 2009 to look into the reasoning underlying the application of bone testing to applicants who hold passports and birth certificates from their country of origin which attest to the fact that they are legal minors. This issue generally affects unaccompanied foreign minors, but it has a particularly harmful effect on children seeking asylum because it places them in more vulnerable circumstances than adult asylum seekers because of the way the shelters are set up.

## Equal Treatment and Non-Discrimination due to Ethnic, Racial, or National Origin

Throughout 2009, the Ombudsman continued to pursue investigations initiated in previous years regarding Internet use by racist and neo-Nazi groups who seek to disseminate hateful and violent content toward individuals or social groups for racist, xenophobic, anti-Semitic or homophobic purposes. The Attorney General reported on the actions currently under way and on proceedings involving alleged violations of Article 510 of the Penal Code. In any case, and in light of both the difficulties involved in prosecuting such crimes as well as news reports regarding the designation of a special prosecutor to address hate crimes and discrimination, requests have been made for details regarding specific plans to improve the Attorney General's effectiveness in this area. Moreover, given the difficulties in gathering evidence for such cases as well as and the limited legislative recourse for such behaviour, the Ombudsman has initiated proceedings with the Spanish Observatory on Racism and Xenophobia to ascertain their opinion regarding the dissemination of hatred and xenophobia on the Internet. Information has also been requested from said Observatory regarding potential collaborative efforts that may be undertaken with the European Observatory on Racism and Xenophobia as well as other international organizations regarding the best practices



and strategies to adopt in order to effectively prosecute the online dissemination of hatred and violence against persons or social groups for racist, xenophobic, anti-Semitic or homophobic purposes.

Enquiries have also continued throughout 2009 with the Spanish Observatory on Racism and Xenophobia to learn more about plans for awareness programs aimed at media professionals that are meant to combat online racism and xenophobia. In

2008 the General Directorate for the Integration of Immigrants informed the Ombudsman about the effort to disseminate a practical guide for media professionals focusing on media coverage regarding immigration issues as well as the monitoring under way with respect to the way immigration issues are treated in the media. With this effort, as per official reports, the aim is to draft proposals directed toward the communications media to improve their treatment of immigration issues.

## OMBUDSMAN PUBLICATIONS IN 2009

2009 saw the publishing of *Recomendaciones y Sugerencias 2008* [*Recommendations and Suggestions 2008*], *Informe de Gestión 2008 y sus debates parlamentarios* [*2008 Report and corresponding parliamentary debates*], as well as The Summary of that report in Spanish and English. These publications can be consulted on the website [www.defensordelpueblo.es](http://www.defensordelpueblo.es)



## In anticipation of a social pact on education, the economic crisis represents a major obstacle to integration into the European Higher Education Area

**For far too many years, an unwelcome degree of uncertainty has afflicted the Spanish educational system. The Ombudsman, in annual reports for 2004 and 2005, urged that efforts be combined and arguments softened in order to agree upon a process of educational reform stable enough to remain in force over the long term. At the time of writing this report, negotiations are under way among the main political forces with the objective of achieving a social and political pact in the area of education. This fact in itself represents magnificent news.**

**The problems that cannot be ignored include, among others: a high failure and dropout rate, poor national and international standardized testing scores, low social regard for professional training, and inadequate volume of critical degrees in the production system. To this list must be added insufficient budgetary resources to ensure quality in the educational system, and particularly to overhaul university curricula to conform to the European Higher Education Area.**

### Non-university Education

#### School Facilities

Complaints, which mainly involved schools for students at the preschool and primary levels, dealt with subjects similar to previous years: general deficiencies or unsuitability, lack of sufficient space and the adoption of stopgap measures to mitigate the problem (preparing areas meant for other purposes to be used as classrooms, increasing the number of students per class, etc.), or the failure of the educational authorities to meet construction deadlines or to establish locations for new facilities.

The Ombudsman is planning to open an *ex officio* enquiry in 2010 with each of the educational authorities in order to gather information that would enable the impact of circumstances such as those mentioned to be accurately assessed, with a view toward making improvements for the 2010-2011 academic year.

#### Schooling

Most complaints deal with the inadequate supply or uneven distribution of spaces in preschool and the early primary school grades, where students more and more often tend to begin their education. This report analyzes specific cases that underscore the difficulties such circumstances pose for students and their families who have no choice other than to pay fees, often without compensation, to enrol their children in private schools or in schools located far from the family's place of residence. This can have a serious impact on the balance of work and family life, and may lead to extreme circumstances in which appropriate schooling becomes totally impossible due to a lack of availability at schools best suited to the student's educational needs.

This report underscores yet again the fact that both phases of early childhood education (birth to three years and three to six years of age) are "educational in nature" as set

forth in Article 14 of the Organic Law on Education, and as such they form part of the basic right to education to which everyone is entitled. For this reason, lawmakers—fully aware of the structural and material deficiencies that make it difficult to ensure this right and even of the voluntary nature of early education—ordered the government to proceed with a gradual increase in the number of pre-school spaces available (Article 15.1.). Legislators also established that the aforementioned second phase of early childhood education would be free of charge, a circumstance that is rendered inapplicable when not enough public or publicly-subsidised spaces are made available. This situation, in turn, has led the legislature to order the progressive allocation of funding needed for this purpose in future general state budgets.

As stated in previous reports, compliance with these legislative mandates is vital to ensuring the effectiveness of a lawful right, and the Ombudsman must strive to guarantee that this right is duly protected. Ensuring this entitlement also requires direct action by public administrations, specifically by educational authorities, in addition to the local administrations that have yet to fulfil their duty to provide sufficient space in public schools to meet existing demands.

#### Student Admissions

The criteria and standards used to determine admissions priorities regarding openings at publicly subsidised schools (which may not always match the circumstances and needs of those seeking them) would seem to call for a certain degree of flexibility in practice, although this would represent a constant challenge to the need for objectivity when selecting candidates for these spaces.

For example, the Ombudsman has received complaints in the area of preschool education that challenge the awarding of points to families where both parents work full-time, which

is justifiable from the standpoint of balancing family life and work and special care for young children from birth to 3 years of age. But it is equally true that unemployed parents or those with certain personal circumstances such as a severe disability may have fewer options available for their children as a result if this standard is applied. A similar set of problems arises when specific circumstances affect the students themselves, such as health problems that warrant the granting of a spot at a particular school, or the simultaneous admission of multiple-birth siblings to the same preschool or day-care centre.

At other educational levels, complaints continue to be filed regarding the establishment or modification of school district boundaries. During the period covered by this report, and in addition to the problems commonly associated with verifying income or place of residence reported in school entrance applications, issues dealt with included admissions criteria for bilingual departments at certain schools as well as admission difficulties for immigrant pupils awaiting residency permission in spite of the precepts established by the Constitutional Court with respect to the limitations originally set forth in the Organic Law on Immigration.

### Academic Affairs

In this section, some cases that are indicative of certain situations that should be avoided are discussed. For example, the Ombudsman reckons that the practice of allowing educational system diagnostic testing and evaluation materials to be used to rank schools based on the results compiled there is unfair and runs contrary to the provisions of the Organic Law on Education. Of course, this type of testing—both at the national and regional level—should be used to shed light on whether educational goals are being met and to improve the transparency and effectiveness of the system, but not to rank schools because this is unlawful and it distorts results obtained for other purposes.

Another matter of concern for the Ombudsman, among other cases discussed herein, is that poor supervision and control of activities at private schools can sometimes have a deleterious effect on students and the educational system itself. This occurred, for example, at a private job-training centre accredited to offer distance learning, which over the course of several academic years had shown enrolment levels well in excess of what was permitted along with other irregularities involving their students' academic documentation. As a result, this centre's accreditation was eventually revoked.

### Special Education

This section refers to pupils with special educational needs and students with specific learning challenges who require additional educational support.

The educational program is often questioned in such complaints. The roots of the problem may sometimes be found in the following: insufficient human and material resources; poor communication and collaboration among centres, evaluation teams and students' parents; or inadequate supervision of students' personal and academic progress, which can lead to

disagreements or mistrust regarding the effectiveness of the measures applied in each case as well as the educational methods used. The educational authorities may not shirk their duty to determine the most appropriate educational approach for each case. Rather, they must take proper and clearly substantiated decisions, address the families' demands whenever possible, and lend credibility to the effectiveness of these decisions by carefully monitoring the progress of each student.

Complaints have been lodged with respect to the late detection of learning disabilities and the substandard assistance provided for such students. The problems most often referred to in this matter involve students with dyslexic disorders that, regardless of whether or not the disorder was detected at the outset of their education, are not given the psycho-pedagogical evaluation required to get to the root of the problem and determine the specific type of care required for each case. The number of complaints handled in this area tends to confirm the considerable delays that often arise in requesting the intervention of evaluation teams.

Given the remarkable growth in this type of complaints, the Ombudsman decided to initiate an *ex officio* enquiry with each of the administrations in order to gather information on actions taken or planned in order to achieve the following: early detection of dyslexia, fostering of student services and support, improvements in special teacher training, and better availability of specific materials needed by teachers working with students at a developmental stage where early detection is essential to the effectiveness of the treatment given.

All of the administrations consulted expressed their willingness to cooperate in this matter. Nonetheless, the information they provided tends to point up the general conclusion that sufficient effort has yet to be made to adapt the early detection and diagnosis methods and the special education and services available so as to fully meet the special educational needs of students with specific learning disabilities. Moreover, workshops and seminar training do not necessarily guarantee that skills will become sufficiently widespread such that all teachers will know exactly how best to perform their duties.

The Senate Committee on Education, Social Policy and Sport recently passed a motion urging the Government to seek an agreement between the Autonomous Communities and Education to conduct a nationwide study geared toward identifying dyslexic students, analyzing their situation, and considering effective ways to intervene. Likewise, the drafting of a faculty-training plan was urged, which would enable teachers to detect early signs of such disorders so that the appropriate methodological strategies might be applied.

### University Teaching: Integration of the Spanish University System into the European Higher Education Area-The New University Degrees

The European Higher Education Area, which has its roots in the 1999 Bologna Declaration, represents the starting point for an ambitious project to standardise the university systems

of 46 European countries, including Spain. The main objective of this project is to promote the compatibility and comparability of university programs and degrees among the signatory nations, while at the same time respecting their diversity, so as to encourage the exchange of graduates and to adapt the content of university programs to meet social demands.

In this country, associate degrees were first offered in 2008-2009, and since then they have coexisted alongside bachelor's degrees, diplomas, and engineering and architectural degrees offered under the former system. According to data released by the Ministry of Education, 1,302 new associate degrees were proposed in 2009, representing about 50% of the total number of degrees expected to be offered in the coming academic year, in addition to the 1,709 university master's degrees and the 1,296 doctoral programs proposed.

Regarding complaints lodged on this subject, it may be concluded that the objections to this process range from very widespread disagreement with respect to the likelihood of improving university education to more specific criticisms based on the notion that the restructuring of the university system aims to gradually turn it into a commodity. Moreover, such arguments claim, this restructuring lacks sufficient funding to allow universities to do the following: to comply with existing limits on the number of students per class, to employ new technologies to track individual students' academic progress as per the new guidelines, or to effectively and sufficiently shore up student scholarship programs.

With respect to funding earmarked for university education, efforts made by universities to adapt their programs to the new European higher education guidelines indisputably go hand in hand with a sustainable public university financing model based on a balanced system of contributions from the relevant Autonomous Communities and from the Public Administration, which is duty-bound to foster the role of universities in research policy.

This notion is clearly and necessarily complementary to the position held by the Ombudsman Institution within the scope of its duties. The Ombudsman has long called upon public universities to strictly fulfil their commitments and duties regarding resources and faculty required to participate in the European Higher Education Area. Furthermore, this institution has urged said public universities to participate in research, development, and innovation, as well as in the creation and implementation of programs and social benefits (such as scholarships, accessibility assistance, support for people with disabilities, etc.). Meeting such demands not only requires diligent effort and effective management but also the allocation of sufficient financial backing to appropriately address the issues of concern.

If normal times require adequate funding for public universities to underpin the right to an education, times of economic crisis such as the present call for streamlining and cost-cutting measures to be applied to university expenditures, along with any other expedient that would help offset the impact of the foreseeable curtailment or deferral of public

university funding so that universities might continue to perform their functions in the area of higher education and research.

### **Access to Spanish Public Universities**

A rise in applicants was observed, which could continue or even increase due to the expected arrival of students from other educational systems or because of new admissions policies implemented for those over 25 and 45 years of age. 2009 was the last year for the outgoing admissions procedure, which continued to raise complaints due to cases where student results or priority criteria applied by universities prevented students from being granted the first choice they had listed on their applications.

Even before they were applied, certain aspects of the new test structure gave rise to a significant number of complaints regarding the disadvantages potentially faced by those who had begun high school under the former regulatory framework, as well as the entrance examination exemptions allowed for students from EU educational systems or from other countries with which Spain has signed international, reciprocal-access agreements for students holding an Advanced Technical degree and an Advanced Sports Coaching degree. These issues were referred to the Directorate General for University Policy.

The Ombudsman's concern must be stressed once again with respect to the limited space available in certain highly popular academic fields and the need to boost the number of spots in these areas in order to meet the demands of their corresponding professional sectors.

### **Nostrification Process for Degrees Earned at Foreign Universities**

In 2009, delays in handling cases involving the nostrification of academic degrees of foreign origin continued to give rise to numerous complaints in spite of the best efforts of the relevant administrative authorities and the improvements in processing achieved—often in line with suggestions and recommendations offered by the Ombudsman. Complaints were also filed that dealt with the additional educational prerequisites needed to nostrificate degrees. Specifically, these complaints express disagreement with the fact that the various options for satisfying these prerequisites are not always made available by universities (aptitude tests or combined examinations, directed study courses, internships, or submission of an academic project or paper), and that said universities sometimes even add on further prerequisites not contained in the nostrification proposal. For these reasons, a general enquiry had been undertaken and was still under way at the time this report was completed.

Another issue that led to action by the Ombudsman dealt with the difficulties involved in handling specific analyses of nostrification applications referring to degrees obtained from foreign institutions based in Spain. It is the duty of the Ministry of Education to apply the legal requirements for nostrification and to ensure that they are duly enforced. For this

reason, recommendations were made to said Ministry, and these were in turn expressly accepted in a letter describing both the appropriateness of said recommendations as well as the intention to promptly pass them on to all Spanish universities.

### **Grants and Other Financial Aid for Post-Compulsory Educational Studies**

The principle of equal opportunity in access to education at post-compulsory levels behoves the Ombudsman's office to push for greater momentum in determining policy for scholarships and financial aid for students. The implementation of the new Bologna process-based university system means that this demand should be extended not only to improve university access but also to ensure greater transferability of students among different Spanish and foreign universities.

Numerous complaints in 2009 express disagreement with the regulatory formulas established to calculate the family income or asset levels that are eligible for financial aid. Additionally, the Ombudsman urged that financial aid be made available to foreigners under 18 years of age without their having to prove residency status in Spain, and that the requirement for the NIE (Foreigner Identification Number) be removed from application forms.

Other complaints have been lodged due to the delay in issuing the order that would govern student loans for Master's programs as well as the convening of the Seneca grant program. Among the positive points, the creation of the "fellowship" should be pointed out, although Spain continues to lag behind more developed countries. The fellowship requirements for students wishing to be deemed financially independent are too restrictive. Additionally, faculty planning should be fostered for part-time studies to make it possible to reconcile educational programs with professional activities.

Complaints concerning delays in processing grant applications diminished significantly, clearly as a result of the fact that they were handled through the Ministry's website. However, this has given rise to a new set of complaints regarding difficulties encountered in carrying out procedures: having to physically visit a public institution that offers Internet services, being able to connect online only in the early morning hours, having to repeat a procedure time and time again due to system crashes or for having surpassed the limited times allotted, not receiving

confirmation for the application submitted along with the corresponding password, etc.

The Ministry should have done the following: planned an adaptation period in order to phase in the new online system, established an alternative method for families living in remote rural communities or who are unfamiliar with computers, and, of course, kept open the option of submitting grant applications on paper rather than requiring electronic filing in all cases.

Special scholarships have been set up for students with disabilities, which includes grant amount increases, income level extensions, and study load reductions, although only those who can prove a 65% degree of disability are eligible for these enhancements.

The *ex officio* proceedings by the Ombudsman's office described in the 2008 report resulted in full recognition of the disabled students' right to a full tuition waiver at all Spanish universities as of the current academic year.

### **Academic Disciplinary Rules for University Students**

Law 4/2007, of 12 April, requires the Government to pass a university student statute within one year of its entry into force. This duty, which the government continues to neglect, was specifically sought by the Ombudsman in the 2008 report after an *ex officio* enquiry with all Spanish public universities to elucidate the criteria and principles that were being applied in cases involving academic disciplinary issues, with specific regard to the enforcement of the partially effective Decree of 8 September 1954.

Complaints on this subject continued to be lodged in 2009, which behoves the Ombudsman to question yet again whether it is proper to force the pre-constitutional validity of a rule whose precepts have been deemed partially repealed. A recommendation was made to draft a provision forthwith in order to resolve the issue with the appropriate legal effect and to lay down a regulatory framework for the system of academic discipline at universities. The State Secretariat for Universities accepted this recommendation in its entirety in February 2009, stating that they had agreed to swiftly undertake whatever steps were needed to draft a national law governing the fundamental aspects of this issue. Regrettably, approval of the aforementioned law remains pending, and efforts to pass the University Student Statute have been paralyzed.

## Twenty-three years after passage of the General Law on Healthcare: the right to medical treatment has yet to be fully guaranteed

**The principles of fairness, quality and social involvement in the National Health System, which are referred to in many of the complaints received by the Ombudsman in 2009 and whose main aspects shall be discussed in this report, are typified by the following needs: to ensure access to services under equal conditions throughout the country, to achieve faster and more robust healthcare with higher quality and more personalized service, to standardize the safe and effective incorporation of clinical and technological innovations, and to get patients and users more involved by taking into account their feedback.**

### Clinical Data and Documentation

For many years prior to recent times, the doctor/patient relationship was essentially a paternalistic one, and the principle of beneficence that prevailed over this relationship afforded the doctor wide authority to act without taking the patient's will into consideration. Gradually, and doubtlessly stemming from the fact that citizens are better informed and more discerning nowadays and from the profound changes taking place due to rapid advances in scientific knowledge and technological progress, the trend has been to stress patient freedom of choice and, in keeping with this concept, to recast the doctor/patient relationship to include the principle of informed consent, thus acknowledging the decision-making capacity of the patient.

On this subject, it should be noted that Law 41/2002 of 14 November governing patient freedom of choice and the rights and responsibilities involved in handling medical data and records, provides for the following: it completes a regulatory framework that properly addresses what has been referred to as an "ethical action protocol"; it provides concrete details with regard to the general principles set forth in the General Law on Healthcare; it supports patient freedom of choice; and it regulates the aforementioned citizens' right to informed consent. This law, which is linked to the 1948 Universal Human Rights Declaration itself as well as the doctrinal and legal aspects that came into play when defining its scope, has come to resolve a number of issues related to patient freedom of choice and medical data and records that were described in complaints handled by the Ombudsman. Nevertheless, it should be pointed out that more than six years after this basic law was passed, cases continue to be seen that indicate that compliance with it, and hence the protection of the patients' rights contained therein, has not yet reached an acceptable level.

In this regard, it logically follows to cite a recent study conducted by the Ombudsman regarding "Shelters for the Protection of Minors with Behavioural Disorders and Social Problems". Among the study's conclusions and recommendations, it is stated that the prescription and administration of drugs given to hospitalized children were occasionally not performed within

the confines of Article 9.3 of Law 41/2002 of 14 November; insofar as the intellectual and emotional ability of the patient to comprehend the impact of the treatment was not considered, and, where appropriate, consent from the competent public authority, serving as legal representative, was not sought, treatments were applied without considering the minor's opinion in cases involving children over 12 years old, and without having obtained prior consent in cases involving children over 16 years old.

Complaints received by the Ombudsman referring to missing medical records or the violation of patient rights dealing with the proper handling of "informed consent" issues continued to be noteworthy. The processing of these complaints points up the need to strive toward more precise and effective expression of patients' rights with respect to medical data and records.

With respect to proper handling of "informed consent" issues, last year's annual report discussed an issue raised by a patient whose request for a copy of the "informed consent" form for a surgical operation received at a private hospital had been denied. Based on the details provided in the complaint, and once the facts surrounding this incident could be confirmed, the Ombudsman approached the Department of Health of the Community of Madrid to propose that pertinent action be taken via a healthcare services inspection so as to ascertain whether the aforementioned hospital had adopted the appropriate measures to ensure the patient's right to "informed consent" as well as access to medical records in all cases and at all times. In 2009, the aforementioned Department stated that the healthcare services and facilities inspection team had carried out the investigation recommended by the Ombudsman, upon which said hospital agreed to include mandatory annexes and clauses regarding compliance with the stipulations of Law 41/2002, of 14 November, in all contracts with healthcare professionals.

### Regulation of Healthcare Services

Complaints to the Ombudsman regarding the scope and reach of healthcare services continue to underscore the need for



improved strategies and guidelines for these services in light of noteworthy scientific advances in the Biomedical field as well as the existence of regional inequities and ever widening gaps in the range of healthcare services offered by different Autonomous Communities.

With respect to fibromyalgia (FM) and chronic fatigue syndrome (CFS), the Ombudsman has carried out a wide variety of actions, as described in reports from previous years, with the Ministry of Health and Social Policy and the National Institute for Social Security, toward researching and developing evaluation protocols for disabilities that may affect FM and CFS sufferers. In 2009 and in line with the Ombudsman's position on the issue, the aforementioned Institute reported that a panel of experts had conducted an extensive bibliographical study into the matter and had produced a first draft protocol for evaluating diminished work productivity in patients with FM and CFS. They added as well that this draft was undergoing consultations both internally (among physicians belonging to the Institute itself) and externally (among specialists in the field) before being sent on to the Ministry of Health and Social Policy before the end of 2009.

Regarding Traumatic Brain Injury (TBI), an area where the general consensus holds that establishment of a specific health and social services resource network dedicated to providing comprehensive healthcare to those affected remains a pending issue, one should recall that in 2006 the Ombudsman produced a monographic special report on "Traumatic Brain Injury in Spain: an Epidemiological Healthcare Approach". The contents of this report, which provided a foundation for the Ombudsman to make a series of recommendations to the Administrations governing the various types of services involved in TBI care, remain relevant and continue to reflect the current reality in our country. This statement is further supported by the fact that at the end of 2009, the Ombudsman approached the authorities in charge of and involved in TBI healthcare issues to gather updates on programs and resources available in this healthcare field.

Although full details had not yet been provided regarding the requested information at the time this report was being prepared, it can safely be stated from the reports issued thus far—some of which present the forming of new programs or specific frameworks for TBI care or plans to create them in the near future—that many challenges clearly lie ahead, as acknowledged by certain Administrations, in order to achieve high quality TBI care throughout the public healthcare sector.

Deserving special mention in this section is an enquiry, the opening of which was noted in last year's report, with the Ministry of Health and Social Policy, regarding the especially hard circumstances of sufferers of Multiple Chemical Sensitivity Syndrome (MCSS). In complaints lodged, concerned parties stress the following factors, among others: that the multisystem nature of MCSS causes a wide variety of different symptoms, some of which are quite serious; that there are no cures for MCSS, so those affected must lead a highly controlled life by avoiding respiratory, digestive, and skin contact with chemicals;

and that they cannot enter healthcare facilities, where numerous disinfectants, pharmaceutical products and fragrances are used. Also in 2009, the Administration stated that the effective application of Regulation (EC) 1907/2006 of the European Parliament and Council, 18 December, on the registration, evaluation, authorization and restriction of chemical substances and combinations, represented an important tool in safeguarding the health of those potentially exposed to chemical substances, and that the enforcement of this regulation would alleviate the current lack of awareness with regard to the intrinsic and hazardous properties of many of the chemicals found on the market.

Moreover, said department has communicated that the intended outcomes are as follows: to gather information on the properties of substances on the market and their potential health and environmental risks so as to define strategies to control these risks more effectively; to make this information available to all users (industrial workers, consumers and the general public); to establish a permit process in the regulation that aims to substitute highly hazardous substances with alternative substances or technologies whenever technically and economically feasible; and to draft restrictions for manufacturing, marketing or use of substances that pose an unacceptable health risk.

## Waiting Lists

As may be deduced from the extraordinary number of complaints lodged with the Ombudsman regarding healthcare delays in the National Health System, many patients are forced to wait months or even years to be diagnosed or to receive specialized treatments, and such interruptions in service over extended periods of time represent a failure to effectively safeguard patient health. This serious deficiency must be linked to the fact that activities conducted in the area of outpatient services and diagnostic testing have traditionally been given lower priority than hospitalization. Reliable evidence of this is that healthcare services have drafted strategic plans in the area of hospitalization in recent years in which reduction in waiting time delays for surgical procedures, improvements in data systems, and per treatment costs have taken on prominent roles, in contrast to the limited emphasis placed on such areas as outpatient services and diagnostic testing.

On the subject of outpatient services and diagnostic techniques and testing, it must be pointed out that complaints to the Ombudsman in this area have been quite numerous, even more so than in previous years. The handling of these cases has shed light on long waiting times, some of which are unacceptable, in spite of their volume of activity and their growing relevance in the healthcare sector.

The following cases are listed to provide specific examples of delays: three and a half year's wait for medication allergy testing at the Hospital Príncipe de Asturias, Alcalá de Henares; over a year and a half wait (electromyogram) at the Hospital Insular de Las Palmas de Gran Canaria; fifteen and thirteen month-long waits, respectively, in osteopathic services and vascular surgery at Hospital Miguel Servet, Saragossa; ten month's wait



(EMG) at Hospital Puerta de Hierro, Madrid; ten month's wait in the coronary care unit (echocardiogram) of Hospital Ramon y Cajal, Madrid; nine month's wait for cardiology services (inter-departmental) at Hospital Doctor Negrin, Las Palmas de Gran Canaria; over eight month's wait for preferential treatment in the ophthalmology department at the Centro de Especialidades Gerona, Alicante; eight month's wait in the coronary care unit (Holter) at Hospital La Fe, Valencia; eight month's wait for trauma services at the Centro de Especialidades Coronel de Palma, Móstoles; seven month's wait for endocrinology services at Hospital Puerta de Hierro, Madrid; seven month's wait for the endoscopies unit (colonoscopy with sedation) at Hospital Gregorio Marañón, Madrid; over six month's wait for the radiology services (electromyogram) at Hospital Clínico de Valladolid; six month's wait for nuclear medicine services (PET) at Hospital Puerta de Hierro, Madrid; six month's wait for the urology department at the Centro de Especialidades Emigrantes, Madrid; six month's wait for the coronary care unit (stress test) at Hospital Príncipe de Asturias, Alcalá de Henares; five month's wait for gynecological services at Hospital Infanta Sofía, Madrid; five month's wait for the endoscopy unit at Hospital Virgen de las Nieves, Granada; over four month's wait for pain unit care at the Hospital General Universitario de Valencia; over four month's wait for trauma care at Hospital de Fuenlabrada, Madrid; four month's wait (abdominal ultrasound) at Hospital Doctor Negrin, Las Palmas de Gran Canaria; three month's wait for urgent rehabilitation treatment at Hospital Henares, Madrid; and two month's wait for preferential mammogram services at the Fundación Jiménez Díaz, Madrid.

## Primary Care

In light of the deficiencies plaguing this aspect of healthcare, the report entitled "Strategies for 21st Century Primary Care", produced by the Ministry of Health and Social Policy, discusses, among other topics, bureaucratization, limited resources, data sharing issues, insufficient professional healthcare staff and care-giving times. Similar conclusions may be deduced from complaints submitted by citizens to the Ombudsman on this matter.

With respect to the bureaucratization of doctor's office visits, last year's report offered a detailed account of a complaint lodged by a large number of primary care physicians from different healthcare areas in Madrid. They stressed, among other aspects, that primary care physicians were acting merely as "transcribers" rather than as professionals when filling out official prescriptions as per orders given by specialists and physicians of other emergency services. It was also added that, consistent with the Ombudsman's stance, the Department of Health had mentioned the adoption of various measures intended to resolve this situation, pointing out that they had issued Resolution No. 417/2008, on the Vice-Department of Healthcare, which provided guidelines for improving ongoing medication treatments between primary care and specialised care.

During the period covered by this report, the aforementioned healthcare professionals approached the Ombudsman

on a separate occasion to state that said resolution 417/2008 only partially addresses the issue they had previously raised, in the sense that it excludes emergency care services from prescribing directly from the hospital or healthcare centre, the Community of Madrid being alone in not using official prescriptions for these services. On this subject, the Health Administration has indicated that prescription safety should always prevail over efficiency and time considerations, reckoning that the safety issue is bolstered if primary care physicians prescribe medication. This, they add, is based on the concept that emergency services should focus on providing care that is appropriate to their area of expertise, and that primary care physicians are not obliged to continue treatments first established by the emergency services. Such treatments are temporary by nature and subject to subsequent revision, wherever appropriate, by family and community healthcare professionals whose decisions regarding the best treatment to follow after examining the patient may or may not coincide with judgements initially made by emergency service caregivers.

## Specialised Care

Rapid progress in scientific knowledge and technology has enabled us to better understand diseases as well as to develop more sophisticated and effective techniques to treat them, all of which have led to profound changes in healthcare. These changes, at the same time, bring along greater demand by citizens to realign services to suit their needs and to promote freedom of choice. This has resulted in a large number of complaints in this area on a wide variety of issues that may be summarized in three main types of complaint.

The first type of complaints deals with the implementation of new organizational and management models at health facilities and centres belonging to the Community of Madrid.

In this regard, one must take into account complaints lodged by trade unions and healthcare professionals, with respect to Law 6/2009 of 16 November, on Medical Freedom of Choice in the Community of Madrid. These complaints express concern about the new regional and operational management models for the Madrid Healthcare Service, particularly the elimination of eleven health areas that existed prior to passage of said Law and to the creation of a "single healthcare area".

A second set of complaints deals with access to healthcare facilities and services. One of the enquiries undertaken in this matter stemmed from the lack of medical specialists in vascular surgery on Menorca Island. According to concerned parties, quality healthcare and the need to ensure access to services based on the principal of equality require that a vascular surgery facility be established in Menorca, like those that have existed for years on the islands of Mallorca and Ibiza. On this subject, the Department of Health and Consumer Affairs of the Balearic Islands expressed their opposition to the creation of said medical service, based on the argument that citizens of Menorca are guaranteed comparable vascular disease healthcare services under the same conditions as citizens residing on the other Balearic Islands, and that case studies did not warrant

establishing a facility that would not be able to ensure acceptable standards of safety and quality.

The third group of complaints deals with issues involved in the organizational structure and operation of healthcare facilities and services. Because of its special importance, it is noteworthy to discuss the situation of non-compliance with legislation governing morgue conditions at facilities belonging to the Madrid Health Service. In this regard, the Health Ministry indicated in their initial statement that, in order to adequately prepare the report requested by the Ombudsman, hospitals had been asked to submit the documents required to determine their level of compliance in the matter. They stated in a subsequent notification that certain variance had been found in the procedures followed at different hospitals, and that the Directorate General for Management and Inspection would draft a new regulatory framework so that all Madrid-area hospitals, both public and private, would be required to comply with one standard set of criteria on morgue conditions.

## Patient Safety

The Ombudsman has stressed, as evidenced in recent annual reports to Parliament and in various interventions with the healthcare authorities, that in order to properly manage healthcare quality and safety issues the following tasks, among others, must be performed: an effective and systematic investigative protocol must be set up and maintained in order to look into patient complaints regarding incidents dealing with safety issues, priority must be given to implementing data systems to process information related to said incidents so as to adopt preventive measures to avoid them in the future, and a system of indicators must be established to effectively gauge safety issues in the healthcare sector:

In this context, special mention should be made regarding the recent recommendation by the Council of the European Union, on patient safety, 5 May 2009, based on the work carried out by the World Alliance for Patient Safety of the World Health Organization (WHO), the Council of Europe and the Organization for Economic Cooperation and Development (OECD). This recommendation points out that the Council's initiative was undertaken to address the finding that from 8 to 12 percent of patients admitted to hospital suffer adverse effects during treatment, and that 1 out of every 20 hospitalized patients contracts a treatment-related infection. It goes on to underscore "the value contributed by information and monitoring of healthcare quality and safety indicators, the need to implement advanced data technologies to define common strategies to minimize adverse effects through non-punitive

notification systems meant to hone professional skills, and the implementation of preventive measures". Nevertheless, it must be pointed out that as a result of some of the enquiries undertaken by the Ombudsman into the matter of patient safety, the preventive measures mentioned do not yet appear to have reached a satisfactory level, at least in certain cases.

Several *ex officio* enquiries were initiated this year, and one particularly noteworthy case, opened after media reports about the death of a baby due to confusion by nursing staff with respect to the use of a special milk formula for premature babies, was closed once the Department of Health of the Community of Madrid reported the issuance of Resolution 7/2009 of 6 August, establishing measures to improve safety when administering medications and nutritional supplements to patients in urgent care units. This resolution, along with other measures intended to bolster safety criteria involving intravenous medication and enteral and parenteral nutrition practices, calls for the following: the use of specially designed, colour-coded syringes to easily distinguish orally administered liquid formulas; the replacement of enteral formula feeding systems with others whose connectors are incompatible with any venous or arterial parenteral access device; the use of clearly distinguishable pumps for parenteral or enteral administration; and the drafting of a reception plan for new healthcare professionals in urgent care units that includes at least a basic training and instruction period with incremental increases in responsibility.

## Tobacco Addiction

For yet another year, and since the adoption of the aforementioned Law 28/2005 of 26 December, on anti-tobacco healthcare measures and regulations regarding the sale, supply, use, and advertising of tobacco products, the Ombudsman has received numerous complaints in which citizens expressed their agreement, or otherwise, with the contents of the legislation. In most cases, they called for the approval of stricter regulations that would expand the prohibition of smoking to all public areas so as to ensure greater protection of non-smoker rights.

In 2010, it is expected that said Law 28/2005 of 26 December, on anti-tobacco healthcare measures and regulations regarding the sale, supply, use, and advertising of tobacco products, will be amended to make it less lenient. The aim appears to be to impose a complete ban on smoking in all indoor public establishments, including bars, cafes and restaurants. With regard to this future reform, the Ombudsman has been receiving numerous complaints offering the personal opinions of some citizens with respect to the stiffening of said Law and its potential social and economic impact.

## The Ombudsman presents a report on “Shelters for the Protection of Minors with Behavioural Disorders and Social Problems”

**For the purpose of analysing conditions at residential shelters for minors with behavioural disorders and social problems, an investigation was undertaken and numerous irregularities and deficiencies were found in the operation of these shelters. The results of this study have been presented this year in a report entitled “Shelters for the Protection of Minors with Behavioural Disorders and Social Problems”.**

### Minors

After a reasonable period of time had transpired after this report had been presented, the Ombudsman deemed it appropriate to follow up on the recommendations made to the various public administrations in order to confirm their acceptance and to learn about potential measures adopted in order to abide by the recommendations made in our study.

As of the date this annual report was prepared, most administrations had replied in detail with respect to actions taken stemming from the recommendations contained in that report. The public entities, increasingly aware of the problems arising under the current model of residential care, are attempting to achieve a level of quality needed to adequately safeguard and provide for all minors who suffer such problems irrespective of their severity and regardless of the minor's socioeconomic, family or legal status.

All of the administrations that have responded to the *ex officio* enquiry undertaken, viewed the proposals and recommendations made by the Ombudsman in a very favourable light (particularly Andalusia, Castile-La Mancha, the Provincial Council de Álava, and Aragon), especially the general ones, such as those dealing with drafting preventive measures, coordinating all caregivers and service providers assisting these minors, developing a common regulatory framework, standardising protocols, legislation, regulations, etc.

Specifically, the main measures adopted by the relevant public authorities in the various autonomous communities are, among others, the following:

- **Castilla-La Mancha** has effected a noteworthy overhaul of their management model (due to the highly specialized nature of care required by these children), and under the new plan drafted by this Community these shelters are now state-owned and operated. The closure should also be noted of the shelters known as Nuestra Señora de la Paz and Casa Joven, which were publicly owned and privately operated. Additionally, as per the new management model, these services are not only associated with the range of child protection programs, but also with the medical and social services sector. In line with this new approach, a new medical and social services

facility was inaugurated in September 2009 to provide specialized care for minors in Toledo, and the creation of new shelters is planned as well. A generally accepted technical paper exists which provides specific details on the intervention project and on shared living arrangements at medical and social services facilities that offer specialized care for minors. This paper also stresses enhanced participation by minors and greater legal protection for their rights.

- **Andalusia** is working to improve coordination in the performance of everyone involved in providing care for these minors, from all fields and disciplines, and to establish effective action protocols aimed at enhancing cooperation among the Administrations with jurisdiction in the matter. They are also focusing significant effort in the area of early detection and family prevention of behavioural disorders.
- **The Region of Murcia** has held meetings with officials of the Board of Education to seek educational services coordinated by a certified teacher at these shelters. They are also working on rewording the Internal Regulations at these shelters so that minors will find them easier to understand. Furthermore, they are expressly informing minors as to the availability of complaint forms issued by the Inspection Service as well their right to telephone the representative of the Directorate General for Families and Minors assigned to their shelter or the Juvenile Prosecutor's Office should they so desire.
- **The Community of Valencia** has formed a work-study group comprised of professionals from institutions and regional Directorates of Social Welfare and Family Affairs to prepare a paper on caregiving services for children with behavioural problems within the Child Protection Program. Additionally, in March 2009, the Regional Directorates for Public Welfare were successfully urged to require custody warrants when children are or are going to be admitted at the locations mentioned above, as per Article 271.1 of the Civil Code, through the procedure of voluntary jurisdiction.
- **The Council of Aragon** has undertaken efforts to make improvements in areas where it is possible. Furthermore, they are preparing the Comprehensive Plan of Aragon for Children and Adolescents in an attempt to provide, among

other aspects, coordination among healthcare, education, and social service organizations.

- **The Council of the Canary Islands** aim to meet each and every one of the recommendations made by the Ombudsman that correspond to them in line with transferences made to the Government of the Canary Islands. Nonetheless, financial issues make it difficult to provide the network of shelters with improvements in educational services, and this mainly stems from procedural sluggishness in institutional relations as well as the overlap in functions existing between the Council and Government of the Canary Islands.
- **The Provincial Council of Alava** has been obliged to relocate the Sansoheta Facility, and although the program is temporarily being conducted at other provincial facilities, a new facility—with more spaces to handle the rise in demand—is expected to be inaugurated in the first half of 2010 to house and work with these children. The aim is to draft prevention policies for problematic conduct and to broaden the range of specialised guidance and protection programs for families in situations of vulnerability that range from slight to severe. Additionally, an agreement has been signed between the Provincial Council and the Consortium for Compensatory Education and Social and Work Integration of Vitoria-Gasteiz and Alava (for 16 to 21-year-old youths). They greatly appreciate recommendations dealing with defining common protocols and achieving streamlined intervention procedures, and they agree that these activities should be fostered in the mental health sector.
- **The Government of Extremadura** lacks such centres. However, they are studying the possibility of creating permanently assigned spaces at some centre as well as setting up their own specialised residential shelter in order to meet demand. In 2010, collaborative agreements are expected to be reached with two associations to manage housing resources for young children with special behavioural problems.
- **The Island Council of Mallorca** lacks shelters of this type as well. Nevertheless, they plan to build a therapeutic care facility by 2011, and they urge the administrative bodies in their Community to promote protection programs.
- **The Balearic Islands**, in collaboration with the relevant Boards of Education, Health, and Social Services, has set up an educational therapeutic support unit as a pilot project on the island of Mallorca. This unit serves as a structure providing comprehensive and targeted care to a population with serious psychopathological behavioural problems and mental disorders, which underscores the significance of the school context as a normalizing factor.

In conclusion, it may be stated that the majority of communities are adopting initiatives and projects to improve the quality of residential care services at such shelters.

In another vein, it is also important to mention the creation of a task force—sponsored by the Ministry of Health and Social Policy and pending approval by the general directors of all pertinent Departments—as per an announcement made by

the Government during the State of the Nation debate. This task force is currently under deliberation, and a feasibility study is being conducted into the possibility of drafting an “Intervention Protocol for Shelters for Minors with Behavioural Disorders”. Thus, in order to determine the measures potentially adopted by said Ministry, the Ombudsman opened an *ex officio* enquiry with them in December 2009.

It is also important to note that the Attorney General's Office supported the Ombudsman's report, ordering the opening of pre-trial proceedings so as to determine any potential liability for allegations contained in the report, and drafting an inspection protocol for children's shelters that juvenile prosecution offices of the respective provincial courts must comply with.

Also noteworthy are statements made by European Committee against Torture in their Concluding Observations—and subsequent to examination of reports submitted by signatory nations as per article 19 of the Convention against Torture for their 43rd session—to indicate that they “regret the lack of sufficient information regarding measures taken to address the serious concerns expressed by the Ombudsman Institution in their 2009 report with respect to conditions at shelters for the protection of minors with behavioural disorders and social problems. In particular, the Committee is concerned about allegations stemming from the practice of solitary confinement at many of these shelters as well as use of medications without adequate safeguards (articles 11 and 12). The signatory nations must adopt measures to ensure humane and dignified conditions at shelters for the protection of minors with behavioural disorders and social problems, and they must also thoroughly investigate any and all allegations of abuse or mistreatment at these shelters”.

It should also be pointed out that publication of this report raised great social interest, and so the Ombudsman organised a seminar on juvenile shelters as part of the summer program at El Escorial offered by the Universidad Complutense de Madrid, with administrations, institutions and various shelter employees participating. Likewise, Institutional participation in a number of forums, seminars and gatherings related to said report was continual throughout 2009.

Some of the specific outcomes stemming from our report are as follows:

- Closure of the *Tetuán* shelter in Madrid (July 2007), subsequent to a visit from the Ombudsman's Office.
- Closure of the *Nuestra Señora de la Paz* (September 2009) and the *Casa Joven* (October 2009) shelters in Castile-La Mancha, and transfer of minors to the new specialized medical and social services centre for minors in Toledo.
- Cancellation of subsidies, both public and private, and agreements with entities that have not received favourable evaluations in our report. In this respect, it should be noted that on 29 February 2009, the Murcia City Hall halted the proposed transfer of land to the *Fundación O' Belén* to build a new child protection facility in Murcia. Additionally, the plenary committee

of the Provincial Council of Guadalajara recently agreed (on 20 November) to withdraw its membership from the *Fundación O' Belén* Board of Trustees.

- We have also received unofficial reports about improvements in the quality of care provided to minors at certain shelters (for example, solitary confinement cells have been removed or redesigned at certain shelters), and—especially important—the air of impunity that once prevailed in these shelters appears to have been dispelled to a certain extent.

To sum up, it is worthwhile to point out that, stemming from publication of the report on “Shelters for the Protection of Minors with Behavioural Disorders and Social Problems”, many relatives of minors at these shelters, the children themselves, and youths who were once housed in shelters of this kind have approached the Ombudsman to express their gratitude for the Ombudsman’s actions in this area of such great social significance, underscoring the “courage” it took to shed light on facts or irregularities that had remained in obscurity until the report was issued.

Unfortunately, this has not translated into fewer complaints being submitted to the Ombudsman regarding ongoing irregularities in the child protection system and violations of children’s rights at these shelters. Both the public authorities as well as the directors of these shelters should take every possible measure to prevent these types of situations from occurring, and an institution such as the Ombudsman, duty-bound to safeguard the rights of minors, cannot turn a blind eye toward them either.

As such, we must once again urge that urgent measures be adopted to reorganise a protection system that is not producing desirable results and is not always deemed satisfactory by educators. Moreover, it is generally viewed in an unfavourable light by the students themselves, who show a high rate of disapproval both during their stay in these shelters, as well as when they are obliged to leave the centre, at 18 years of age, without having completed their therapeutic intervention program.

The suicide of two minors under the guardianship of the public administration and residents at two child protection shelters led to the opening *ex officio* enquiries by the Ombudsman. Given the gravity of these events, this Institution deemed it necessary to gather facts from the relevant administrations regarding the actions that led up to these minors being sent to the respective shelters, and also regarding the findings of investigations conducted in these cases.

In December 2008, a hanging occurred under suspicious circumstances involving a 13 year-old Moroccan child who had been admitted to the *Picón de Jarama* psychosocial care shelter, which was jointly managed by the Department of Family and Social Affairs of the Community and the *Fundación Internacional O'Belén*.

Said administration reported that the child had become a ward of the state by judicial order of 21 August 2008, and that he had initially been sent to the *Isabel Clara Eugenia* Shelter.

However, in light of his behavioural issues—as evidenced by those in charge of the high school where he was in his freshman year—as well as the difficulties he had encountered in adapting to shared living arrangements, the Madrid Institute for Minors and Families arranged to transfer him on 18 November 2008, *Picón de Jarama* psychosocial care shelter.

The Department of Family and Social Affairs noted that during the initial diagnostic interviews after being admitted to the shelter, no information was gleaned which might indicate a suicidal tendency in this minor. Nevertheless, the child began to exhibit signs of recalcitrance and highly disruptive conduct.

Court No. 6 of Torrejón de Ardoz proceeded to open an enquiry, and, upon its completion, the case was ordered temporarily filed, referring to the prosecution for their report on the matter.

In April 2009, the death of a 14 year-old girl occurred when she threw herself from a moving vehicle when being driven to the *Casa Joven* children’s shelter in Azuqueca de Henares (Guadalajara), managed by the *Fundación Internacional O'Belén*.

In a report submitted by the Ministry of Health and Social Welfare of the Regional Governments of Castile-La Mancha, firstly, details are provided regarding the actions carried out as a consequence of the recommendations made in the Ombudsman’s report on “Shelters for the Protection of Minors with Behavioural Disorders and Social Problems”, and, secondly, information is given with respect to the deceased minor; her experience at the *Casa Joven* shelter; and certain circumstances involved in her death.

The Ombudsman has long kept special watch over the security and safety measures adopted at child protection shelters to control minors, with even greater emphasis placed on special cases involving children with a history of serious psychiatric disorders or attempts to commit suicide.

In this regard, one must consider that case law has established certain standards related to the functioning of public services to determine the liability of the public administrations in suicide cases involving people who require a high level of special care or supervision. More specifically, the law determines the legal compliance of service rendered in terms of whether the Administration is able to detect or predict such suicidal tendencies. This implies a duty to act, intercede, or, put another way, to adopt appropriate measures to ensure effective and constant supervision. In addition to this is the perception of circumstances arising from deficiencies in the rendering of public service, such as, for instance, substandard medical transport for a patient, failure to detect suicidal tendencies, or lack of medical supervision over a certain period of time.

In the same vein, the Supreme Court has declared that, with respect to patients with suicidal or self-destructive tendencies, regardless of the use of whatever medication is deemed appropriate, a specific set of measures toward adequate supervision and control is needed, adding that the rigor of diligence and service called for and provided should be enhanced when the patient’s suicidal intent can be confirmed in their medical history, treatment, and psychopathology.

To sum up, in light of certain clinical circumstances, it is vital to implement whatever human and material resources are required to provide an adequate degree of security and control to safeguard the minor's inalienable right to life and physical integrity.

In connection with the aforementioned arguments and with respect to the case involving a girl's death, the security measures taken during her transfer to the children's shelter where she was staying were clearly inadequate, and precautions been not taken to ensure that the girl's medication would be responsibly administered over the holiday period.

Based on the aforementioned information, the Ombudsman deemed it necessary to make the following recommendations to said Department:

- That the Department of Health and Social Welfare should consider adopting appropriate measures that would bolster the supervision and safety of children with behavioural disorders and are wards living at shelters belonging to that Community, particularly in cases where serious psychiatric disorders or suicidal tendencies have been diagnosed or where medical records contain evidence that suggests that such a risk may exist.
- That, in line with the above, a protocol be drafted for professionals working at shelters for children with behavioural problems with respect to the safety and protection of said minors when they are suffering from serious psychiatric disorders.
- The recommendation was accepted and the Department of Health and Social Welfare of the Regional Governments of Castile-La Mancha proceeded to close the *Casa Joven* shelter in Azuqueca de Henares, where the minor in question was living.

## Disabled Persons

As shown in successive reports presented to Parliament, great efforts and progress have been made by both RENFE-Operadora as well as by ADIF in order to offer full railway transport accessibility to disabled persons.

Nonetheless, complaints continue to arrive from citizens who disapprove of the fact that their local train station or the trains that they ride on are not properly fitted, making it difficult or impossible for those with reduced mobility to use them.

One issue that has given rise to several complaints in 2009 deals with difficulties stemming from the use of electric or non-folding wheelchairs.

In a complaint lodged with the Ombudsman, the claimant, with a 76% degree of disability, stated that when she had phoned the RENFE Customer Service Helpline for Disabled Travellers to enquire about the use of an electric wheelchair by a passenger on the Zamora-Corunna railway line, she was informed that trains bound for Zamora lacked wheelchair-ready spaces for disabled persons who are unable to move into a seat by themselves. Aisles and WCs are not wheelchair accessible either, so disabled travellers who are helped by railway personnel into their seats must remain seated for the entire

five-hour journey with their wheelchairs stowed in the vestibule between two railway cars.

In spite of such inconveniences, the claimant accepted the unfavourable travel conditions due to the lack of any alternative wheelchair-accessible public transport to get to Zamora.

However, after purchasing the tickets, she was told that she would have to return them for a refund because her electric wheelchair could not be folded and stowed away in the passenger compartment, and it was against safety regulations to stow it in the space between railway cars.

A relevant report was requested by the Ombudsman into this matter, and the Secretariat of State for Transport subsequently confirmed that the day train between A Coruña and Zamora had been included in the Renfe Operadora Accessibility Plan. As such, funding had already been approved to retrofit it, and this was expected to be completed at least 8 years prior to the deadline established in Royal Decree 1544/2007.

Notwithstanding the foregoing, said Secretariat expressed their intention to contact the person concerned so as to study her specific case in an attempt to determine if a personalized solution might be feasible.

Full accessibility requires a progressive effort by all public administrations involved. Those with some type of disability—which according to the National Statistics Institute represent more than 3.5 million people and account for 9% of the national population—encounter obstacles that hinder or may even prevent their assimilation into society and the workforce.

Such everyday tasks as catching a taxi, going to the post office, taking a bus, or going to a doctor's appointment at a primary medical care clinic present challenges to a significant sector of the population.

In one complaint, a citizen objected to the fact that many public spaces in the municipality of Ferrol failed to meet the accessibility conditions contained in Law 8/1993 of 22 June, of the Community of Galicia on Improved Accessibility via Removal of Architectural Barriers. Among other issues, the claimant complained that the information panels installed by the Town Hall to announce public works in progress were blocking access for wheelchairs on the sidewalk, as well as unsafe conditions on city buses for disabled passengers due to a lack of clamps or safety belts to secure wheelchairs.

The Town Hall of Ferrol acknowledged poor conditions in public spaces with respect to accessibility for disabled persons, but these would soon be improved by the forthcoming adoption of a "mobility plan" and other projects currently planned or in progress, as well as the Plan E public works already under way. Similarly, the cited Town Hall confirmed their willingness to address any problems found and to seek appropriate solutions.

Having studied the foregoing circumstances, it was concluded that the City Council of Ferrol were indeed taking steps to address the issues presented and the case was closed.

## Living Facilities

Stemming from a media news report that 582 vacancies for mentally disabled patients at ten asylums in the Community of



Madrid were awaiting public funding by the Community of Madrid, the Ombudsman initiated an *ex officio* enquiry with the Department of Family and Social Affairs of the Community of Madrid.

This Department reported on the matter that administrative circumstances at some of the centres mentioned in the media report not only precluded public funding but also prevented them from being opened.

In any case, it was observed that processing of public service management contracts had already begun for 436 new spaces for dependent persons who meet the required conditions at asylums, most of which had begun rendering services on 1 August 2009.

Lastly, it was noted that the number of spaces available free of charge for disabled persons in the public asylum network of the Community of Madrid was 17,916, comprising over 98% of the total existing vacancies for disabled persons in said Autonomous Community.

Additionally, *ex officio* proceedings were undertaken with the same Department in response to alarming news reports about food being served after the expiration date as well as other health-related irregularities found at the *Dos de Mayo* Public Asylum for the Mentally Disabled. In the information provided it was specified that the incidents discovered had been promptly rectified. Furthermore, it was also pointed out that the centre had no history of any type of food poisoning. This asylum, as with all other caregiving facilities for persons with disabilities, is subject to periodic inspections.

Notwithstanding the aforementioned, it was reported that the Management Directive on Procurement, Storage and Handling of Foodstuffs had been approved on 6 November 2009 as an additional safeguard.

## Situations of Dependency

The Ombudsman must underscore the significant number of complaints received throughout the year from citizens whose potential entitlement to aid as provided for in the Dependency Act had not yet been resolved in 2009 even though they had initially applied for it in 2007. As such, the processing delays for certification reported last year are being drawn out by further delays in the approval granting process for individual care programs and, thus, the effectiveness of this service is being deferred as well.

As is well known, the rights of those certified with high dependency grade III, levels 1 and 2 should have been enforced in 2007. Nevertheless, many cases awaiting approval for the individual care program (PIA) remained pending in 2009. These excessive delays have led the Ombudsman to send several Reminders of Legal Duty to urge the authorities involved to resolve such issues in a timely fashion.

The repeated allegation in such cases is as follows: an application for dependency certification submitted in the first months of 2007, certification is then granted at some point in 2008, and the PIA approval date remains unspecified. For many cases such delays cause, apart from financial hardship,

unrecoverable losses for informal caregivers who are unable to exercise their right to make Social Security contributions. Two years of contribution can make the difference between reaching or not the minimum number of working years required to receive a retirement pension. Consequently, reminders were sent to the respective Councils of the Community of Madrid and the Generalitat Valenciana regarding their legal duty—as per Articles 41 and 42 of Law 30/1992 of 26 November; on the Legal System of Public Administrations and Common Administrative Procedure—to swiftly and expressly resolve any and all requests, complaints and appeals submitted to them by citizens before established deadlines. Moreover, they were reminded of their duty, as per said legislation, to remove any and all barriers that might hinder or infringe upon the rights of individuals or their legitimate interests, and to provide whatever resources might be deemed opportune to prevent any irregularities from arising during the processing of cases.

## Survivors' Benefits

The 2008 annual report shed light on an enquiry initiated with the State Secretariat on Social Security, following complaints by a number of citizens who objected to new regulations set forth in Article 174.2 of the Social Security Act. This legislation fails to consider specific cases in which a separation or divorce stems from marital abuse suffered and which gave rise to renouncement of alimony.

In its report, said Secretariat stated that the new regulations included the provisions of the Agreement on Social Security Measures, thereby reaffirming the widow's pension as a substitute source of income. Notwithstanding the aforementioned, it was also said that the Government aims to effect a comprehensive reform of the widow's pension, via social dialogue, that would identify circumstances of need to be targeted in the future with regard to pension coverage.

Consequently, these enquiries were closed. Nonetheless, the State Secretariat was requested to keep the Ombudsman informed on the subject of said reform and also on considerations that might be deemed relevant to it stemming from any specific issues raised by the women concerned.

Indeed, almost a year later, and in view of the helpless situation suffered by women who—as a result of marital abuse—renounce their right to seek compensatory alimony, the Ombudsman deemed it necessary to pursue a new approach to this issue. Irrespective of either any potential controversies that may arise from the interpretation made by the Administration of Article 174.2 of the General Law on Social Security, or from the questioning of the reference of compensatory alimony as evidence of financial marital dependence, the Ombudsman requested an additional report from the State Secretariat for Social Security regarding the specific cases considered when drafting the provisions that were expected to be included in future regulatory reforms of current legislation, in line with the incipient jurisprudential doctrine that is beginning to be established.

In this respect, the Administration was reminded that Organic Law 1/2004 of 28 December, against Gender Violence,



established a comprehensive system of social, health and financial assistance to afford female victims of gender violence legal status with a number of rights that would provide a level of protection warranted by their special circumstances (among others, “to ensure gender mainstreaming of measures so that may be applied in full consideration the specific needs and demands of all women who become victims of gender violence”. art.2k).

On the other hand, recent noteworthy judicial rulings have interpreted that in cases the surviving spouse who was a victim of domestic violence had not received compensatory alimony, this was presumably due to reasons of self-protection. These judgments regard the abuse suffered by those concerned as proven fact, and deem that the lack of compensatory alimony should not preclude granting of the widow's pension when the female victim of domestic violence must be accorded full protection.

The State Secretariat, however, maintained their position that the most appropriate approach would be to assess this question from a global perspective while taking into account the diverse issues involved in the area of protection.

Accordingly, the Ombudsman's Office finalized all actions taken to that effect without disregarding its duty to reaffirm its opposition to the State Secretariat's conclusion on the subject.

Notwithstanding the foregoing, a revision was recently made of paragraph 2 of Article 174 of the General Law on Social Security, a reform contained in the Third Final Provision of Law 26/2009 of 23 December; on the General State Budget for 2010. In accordance with the arguments previously offered to the Ombudsman by the State Secretariat on Social Security, the new legislation entitles women who are not recipients of compensatory alimony to a widow's pension provided that they can prove that they were victims of gender violence upon legal separation or divorce. This determination shall be made by final ruling, or by closure of cases stemming from expiry of criminal liability because of death. In the absence of a ruling, it shall be made via the restraining order issued on the victim's behalf, by a report by the Attorney General's Office describing existing proof of gender violence, or by any other form of evidence that is admissible by law.

At the time this report was being prepared, the possibility of requesting the measures adopted by the National Institute on Social Security with respect to the initially denied requests was under consideration.

Moreover, the aforementioned Law 26/2009 of 23 December; on the General State Budget for 2010, contains a transitional provision regarding widow's pensions, by which granting of the widow's pension shall not be subject to entitlement to compensatory alimony in certain cases where such factors as dependent children and the beneficiary's age must be considered. Via this transitional provision, those with particular difficulty in finding gainful employment or in obtaining other benefits from the system are entitled to the protection of Social Security benefits.

The reform of the widow's pension governed by Law 40/2007 of 4 December; on Social Security matters, also affected common law couples who, from that moment, considered their right to a widow's pension acknowledged provided the surviving common law spouse's income during the preceding calendar year was less than 50% of the combined total income of both the common law spouse and the deceased, earned during the same period. This percentage shall become 25% should there be no common offspring entitled to an orphan's pension.

In 2009, the Ombudsman received a complaint from a citizen who objected to the rejection of his application for a widow's pension following the 2008 death of his partner; whom he had lived with for 5 years and with whom he had had three children, because his income during the calendar year preceding his partner's death had exceeded the 50% limit cited previously.

As a result, the applicant filed an appeal to review said decision with the court claiming during that year his wife's income had dropped due to the fact that she had switched to part time status in order to look after her triplets as per the contents of paragraph 5 of article 37 of the Workers' Statute, and this appeal was denied by the Administration.

After studying the matter in question, the Ombudsman initiated proceedings with the Directorate General of National Institute on Social Security. In their report, they argued that the wording of Article 174.3 of the General Law on Social Security did not permit a flexible interpretation that would allow a parent's exercising of her right to balance work and family life by switching to part-time work status to look after her children, prior to her untimely death, to be taken into consideration when calculating income and, hence, the degree of financial dependence of the surviving spouse.

In view of the aforementioned, the Ombudsman deemed it appropriate to address the State Secretariat for Social Security in order to ascertain the feasibility of including such a circumstance in future regulations, or in revisions of existing legislation.

In this regard, the State Secretariat reckoned that it seemed advisable to proceed with a study and assessment of cases such as the aforementioned, along with others that might arise, so that they might be taken into consideration in a timely fashion upon drafting relevant legislation.

Consequently, the aforementioned enquiries were brought to a close, notwithstanding the need to reiterate the Ombudsman's opinion that situations involving a previous switch to part-time work status by a parent in order to exercise their right to balance work and family life and look after children should be taken into consideration and be presumed a temporary circumstance prior to the aforementioned parent's untimely death. Otherwise, families are “penalized” by being declared ineligible for a widow or widower's pension—a lifetime benefit—because of having previously exercised their aforementioned right to balance work and family life.

## In 2009, the Ombudsman received numerous complaints regarding what citizens consider to be an excessive increase in Real Estate Property Tax (IBI)

**In 2009, numerous complaints were received regarding the future elimination of the deduction for first-home purchases. There have also been many complaints regarding real estate property tax (IBI), which many citizens consider to be outrageously high for various reasons which they made known to the Ombudsman. Lastly, we continue to receive many requests asking that the Ombudsman continue to recommend that the Ministry of Economy and Finance approve a property tax deduction for people over 65 and for people on minimum income. This same recommendation was turned down in 2008.**

### State taxes: Personal Income Tax

As in previous years, citizens have sent in numerous complaints about the assistance they received to fill out their Personal Income Tax forms. Taxpayers do not understand how the tax authority can deny responsibility for the content of personal income tax forms that were drawn up with the help of the authority's taxpayer assistance service. They consider that tax authority employees who help taxpayers draw up their income tax returns are more qualified to do so than the taxpayers themselves. Taxpayers believe that once they have given their financial information to the tax authority assistance service, the service should make the appropriate decisions regarding the tax treatment of that information, thus exempting taxpayers from any problem in that regard. Once and for all, it would be beneficial to set up a system to find a solution to this problem by allowing a record to be kept of the financial information provided by taxpayers.

Many other complaints focused on the disappearance announced of the deduction for first-home purchases, which will soon disappear. This means that people who have been channelling their savings into home-purchase savings accounts and taking the corresponding tax deduction but who, due to financial difficulties, have not yet been able to purchase a home, will have to return all of the tax deductions taken. The fact that the deduction will remain in force in 2010 does not solve this problem, which is compounded by the current difficulty in obtaining a home mortgage loan.

### Local taxes: Real Estate Property Tax

In many cases, municipal notifications are sent out without due diligence and without the necessary prior checks. As a result, receipts and subsequent notifications of summary collection proceedings are sent to the address of the property being taxed, for example, to a garage, even though it is not the taxpayer's home address. Such notifications result in official edicts being made while the property holder has no notion that the debt exists and there is no evidence of the administrative action taken until the taxpayer's assets are seized.

The Directorate General for the Cadastre has been calling for the signing of cooperation agreements with local authorities in order to improve tax collection procedures. Their contents can vary from one municipality to another depending of the functions attributed to each local council, thus making it difficult for the interested parties to know with which administrative body they should place their claim.

The effects of the economic crisis were especially noticeable in 2009 and we received a very large number of complaints regarding the Real Estate Property Tax (IBI) by taxpayers who consider the tax excessively high. Taxpayers complain that the cadastral values being used to calculate the tax, which is based on the assessed value of the property, are based on revisions to those values made in years when real estate values were far higher than they are now. They also indicate that local councils in financial difficulties have raised the tax assessment rates, making the amounts payable unaffordable for some taxpayers, especially families with at least one unemployed member whose sole asset is a family home on which mortgage loan instalments are still due, thereby further weakening the family's financial situation.

The disagreement about property taxes has been especially widespread in seaside towns and in towns where land and property values have escalated due to the construction of secondary residences for use as tourist accommodation or holiday residences, given that reassessment affects all properties equally regardless of the use for which they are intended. In all of the cases with which we dealt, although the rate approved under municipal ordinance is in accordance with the law governing local tax authorities, citizens have the impression that the increase in tax collections is the result of the municipalities' need to continue to provide required services and of inadequate management of public resources in more economically bountiful years. As an illustration, complaints have been filed against the local councils of, among many others, Fuente Obejuna (Cordoba), San Hipolit de Voltregá (Barcelona), Motilla del Palancar (Cuenca), Sueca (Valencia), Marratxi (Majorca), Cunit (Tarragona) Las Rozas (Madrid),

Algeciras (Cadiz), Corbera de Llobregat (Barcelona), Vilareal (Castellon), Campello (Alicante), Chiclana de la Frontera (Cadiz) and Noja (Cantabria).

It is sometimes difficult for citizens to correct administrative errors, which they feel incapable of resolving. A case in point is the Regional Office for the Cadastre in Caceres, which classified a property as urban while the Local Council of Madroñera maintained that it was rural. This gave rise to summary collection proceedings and a subsequent lien on a current account without the property owner ever having any prior knowledge of the existence of or reason for the debt that motivated the proceedings. After carrying out the opportune investigation, it was found that what had happened was that ownership of a different—urban—property had mistakenly

been attributed to the rural property owner and that when the error was corrected, receipts were issued for the rural property without first reimbursing the owner for the amounts previously collected as a result of the administrative error. The Regional Office for the Cadastre eventually sent an official summons to the Provincial Directorate to correct the mistake and redress the damage, whereupon the problem was favourably resolved.

Lastly, we must mention that the Ombudsman is still receiving many requests to ask the Ministry of Economy and Finance to approve a tax deduction for people over 65 and for those on minimum income whose sole asset is the home in which they live. This recommendation was made in 2008 but was rejected by the Secretary of State for Taxation and Budgets.

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## The State Secretariat for Telecommunications accepts the recommendation that broadband Internet service should be considered a universal service

The operation of financial institutions during a widespread economic crisis has resulted in numerous complaints submitted to the Ombudsman. Financial products under various acronyms (SAWP, IRS, etc.) that supposedly guaranteed interest rates, but in fact are highly risky, were also the subject of complaints, and in this respect the Ombudsman reckons that banks should provide greater transparency of information. Many enquiries have arisen due to the harsh economic climate: personal and family bankruptcies, loans from the *Instituto de Crédito Oficial* [Official Credit Institute] or taxation issues. In 2009, the Ombudsman also initiated a number of actions in areas such as social networking and data protection, particularly involving minors. Baggage delays at Terminal 4 of Barajas Airport, deficiencies in sea transport between Algeciras and Ceuta; social benefits for electricity fees. Finally, with respect to new technologies, a recommendation to treat broadband Internet as a universal service has been accepted.

### Financial Entities

Throughout 2009, many complaints were received that dealt with lending activities, because in a climate of economic crisis with rising unemployment and the resulting drop in family income, citizens with mortgages and business or personal loans, have become trapped by circumstances that make timely fulfilment of their financial obligations impossible. The citizens affected feel that banks are being unhelpful at the very best, adding that the latter are also doing very profitable business since they received public aid, whereas families who can no longer afford to make loan payments are in distress.

The banking entities' use of financial products considered to be highly risky, in addition to being technically very complex, as products with a guaranteed rate of interest was also reported.

The way these entities have operated is as follows: a person of responsibility of the branch would contact the customer by offering a product that would protect them from the continual increases of Euribor. The cost represented a slight increase on the mortgage payment, but would prevent it from surpassing certain limits. These interest caps were set at over ten percent, and the products were offered when the Euribor was below five percent. The amounts due were converted by this additional contract into fixed rate loans in such a way that clients made one consolidated payment to the financing entity, and they often accepted this arrangement considering the fact that the rates had been rising steadily over the previous two years.

The clients failed to fully comprehend the true nature of the contract because of the upward trend in interest. However, when the Euribor began to fall and interest rates began to decline steadily, customers found that their monthly mortgage payment was much lower than before, but there was another fee (under different names, "SWAP", "IRS", etc.) that

would invariably be added onto the mortgage payment amount. In other words, mortgage payments of 1,400 Euros would be increased to 1,500 upon signing the contract, but, when rates dropped, mortgage amounts that had fallen to around 1,000 Euros, would be hit with 500 Euros in additional fees as per the terms of said contract. When those affected would realize exactly how the "insurance" worked, they would then try to cancel it, and that's when they would be informed of a clause about a cancellation fee that could reach fifteen or twenty thousand Euros—the same amount they would have to pay out anyway by allowing the loan to mature (two to five years).

The Bank of Spain determined that, as per Law 26/1988, of July 29, on Control and Intervention of Loan Institutions, no express duty to inform existed with respect to any risks that customers incur when signing up for such products, and they stated that they lacked any knowledge on information that may have been provided orally. They also believe that it is not amongst their duties to investigate actions taken by staff at these institutions for the purpose of marketing their company's products.

On the other hand, the Ombudsman argues that these products were entered into by those who sought to protect themselves from rising interest rates and not from potential drops that were, in fact, beneficial to them. As such, transparent information was not provided that would have enabled clients to choose freely, especially as financial institutions tend to know the trends in their sector in advance. This fact should have encouraged the Bank of Spain to act more decisively with respect to certain business practices of the entities it regulates because, otherwise, these practices, which are worthy of an exhaustive investigation in light of the serious nature of the issues raised, could go unpunished. These complaints are still under investigation.

## Enquiries Stemming from the Economic Situation

As was the case in 2008, the economic crisis led to a considerable number of complaints in 2009. Amongst the many complaints handled are the following.

### Personal and Family Bankruptcy

Those affected by the economic crisis, who lost their jobs or who had taken on loans in times of economic boom could sense that their financial situation was becoming more precarious after 2007. First and foremost, this was due to the fact that mortgages, the most significant debt burden, began to rise stemming from a spike in interest rates. Thus, the rising Euribor resulted in larger monthly mortgage payments, in spite of the fact that incomes remained static. The appearance of economically troubled companies and growth in unemployment led to a deterioration of circumstances in some cases, and, in others, the emergence of many new citizens who were no longer able to fulfil their loan obligations.

On this matter, recourse to a bankruptcy proceeding has become yet another problem, rather than a solution. Although companies may, with difficulty, reach agreements that ensure their survival, families find themselves affected by a different set of circumstances with respect to their properties. Those who lack the resources or time needed to resolve their financial troubles cannot afford to invest in a prolonged and costly process that offers no guarantee that their properties will be protected. In fact, legal instruments exist in neighbouring countries that enable debtors, through various means, to manage their circumstances with fewer hindrances and costs. For this reason, in light of the ineffectiveness of existing regulations, the Ombudsman referred this problematic issue to Prime Minister's Office and the Ministry of Justice. In general terms, procedures must be adopted which would make it easier to resolve personal or family insolvency issues through a plan agreed upon by creditors and subject to the discretion and arbitration of the Government or the Courts. This plan would not only enable families to meet their obligations, but also to ensure that they are able to provide for their minimum basic needs without becoming involved in an auction process that adversely affects both their property as well as their health and self-esteem.

Both Administrations have shown sensitivity to these issues, and the State Department of Justice deemed it necessary to analyse the issue in order to study a potential revision of bankruptcy law in this particular area. On publication of this report, no conclusions had been reported to this Institution.

### Loans by the Instituto de Crédito Oficial (ICO)

On the subject of business loans, interested parties expressed their indignation at the lengthy time periods required by entities to process applications. Self-employed professionals and small businesses described their desperation when their

banks refused to refer their cases to the ICO while these banks were touting their status as cooperating agencies with the various lines of financing so as to entice new clients with enough guarantees to take on a conventional loan, which they were then able to finance through these lines of credit. The ICO provided data on the entities and lines of credit that were still active, and they emphasised the voluntary nature of collaboration by these entities, which were the only ones in a position to assess risk for their clients without any ICO influence in the decision-making process. Therefore the Ombudsman proposed that aid directly administered by ICO. Upon the closing date of this report, the Secretary of State for Taxation and Budgets had not yet provided any information on the subject.

Moreover, the emergency lines of credit for families were grouped together in the so-called "Mortgage Moratorium", whose objective was to provide a temporary and partial postponement of mortgage instalment payments between 1 March 2009 and February 28, 2011, provided that certain conditions could be met, such as not falling into arrears. Citizens stated that it would be difficult to fulfil this requirement given the slowness of these institutions in processing their applications for emergency lines of credit. Furthermore, another requirement was to be unemployed, so if approval was not granted swiftly, it was likely that they would fall into arrears with their mortgage payments, which would, thus, disqualify them from receiving this assistance. Up to July 2009, 8379 cases had been handled according to the Official Institute, and the enquiry into this matter remained open as of the date this report was issued.

### Taxation

The announcements made with respect to a tax increase, as well as the approval at local, regional, and state levels, of fees that had not been assessed previously, or the raising of existing ones, was also the subject of a large number of complaints because citizens were unable to see how such measures would resolve existing problems.

### Electricity Supply: The Social Pact

Last year, the Ombudsman opened an *ex officio* enquiry with the Secretary General of Energy for the Ministry of Industry, Tourism and Trade, with respect to the Government's announcement regarding electricity fee increases and the creation of a new social fee rate. This announcement drew a negative reaction from associations of users' and large families as well as electric companies. According to media reports, the National Energy Commission recommended to the relevant Ministry that a significant shift in consumer protection should take place so that social rates would benefit lower-income households. This suggestion was disregarded.

The Directorate General for Energy Policy and Mines reported that, as of 1 July 2009, the social fee rate would disappear and a subsidised rate would be created for certain consumers of electricity under the rate of last resort, contained

in Article 2 of Royal Decree Law 6/2009 of 30 April. The subsidised rate is provided as an additional means of protection for vulnerable groups and the subsidised rate covers the difference between the value of the rate of last resort and a reference value, known as a “reduced rate”, which represents the rate applicable to home consumers on the date the provision enters into force. Its funding is shared by firms that own installations used to generate power for the electrical grid. The characteristics of the social pact, its financing, as well as its initial transitional funding arrangements must be reviewed at least every four years in order to ensure that it conforms to circumstances currently affecting the electricity sector.

Consumers entitled to the social pact rate must be individuals with a stipulated power rate of less than 3 kW in their main place of residence. It also includes the following consumers: those who are at least 60 years of age and can prove that they are pensioners (or permanently disabled, or widows/widowers) receiving the current minimum pension benefits, those who can prove that they have a large number of dependents, and those whose households have been affected by unemployment. The procedure for implementation of the social pact has been set forth in the Resolution of 26 June, on the State Secretariat for Energy. In light of measures adopted to ensure that the most disadvantaged consumers would be eligible for these electricity fee benefits, which addresses the objective of the investigation, the procedure was carried out to completion.

Nevertheless, once the legislation came into force to apply the benefits of the social pact, complaints were sent in by citizens who had obtained the certification needed from Social Security to prove their status only to be informed by the electric company upon submitting it that their cases were rejected because they failed to meet the requirements. There have been cases involving those receiving a family members' pension whose amount is below the minimum required for pensioners eligible for social pact benefits, and their cases have been rejected because they are not included among the beneficiaries provided for in the legislation that establishes it. This, they consider, represents a discriminatory attitude toward these pensioners as well as toward those who receive an orphan's pension, who are also ineligible for this benefit. An enquiry was undertaken into this matter with the State Secretariat for Energy of the Ministry of Industry, Tourism and Trade.

## **Deduction of Payments for Medication**

Royal Decree 2130/2008 of 26 December on Urgent Measures for Pharmaceutical Expense Containment ordered the government to regulate the procedure to be followed in applying the deductions table when medications for human use that are subsidised by mutual associations for Civil Servants. Monthly invoicing by pharmaceutical offices involving specially prepared prescriptions for pharmaceutical products subsidised by these mutual associations led to the opening of an enquiry with the Ministry of Health and Consumption.

First, it was alleged the lacking of no clear and specific provision existed that would enable the government to establish, via regulation with the force of a Royal Decree, new deductions applicable to medications charged to public funding.

Moreover, the adopted of this Royal Decree create two separate deduction tables, depending on who receives payment, which could give rise to patently unequal treatment in the pharmaceutical sector.

Moreover, as has already been indicated on previous occasions, the Ombudsman has analysed the rules that govern the discounts in billing for medication subsidised with public funds, and states that the calculation for monthly billing is made using the retail price plus VAT. This method is merely an attempt to arrive at the amount that constitutes the basis of the discounts more easily, and considering the neutral nature of VAT, it should not be taken into account.

These reasons led to a recommendation to the Undersecretary for the Ministry of Health and Social Policy to amend Royal Decree 2130/2008 of 26 December, and, in line with industry estimates, to establish a single deduction table for all billing of medications that are subsidised with public funds. Similarly, it was recommended that the measure adopted should take into account the neutrality of VAT. This recommendation was rejected, but later that Royal Decree has been repealed.

## **Broadband Internet: Universal Service**

The guarantee of Internet access for all citizens, provided for by law, represented a major milestone in the modernization of Spanish society several years ago. However, people have continued to demand that their rights in the area of telecommunications be backed legislatively in such a way that this guarantee would be expanded to include broadband access to Internet as a universal service.

In 2006, the *ex officio* enquiry initiated to include broadband access to Internet in the so-called universal telecommunication service was reported. The State Secretariat on Telecommunications and the Information Society stated in 2007 that the inclusion proposed was an issue being studied at the European institutional level, as universal service is a standardized European concept included in the so-called 2002 Package known as EU Telecommunications Guidelines. In particular, Directive 2002/22/EC of the European Parliament and Council, envisaged the need to conduct an initial review of the scope of universal service obligations at two years after the transposition deadline and every three years thereafter. The first review was conducted by the European Commission in 2005, in light of social, economic and technological developments, taking into account, among other items, mobility and transmission speeds, as well as the technologies most often used by most subscribers.

Regarding changes in the retail broadband market, the COCOM document prepared by the European Commission in 2008 concluded that Spain, ranked 12th, has a broadband penetration rate well below the rest of the EU member nations.



The Public Administrations deem that the expansion and the streamlined development of broadband depends on the proper functioning of the market, attributing a subordinate role to public powers, and intervention should only be considered in cases where the market fails to provide this service or for reasons of fairness and/or interregional equality.

The Commission also pointed out that broadband fees in Spain are higher than those of neighbouring countries, however, it is enormously difficult to try to boil the variety of offers down in terms quality and price to a cost-only indicator that would permit an easy comparison, and this is mainly due to the lack of uniformity in what is offered.

This institution reckoned that consideration should be given to the importance and scope of the inclusion of broadband Internet into the so-called "universal service" in light of two key factors: the generalization of safeguards for network users' rights regardless of the area in which they reside.

As previously indicated, Spain is one of the most costly European Union countries in terms of ADSL Internet service fees. The European Commission has intervened on the subject, and has also pointed out the growing Spanish digital gap from the rest of the EU, because the broadband penetration in Spain is progressing at a slower pace than the EU average. The incorporation of ADSL Internet service into universal service would ultimately lead to price controls for this service upon becoming subject to administrative oversight activity that does not yet exist. The Ombudsman reckons that at an economically difficult moment there is a risk that usage rates for technology could shrink because high fees might encourage users to cancel services as a way to reduce household costs.

With the aim of achieving a more egalitarian and actively involved society, the Ombudsman made a recommendation to the State Secretariat for Telecommunications and the Information Society that existing legislation should be amended to allow Broadband Internet service to be included in the so-called universal service. This recommendation was finally accepted.

## Online Social Networks

Nowadays, the use of so-called social networking sites is widespread, including users who are minors, who often provide personal data without knowing its end use or the real dangers associated with its dissemination. Lack of governmental controls, or, as the case may be, by network service providers, has led acting Ombudsman.

In light of this exponential growth of social networks, the Spanish Data Protection Agency, in collaboration with the National Institute on Communication Technologies (INTECO), undertook a study in 2008 into online personal data privacy and information security. It analyses, among other things, the risks that social networks can present with regard to the safeguarding of personal data. Additionally, it includes proposals and recommendations to various groups involved in this area (industry, manufacturers and suppliers of computer security

services, Internet service providers, public authorities, and users). Meetings were held with leaders of social networks (Tuenti and Facebook) to communicate a number of concerns and complaints concerning personal data protection. In a meeting on April 2, 2009, the directors of Tuenti agreed to adopt measures to limit access for children under 14 years of age to their social networking service.

Social networking sites are services that go beyond the scope of any single country. As such, a set of guidelines is being prepared with the common criteria of Data Protection Authorities of EU Member States regarding the implications of the aforementioned information services concerning data protection issues.

At a later meeting with the directors of Tuenti, compliance with the commitment was evaluated. Tuenti said it had set up a filter process to restrict those under 14 years of age. User profiles are analysed, and those that appear to be under 14 years of age are sent a request to submit their ID or passport within 92 hours. The user is warned that should no reply be sent, their social network profile will be deleted. With respect to the thousands of checks conducted, 90% of children failed to reply and their profiles were subsequently deleted. Additionally, Tuenti agreed to implement a testing strategy for new profiles created and are suspected of belonging to users under 14 years of age. It was also reported that in the coming months the maximum degree of privacy would be provided for children under 18 years of age.

Meetings were also held with representatives of the social networking site Facebook in which the company reported a lack of methods to block access for users under 13 years of age, the minimum age at which children may become Internet users as per legislation in the United States. The agency urged Facebook to extend the use of the aforementioned methods to those under 14 years of age, as provided for in the draft regulations of Organic Law 15/1999, of 13 December, on the Protection of Personal Data. Those responsible for Facebook have agreed to study the possibility of implementing this extension. A wide range of activities has been carried out to raise public awareness regarding the potential risks to users of social networks as well as their rights. In celebration of World Internet Day, a new "Recommendations Guide for Internet Users" divided into twelve sections in which the main Internet risks are analysed and recommendations are made to avoid their impact. Protecting minors and educating them on how to use the Internet safely are of utmost importance.

The media have responded positively to these campaigns and have conducted new initiatives to warn of the risks to Internet users and raise awareness regarding their rights.

Regarding the Working Group Paper by the EU Member States' Data Protection Authorities, Resolution 5/2009 on online social networking was adopted. Given the global scope of social networks, common standards and new levels of cooperation are needed among the Data Protection Authorities.

In light of information gathered in individual communications, a further report has been ordered for the purpose of



conducting a detailed analysis of Administrative actions taken in this area. The contents of this report will be included in next year's annual report.

## Passenger Air Transport

Passenger complaints stemming from cases non-compliance with the terms of air transport contracts with an airline were fewer in 2009. This could represent a favourable assessment stemming from efforts made by the National Agency for Air Safety (AESA) to reduce the time needed to respond to passenger queries and complaints. In a similar vein, we must also underscore the argument expressed in previous reports referring to the Ombudsman's reckoning that protection of passengers' rights in their dealings with the airlines would be more effectively safeguarded if complaints submitted in the Spanish Airports due to breach of Regulation (EC) No 261/2004 were made only using National Agency for Air Safety (AESA) forms and not those of AENA, an administration that has no jurisdiction in such matters and ends up referring such complaints to AESA.

Certain airlines, specifically Air Europa, Spanair, Iberia, Vueling, EasyJet and Ryanair, provide only an 807 telephone number to contact them, with a cost of between 0.41€ and 1.51€ per minute, and they fail to offer any easy alternative for doing so. This prompted the opening of an *ex officio* enquiry requesting information from the National Consumer Institute regarding the legal nature of such requirements and the criteria that these Administrations maintain regarding the legality or illegality of said practice.

The National Consumer Institute submitted a report in which it may be concluded that the airlines mentioned were not in full compliance with certain requirements set forth in the Resolution of 15 September 2004, and they proceeded to inform the Supervisory Commission on Additional Fee Services of these facts so that they might then be submitted to further scrutiny and verification.

Additionally, the opinion of the National Consumer Institute is that, although 807 telephone numbers are meant for professional services, these numbers are more costly for the consumer who uses them and represent an unfair term under Article 82 of the Revised Text of the General Act for Consumer and User Protection as well as other complementary legislation. This clause represents an imposition on the consumer of unsolicited complementary or additional services or goods. Consequently, although the use of a telephone service as a means of customer assistance and complaint is not expressly prohibited by law, it runs against the spirit of existing legislation to establish a procedure that generates a profit for the company at the expense of the consumer in this way.

Due to the suspension of operations at Air Comet airlines, which affected thousands of passengers, an *ex officio* enquiry was undertaken and sufficient details were requested from the Ministry of Public Works to adequately determine the following: the reasons why the airline's operations had been suspended, resulting in cancellation of all of their flights;

the measures adopted by the Administration to require Air Comet to fulfil their obligations with their passengers in accordance with Regulation (EC) No 261/2004 of the European Parliament and Council, of 11 February 2004, which contains common rules regarding compensation and assistance for passengers who have been denied boarding or whose flights have been cancelled or seriously delayed; and also the measures taken to mitigate the discomfort and hardships faced by passengers who remained in airport facilities when operations were suspended to wait for the resulting flight cancellation issues to be resolved. No reply was received from the Ministry of Public Works during the time this report was being prepared.

## Civil Aviation: Luggage

Since Terminal 4 began operating at Madrid's Barajas Airport, passengers have been complaining about luggage delays that go far beyond what would be considered reasonable limits for such cases. An *ex officio* enquiry was initiated with the Spanish Airports and Aviation Administration (AENA) in order to determine the amount and the causes for the complaints. AENA reported that these complaints should be considered in light of the high degree of complexity involved in operating a top level airport such as Barajas, where diverse organizations interact—the Administration, the airport authorities, airlines and handling companies—as well as other factors—safety, weather conditions, etc. Hence, it is not always possible to achieve the goal of ensuring complete passenger satisfaction. With this goal in mind, though, Barajas currently uses the Automated Baggage Handling System (SATE), a complex luggage transfer system that is over one hundred miles long and equipped with many optical scanners designed to ensure that suitcases are loaded onto the correct aircraft or, after landing, returned to their owners swiftly and safely, avoiding to a great extent the possibility for human error.

According to AENA, and under the terms of the baggage-handling contract, the total delivery time from the moment the plane stops to the moment the last suitcase is delivered should be between 20 and 45 minutes depending on the type of aircraft. That timeframe is met for 95% of all flights in Terminals 1, 2, 3 and 4, with the sole exception of the T-4 satellite terminal, where the overall average baggage delivery time is a bit more than 45 minutes.

AENA is collaborating with Iberia, the main user of this terminal, to achieve lower delivery times and to limit the inconveniences caused to passengers. For this purpose, they have installed an information display at the luggage carousel that shows the time remaining for the first and last suitcases from a flight to appear. Likewise, for flights heavily laden with baggage two unloading bays are used simultaneously to save time. Additionally, technical improvements are being implemented that will speed up conveyor belts from the T-4 Satellite and shave 6 to 8 minutes from the current delivery time. Such devices were not available for use previously due to the fact that they have only recently been manufactured.

Potential breakdowns in the baggage delivery system do not exceed 0.51%, and the average response and resolution times for such breakdowns is less than five minutes.

AENA received 328 complaints in 2008 due to baggage delivery delays, which is one third of those received in 2007 and represents a rate of 6.9 complaints per one million passengers. In the reply given to passengers the Administration explains that baggage handling is the responsibility of the airlines or the handling personnel they designate. No anomalies were found in the operation of SATE that would explain baggage delivery delays.

## Sea Transport: Ceuta

Problems associated with ferry service between Ceuta and Algeciras—involving frequency, punctuality and fares—have been the subject of certain citizen complaints. Reports were made regarding delays, cancellation of departures, declining quality of service and continual and arbitrary fluctuation in fares, insufficient passenger information and poor customer service. In light of these allegations, the Port Authority as well as the Government Delegation in Ceuta submitted full reports discussing in great detail the various aspects mentioned.

They pointed out that the punctuality for ferries that sail the Algeciras-Ceuta crossing is reasonable, and noteworthy delays only occur when circumstances arise such as bad weather, poor visibility and excessive demand. Delays may also arise during the completion of Ceuta-Algeciras-Ceuta round trips, which occur every three hours and include thirty-five minutes crossing time each way and, basically, loading and unloading functions.

Suspension and cancellation of services were caused by *force majeure*, either due to adverse weather conditions, breakdowns or dry-docking of vessels. In spite of this, round trip connections with Algeciras were assured throughout 2008.

Lastly, with respect to fares, only the ferry service awarded the Maritime Lines of Public Interest Contract is required to apply fares approved by the Directorate General for Merchant Shipping as stipulated in the contract, which effectively represent the maximum fare applicable. The remaining ferry companies are not subject to any fare regulation because they operate under the rules of free trade.

## Consumers

During 2009, the complaints received by our Institution in consumer matters increased by 73% with respect to 2008, mainly because consumers are nowadays more demanding and want to purchase fully-guaranteed products; they are also willing to uphold their rights and gradually demand more participation from consumer services.

As regards the type of civil law claim most frequently addressed by consumers to the Ombudsman, this year's complaints have again mostly involved a breach of warranty regulations, defective technical services, abusive conduct by certain car rental companies, and emergency assistance

services. Moreover, consumers have also manifested their concern with respect to non-compliance with the 2000E Plan by certain car dealers, despite the contractual commitments assumed; consumer loans, which have continued notwithstanding contractual termination; and the labelling of food products.

In 2009, the Ombudsman began to conduct two *ex officio* investigations in two matters with a huge social repercussion in consumer terms: non-accredited studies and debt collection companies.

The *ex officio* investigation on non-accredited studies conducted with the National Institute of Consumers began further to the numerous complaints brought before the Institution, where claimants reported irregularities on the part of certain non-accredited teaching centres.

This allegedly fraudulent practice not only obviously causes an economic loss but also a certain feeling of vulnerability, since consumers feel trapped by a contract which, very often, does not reflect what was previously agreed or what was advertised in the informative leaflets of the relevant course.

The National Institute of Consumers, in response to a request for information, informed our Institution that a national campaign is being launched over non-accredited teaching centres that affects various issues related to information, advertising and the terms of enrolment; the programme has announced the participation of the Autonomous Communities of the Balearic Islands, Castilla-La Mancha, Extremadura, Madrid, Navarre, the Community of Valencia and Madrid.

Furthermore, given the significance of this activity, inspections will also be conducted during 2010 as part of the national campaign for private teaching centres that offer non-accredited and non-academic courses, which has announced the participation of the Autonomous Communities of Andalusia, Asturias, the Balearic Islands, Castilla y León and Galicia.

In turn, an *ex officio* investigation on the activity of debt collection companies was presented to the Ministry of Economy and Finance, as a result of the many complaints received by our Institution over recent years, where claimants report potential irregularities on the part of certain companies involved in debt collection.

On 28 December 2009 the Ministry's official response was received, which stated that no pronouncement could be made over a future regulation of the activity of debt collection companies, or on any possible measures already adopted, given that the issue falls outside the scope of the Ministry's competence.

However, it has come to our knowledge that the Commission of Economy and Finance, at a meeting held on 10 March, has approved a Motion, subject to review (published in the Official Gazette of the Spanish Courts, series D, number 167, on 17 March 2009), regarding the need to regulate the activity of debt enforcement and collection companies,

where the House of Commons (“Congreso de los Diputados”) requests that the Executive:

- Adopt the necessary measures to create a legal framework for debt recovery and the collection of bad debt. Consequently this framework, together with sector associations, will take into account any codes of ethics for good conduct voluntarily adopted by sector companies.
- Reinforce and assure adequate citizen protection against any measures that are detrimental to personal dignity or privacy as a result of claims for bad debt.
- Regulate procedures that enable citizens to promptly and effectively defend their interests, in such a way as to shorten the time spent in the resolution of claims and to not discourage creditors from using the legal remedies available against debtors in default”.

- Consequently, the Ombudsman has addressed the Ministry of the Presidency in order to obtain information on any measures adopted to date by the Executive, or which it intends to adopt hereinafter; on the aforementioned issues, in order to fulfil said Motion.
- To conclude, the Ombudsman would once again like to thank the Consumer Services for the huge effort made to procure a better protection of consumer rights, to encourage market control and inspection policies, to strengthen consumer arbitration proceedings, and for the effective management of claims. However, our Institution would like to emphasize the need to continue assisting the Administration in order to increase the *en masse* dissemination of highly sensitive consumer issues, to speed up the forwarding of files to other administrative bodies, and to uphold a principle of effectiveness in the processing of complaints.

## OMBUDSMAN PUBLICATIONS IN 2009

2009 saw the publishing of *Recomendaciones y Sugerencias 2008* [*Recommendations and Suggestions 2008*], *Informe de Gestión 2008 y sus debates parlamentarios* [*2008 Report and corresponding parliamentary debates*], as well as The Summary of that report in Spanish and English. These publications can be consulted on the website [www.defensordelpueblo.es](http://www.defensordelpueblo.es)



## The public administrations show a willingness to increase the stock of state-subsidised housing, but their commitment to the underprivileged is scant

**It is evident that urban planning has served not so much to establish the proper uses of land—which is its main aim—as to engage in economic, financial and speculative activities that have little or no bearing on that objective and that are, in fact, in opposition to it. As far as housing is concerned, this Institution applauds the effort that the public authorities are making in this regard, but we condemn the administrations' lack of commitment to defending the interests of vulnerable members of the population.**

### Urban Planning

#### Urban Management

We would like to call attention to the state of neglect of the inhabitants of the Cañada Real Galiana settlement in Madrid. In the opinion of the Ombudsman, this matter is an example of the lack of willingness of the public administrations to seek a global solution using all available resources.

The Ombudsman has intervened due to conditions in the settlement, and continues to do so, calling for a more global perspective. The problem in question is both social and cultural, affecting public health and safety, but at the same time, quite clearly circumscribed locally. The Cañada Real (which must, by its very nature as a place of historical, urban, social, cultural and environmental interest, be preserved) needs to undergo redevelopment. We need to address not only structural safety and habitability issues (evacuating or demolishing illegal structures being used as dwellings), but also the Cañada's functions given its state, nature and uses. A global technical-administrative solution is required that would call for reclassification of land, urban planning permission and construction in the area where the settlements are currently located and where the grave deficiencies observed require supramunicipal and supraurban procedures.

In a case like this, the Autonomous Community of Madrid might attempt to coordinate a pact with the two other territorial administrations (General and Municipal) based on its own role in setting policy on environmental, urban planning and regional strategy issues, such as to combine environmental protection with solutions to the urban planning problems in the region. For instance, it could summon municipal officials and the Government Delegation in order to elicit information and, between the three levels of government, arrive at a desirable coordinated action based on all three areas of competence that will lead to an efficient and viable solution.

We therefore sought the opinion of the Department of Environment, Housing and Land Management based on both the aforementioned reasoning and on the functions vested in the Autonomous Community of Madrid. The Ombudsman's

Office was disappointed by the contents of the Department's report, and we had to admit that we had made a mistake in considering this autonomous government body the appropriate one to approach. This was not due to a lack of instruments or of legal competence, but to a manifest lack of desire for involvement in the Cañada Real problem.

The Autonomous Community of Madrid expressed its willingness to cooperate, acknowledging that we face a supra-municipal problem that requires coordination between all the administrations and even, in summary, that a special integral draft bill is needed that will recognise this as a grave problem (housing, sub-standard housing) and a huge one (social, educational and safety). Sadly, however, none of this can be seen in the Department's current practices, which could be inferred from the aforementioned report.

This inquiry, which does not differ greatly from others carried out previously, aims to call the Parliament's attention to the failure of planning instruments when the Administration seeks preconceived solutions that are beyond the scope of current law, thus resolving them within a new legal framework. The administrations must be called on to stand firm when planning and executing large-scale urban operations that can affect the collective interest in areas such as historical, cultural and architectural heritage or landscape.

Elsewhere, the chapter of the Annual Report on urban planning mentions other studies relating to delays in the processing and approval of plans as well as other irregularities that affect the public right to participate in these processes. The Ombudsman believes that delays in approving General Plans have serious consequences, although they may sometimes be justified if they result in truly rational, integral land management that expresses the widely held sentiment of society as a whole and not just of the local residents.

Similarly, we refer also to the obligation to request a report showing that the water resources available are sufficient. This matter is analysed in detail in the monographic report in the first semester of 2010, *Water and Land Management*. The most flagrant cases are to be found in the Autonomous Community of Valencia for the obvious reasons of

intense property development in the past and chronic water shortages.

### Urban Planning Information

As in previous years and as mentioned in the related section on access to environmental information, we have received many complaints on this poorly resolved issue.

Some general conclusions can be drawn from the actions taken by the Ombudsman: 1) citizens must realise that information can never be obtained instantaneously and that normally documentation must be searched for and located in the municipal archive; 2) however, a local council cannot expect a lack of “obstruction” of municipal activity because, far from constituting an obstruction, requests for access to administrative information is merely one more municipal duty to which the council must attend; 3) citizens are in turn obligated to allow the municipal offices a reasonable length of time within which to provide applicants with the information requested; 4) the law establishes time limits for delivering copies to individuals as determined by Act 27/2006 on the right of access to information, public participation and access to justice in environmental matters (including information on land, i.e., urban planning information), which refers not only to allowing access to information, but to *providing* that information, which normally entails delivering copies of documents; 5) the reasons adduced by the local councils—the right to privacy or the right to intellectual property—do not constitute a valid reason for refusing to provide copies of construction projects. In such cases, these rights are safeguarded without having to impede access to information.

### Urban Planning Licences

Here we find two types of complaints: homes that lack a licence of first occupation, and those that do have a licence but without guaranteed access to basic services. In the former case, delays in awarding licences cannot be attributed to the local council. Normally, the public administrations do not sit back in the face of such problems and usually remind developers of the obligation that the buildings they execute conform to the project design and corresponding planning permission. Everything appears to indicate that interested parties must claim damages for delays in the above-mentioned licence and for any ensuing deficiencies in basic services such as water or electricity from the construction company itself. Nevertheless, this Ombudsman's Office believes that in such cases the local administration must, if possible, be even more active, continuing to take action with a view to forcing the developer to conform to the approved construction project so that the homes may be legally formalised and thus awarded the first occupation licence.

As for homes having a first occupation licence but lacking access to basic services, the local councils consider the steps they have taken sufficient by virtue of the fact that the licence is awarded only when favourable technical and legal reports have been issued. They state that the lack of access to services

is a problem that has “nothing to do with the local council”. Here, too, we find ourselves before a grave problem given that there are residents living in homes that do have the requisite first occupation licence—which places them beyond the scope of municipal control—but that *de facto* lack some basic service such as electricity or water, and so can hardly be considered to fulfil the conditions needed to be considered habitable and appropriate for residential use. Since these complaints indicate that the supply of electricity or water is not guaranteed, in the opinion of this Office, said first occupation licences should never have been awarded in the first place. In such cases, we should like to formulate a reminder about the legal duty to resolve licensing applications by abiding by the rule of law and the principles of legality and legislative hierarchy, in conformity with the Constitution, the Law of Common Administrative Procedure and the Law on Regulations of Local Government. In addition to this reminder, we must insist that the local administrations take appropriate steps and adopt measures within the scope of their function as mediators given that this is a problem that affects local residents who, as we mentioned earlier, live within their municipalities in homes that are lacking at least one of the so-called essential services.

### Housing

This section must begin by reporting that over one thousand complaints (1,152 to be precise) were received in 2009, thus giving some idea of the range of problems included under this heading. This Office harbours no doubts regarding the efforts being made by public institutions to find solutions to this grave problem. Measures approved to increase the stock of state-subsidised housing are proof of these efforts. However, we do observe a lack of policies aimed at protecting other sectors of the population, a lack that is made worse by the current economic crisis. The stock of public housing made available to these sectors must be increased considerably: if the number of state-subsidised homes proved to be insufficient in the past, this shortfall is even greater in public housing for very low-income families. In addition, the level of need of the sector of the population for whom it is meant is that much greater given that, in general, they do not even have the financial resources to pay for a rental property.

### Rental Assistance Programme for Young People (RBE)

Royal Decree 1472/2007, dated 2 November, which went into force on 8 November 2007, establishes a rental assistance programme to help young people become emancipated. This is a direct state subsidy for people ages 22 to 30, of Spanish nationality or from a European Union or European Economic Area member state, with a maximum gross annual income of 22,000 euros, and it is meant to help defray the cost of renting their legal, permanent residence. This measure was well received by its intended recipients, whom it might effectively have helped to become emancipated, in addition boosting

urban rentals as an alternative form of access to housing. However, it has generated considerable criticism and created significant problems, especially for those who, having trusted in the good offices of the administrations, decided to leave their parents' home, only to see aid delayed when it had already been approved. In some cases, the delay was so long that they were forced to go back to their parents' homes, unable to meet the rental payments they had agreed to, believing that they would receive said RBE subsidy. In 2009, we saw a repeat of the deficiencies in the management of Royal Decree 1472/2007, despite being modified as of 8 April by Royal Decree 366/2009, dated 20 March, which modified the original Decree on the basis of the experience, suggestions and proposals put forth by the autonomous communities and the financial institutions involved. On the basis of this modification, which was necessary to improve the administration of the RBE programme, it became possible for beneficiaries to pay the rent not only by bank transfer, as had initially been envisaged, but also by direct bank debit. In addition, several aspects relating to the employment history of the recipients and the cadastral reference of the rental properties were modified, and a new application form was created.

During the year covered by this report, the Ombudsman's Office received 628 new complaints and closed a further 126 cases dating from 2008. Whereas the General Technical Secretariat of the Ministry of Housing almost always replied within the permitted time frame, when we investigated cases within the autonomous communities, we generally had to issue several summons before the reports were sent.

Among the many complaints received in 2009, in 360 we were able to provide the interested parties with detailed reports of our findings relating to delays in processing requests or delays in the payment of subsidies that had already been granted due to malfunction of the computer systems or to other irregularities. Thanks to the information that we were able to give to young people whose complaint had not been accepted due to a lack of sufficient data, they were able to conclude that, in some cases, there had not been, as they claimed, any administrative fault, either because the time frame for processing the request and payments was reasonable, or because the Administration had acted correctly, or because the interested parties themselves had failed to comply with one of the requirements imposed by Royal Decree 1472/2007, or because they had not completed some other step of the process. For instance, they were informed that in order to be able to receive the rental subsidy they would have to fulfil several requirements. They were also warned that the Ministry of Housing checks on beneficiaries on a monthly basis to ensure that they continue to fulfil the criteria for the subsidy, and that payment of the subsidy is stopped if the Ministry detects that they are not up to date on their rental payments or on their tax obligations or Social Security contributions, doing cross-checks between the respective databases. Similarly, recipients were informed that this Office had detected numerous irregularities relating to rental payments. They were also

warned that beneficiaries opting for the rental payment system by direct debit of bills must every two months provide the Ministry of Housing with proof of payment to the landlord and that if they failed to do so or were late so doing, this would lead to provisional suspension of the case and they would cease to receive the subsidy until the Ministry received the missing proof of payment. If, on the contrary, they had opted for the rental payment system by bank transfer, young people were told that they must provide the financial institution through which they had requested the subsidy with a copy of the ruling by the corresponding autonomous community, and that they must ensure that the financial institution in turn informed the Ministry of Housing of said transfer in accordance with the agreed standard contract. In order to avoid further delays and interruptions in the subsidies, the young people were warned that the Ministry of Housing had informed this Office on numerous occasions that beneficiaries were responsible for setting up a standing order with their bank, or arranging for direct debit of the bills issued by the landlord, and that they must ensure that there was a sufficient balance each month to cover the transfers or the direct debit amounts on the agreed dates.

It was also considered necessary to devise a more agile procedure to process complaints on an exceptional, temporary basis, and the use of electronic mail was introduced instead of regular mail. Once the number of complaints ceased to be exceptionally high, the need for this procedure disappeared and the ordinary mail processing system was reinstated.

In addition to the interest that this Ombudsman showed in processing complaints from young people as quickly as possible, another of the unvarying aims that guided us throughout 2009 was to increase the amount of information made available to interested parties by the Administration, and to improve processing procedures in order to avoid errors and involuntary delays, thereby allowing citizens to exercise their rights more fully while becoming better acquainted with their duties. We have sent numerous written petitions to the administrations in this regard.

Looking at the results, in 99 cases the administrations were at fault, and admitted to and corrected their mistakes. Although some of these cases were resolved when the autonomous communities issued rulings expressly recognising the right to receive the basic subsidy even after the two-month deadline, the overwhelming majority of cases having a favourable outcome were resolved when the Ministry of Housing confirmed that monthly payments owed to the interested parties had been paid or that steps had been taken such that said payments could be made immediately. In 97 instances where the Administration did not act incorrectly, there were cases in which the RBE subsidy being claimed had been received within the normal processing times, and those in which, having corrected a deficiency for which the Ministry was not responsible, payment of the pending subsidy had been received.



## Management of state-subsidised housing stock

We dealt with five types of problems: the withholding of amounts paid as income to persons refusing the right to subrogate their rental contract; claims for the retroactive payment of sums as a result of income adjustments; claims for late-payment interest on utility bills paid over fourteen years ago; extinguishment of the right to a reduced rental due to incompatibility with another subsidy being claimed; and rejection of housing applications as a result of the lack of regulations governing how public servants may have a right to housing by virtue of their job or position.

## Other measures to promote access to housing

We refer here to five problems: delays in revising interest rates on qualified loans and agreements made as part of government housing programmes; insufficient information on how to go about claiming subsidies available under the government housing programme; permission to increase the number of attached parking spaces by modifying provisional classifications on state-subsidised housing developments for people under 35 under rental purchase options; higher rental prices on state-subsidised housing than had originally been advertised; and rejection of applications for refurbishment subsidies after all of the work set out in the provisional classification of the state-subsidised project had been completed.

## The obligation to conserve

The obligation to conserve means implementing the necessary measures to maintain the buildings in secure, clean, and aesthetically acceptable conditions, and it comes into force by virtue of the mere appearance of deficiencies or defects that must be repaired. There is thus a generic obligation to conserve, to which end the administrations have been vested with the power to order owners of land, property and buildings of all types to carry out the necessary repair work to keep them adequately maintained. This power is exercised by issuing orders to execute work (or orders of execution or intervention in construction and use of land). These orders are not included in our legal framework as an optional power to be exercised at will but as a real duty of the corresponding administration, which must issue an order when the legally

established conditions concur; that is, when it is necessary to conserve the conditions of security, cleanliness and aesthetic acceptability.

Not only must the content of work execution orders issued by the municipal administration be specific, have just motive and conform to the principle of proportionality, but it must also specify the time frame within which the work must be completed. Furthermore, it should be remembered that the Administration's duty to ensure that land and buildings fulfil the conditions of security, cleanliness and aesthetic acceptability does not end when it issues a work order but rather it must monitor execution of the work order given that, by virtue of its powers of inspection, the local council also has a duty to supervise such work and ensure that it is in fact carried out, especially when it is the local council itself that has ordered the work to be executed and set a specific deadline for it.

One specific and noteworthy example of the duty to conserve is the *Beti Jai* fronton (Basque Pelota court) in Madrid (Marqués de Riscal 7), currently the subject of an *ex-officio* inquiry by this Office, which found out through the media that the building, which has been declared of cultural interest, needs to undergo restoration and be classified as a protected building.

## Architectural barriers

Lastly, with respect to the problem of architectural barriers, we highlight a single investigation regarding a complaint from a regional ombudsman indicating that an *ex-officio* inquiry had been launched after discovering that the only accessible itinerary in a public office building was through the middle of the installation. A report had been requested from the appropriate local council regarding compliance with the provisions of Act 1/1994, dated 24 May, which regulates Accessibility and Elimination of Architectural Barriers in Castile-La Mancha, and Decree 158/1997 approving the Accessibility Code. Once this Office received said report, we were informed that a platform lift was to be installed in the main entrance of the building and that the inconveniences caused by loading and unloading of goods on the public thoroughfare would be resolved as soon as the Provincial Treatment Centre moved to a warehouse that it planned to rent.



## Steady rise in number and complexity of complaints related to the environment

**During oversight of the activities of the public administration, it has been observed that the term “environment” itself has been weakened from overuse. This expression is frequently employed by public authorities as a buzzword to embellish decisions lacking transparency and consensus and whose final outcome may shield those responsible for such decisions from accountability.**

In 2009, the fact of the matter is that a wide variety of cases have been processed, and complaints have steadily become more complex and numerous.

Among the most noteworthy general problems described in many complaints are those related to organizational issues, such as a serious lack of information regarding the structure and functions of certain administrative authorities and departments.

Administrations are continually reminded to take great care in distinguishing those conflicts that wholly involve private parties—which precludes administrative intervention and, consequently, any action by the Ombudsman—from conflicts that may merely appear to be private, but actually involve important public issues and concerns, and, thus, are subject to the authority of administrative law. This has occurred, for example, in a case involving private parties, when a Hydrographical Confederation failed to take action or even to present arguments regarding observations made on two separate occasions by the Ombudsman with respect to potential damage to public watersheds.

### Environmental information

We continue to encounter resistance by the administration in fulfilling their public duty to provide access to environmental information in their possession and, in so doing, to enhance participation in public affairs. We have observed a tendency in the administration to set untenable limits, which wrongfully provide illegitimate grounds for denial and are generally inapplicable.

The right of free access to environmental information is closely associated with the basic right entitling concerned parties to obtain copies of documents for proceedings in which they are involved, as well as with the right of citizens to gain access to and obtain copies or certificates of file documents contained in administrative records (closed proceedings), and public registries.

With respect to grounds for denial, we consider above all that these must be interpreted in a restrictive manner. As such, the relevance of the disclosure of information is weighed in each case against the interests served by its denial. Requests submitted to an administrative authority or department that lacks the environmental information sought must always, except in cases where it is impossible and explicitly justified,

refer the matter to the authority or authorities who do indeed possess this information, and the applicant must be apprised accordingly.

### Environmental impact assessment

Matters dealt with in this section are quite diverse, although they may stem from several typical and widespread problems. Deficiencies discovered in years past persist. These are commonly associated with the difficulties encountered in achieving truly accurate assessments, because the assessments actually produced are often seriously defective despite presenting a superficial appearance of legality.

We contend that the administration does not correctly apply the expiration of environmental impact statements (DIA). According to the Ombudsman, neither the Constitution nor the jurisprudence of the Constitutional Court preclude an interpretation of the law that would permit the environmental agency to make enquiries with the developer, in light of the failure to commence execution for five years, as to whether significant changes have been made to the key elements of the impact assessment. In certain cases, a recommendation is made to the developer that a new assessment should be carried out.

Other common problems are as follows: the need for the environmental agency to be the body that requires relevant authorities to repair and rectify damages, the lack of coordination between environmental agencies and governmental authorities in order to avoid procedural delays, the lack of adequate information regarding the reasons for delays in spite of the undeniable—albeit few—improvements in the disclosure process, and the close proximity between environmental agencies and relevant authorities.

Lastly, we refer to what is perhaps the most common defect in substandard impact assessments: the lack of real alternatives, assessment of a project that is deemed from the outset to be environmentally viable, so that the evaluation serves merely to provide justification for such viability, in spite of the fact that the physical and documentary evidence leads directly to the conclusion, in purely logical and legal terms, that the project is unfeasible. Several cases are cited in the Urban Planning section related to the problem of insufficient water resources required to carry out urban development projects. Other complaints received by the institution demonstrate

how the environmental impact assessment is degraded to the point of becoming a mere empty formality that is nearly useless but extremely important because it contains the declaration of environmental sustainability that opens the door toward potentially irreversible environmental damage.

## **Protection and conservation of nature preserves, flora and fauna**

We refer in this case, first, to a case of inaction involving the Departments of Industry and Environment with regard to the illegal installation of diesel tanks on a hillside, and their failure to enforce judgments requiring the restitution of the land to its previous state.

We should also point out the enquiry into the administration's handling of the impact of neurotoxic pesticides on bees and other pollinating insects. Here we underscore two actions undertaken by the Ombudsman before the General Directorate of Agricultural and Livestock Resources. On one hand, we have presented a Recommendation to this Directorate with respect to the use of neurotoxic pesticides for seed treatment, and on the other, we have requested clarification regarding the enforcement and effectiveness of requirements needed to obtain permits for neurotoxic pesticides that are sprayed onto plants.

Therefore, as a precautionary measure, and in light of both the need for effective pest control as well as the serious hazard that such products represent for bees—issues that are understood by all parties concerned—permits for the use of such pesticides should be revised and prohibited for the purpose of treating corn, grains and potatoes. Otherwise, at the very least, their conditions for use should be improved and the liability of the user should be stated, expressly prohibiting their use in the vicinity of pre-existing hives as well as in certain towns or places where it is clear that wild bees must be protected.

Finally we should report on the management of lands pertaining to the Sierra de Guadarrama Nature Reserve. Recent reports by two autonomous administrations led to the following conclusions: In arguments presented by the Department of Environment of the Council of Castile and Leon, it seemed clear to the Ombudsman that the delay—not only in adopting the Natural Resource Management Plan (Spanish acronym: “PORN”) but also in taking the preliminary steps to initiate the process—cannot be justified based on the facts. For example, from the first day of processing (4 March 2003) up to the draft of the Initial Proposal submitted on 17 April 2008 in Segovia to the municipalities affected, five years had passed. Furthermore, the description of activities during that period failed to indicate a minimum degree of efficiency and diligence, lacking even so much as the establishment of effective provisional safeguards. Regarding information provided by the Department of Environment, Housing and Land Management of the Community of Madrid, there was no mention of so much as an approximate date that might suggest a minimal degree of planning. Although a period for appeals, as a final step before

pronouncing a decision in the enquiry in question, was granted to the claimants (*Unión Sindical de Madrid Región de Comisiones Obreras* [Madrid Regional Labour Union of Workers' Commissions]), we have learned, without official confirmation yet, that an appeal involving certain planning instruments had been brought before the Administrative Disputes Court, which would be grounds for suspension of an enquiry.

## **Inland waters**

The Special Report on Land and Water Management, presented to Parliament in February 2010, provides the thorough and extensive analysis that complaints involving inland waters deserve, and it reaches several noteworthy conclusions.

Regarding exclusive use rights and concessions (quantitative protection of public water resources), municipal fees that lack properly granted concessions have again been found. Furthermore, the City Halls involved even consider it unfair and illegal that they should be fined for this practice, and they resist efforts to regulate the situation and refuse to comply with resolutions adopted by the Watershed Authority in such matters.

In addition, the diligent exercise of power by the Hydrographical Confederations in order to enforce compliance by the concessionaire with conditions required by the water concession leads to various interventions by the Ombudsman every year. These complaints are usually lodged by residents or environmental protection associations.

This year, cases involving the failure of Hydrographical Confederations to enforce their own resolutions have also been dealt with, as have cases involving failure to register exclusive use rights for groundwater by legal provision due to a lack of proper certification of land ownership.

Complaints involving Irrigation Associations have also been investigated, such as the payment of infrastructure improvement fees subsequent to the expropriation of land tracts by the Ministry of Public Works to build a highway, and for irrigation system modernization works.

Other enquiries included in special reports have to do with the following: the problem of calculating allocations of water for concessions to supply water to the population; the acknowledgement of water use prior to 1986 (when the 1985 Water Use Law entered into force) and expansion of irrigated land; the excessive, unusual and unacceptable duration of proceedings involving concessions and acknowledgement of water use prior to 1986; the use of flow meters; the conditions affecting watershed areas; and the decision of who should be responsible for building and maintaining the secondary irrigation network of an Irrigation Association.

Regarding qualitative protection of the public domain (i.e. regulation of dumping, wastewater treatment and water pollution), year after year numerous complaints arise regarding the dumping of untreated sewage from housing or urban areas, which persist over time despite fines and the legal action by Watershed Authorities. The Ombudsman is interested in the processing status of sanction proceedings initiated by

Watershed Authorities (against homeowners or the City Hall), and the revision or revocation of permits whenever appropriate. Problems related to inadequate municipal water treatment are widespread. All enquiries seek to determine whether the municipal services are aware of the current status of the problem in question; if the municipality has made progress in implementing and starting up a water treatment system for the urban area that complies with water regulations; if any other population centre in the municipal area has a substandard water treatment system; and what measures have been taken or are due to be adopted by local councils to resolve issues and ensure that treatment of all municipal wastewater is in full compliance with the law. It is usually necessary in such cases for the Ombudsman to remind municipalities that compliance with both the law on water treatment as well as resolutions adopted by the Watershed Authority should be given their highest priority, such that the City Hall should strive to achieve a wastewater management policy that respects the rules and the rights of citizens.

Many enquiries into illegal dumping by industries are still under way. As noted in previous reports, it is common for City Halls to grant operating licenses to companies that lack the required dumping permits. Furthermore, when local authorities are made aware (by the very Watershed Authority itself) of unforeseen cases of non-compliance with dumping permits, they fail to block the activity either. Even the Autonomous Communities do not always take into account the sometimes qualified and extensive records of infractions upon granting integrated environmental permits and exercising their authority to override City Halls.

Nonetheless, we must also acknowledge that sanctioning activities of the Watershed Authorities are often ineffective. Occasionally, waters are polluted with impunity for years (or at least at a cost that clearly benefits the offender) in detriment to the general interest, welfare, and health of local residents. The enormous amount of administrative, regulatory and sanctioning proceedings initiated by the relevant Hydrographical Confederations on the matter fail to oblige those responsible for dumping to make the modifications needed at their facilities to reach purification levels that meet minimum standards required by permits. Nor do they effectively block these activities if such legal requirements cannot be met. Examples abound, and the Ombudsman must reiterate that the powers of Watershed Authorities in this area are not always duly exercised.

## Sea, coastlines and ports

As for territorial waters and the maritime-land zone, an enquiry initiated in 2007 continues regarding the government's handling of polluting activities caused by an industrial fertilizer production plant in the surroundings of the Huelva estuary. The most recent advances in the investigation are not encouraging. In other words, the situation is in decline, with the sole exception of levels of radioactivity. The Ombudsman has found that the national and autonomous administrations have failed

to develop a solid reciprocal relationship to ensure a useful exchange of information, effective coordination, and mutual respect for one another's authority.

With respect to the non-port coastline this year, we must once again call attention to the persistent administrative disorganization in certain areas, usually due to lack of proper planning.

Another group of complaints, which for the moment have not been admitted, concerns the fixing of local boundaries in Empuriabrava (Girona). It is not possible to admit complaints regarding boundaries for processing when the irregularities reported are generic in nature or are based on arguments that this institution does not share. We insist, as such, that the effect of the Coastal Act on property is indisputable, but the arbitrary fixing of boundary lines delimiting the public domain, in the Ombudsman's view, is invariably rejected by the courts where it is determined to have taken place. It is not possible to state that there is widespread abuse in the authority to fix boundaries. The law may not be applied retroactively, nor may any release be granted arbitrarily. Indeed, it is a serious mistake to consider the Coastal Act to be "retroactive"—this is simply baseless—and it does not allow acts to be enacted retroactively—equally unfounded. The error is serious because it may lead one to think of even more serious transgressions of the acquired rights of individuals, something that is equally inadmissible under the Coastal Act unless it is resolved via generally accepted legal and constitutional methods to modify properties. Moreover, the law does not provide for confiscation (appropriation without compensation); it does not illegalize buildings built before the law's entry into force; and it does not permit fines to be levied for events occurred prior to their becoming sanctionable. The Coastal Act represents an invaluable benefit to the general public. In other words, the demolition of illegal constructions along the coast undoubtedly affects certain individuals in a negative way, but on the other hand it benefits everyone else.

## Waste prevention and management

One of the most serious cases dealt with is the stench suffered by residents in the area of Valdemingómez (Madrid), although no new incidents have arisen since the 2008 report. The Madrid City Hall has responded but not the City Hall of Rivas Vaciamadrid. Unfortunately, this issue persists and the Ombudsman must insist that these facilities require environmental easements on adjacent properties that prevent the construction of homes over a large surrounding surface area. According to the Ombudsman, the correct approach is that large-scale infrastructures such as this should be properly zoned—the dimensions of which depend upon their specific activities and environmental impact—so that surrounding lands may not be used to build residences.

Other issues investigated deal with the accumulation and disposal of waste in abandoned lots in Ponferrada, and with the implementation of a selective battery-recycling program in the city of Jaen. Additionally, there was an *ex officio* enquiry into conditions at landfills in certain Autonomous Communities

and the enforcement of existing regulations in this respect. In general, the situation is as follows: Canary Islands and Valencia appear to have fallen behind in their projects to improve their waste management systems, Galicia, Castile and Leon, and Murcia appear to have their weak areas under an acceptable degree of provisional control with the intention to resolve them the future.

## **Air pollution**

We would like to place special emphasis this year on broadcasts in the general media containing reports related to episodes in which thresholds established to inform or to warn about high concentrations of certain contaminants in the air had been exceeded. In our view, in cases where alert or information thresholds are surpassed, a summary of relevant data published on the Internet should be broadcast by television and radio. Such information includes air quality status in relation to the current air quality objectives for each pollutant, or the information and alert threshold limits provided for by law. In these cases, the Autonomous Community affected must also report to the relevant authorities in each case regarding health, environment and civil protection issues in accordance with the action plans and protocols established under the framework of civil defence.

## **Noise pollution**

This is one of the sections in which the number of complaints has steadily risen. In 2009 alone, over 250 new complaints have been added on top of the numerous ongoing studies that were already under way. One of the most serious cases is (and has long been) airport noise, with scant change in real noise pollution levels. Damages caused by airport noise pollution may even affect nature reserves.

The Ombudsman reckons that the noise pollution problem is far from being properly addressed and represents a matter of such daunting proportions that authorities have become overwhelmed by acts of incivility, although it is fair to say that, generally speaking, their level of performance in this regard is far from acceptable. The involvement of the Ombudsman may be counted on in the pursuit of our daily efforts, modest but persistent, continuous and extensive. Of course, such complaints tend to be among the most noteworthy in terms of their sheer numbers and complexity. Disturbances arising from noise at patron saint festivities continue to be the subject of complaints, and City Halls continue to wholly reject them—asserting, for example that the dwelling in question is not properly licensed and “likely” has inadequate soundproofing—in spite of the fact that such disturbances have been reported by other residents of the municipality.

## **Airports, roads, and railways**

In this section, we discuss matters dealt with in part in sections on environmental information, noise pollution and measurement, and even in natural reserves (Barajas Airport noise in the Sierra de Guadarrama). In particular, complaints involving

airports continue to be quite remarkable. Unfortunately, the aviation and airport management is already overwhelmed by incidents, which it did not duly anticipate even though it continues to avail itself of legal and judicial means to maintain a status quo that prevents sufferers of noise pollution from leading a decent, normal life. In spite of environmental impact declarations and AENA's best efforts, airport activity has for some time, is now, and will continue to be in the foreseeable future the cause of noise-related stress as well as other nuisances and hazards afflicting concerned populations. These issues must not be considered commensurate to the purpose of the airport, and they are wrongful because they lack legal foundation when the fact of the matter is that the population zones are pounded by noise to such an extent that the very dignity of the residents and citizens is seriously shaken.

Of course, similar problems have arisen that involve roads and railways.

## **Classified activities**

In this section alone, new complaints received by the Ombudsman exceeded two hundred, and these were added to existing enquiries that were still under way. For yet another year, we must reflect upon the unwillingness exhibited on occasion by the Administration to seek solutions for issues addressed in citizen complaints, which frequently stem from noise in the vicinity of bars, sports facilities, shops and factories. Enquiries opened five or six years ago that could not be closed until 2009 are not uncommon.

The lack of specific regulations regarding the licensing of nightclubs on narrow streets in General Urban Planning Regulations may result in similar actions being transferred to other areas of town with similar characteristics. Therefore, it seems worthwhile to pay closer attention to nightclubs that are in high population density areas or on narrow streets with limited manoeuvrability and/or parking. In such cases specific restrictions should be imposed on them in order to prevent excessive noise and vibration.

Other issues handled involving sources of noise pollution are as follows: noise from supermarket activities, often accompanied by the City Hall's failure to take action, to respond appropriately to legitimate complaints or even to verify the facts or refute allegations; an unlicensed, annoying activity located in a residential area built on land devoid of legal protection because it had never been zoned for residential use, municipal silence regarding internal problems of the Municipal Corporation with the likelihood of having breached the duty of confidentiality; we have also observed that the City Hall has submitted information regarding a construction project other than what was requested—perhaps to divert the attention from the investigation; the Administration grants unrestricted opening hours to business owners to the detriment of citizens affected by noise; other activities that have been operating or are operating without proper permits due to the permissiveness of the administration, which fails to impose effective, short term measures.

## Electromagnetic contamination

This new section has been created this year to replace the former one known as “high-tension lines and mobile telephony”. We believe that it better reflects the focus of public concern, complaints and objectives sought and sometimes achieved, by the Ombudsman. Most of the complaints undoubtedly come from these two sources (power lines and mobile stations).

There is a clear and well-defined relationship between power lines and the implementation of urban planning. We discuss the matter in this section as opposed to the urban planning section because the matter is worthy of special consideration. However, it is not such a relevant issue as the passivity of the municipal authority, which is often an ineffectual entity.

With respect to mobile telephony, yet again this year we highlight the reduced number of complaints received on this matter compared with previous years, and above all the persistent and ongoing debate over the potentially hazardous effects of the electromagnetic fields (EMF) generated. Noteworthy for such aims is the European Parliament Resolution of 2 April 2009, on health concerns related to electromagnetic fields (2008/2211- INI), which contains the following: it urges the Commission to review the scientific basis and appropriateness of EMC limits set in the Recommendation 1999/519/EC; it asks that greater attention be paid to biological impact when assessing the effects of electromagnetic radiation on health, especially in light of the fact that certain studies have determined that very low-level radiation may actually be quite hazardous;

it states that the industrial agents and infrastructure managers and public authorities may indeed intervene and influence such factors as the distance between the site affected and the transmitters, or the altitude of the site with respect to the elevation of the antenna and the orientation of the transmitter antenna with respect to the inhabited areas, for the purpose of reassuring and protecting populations living near these installations, etc. Additionally, the Parliament regrets that, due to a systematic postponement since 2006, findings have not yet been published for the INTERPHONE international epidemiological study, which aims to explore whether there is a link between mobile phone use and certain cancers, particularly tumours of the brain, the auditory nerves, and the parotid gland. Furthermore, it calls on the Commission and EU Member States to increase funding for research and development (R&D) to assess the potential long-term negative impact of exposure to mobile phone radiofrequencies, as well as to expand public calls for research into the adverse effects of repeated exposure to different sources of EMFs, particularly with regard to children. This is a very significant resolution that must be taken into account from now on. It also encourages the establishment of a single standard to minimize exposure of residents when expanding the high-tension power line network, and calls on EU Member States to follow Sweden's example by treating electrical hypersensitivity as a disability in order to ensure adequate protection and equal opportunities for those who suffer from it.

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## Noteworthy increase in complaints related to staff selection processes during 2009

**Access to the Civil Service, and issues related with performance of administrative duties—such as the work-life balance, mobility, workplace harassment, and violence against health professionals and teachers—have been cause for complaint, as has the civil servant selection process. The Military Career Law and the need to regulate basic rights and civil liberties in the Armed Forces have also resulted in numerous complaints.**

### Access to Civil Service

The year 2009 has seen an increase in complaints related to the selection processes set up by the various public administrations. At a time when the number of private sector jobs has declined and there has been a Public Job Posting with nationwide participation forecasts exceeding 250,000 applicants, complaints by citizens have risen over a wide range of subjects.

The current economic situation has manifested itself in the consistency of issues raised, such that the concerns expressed by citizens who gain or seek access to Civil Service for the first time and those who already belong to it present similarities across the range of national, regional or local administrations.

Regarding access, there has been a significant increase in complaints arising from selection process delays, particularly those related to internal promotion and due to the conditions or requirements demanded.

Regarding other issues, complaints have continued to be lodged by civil service examinees that had not managed to obtain copies of examinations taken in the process of seeking employment in the Administration. This institution defends the notion that applicants in selection processes may keep the copy of their examinations and of the questions that they have been asked.

Complaints have also arisen regarding the rules governing calls for public employment due to disagreement with the following: the computation method used to determine merit in the contest, the cancellation of selection processes already convened and under way, and the excessive merit points awarded for work performed in the convening Administration, when the tasks are equivalent to those performed at other administrations.

Regarding safeguards to ensure access to public employment for the disabled, enquiries were initiated to look into the lack of job posts set aside for this group in view of the fact that there were temporary jobs held by disabled people who, nevertheless, were not included in the corresponding quota when they were filled with permanent staff members.

*Ex officio* enquiries were also undertaken with various administrations to determine the reasons why current legislation provides for the system of civil service examinations for temporary job posts.

### Performance of Administrative Duties

Reconciling family and professional life continues to be the main subject of enquiry for the Ombudsman's office, stemming from both complaints submitted by public employees, as well as from *ex officio* actions. It was observed that different public administrations tend to interpret existing legislation differently and not always in favour of their staff.

The ability to transfer between different autonomous communities as well as to transfer for health-related reasons are also questions that have led to numerous complaints.

Complaints have also arisen describing workplace harassment or conflicts suffered by those concerned, such as professional or physical mobbing, referring to the assignment of degrading tasks, to inappropriate personal treatment, and to the initiation of disciplinary proceedings that remain stalled without reaching the required conclusions.

With respect to statutory health services personnel, the Ombudsman deems it essential to ensure that effective, high-quality healthcare be provided in every aspect as per the organizational model of the National Health System. The operation of this system must be streamlined, coordinated and supportive, as provided for in the General Health Law, which stipulates—within the framework of the regulations governing this sector of administrative activity—that actions taken by the health services administrations must comply with the aforementioned standard operating guidelines.

Based on these premises, we have completed all of the *ex officio* activities undertaken by the Ombudsman with the various health services and the Ministry of Health and Consumption for the purpose of acknowledging and paying out triennia to statutory temporary personnel.

The solution to this issue remained pending in only two autonomous communities, Navarre and Madrid, and the Community of Navarre has reported that it is already making triennia payments to contract personnel hired for administrative purposes that correspond to services rendered. On the other hand, the Community of Madrid rejected a recommendation prepared by the Ombudsman on the subject, arguing that the Framework Statute for Statutory Health Services Personnel should be applied (which precludes triennia payments for temporary statutory personnel) as opposed to the Civil Service Statute, and that such payments would prove to



be too costly. The Ombudsman disagrees with the position adopted by the Government of Madrid, which is based on a distorted view of the system and is neither compatible with the principle of equality nor with the criteria needed to ensure a streamlined, cohesive, coordinated yet autonomous functioning of the various health services that make up the National System.

## Violence toward Healthcare Professionals

An *ex officio* enquiry into violence directed at healthcare professionals has been concluded. It has shown that the various healthcare administrations are actively seeking ways to approach and prevent this labour issue, noting, as well, that cases of workplace violence in this area are both real and frequent.

Another matter of interest regarding regulations governing statutory personnel is the possibility of opting for partial retirement under Article 26.4 of Law 55/2003, of the Framework Statute. This issue remains unresolved for the moment, and an enquiry is ongoing.

With respect to the conditions required to perform work duties, the assessment of risks during pregnancy and the acknowledgement of the corresponding subsidy have been studied.

Actions have also been undertaken with a view toward promoting a family-friendly, work-life balance for healthcare workers.

## Non-University Faculty

Regarding public teaching staff, the Ombudsman has initiated an *ex officio* enquiry with the Boards of Education of all the Autonomous Communities and with the State Department for Education (with respect to Ceuta and Melilla). The objective is to study actions taken by these administrative bodies along with any potential agreements that might be reached during the Education Sector Conference to allow family circumstances to be considered in civil servant transfer cases in order to promote mobility, and, thus, to safeguard the right to balance work, life and family. It was recommended that measures be adopted to draft regulations for mobility application procedures, including specific standards and assessment procedures for the awarding of commissions and other means of rendering professional services in order to address the difficulties encountered by temporary or permanent civil servants whose assigned posts are located far from their homes and dependent families.

Regarding cases involving workplace mobbing in the area of non-university academia or activities that may have a similar effect, those affected have always been treated with the utmost respect and consideration for whatever personal circumstances they might be suffering because even behaviours of superiors or colleagues that are not deemed to be illegal or worthy of disciplinary action can still have a similar impact. This Institution reckons that such conflicts should be the subject of extensive debate by the Educational Authorities and

the legislature, who are obliged, first and foremost, to resolve all such issues and to ensure that existing standards conform to a social situation that is in constant flux.

Regarding difficulties encountered when applying for technical training faculty positions due to the fact that certain degrees were not considered in the official announcement of civil service job vacancies, the State Department for Education and Vocational Training of the Ministry of Education has stated that it has begun to review the degrees required in this area, taking into account both teacher qualifications as well as the needs of the educational system.

Regarding acknowledgment for services rendered by overseas conversational training assistants, subsequent to actions taken by the Ombudsman, the Regional Directorate of the City of Madrid has resolved requests made by these assistants in their favour, in accordance with our opinion that Law 30 / 1984, on Civil Service Reform Measures, establishes that triennial payments should be paid out for services rendered in any public administration of any EU member state.

The implementation of the European Higher Education Area (EHEA), which is being applied and carried out at many Spanish universities, requires the establishment of a verification process for undergraduate, master and doctoral degrees. However, the Royal Decree, which governs nationwide civil service selection processes for faculty members does not provide for acknowledgment of EHEA qualifications, which hinders a proper evaluation of the academic merit of participants.

As a result of doubts raised, the Directorate General of Professional Training and the Directorate General of University Policy, of the aforementioned Department, issued an informative memorandum discussing a university master's program designed to qualify the degree-holder to teach in the areas of compulsory secondary education, high school, professional training, and language teaching. Additionally, it stated that, as of 1 October 2009, the degree required for these professions would be the university master. Furthermore, requirements have been defined by Ministerial Order for the verification of official university degrees that entitle students to work in these professions, including transitional measures intended to facilitate fulfilment of the academic requirements for the 2009-2010 academic year.

## University Faculty

As for university-level teaching, complaints have been received from citizens who feel that public universities fail to set aside sufficient space for disabled persons who apply for university faculty positions. The Directorate General of Universities stressed, firstly, that the Organic Law on Universities takes into account the need to actively promote policies to ensure equal opportunities for disabled persons. Secondly, a policy of non-discrimination for disability is expressly contained in the draft of the Royal Decree regulating the Statute for Teachers and Researchers at Spanish Universities, setting forth the right to receive whatever resources and care are needed so that



professors may do their work, although, as an exercise of their independence, it falls to the universities to determine their own job postings lists.

Also received have been complaints stemming from the recognition process for six-year terms of research, which are carried out by the National Evaluation Committee of Research Activity (CNEAI) and by the activities of the National Agency for Quality Assessment and Accreditation (ANECA).

## Justice Administration Personnel

With regard to other issues, difficulties have been noted in applying certain contents of Law 7/2007, of the Basic Statute for Civil Service, to personnel working for the Justice Administration.

Likewise, action has been taken to resolve the situation of a court clerk, formerly Member of Parliament, who, in accordance with the aforementioned Basic Statute, had requested equal treatment in determining category and bonus compensation with respect to what is received by former holders of high-level posts, such as general directors, in the various public administrations.

The recommendation submitted on this subject was not accepted by the State Secretary of Justice, although a review of the claimant's individual situation through the internal appeal he has initiated remains pending.

## Prison Staff at Correctional Facilities

Regarding correctional facilities, the Department of Social Work at the Albolote Correctional Facility (Granada) has described to the Ombudsman the difficulties undergone by their prison staff as a result of the failure to fill job vacancies at that centre.

A group of prison staff from the correctional facility staff corps has explained the issues they must face as a result of the merging of ranks for that corps, provided for by the thirtieth additional provision of Organic Law 3/2007, for the effective equality of women and men. In their opinion, the application of this provision distorts the objective of equality sought by that law, because they consider that their situation as civil servants has deteriorated as a result.

The Ombudsman Institution informed the prison authorities that the aforementioned merging of ranks is viewed in a positive light, as has been made clear in previous parliamentary reports, but also that the complaints submitted are considered to be objective and reasonably justified as well. One must bear in mind that a measure such as the one adopted, which involves forming a single prison staff corps, must be accompanied by actions aimed at preventing conflicts of interest between male and female staff members or infringement upon the rights of those concerned regarding their careers and job security, taking into account the skills and knowledge they have gained based on the specific functions they have performed and experience they have acquired.

As for the incorporation of prison healthcare staff into the National Health System, the Autonomous Community of

Aragon and the Basque Autonomous Community have expressed their willingness to carry out this process.

None of the remaining communities has formally announced whether they plan to initiate or continue the transfer process, but all have been informed of the will of the General Public Administration that the prison healthcare transfer process should be carried out as soon as possible.

## Military Administration and State Security Forces and Corps Personnel

With respect to military administration staff, *ex officio* enquiries remain open with the Undersecretary for Defence in order to make it easier for members of the National Police Force to participate in civil service offers conducted for reservists. The new Regulations for Reservists of the Armed Forces will resolve the questions raised by the Ombudsman, and will be applicable to members of the National Police Force and both local and autonomic Law Enforcement Agencies and Corps—but not to the Civil Guard, given the nature of the Armed Forces Institution.

As has been occurring since the Military Career Law was first published, many members of the Armed Forces have described the impact on their professional expectations due to the new legislation, which they deem to be discriminatory. As such, they have requested that the fourth and seventh transitional provisions and the tenth additional provision be revised.

Throughout 2009, hundreds of military personnel have also expressed to us their concern regarding the lack of a legal framework governing the basic rights and civil liberties of members of the Armed Forces.

Given the length of time that has passed since the Military Career Law entered into force, the Ombudsman made a recommendation to the Ministry of Defence that a corresponding draft law should be drawn up as soon as possible for the purpose of adapting the National Defence legal system and the rights and duties of the military to the Professional Armed Forces model, whenever the timeframe provided for in Law 17/1999 is exceeded.

Elsewhere, complaints lodged by members of the Civil Guard Corps and the Armed Forces continue to manifest lengthy delays in cases involving the determination of inadequate coordination and motor skills. As such, a new enquiry of general scope has been undertaken with the Undersecretary for Defence.

Likewise during 2009, *ex officio* enquiries initiated four years ago continued to examine cases of medical leave for psychological reasons as well as suicides committed by Civil Guard Corps personnel. The number of cases involving medical leave for psychological reasons has fallen considerably, but suicidal behaviour has been on the rise with respect to previous years. As such, further information has been requested with respect to the locations where these situations have taken place as well as their possible causes, be they personal, family or work related.

The physical conditions at certain installations have also been investigated, such as those at Cangas de Morrazo, under the Civil Guard Headquarters at Pontevedra, where twelve families live and fifty staff members work, in various office and residential buildings that apparently fail to meet minimum standards for these purposes.

Another area of enquiry involved the possible rehiring and return to active duty of Civil Guard personnel who had been retired due to permanent disability in cases where the reasons underlying such decisions are dispelled, as is provided for in the Armed Forces.

A follow-up has also been conducted with the Directorate General of the Police and Civil Guard, regarding the situation of members of this armed institution who are declared fit for duty with limitations, as well as the application of regulations set forth in Organic Law 11/2007 of 22 October; on the Rights and Duties of members of the Civil Guard.

A large number of citizens requested our assistance with regard to the aforementioned Directorate's Resolution of 25 May 2009, by which an official call was made for 1949 trainee positions at the Training and Mastery Division's Training Facility for those seeking access to the Basic Rank of the National Police. These citizens, who were 30 years of age or older in 2009, sought to amend the maximum age limit for entry in order that they would be able to participate in this selection process.

The cited Directorate informed the Ombudsman, in a lengthy report, of the reasons why they considered it unfeasible to effect such a change in policy, within the framework of the self-regulating authority they possess in providing public services through the management of various groups of civil servants.

Transfers for health reasons affecting the civil servant, the spouse or dependent children have also been investigated.

## Public Administration Staff

The handling of selection processes and the filling of staff vacancies in public administrations continue to lead to the lodging of numerous complaints.

Regarding improved conditions involved in rendering service, it should be pointed out that a system of professional identification numbers for employees of the Sociedad Estatal Correos y Telégrafos [National Postal Service] has successfully been implemented to prevent their having to use their own National Identity Card numbers for professional purposes.

In connection with the Agreement on working conditions for overseas staff, of 3 December 2007, of the General Negotiations Board of the Public Administration, which was approved by the Council of Ministers of 25 January 2008, the Administration has given high priority to the holding of union elections as well as the implementation of a disciplinary procedure, and has begun negotiations on these and other measures.

## Retired Public Servants

Regarding the *ex officio* enquiry under way into the equivalency process between the Special Plan for Retired Public Servants and the General Social Security Plan, regarding payments to be made by civil servant pensioners when they obtain prescription medications, the Ministry of Economy and Finance reported that due to the economic situation, steps were being taken to control spending. Consequently, an increase was not deemed to be opportune in this process of merging the two different social protection plans.

It is the Ombudsman's hope, given that the current economic situation is the reason why adopting the appropriate budgetary measures is temporarily unfeasible, that this process will resume when economic circumstances permit so that retired public servants will be permitted to achieve their objective of equality with pensioners under the General Social Security Plan.

### Co-official Language Status

Some complaints lodged this year regarding the fair use of two official languages with equal status in certain Autonomous Communities challenged the right of regional, local and corporate authorities to use a second official language alongside Castilian, whereas others objected to the use of Castilian by national administrative organisations located in these regions for administrative procedures or when dealing with citizens.

Generally speaking, it was observed that the volume of complaints regarding co-official language status had diminished during the period covered by this report. This reduction—always desirable for this and for any other issue—may stem from several root causes such as the following: reduced regulatory activity in this area by Autonomous Communities with a second official language; acceptance or, rather, assimilation of co-official language status stemming from the length of time this practice has been in force; and the adoption by public authorities and citizens of practices and procedures established in the Constitution and developed in subsequent legislation.

In any case, it would be opportune to have a ruling on issues that remain pending in this area by the Constitutional Court in order to update, confirm or review case law regarding co-official language status. This judgement should be made in view of the practical outcomes gained by developing a range of methods in certain Autonomous Communities while also taking into account the results described by said regions stemming from their experience in this endeavour. Experience thus gained should help to elucidate both the rights and responsibilities of citizens as well as the duties and boundaries of public authorities with respect to any issues that involve co-official language status.

### The Electoral System

Election-related complaints tend to question procedural aspects that do not necessarily infringe upon participation rights, such as vote counting issues and how to treat blank votes. There are also complaints with regard to the following: availability of census lists for political parties, accessibility at polling stations, forming of electoral tables, vote-by-mail processing issues, or obstacles that prevent full participation by the disabled in the electoral process.

### Protection of Minors Concerning the Media

The protection of minors represents a restriction that the Constitution imposes over all other basic rights, particularly in the following areas: freedom of speech, information, communication, as well as literary, artistic, scientific and technical creation. In numerous reports over the years, the Ombudsman has stressed the need for such protection, for the enforcement of the Self-Regulating Code for Television Content and Minors (2004), and for the establishment of a competent authority that

is fully independent of government structures. Mention is made of the so-called “National Audiovisual Media Council” in the General Draft Bill on Audiovisual Communication.

It should also be pointed out that the Ombudsman, in collaboration with UNICEF, is studying the opinions of young people between the ages of 12 and 18 concerning respect for and protection of their rights in content and programming offered on television and the Internet. The results of this study will soon be made public in a special report on the subject.

### Financial liability

The Constitution establishes the right of those under the authority of government administrations to be compensated for any infringement on their rights and property, except in cases involving *force majeure*, whenever such infringement arises due to civil service functions.

The Ombudsman has received many complaints regarding the general sluggishness in processing cases, most of which refer to the Ministry of Public Works as well as the regional healthcare administrations. Among the reasons for such complaints are the following: damages arising from construction projects involving housing, estates or businesses, accidents due to deficiencies in national motorways, injuries stemming from inadequate performance by healthcare workers, etc. Complaints have also been lodged against local authorities for delays in investigating cases involving financial liability.

The Ministry of Public Works has reported that a streamlined management model has recently been put into place that is speeding up procedures significantly.

### Local Administration

#### City Hall Member Rights

Complaints are common from municipal government members or groups, obviously from the opposition party, regarding their right of access to the documentation they need to perform their functions. This year, complaints regarding the enforcement of the “anti-defection” pact have revealed that different interpretations can be made with respect to the subsections of Article 73.3 of the Law Regulating the Basis of Local Government, even in light of its direct origin from the political agreement upon which it is predicated. A revision of this legislation is advisable so as to make whatever modifications, corrections or clarifications might be deemed opportune.

#### Functioning of Government Organizations

Complaints in this section have primarily dealt with attempts that have tended to hinder participation by opposition party members, who object to the following: non-compliance with the agreed-upon session schedules, failure to establish more accessible opening times outside of normal work hours, failure

to hold a monthly plenary session as required by law, and blockage of citizens' right of access to information.

### **Information and Public Participation**

Municipal governments are legally bound to facilitate participation by residents in the affairs of local public life, and for this purpose the law itself provides for the establishment of a commission to deal with any suggestions and complaints. Nevertheless, an issue has arisen in the city of Valencia, where it has taken nearly six years for said commission to be put in place.

Other complaints from neighbourhood movements have been the lack of advertising media to spread information about themselves or the lack of municipal bulletin boards.

### **Town Council Activities and Services**

More and more complaints are lodged due to failures to provide basic services required by law, such as public lighting, rubbish collection, street cleaning, potable water supply, sewerage, access to population centres, and paved roads.

These complaints primarily refer to small towns in rural areas that for the most part are in danger of disappearing. Although their small and aging populations are reluctant to abandon their roots, the demand for services in these areas is limited and offers scant opportunities for "profitability". The Ombudsman is not unaware of the logistical and financial difficulties involved in ensuring the supply of basic services

required by law, but the Law mandates that Provincial Councils and Autonomous Communities should provide assistance or take over the activities of Town Councils when they are unable to fulfil their obligations.

In larger population centres, complaints have been lodged with regard to the following aspects: conditions at sports facilities and their fees and rules of use, inconveniences caused by pets, or the keeping of potentially dangerous dogs.

### **Municipal Registry Management**

Numerous complaints have arisen due to rejected requests to register at the Municipal Registry, and among the justifications most often alleged are the following: the lack of prior residency in the municipality, which is the case for many immigrants; the application of blanket procedures requiring submission of "similar documents" that complicate or hamper the registration process; and other prerequisites such as a minimum housing surface area of 20 m<sup>2</sup> for each person registered at that address or a certification of habitability or fulfilment of tax obligations.

Complaints have been admitted based on the premise that official registration at the address where one resides represents a basic and universal right of citizens which provides the foundation for other highly important basic civic rights that should take precedence over any other bureaucratic, administrative, or fiscal issues.



## INSTITUTIONAL RELATIONS



### Parliamentary activities

The Ombudsman appeared before the Joint Committee on Relations with the Ombudsman on 17 February in order to present a report entitled “Shelters for Minors with Behavioural Disorders and Social Difficulties”.

Later, on 25 May, the Ombudsman submitted the 2008 Annual Report to the respective Presidents of the Congress of Deputies and the Senate. The appearance before the Joint Committee was made on 16 June 2009 and a debate was held.

Finally, the 2008 Annual Report was presented to the Senate and to the Congress of Deputies during plenary sessions held on 24 June and 10 September, respectively.



The Ombudsman, Enrique Múgica Herzog during the presentation of the 2008 report at the Plenary Session of Congress.

### Relations with parliamentary commissioners

This section lists the main meetings held in 2009 with regional parliamentary commissioners. Included are both official meetings at the Ombudsman headquarters or regional offices, as well as gatherings and group events—among which the annual national coordination workshops are noteworthy.

- Interagency visit and workshop of the Ombudsman for Murcia, José Pablo Ruiz Abellán, accompanied by his Deputy and Secretary General. Ombudsman headquarters, 11 February.
- Attendance of the Ombudsman and his Second Deputy at the inauguration of the *Síndic de Greuges* [Ombudsman] of the Community of Valencia, Jose Cholbi Diego. Valencia, 6 March.
- Attendance by the Secretary General at events commemorating the 25th Anniversary of the Law on the *Síndic de Greuges* of Catalonia. Barcelona, 27 March.
- Visit with the *Síndic de Greuges* of the Community of Valencia and his Second Deputy. Ombudsman Headquarters, 27 April.

- Visit with the *Valedor do Pobo* (regional Ombudsman), Benigno López González. Ombudsman headquarters, 13 May.



The *Valedor do Pobo* [Ombudsman], Benigno López González, visited the Spanish Ombudsman at the headquarters of this Institution. Appearing alongside them in the photograph, the Secretary General of the Ombudsman, Mar España Martí, and the Ombudsman's Chief of Staff, Manuel García Viso.

- Participation of the Second Deputy in the second preparatory session for the Ombudsmen Coordination Workshop. Albacete, 18 May.



Group photo of the Ombudsmen during the 24th Coordination Workshop.

- Signing of a cooperation and coordination accord between the Ombudsman of Spain and the Regional Ombudsman of Murcia. Cartagena (Murcia), 1 June.
- Attendance by the Ombudsman and his Second Deputy at an institutional event held to celebrate the 20th anniversary of the *Ararteko* (regional Ombudsman). Vitoria, 17 June.
- Attendance at the presentation of *Ararteko's* 2008 Report. Vitoria, 18 June.
- Attendance by the Ombudsman, the Second Deputy and Secretary General at the Conference held to commemorate the 25th Anniversary of the founding of the *Valedor do Pobo*. Santiago de Compostela (A Coruña), 22 and 23 June.



- Official meeting with the Secretary General of the *Sindic de Greuges* of Catalonia and a delegation from that Institution to discuss technical organisation issues and computer improvements. Ombudsman Headquarters, 6 August.

## 24th Ombudsmen Coordination Conference

The 24th Ombudsmen Coordination Conference was held in Seville and Cordoba on the 19th and 20th of October, 2009, under the theme "Protecting citizens' rights by using new technologies (ICT)".

For yet another year, this conference aimed to foster coordination among the various Ombudsman Institutions regarding general aspects of institutional operations as well as various issues of particular interest to the public. The Citizens' Rights Forum on Children and New Technologies was held concurrently with this conference.

The 21st century has proven the value of information and communication technologies (ICTs), which have become an essential instrument for guaranteeing citizens' rights as well as a means by which public authorities should strive to streamline their activities in order to ensure that said rights are effectively enforced.

During the conference, citizens' rights were debated with respect to the following issues: access and use of ICT; employment of ICT as tools for guaranteeing social rights in such areas as education, health and social services; the implementation of electronic Administration in the public sector as well as the application and use of ICT at the various Ombudsman Institutions.

In this regard, the Ombudsmen seek to provide citizens with electronic access to their services, and they reaffirm their firm commitment to the right to data protection and privacy.

## Official meetings with authorities, citizens and social organisations

In addition to ongoing interaction with citizens and authorities during the normal handling of complaints, special meetings are regularly held to address highly relevant issues. These gatherings may involve one or more particularly complex cases or they may focus on issues of a wider scope, such as the social debates that may arise regarding legislative reforms.

In these meetings it is also customary to discuss how best to establish procedures for making enquiries to the authorities and, for that purpose, viewpoints are exchanged among representatives of the various administrative departments and institutions.

The names of Ombudsman attendees at the various meetings have generally been omitted for the sake of avoiding unnecessary repetition.

- Meeting with the Dean of the Association of Registrars, Eugenio Rodriguez Cepeda, and other members of the Association. Issues regarding civil registry collaboration and

delays were addressed, particularly at the Central Civil Registry. Madrid, 14 January.

- Meeting with the President and representatives of the National Association for People Affected by Traffic. Ombudsman Headquarters, 19 January.
- Interview in the Assembly of Madrid with Speaker for the *Izquierda Unida* Parliamentary Group, Ines Sabanes Nadal, accompanied by the Speaker for said group on the Education Committee, Eulalia Gomez Vaquero. They notified the Ombudsman of their concerns about the publication of data from the Ministry of Education of Madrid reflecting scores from the minimum basic skills and aptitude test for sixth grade Primary Education students at public schools in the Community of Madrid. Ombudsman Headquarters, 22 January.
- Meeting with representatives of "Torrenat", the Torrelodones Residents' Association (Madrid) for Nature and Sustainable Development. Ombudsman Headquarters, 27 January.
- Visit with the Director of the Health Department of the Community of Madrid, Juan Jose Guemes Barrios, and other representatives from that Department, to submit a report in response to a request made by the Ombudsman during an *ex officio* enquiry. Ombudsman Headquarters, 2 February.
- Meeting with the Director of Multilateral and Sectorial Cooperation of the Spanish Agency for International Development. Ombudsman Headquarters, 4 February.
- Meeting with a representative of the General Department for Strategic Affairs and Terrorism of the Ministry of Foreign Affairs and Cooperation. Ombudsman Headquarters, 5 February.
- Visit with the new President of the General Council of Notaries, Antonio Ojeda Escobar. Ombudsman Headquarters, 11 February.
- Meeting with the General Director of Consular Affairs and Assistance of the Ministry of Foreign Affairs and Cooperation Miguel Angel de Frutos. Ombudsman Headquarters, 11 February.
- Meeting with the Ombudsman for Citizens and Tourists in Calvia (Balearic Islands), Francisca Mascaro Tous. Ombudsman Headquarters, 12 February.
- Meeting with a delegation comprising the UNHCR Senior Institutional Policy Advisor Jose Maria Riera, the Assistant Officer for Policy Evaluation, Mary Rijskjaer, and the advisor for the assessment of mixed immigration patterns, Anna Marie Gallagher. Ombudsman Headquarters, 17 February.
- Visit with representatives of Basque trade and ertzaina (police) unions to elaborate on the contents of an appeal for unconstitutionality filed jointly by the CCOO, UGT, ERNE, ESAN, SIPE, and EUSPEL with respect to Article 22 of Basque Law 19/2008 of 29 December, approving the 2009 General Budget for the Autonomous Community of Euskadi. Ombudsman Headquarters, 18 February.
- Meeting with the Director-General of Environmental Quality and Assessment, Ministry of the Environment, Rural Areas and Marine Areas, Maria Jesus Rodriguez de Sancho, and the



The Ombudsman, Enrique Múgica, and his Second Deputy, Manuel Aguilar, at the official presentation of the report on children's shelters. With them is the Chairperson of the Joint Commission, Carmen Maron.

Assistant Director General of Environmental Assessment, Ángel Muñoz Cubillo. Ombudsman Headquarters, 2 March.

- Meeting with the President and the Director General of "Platform for Children", with respect to a special report on "Shelters for Minors with Behavioural Disorders and Social Difficulties". Ombudsman Headquarters, 3 March.
- Meeting with representatives of the Professional Association for Real Estate Administrators in Madrid. Ombudsman Headquarters, 11 March.
- Attendance at a meeting organized by the Ombudsman of Andalusia with the "Almería Acoge" Association. Seville, 12 March.
- Visit with the Secretary General for CCOO-Comisiones Obreras (Workers' Union) of Madrid and the Secretary General of COMFIA-CCOO regarding the filing of an appeal of unconstitutionality against Madrid Assembly Bill 3/2008, on Taxation and Administrative measures. Ombudsman Headquarters, 16 March.
- Meeting with representatives of the Coordinating Forum for Sustainable Transport of the Community of Madrid. Ombudsman Headquarters, 20 April.
- Meeting with representatives of the State Federation of Lesbians, Gays, Transsexuals and Bisexual. Ombudsman Headquarters, 29 April.
- Meeting with the Mayor-President of the Town Hall of San Martín de Valdeiglesias (Madrid). Ombudsman Headquarters, 5 May.
- Meetings with the President and the Director of the Department of Road Safety of the Mutua Motera Association. Ombudsman Headquarters, on 13 May and 8 October.
- Meeting with members of the Association for Relatives and Friends of Inmate Patients in Correctional Psychiatric Hospitals. Ombudsman Headquarters, 18 May.
- Meeting with the Director for Institutional Relations and Internal Policy of Amnesty International, Ángela Iranzo, the Head of Advocacy and Social Participation of CEAR, Mauricio Valiente, and with the Secretary General of CEAR, Alfredo Abad. Ombudsman Headquarters, 2 June.

- Meeting with the Director General for Regional Planning and Parole of the Secretariat General for Prisons of the Ministry of Interior, Virgilio Valera. Ombudsman Headquarters, June 4.
- Meeting with representatives of Platform against Citizenship as a School Subject. Ombudsman Headquarters, 15 June.
- Meeting with the Ombudsman for Citizens of Paterna (Murcia), María Antonia Moreno Gutierrez, accompanied by attorney at law, Susana Sanchis. Ombudsman Headquarters, 29 June.
- Official meeting between the Ombudsman and the State Attorney General. Headquarters of the Attorney General, 3 July.
- Meeting with the Director of Family and Social Affairs of the Community of Madrid, Engracia Hidalgo Tena, along with the General Director for the Coordination of Dependents, Miguel Angel Garcia Martin. Ombudsman Headquarters, 7 July.
- Meeting with representatives of the ASPEPC Union with regard to the Education Act of Catalonia. Ombudsman Headquarters, 8 July.
- Meeting with representatives of various associations (Civic Catalan Coexistence, Ermua Forum, CONCAPA, Denaes), who presented to the Ombudsman the appeal initiated regarding the unconstitutionality of the Education Act of Catalonia—approved by the Parliament of Catalonia on 1 July 2009. Ombudsman Headquarters, 21 July.
- Meeting with the Director and Deputy Director of the Spanish Data Protection Agency. Ombudsman Headquarters, 21 July.
- Meeting with the head of institutional relations of the Spanish Society of Authors. Composers and Publishers regarding the Law on Intellectual Property. Ombudsman Headquarters, 21 July.
- Meeting with the UNHCR representative in Spain, Maricela Daniel, with the attorney from said office who handles issues involving minors, Margarita de la Rasilla, and person in charge of the legal department, Marta Garcia. Ombudsman Headquarters, 22 July.
- Meeting with representatives of national and regional Izquierda Unida parliamentary groups, in which the Ombudsman was petitioned to file an appeal regarding the unconstitutionality of Law 6/2009 of the Autonomous Community of Aragon, 6 July, on high occupancy entertainment facilities. Ombudsman Headquarters, 23 July.
- Visit with representatives of the Vallecas City and Metropolitan Area Association to file a complaint for breach of an agreement by the Community of Madrid. Ombudsman Headquarters, 27 July.
- Visit with representatives of the National Association for High School Teachers (ANCABA) and the Association of Secondary Teachers of Catalonia (ASPEC). Ombudsman Headquarters, 28 July.
- Interview with the former chairman of the Joint Committee on Relations with the Ombudsman, Agustí Cerdà i Argent, accompanied by various heads of opposition groups calling

for the proper application of the Dependency Act. Ombudsman Headquarters, 16 September.

- Visit with the Director of the Melilla Bar Association, Blas Jesús Imbroda Ortiz, accompanied by the Secretary and the Representative of the Commission on Immigration. Ombudsman Headquarters, 29 September.
- Meeting with representatives of the Professional Association for Real Estate Administrators in Madrid and the General Council of Real Estate Management Professionals. Ombudsman Headquarters, 30 September.
- Interview with the United Nations Director General for Global Affairs and Human Rights of the Ministry of Foreign Affairs and Cooperation, Jorge Domecq Fernández de Bobadilla, accompanied by Deputy Assistant Director of the Office of Human Rights. Ombudsman Headquarters, 7 October.
- Meeting with the Executive Director for Fostering Accessibility and the Coordination of Innovation at the Renfe-Operadora Public Rail Transport Firm, Francesc Romeu Martí. Ombudsman Headquarters, 8 October.
- Meeting with representatives of the Basque Federation for Early Retirees and Pensioners and the National Confederation of Early Retirees and Pensioners. Ombudsman Headquarters, 26 October.
- Visit with members of the Victims and Justice Association. Ombudsman Headquarters, 16 November.
- Meeting with the director and representatives of Women's LinkWorldWide. Ombudsman Headquarters, 25 November.
- Meeting with the Bishop of Tangiers and with Helena Malero Garzon, on female human trafficking. Ombudsman Headquarters, 26 November.
- Meeting with representatives from the environmental organizations of Greenpeace and WWF/Adena. Ombudsman Headquarters, 3 December.
- Visit with a group of representatives of CCOO-Comisiones Obreros and UGT- Union General de Trabajadores (Workers' Unions) Madrid, to submit a complaint regarding Law 6/2009 of the Assembly of Madrid, on Freedom of Choice in Health Care. Ombudsman Headquarters, 9 December.
- Meeting with representatives of the Association for Small and Medium-sized Businesses Affected by Financial Derivatives (APYMAD). Ombudsman Headquarters, 10 December.
- Interview with members of Ouest France, Mark Zennec and Maria Santamaria, regarding Spanish correctional institutions. Ombudsman Headquarters, 10 December.
- Meeting with representatives of the Farmers and Ranchers Union. Ombudsman Headquarters, 16 December.
- Meeting with the parents of a missing child in Seville and with the Secretary of the Victims and Justice Association, Fernando Suarez de Arcos. Ombudsman Headquarters, 16 December.
- Meeting with the Director of Health of the Community of Madrid, Juan Jose Guemes Barrios. Ombudsman Headquarters, 16 December.

- Visit with the Mayor of San Fernando de Henares (Madrid), Julio Martinez Setién, accompanied by spokespersons for the local offices of *Izquierda Unida*, the *PSOE*, and the *Partido Popular*, to discuss issues involving the airport.

- Meeting with the President of the *Sociedad Pública de Alquiler*, S.A. (Public Company for Rental Housing) of the Ministry of Housing, Nieves Huertas Sanchez. Ombudsman Headquarters, 22 December.

## International activities

This section describes the main activities conducted by the Ombudsman Institution with international scope.

In 2009, cooperative relations have been strengthened with international organizations dedicated to fostering and defending human rights. A noteworthy example of this is Spain's association with various United Nations organizations, which is conducted through the diligent efforts of the Office of the High Commissioner for Human Rights. The Ombudsman may participate in meetings held at the UN headquarters in Geneva to offer the Ombudsman's opinion regarding human rights conditions in Spain, and, specifically, regarding any preliminary reports or findings referring to Spain that may be under scrutiny. One must bear in mind that the Ombudsman works concurrently with the Spanish authorities in charge of preparing the pertinent documents whenever it is deemed opportune, and this fact has been stated in view of the forthcoming Universal Periodic Review of Spain scheduled for May 2010 at the Human Rights Council.

The Spanish Ombudsman continues to work closely with the EU Network of Ombudsmen as well as with the European Ombudsman and the Ombudsman takes active part in coordination meetings held by national institutions for the protection of European human rights belonging to Council of Europe member nations.

The normal cooperative efforts have continued with organizations that represent the Ombudsman institutions of the various countries with which Spain maintains special relationships and ties. Reference has already been made to the 14th Assembly and Congress of the Ibero-American Federation of Ombudsmen (FIO) held in Madrid. Furthermore, effort continued to be dedicated toward promoting the new Association of Mediterranean Ombudsmen (AOM).



Speech by the Ombudsman, Enrique Múgica, in the third meeting of the Mediterranean Association of Ombudsmen (AOM), in Athens (Greece).

Additionally, work continued with respect to bilateral cooperation activities. This latter, more heterogeneous group of activities included contact and meetings with representatives from vastly diverse countries such as China, Montenegro, Turkey, Egypt, Morocco and Israel.

Also noteworthy is the commencement of a new twinning project promoted by the European Commission. Subsequent to the positive experience gained from the Project in Kazakhstan that took place in 2006 in collaboration with the Ombudsman of Greece, the Commission approved, in 2009, a joint proposal submitted by the Ombudsman of the French Republic and the Spanish Ombudsman to carry out this type of project with Human Rights Ombudsman of Armenia. By virtue of this decision, the 18-month project was undertaken. During this endeavour, activities are to be conducted in close and constant collaboration with the Office of the Ombudsman of France for the purpose of enhancing the Ombudsman Institution of Armenia, and an advisor from the Spanish Ombudsman's office has been transferred to Armenia in order to coordinate efforts there.

### International events

- Participation in an International Conference organized to commemorate the 10th Anniversary of the Ombudsman of Georgia. Tbilisi (Georgia), 11 and 12 February.
- Participation in the First International Conference of the Councils and Institutions on Emigration. Rabat (Morocco), 3 and 4 March.
- Tenth regular series of sessions of the Human Rights Council. Attendance by a delegation from the Spanish Ombudsman's Office at the presentation of a Report on Spain by the Special *Rapporteur* with regard to respect for human rights in the fight against terrorism. Geneva (Switzerland), 10 March.
- Tenth regular series of sessions of the Human Rights Council. Attendance by a delegation from the Spanish Ombudsman's Office at the annual meeting of the International Coordinating Committee of National Human Rights Institutions (ICC). Geneva (Switzerland) from 23 to 27 March.
- Conference and participation in a meeting regarding implementation of the Optional Protocol for the United Nations Convention against Torture, organized by the Ombudsman of the Republic of Serbia. Belgrade (Serbia), 23-25 March.
- International Workshop entitled "*The Role of National Human Rights Structures in case of Non Execution of Domestic Judgments*", organized by the Human Rights Commissioner of the Council of Europe and the University of Padua. Padua (Italy), 24-26 March.
- 7th Seminar for National Ombudsmen of EU Member States and candidate nations. Organized by the European Ombudsman and the Ombudsman of Cyprus. The theme was "*Migration and its impact on the Ombudsmen's work*". The Spanish Ombudsman chaired the session held on the second day called "*Immigration and Asylum in Third Countries*". Paphos (Cyprus), 5-7 April.
- Participation in the Review of the Durban Conference, organized by the United Nations. United Nations Headquarters. Geneva (Switzerland), 20-24 April.
- 9th World Conference of the International Ombudsman Institute and Bicentennial of the Swedish Parliamentary Ombudsmen's Office. Participation by the Spanish Ombudsman in the workshop entitled "*No Residency Permit. Protection for Asylum Seekers and Legal Immigrants*". Stockholm (Sweden) 10-12 June.
- Participation in the Fourth International Euro-social Networks Conference, "*The Agenda for Social Cohesion in Latin America: Achievements and Challenges*". Salvador de Bahia (Brazil) 23-25 June.
- Second Conference of immigration and asylum experts from the European Network of National Human Rights Institutions (NHRI network), organized by the Department of Migration and Fundamental Rights of the Belgian Centre for Equal Opportunities and Against Racism. Brussels (Belgium), 25-26 June.
- Participation in the 2nd conference of representatives from the European Agency for Fundamental Rights (FRA) and National Human Rights Institutions in Europe (NHRI). Vienna (Austria), 29-30 June.
- Speech by the Ombudsman on the roles of the Ombudsman and the National Human Rights Institutions in the United Nations system, which was given during the parallel event to the 12th Session of the Human Rights Council organized in Geneva by the Permanent Missions of Morocco and Switzerland with the support of the Office of the High Commissioner for Human Rights. Palais des Nations, Geneva (Switzerland), 24 September.
- Participation in the seminar "*Linking Human Rights and Migrant Empowerment for Development*" organized by the United Nations High Commissioner for Human Rights. Geneva (Switzerland), 8 October.
- Attendance by the Ombudsman and the Second Deputy to the Forum "*Current Challenges for International Human Rights Protection from a Latin American Perspective*". Headquarters of the Ibero-American General Secretariat. Madrid, 16 October.
- Participation in the Workshop "*The Protection of Separated/Unaccompanied Minors by National Human Rights Structures (Including Children's Ombudsman)*", organized by the Council of Europe, the European University, and the University of Padua. Padua (Italy), 20-22 October.
- Attendance at the preliminary meeting for the Universal Periodic Review process organized by the United Nations. Brussels (Belgium), 21-24 October.
- Celebration of the 14th Annual Congress and Assembly of the Ibero-American Federation of Ombudsmen, organized by the Spanish Ombudsman Institution. The President of the Senate, Javier Rojo, acted as host and TRH the Prince and Princess of Asturias inaugurated the Solemn Session of the 14th Congress. The Congress was divided into two major conferences under the charge of experts, Gregorio Peces-Barba and Sergio Garcia Ramirez. During the



President's table at the Formal Inauguration of the 14th Conference of the Ibero-American Federation of Ombudsmen by TRH the Prince and Princess of Asturias, accompanied by the President of the Senate, Javier Rojo, and the Ombudsman, Enrique Múgica.

course of the 14th Ordinary General Assembly, Peru's Ombudsman, Beatriz Merino, was elected to serve as the new president of the organization, and a collaborative agreement recently signed by the Ombudsman and the Valsaín Foundation was announced. Concurrently, a seminar was held by the Women's Network on the exploitation of women and girls, and the FIO Observatory on Human Rights in Latin America, prepared by the University of Alcalá, was presented. Additionally, the 7th Ordinary General Assembly of the Network of Institutions for the Promotion and Protection of Human Rights (NHRI) in the Americas was held. The Senate. Madrid, 27-30 October:

- Inauguration of the new headquarters of the Mediterranean Association of Ombudsmen (AOM) and International Conference on the subject *"Quel rôle pour les Associations et réseaux régionaux et internationaux dans la promotion des Ombudsmen et le développement de ces Institutions?"*. Tangier (Morocco), 4 November.
- Participation in the meeting entitled *"Meeting on New Partnerships for Torture Prevention in Europe"*, organized by the Association for the Prevention of Torture in collaboration with the Directorate General for Human Rights and Legal Affairs of the Council of Europe. Strasbourg, 6 November.
- Speech at the 43rd session of the Committee against Torture, on occasion of the presentation of the 5th Periodic Report on Spain. Geneva (Switzerland), 11 November.
- Attendance at the 3rd annual meeting of the National Human Rights Institution Contact Persons for the Council of Europe. Budapest (Hungary), 16-18 November.
- Attendance at the informative meeting of experts regarding the EU Action Plan for unaccompanied minors, organized by the European Commission. Brussels (Belgium), 17 November.
- Attendance at the meeting organized by European Commission and regarding other aspects related to the attendance by organisations responsible for unaccompanied minors. Brussels (Belgium), 20 November.

- Attendance and participation at the round-table meeting on Detention in the European Union (Round-Table Discussion on Best Practices), organized by the European Commission, Directorate-General for Justice, Freedom, and Security. Brussels (Belgium), 8 December.
- The third meeting of the Association of Mediterranean Ombudsmen (AOM) was held under the theme *"Transparency in Public Services: The Role of the Ombudsman"*. Organized by the Ombudsman of Greece in collaboration with the president of the AOM, the Diwan Al Madhalim of Morocco, the first vice-president of the Association, the Spanish Ombudsman, and the secretary general, the Médiateur of the French Republic. 24 human rights advocacy and mediation institutions from the Mediterranean area took part in this 3rd meeting, as well as representatives of United Nations Organization (High Commissioner for Human Rights), the League of Arab Nations, and European Union. Athens (Greece), 14-15 December 2009.
- Attendance at the meeting entitled *"First Meeting of the Permanent Forum on Arab-African Dialogue on Democracy and Human Rights"*, organized by the President of the National Council of Egypt. Cairo (Egypt), 17-18 December.

### Visits and official events

- Visit by officials and members of parliament from the Republic of Serbia. Presentation of the Institution and conference on the Ombudsman's role in the protection of minorities. Ombudsman Headquarters, 9 February.
- Meeting with representatives of the Swedish Parliamentary Commission on Constitutional Affairs, accompanied by the Swedish Ambassador to Spain, Mr. Ronquist, Ombudsman Headquarters, 5 March.
- Introductory visit with the Representative of the High Commissioner for Refugees in Spain, Maricela Daniel. Ombudsman Headquarters, 13 March.
- Visit with prize-winners from the Third Ceremony of the King of Spain Awards for Human Rights, the President and Executive Director of the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM). Ombudsman Headquarters, 30 March.
- Courtesy visit with the Ambassador of Turkey in Spain, Ender Arat. Ombudsman Headquarters, 17 April.
- Participation in the commemoration of the "60th Anniversary of the Universal Declaration of Human Rights: Goals for the New Millennium and Children's Rights" organized by UNICEF and UNIDIA. Madrid, 22 April.
- Meeting with a delegation from the People's Republic of China headed by the Deputy Secretary of the Commission for Disciplinary Control of the CPC's Central Committee, Ma Wen. Visit for the exchange of opinions and proposal of collaboration. Ombudsman Headquarters, 16 June.
- Visit with the Consuls of Bolivia, Hernán González and Freddy Mackay, who introduced themselves to the Ombudsman and told him about training and development plans in collaboration





Meeting with a delegation from the People's Republic of China, led by the Deputy Secretary of the Commission for Disciplinary Control of the CPC's Central Committee, Ma Wen. From left to right: the First Deputy, the Ombudsman, the Secretary General, the Ombudsman's Chief of Staff, Ms. Ma Wen, and other members of the Chinese delegation.

with Spanish authorities for Bolivian expatriates living in Spain. They likewise expressed their intention to notify members of the Bolivian expatriate community in Spain regarding the guarantees and guidance offered by the Spanish Ombudsman to those who personally submit complaints about deficiencies during their contact with Spanish Administrations. Ombudsman Headquarters, 24 June.

- Study visit with a delegation of MPs and officials from the Parliament of the Republic of Montenegro. Ombudsman Headquarters, 7 October.
- Visit with the Secretary General of the Ombudsman of Panama, Carlos Alberto Vásquez Reyes. Ombudsman Headquarters, 6 November.
- Interview with the Director of the EU Agency for Fundamental Rights, Mr. Morten Kjaerum. Ombudsman Headquarters, 2 December.
- Visit with members of the Human Rights Advisory Council of Morocco, Mustafa Iznasni and Mustafa Raissouni, accompanied by the Moroccan Embassy Advisor in Spain, Hanane Saadi. Ombudsman Headquarters, 16 December.
- Visit with the President of the Venezuelan Chapter of the Latin American Institute of Ombudsmen. Ombudsman Headquarters, 28 December.

### International cooperation

- Visit with officials from the parliaments of Latin American countries and also nations that have recently joined the European Union, programmed within the 7th Course for Parliamentary Legal Advisers organized by the Congress of Deputies. Ombudsman Headquarters, 12 February.
- Attendance at the meeting of the Governing Council of the Ibero-American Federation of Ombudsmen. Cartagena de Indias (Colombia), 24 February.
- Meeting with a delegation from the Turkish Interior Ministry (headed by their director general), visiting Spain as part of the project called *"Improvement of Civil Control for Homeland*

*Security"*, administered by the United Nations Development Program. Ombudsman Headquarters, 25 February.

- Meeting with the Ombudsman of Ecuador, Fernando Gutiérrez Vera. Ombudsman Headquarters, 3 April.
- Participation by Ombudsman advisors in the proposed training program for researchers belonging to the Office for Legislative Development of the National Human Rights Council in Egypt, backed by the Spanish Agency for International Development Cooperation. Cairo. (Egypt), 27-30 May.
- Signing of the cooperation Agreement between the Ombudsman of Ecuador and the Ombudsman of Spain. Ombudsman Headquarters, 29 May.
- Visit with an Israeli delegation comprising the Ombudsman/ State Comptroller of the State of Israel, Micha Lindenstrauss, and his Deputy Ombudsman, Hillel Shamgar. Madrid, 9-13 July.
- Visit with a delegation of Nepalese lawyers and magistrates belonging to three groups (Supreme Court, Judicial School, and Bar Association) interested in various facets of Ombudsman activity. Ombudsman Headquarters, 29 July.
- Visit with a delegation of legal advisors from the Korean government (finance, agriculture, health care, etc.), in order to learn about the Ombudsman's activities and relationship with the various ministries and the judiciary. Ombudsman Headquarters, 28 August.
- Training visit with a delegation of Bulgarian and Romanian officials working on issues related to the rights of minors via the TAIEX program, under the auspices of the European Commission. Madrid and Seville, 8-10 September.
- Meeting with representatives from the Bar Association of the District of Antioquia (Colombia). The visit was organized by the Centre for Latin American Studies of the Rey Juan Carlos University, in collaboration with the University of Medellín. Ombudsman Headquarters, 1 October.
- Participation in a breakfast gathering with a delegation of the French Senate for Human Rights and Women's Rights, organized by the French Ambassador to Spain. French Embassy Residence. Madrid, 9 October.
- Visit with four representatives of the National Human Rights Council in Egypt, sponsored by the Spanish Agency for International Development Cooperation and coordinated by the FILAPP. Ombudsman Headquarters, 13-16 October.
- Second work meeting with in the training program for researchers belonging to the Office for Legislative Development of the National Human Rights Council in Egypt, backed by the Spanish Agency for International Development Cooperation. Cairo (Egypt), 22-24 October.
- Meeting with a delegation from the Dutch *Nidos* Foundation to present the European project entitled *Engi*, related to the guardianship of young children seeking asylum or refuge in Europe. Ombudsman Headquarters, 2 November.
- Visit with the senior fellow and deputy director of Foreign Policy at the Brookings Institution, Ted Piccone. Ombudsman Headquarters, 11 November.

- Visit with a delegation from the Chinese Ministry of Education, headed by the general supervisory director, Mr. Li Shengli. Ombudsman Headquarters, 16 November.
- Meeting with members of the Secretariat General of the Moroccan Supervisory Committee, which is responsible for developing a National Action Plan in the area of democracy and human rights. Ombudsman Headquarters, 17 November.
- Informative meeting with those in charge of the French and Spanish Twinning Project with the Ombudsman of the Republic of Armenia. Ombudsman Headquarters, 23 November.
- Participation in the symposium “*Jews in Spain: Past and Present*”, organized by the American Sephardic Federation in collaboration with the Consulate General of Spain. The Ombudsman took part in the conference entitled “Spain and Jews today”. New York (USA), 7 December.
- Visit with a delegation from the Presidency for Turkish Human Rights, headed by the President, Mehmet Kucuk Yilmaz, organized by the Council of Europe. Ombudsman Headquarters, 15-16 December.



The Ombudsman, Enrique Múgica, and his First Deputy, María Luisa Cava de Llano, greeted a delegation from the Presidency for Human Rights of Turkey.

## Activities for institutional collaboration, dissemination and outreach

In addition to the constitutional mandate of overseeing governmental activities, it is the duty of the Ombudsman to disseminate and raise awareness about fundamental rights and public freedoms, a duty which represents the purpose of part of the collaborative efforts the Ombudsman performs with social organizations, educational institutions.

Another high-priority objective is to offer citizens all available means of access to the Ombudsman.

### Collaboration

- Attendance by the Ombudsman at the public presentation of the Gregorio Peces-Barba Foundation, dedicated to encouraging and promoting the study of the philosophy of law and human rights. Casa de América. Madrid, March 10.

- Attendance at the event sponsored by the General Council of Bar Associations Foundation, in defence of victims of femicide in Juarez (Mexico). Madrid, 14 April.
- Workshop with students from the Master Program in Applied Political Studies, in its 11th session, organized by the International Foundation for Administration and Public Policies for Ibero-America. Ombudsman Headquarters, 20 May.



The Ombudsman in a workshop with students from the 11th session of the Master's Program for Applied Political Studies, organized by the International Ibero-American Foundation for Administration and Public Policy.

- Attendance at the presentation of the book entitled “*Adoption, Legal Certainty, and Greater Interest of Minors*”, published in collaboration with Caja Madrid and organized by the *Aequitas* Foundation of the General Council of Notaries. Madrid, 25 May.
- Attendance at the presentation by the Ministry of Health and Social Policy of a World Health Organization report regarding social inequities in healthcare. Madrid, 28 May.
- Signing of agreements between the Ombudsman and the Comillas Pontifical University of Madrid. Ombudsman Headquarters, 3 June.
- Meeting with the Steering Committee Chair for Democracy and Human Rights at the University of Alcalá. Ombudsman Headquarters, 30 June.
- Presentation by the President of the Raxen Association, Esteban Ybarra, and the Ombudsman, of the latest annual report on the Movement Against Intolerance. Ombudsman Headquarters, 23 July.



The President of the *Movimiento contra la Intolerancia* [Movement Against Intolerance], Esteban Ibarra, presented his 2009 Raxen report at the Ombudsman headquarters, accompanied by Enrique Múgica.



- Plenary Session of the Executive Committee and Board of Directors of the National Commission for Improving Spanish Work Timetables, presided by Ignacio Buqueras y Bach. The Ombudsman offered an institutional greeting ceremony. Ombudsman Headquarters, 17 September.
- Meeting with Pablo Perez-Perez, Sonia Bruben Burmeister and Maria Teresa de Gasperis, to present the project entitled "*Solidarity of Duties in the Protection of Unaccompanied Minors Seeking Asylum*", led by the La Merced Migraciones Association in collaboration with UNHCR and funded by the State Secretariat for Immigration and Emigration of the Ministry of Labour and Immigration and by the European Union (European Refugee Fund). Ombudsman Headquarters, 30 September.
- Meeting with the mayor and members of the Town Hall of the Municipality of Real Sitio de San Ildefonso, in order to prepare activities stemming from the agreement signed with the Valsaín Foundation. La Granja de San Ildefonso (Segovia), 6 October.
- Presentation of a book about the 3rd National Congress on improving Spanish work timetables, and information about the 4th National Congress. Speeches given by the Ombudsman, the President of the Commission, and the President of AFWRS (Association of Families and Women in Rural Areas). Ombudsman Headquarters, 8 October.
- Attendance by an Ombudsman advisor at the Annual Conference of the Spanish Bar Association. Royal Academy of Jurisprudence and Legislation. Madrid, 11 December.

## Communication and outreach

- Participation in the 3rd Trans-Pyrenean Internal Border Conference and the Round Table discussion entitled "Arrangement and Scope of the Right to Legal Aid Based on the Doctrine of the Constitutional Court", organized by the *Consell dels Il·lustres Col·legis D'Advocats de Catalunya*. Girona, 16 January.
- Visit with a group from the Mira Cultural Centre. Ombudsman Headquarters, 21 January.
- Visit with a group from the *San Fermin* Cultural Centre. Ombudsman Headquarters, 27 January.
- Attendance at the 2nd annual open meeting of the Spanish Agency for Data Protection. Carlos III University. Madrid, 28 January.
- Visit with several members of the "*Aire Libre*" Athenaeum Society (Ateneo de Madrid). Ombudsman Headquarters, 30 January.
- Visit with a group from the *Cibeles* Cultural Association. Ombudsman Headquarters, 10 February.
- Attendance at the Seminar on unaccompanied foreign minors. Madrid, 12-13 February.
- Ombudsman Conference on the Modular Programme "Social Exclusion, Integration, and Citizenship: Defence and Social Protections for Marginalized Persons and Immigrants in Spain", Faculty of Political Science and Sociology, UNED. Madrid, 20 February.
- Attendance at the specialized course on international child abduction, organized by the Themis Association of Female Attorneys. Casa de la Mujer, Madrid, 4 March.
- Presentation of the work entitled "Immigration at the crossroads. Yearbook on Immigration in Spain" (2008 edition) by the Research Foundation for International Relations and Development (CIDOB). Ortega y Gasset Foundation. Madrid, 4 March.
- Attendance at the 16th Conference of the Spanish Association of Family Lawyers, "Family law: developments in two aspects". Madrid, 6-7 March.
- Attendance at the seminar on "Consumer Protection in Financial Markets" organized by the Carlos III University of Madrid. Getafe (Madrid), 9 March.
- Meeting with law interns from the "Pedro Ibarreche" Law School of the Biscay Bar Association. Ombudsman Headquarters, 12 March.
- Participation in the "*Alien Affairs, Legislation and Rights*" Workshop, organized by the International University of Andalusia (UIA) and the "Sevilla Acoge" Foundation. Seville, 13 March.
- Participation in the 3rd Ombudsmen and Platform for Minors Conference, organized by the Platform of Organizations for Minors in collaboration with the Ombudsman of Castilla-La Mancha. Guadalajara, 17 March.
- Visit with a group of students from the "*Conocer Madrid*" course at the *Carril del Conde* Cultural Centre. Ombudsman Headquarters, 25 March.
- Meeting with a group of interns from the Socialist Group of the Congress of Deputies. Ombudsman Headquarters, 26 March.
- Participation in the First Forum on Custody and Guardianship of Castilla-La Mancha "Guardianship: Protection and/or Liberty", organized by the Brain Injury Care Foundation. Toledo, 26 March.
- Participation in the 2nd Forum on Fundamental Rights in the area of alien affairs, organized by the Malaga Bar Association. Malaga, 26-27 March.
- Visit with a group from the Association of Retired University Professors. Ombudsman Headquarters, 27 March.
- Inauguration of the Program entitled "*60th Anniversary of the Universal Declaration of Human Rights: Goals for the New Millennium and Children's Rights*". Organized by IUNDÍA, UNICEF and the Autonomous University of Madrid. Juan Luis Vives Student Residence. Madrid, 14 April.
- Attendance at the symposium on Unaccompanied Foreign Minors and Foreign Minors, organized by the General Council of the Spanish Bar Association. Madrid, 16 April.
- Conference on the selective courses of the Higher Institutions of the State Public Administration, organized by the National Institute of Public Administration at the College of Physicians of Madrid, 24 April.

- Comments by the Ombudsman during the introduction of *Agora*, Group for Dialogue. Ateneo de Madrid, 28 April.
- Participation in the roundtable discussion *"Thirty years of democratic town councils"*, organized by the Pablo Iglesias Foundation. Circulo de Bellas Artes (Madrid), 29 April.
- Visit with a group of members of *Canovas del Castillo* Sociocultural Centre in Madrid. Ombudsman Headquarters, 30 April.
- Expert-level course on "Defence of Democracy and Military-Civilian Relations", organized by the Institute for Latin American Studies (University of Alcalá). Madrid, 4 May.
- Participation in the Master's Program on Child and Adolescent Needs and Rights, 2008-2009, organized by the Faculty of Psychology at the Autonomous University of Madrid. Madrid, 8 May.
- Participation in the 3rd Amuvih Outreach Conference on HIV/AIDS. Judicial and legal issues for HIV patients, organized by the Murcia HIV Association. Murcia, 13-14 May.
- Visit with a group of members from the "Conocer Madrid" Cultural Centre. Ombudsman Headquarters, 19 May.
- Closing Lecture by the Ombudsman in the 6th World Congress on Bioethics, organized by the International Society of Bioethics at the FIDMA Convention Centre. Gijón (Asturias), 21 May.
- Conference on Law and the Ombudsman in the swearing in of new lawyers at the Bar Association of Las Palmas. Las Palmas de Gran Canaria, 22 May.
- Closing Lecture by the Ombudsman in the Parliamentary Tribute and Seminar on "The Generation of 1956", entitled "A Generation for Democracy". The Senate. Madrid, 22 May.
- Visit with a group of members of the *Adelante* Association of Madrid. Ombudsman Headquarters, 26 May.
- Participation in a Course on "Parliamentary Supervision of Healthcare Activities", organized by the Regional Government of Castile and Leon. Valladolid, 27 May.
- Attendance at a Conference on mentally ill inmates in the prison system, organized by the Association for Family and Friends of Patients at the Alicante Correctional Psychiatric Hospital. Madrid, 8-9 June.
- Workshop on "Civil society and the consequences of terrorism: victims of terrorism, civil liberties, and human rights". Organized by the Governments of Switzerland and Spain with the collaboration of the Elcano Royal Institute. Speech by the Ombudsman. Madrid, 15 June.
- Participation by the Ombudsman at the opening session of the First Judicial Seminar on *"Universal Jurisdiction. Crimes against humanity. Humanitarian wartime law. Human rights in the fight against terrorism and organized crime"*, organized by the Casa Sefarad-Israel in collaboration with the Garrigues Foundation and the International Association of Jewish Judges and Attorneys. Garrigues Foundation headquarters, Madrid, 16-17 June.
- Participation in the 2nd Interregional Conference on the legal protection of the patient as a consumer, organized by the University of Menendez Pelayo and the Ministry of Health of the Government of Cantabria. Santander, 17 June.
- Visit with a group of members of the "Pérez Galdós" Senior Centre. Ombudsman Headquarters, 26 June.
- Attendance at the 5th Conference on Alien Affairs entitled "The Ombudsman in Urgent Legal Actions Involving Alien Affairs", organized by the Bar Association of Valencia. Valencia, 23-24 June.
- Summer Program of the International University of Menéndez Pelayo. Concluding remarks by the Ombudsman. Meeting concerning the political transition in Spain organized by the Association for the Defence of the Transition. La Magdalena Palace. Santander, 26 June.
- Speech at the 1st Public Sector Conference organized by the Dintel Observatory. Santander, 28-30 June.
- Inauguration and framework conference led by the Ombudsman in the summer program organized by the University of Castilla-La Mancha on "Rights of Minors and Adolescents Affected by Violence: The Practical Application of the Convention after Twenty Years in Force". Antonio Pérez Foundation (Cuenca), 6 July.
- Participation in the 2009 summer program of the Pablo de Olavide University of Seville, in association with the 20th Anniversary of the Convention on Children's Rights. Carmona (Sevilla), 6-7 July.
- 10th session of the summer program offered by the Rey Juan Carlos University Foundation. Participation by the Ombudsman in the Course *"Methods and Solutions for the Administration of Justice"*. Real Sitio de Aranjuez (Madrid), 15 July.
- Complutense University Summer Course organized by the Servimedia News Agency called *"Social Responsibility and the Media. The Commitment to Inform"*. El Escorial (Madrid), 17 July.
- Attendance at the summer course called *"Integration and Cross-cultural Challenges of a Pluralistic Society"*, organized by the San Jorge University of Zaragoza and the Institute for Humanism and Society. Barbastro (Huesca), 21-23 July.
- Summer Course at the University of the Basque Country regarding "Child Protection Mechanisms and Challenges",



Closing ceremony in the Senate of the Conference in Homage to the Generation of 1956, with a lecture by the Ombudsman. At the president's table are Antonio López Pina, Julio Diamante, and Enrique Múgica.

organized by the *Ararteko* (regional Ombudsman). Miramar Palace. San Sebastian, 24 July.

- Lecture at *La Casa Encendida* Social and Cultural Centre regarding existing circumstances for children and their rights. Madrid, 26 August.
- Inaugural speech by the Ombudsman, in the 19th Course on Hispano-Jewish and Sephardic Cultures, as part of the University of Castilla-La Mancha summer program called "*From Intolerance to Freedom: on the Development of Jewish Life in Democratic Spain*". Cardinal Lorenzana University Palace. Toledo, 1 September.
- Attendance at the presentation of the report entitled "*Legal and Social Realities for Foreign Minors in Spain*". General Spanish Bar Association. Madrid, 22 September.
- Attendance at the seminar on "*Distinct Perspectives toward Comprehensive Action for Roadway Safety*", organized by the Abertis Foundation. Madrid, 23 September.
- Participation in the conference entitled "*Progress and Global Challenges on the 20th Anniversary of the Convention on Children's Rights*", organized by UNICEF and the Caja Madrid Foundation. Madrid, 30 September.
- Attendance at the "*Global Progress*" Conference organized by the Ideas Foundation and the Centre for American Progress. Casa de América (Madrid), 2 October.
- Participation in the conference on "Safeguarding the Right to Protection of Personal Data" organized by the Ombudsman of Castilla-La Mancha and the Regional Administration School of the Autonomous Community of Castilla-La Mancha. Toledo, 7 October.
- Participation in the conference on "*Alien Detention Centres: Exceptions to the Rule?*", organized by the University of Cadiz and *Algeciras Acoge*. Algeciras (Cádiz), 22-23 October.
- Speech by the Ombudsman during the opening ceremony of the of Seminar of EU researchers studying protection methods for minors in light of new technologies, organized by the Institute for Democracy Studies. San Pablo CEU University. Madrid, 2 November.
- Workshop on the Ombudsman Institution in Cantabria. Santander, 2-3 November.
- Visit with a group of students from the *School Year Abroad* Program of the American School of Zaragoza. Institution Headquarters, 11 November.
- Participation in the 18th Congress on Law and Healthcare organized by the Association of Healthcare Attorneys. Santander, 11-12 November.
- Participation in the roundtable discussion called "Television Safeguards for Minors", within the Seminar entitled "Theory and Practice of the New Public Television", organized by the Madrid RTVE Advisory Council and the Official Association of Industrial Engineers of Madrid. Madrid, 13 November.
- Visit with a group of members of the Mariblanca Cultural Association of Madrid. Ombudsman Headquarters, 17 and 20 November.
- Participation by the Ombudsman at the opening session of the 2nd International Seminar on "Anti-Semitism: Facts

and Current Trends in Spain", organized by the Federation of Jewish Communities in Spain in collaboration with the Centre for the Study of Migration and Racism and the Department of Immigration of the Community of Madrid. Circulo de Bellas Artes. Madrid, 18 November.

- Conference at the official inauguration of the Master's Program on International Safeguards for Human Rights: "The Ombudsman and the Protection of Fundamental Rights" at the School of Law at the University of Alcala. Alcala de Henares (Madrid), 19 November.
- Participation in the 7th National ASPAYM Congress, held under the theme "R&D in a Comprehensive Approach to Spinal Cord Injuries". Oviedo, 19-20 November.
- Attendance at the presentation of the collective work "*Toward Rights for the Disabled*". Studies in honor of Professor Rafael de Lorenzo. Published by Thomson-Reuters-Aranzadi Publishing House in their *Grandes Tratados* collection. Organized by the Yute y Fermi European Academy Foundation. Conference Hall of the "Casa Encendida". Madrid, 23 November.
- Meeting of the panel of judges for the 2009 Ombudsman Contest, chaired by the Ombudsman. Ombudsman Headquarters on 23 November.
- Inauguration of the conference on "Circumstances for Unaccompanied Foreign Minors: Their Protection and Integration", organized by the Polytechnic University of Valencia. Valencia, 23 November.
- Speech by the Ombudsman at the opening ceremony for the 3rd European Congress on Patients, Innovation, and Technologies, organized by the European Institute for Health and Social Welfare. Convention Centre, Madrid, 24 November.
- Participation in the 3rd Conference on Communication and Minors: Digital technology... powering down rights?, within the framework of the celebration of the Universal Day for Children's Rights, organized by the Platform for Children and the Santander Chairperson on Juvenile Law. Madrid, 24 November.
- Visit with a group from the *Neo Magerit* Cultural Association. Ombudsman Headquarters, 24 November.
- Participation in the conference organized on occasion of the International Day for Children's Rights. Logroño, 25-26 November.
- Participation in the opening ceremony for the 8th Annual Conference of the Manantial Foundation, entitled "*People with Severe Mental Disorders in the Penal and Penitentiary System*". Madrid, 26 November.
- Conference on the Ombudsman Institution during the 19th Program of Promotions to Commissioner at the Promotion Facility of the Directorate General for the Police and Civil Guard. Madrid, 30 November.
- Attendance at the International symposium for the universal abolition of the death penalty. Reina Sofía Art Museum. Madrid, 9 December.

- Inaugural Lecture during the School Fellowship Workshop organized by the Department of Education and University Governance of the Regional Government of Galicia. Convention Centre. Santiago de Compostela (A Coruña), 11 December.
- Participation in the 4th Selective Course on enhancing the function of inspection, organized by the Ministry of the Presidency. Madrid, 21 December.

### Educational advancement

Continuing the work of actively fostering awareness of basic human rights and freedoms and the safeguards established to protect them, the Ombudsman collaborated directly on two academic initiatives at the university level during the course of 2009. Both represent a continuation of those undertaken in previous years and in accordance with agreements signed with the universities involved:

- Summer programs at the Complutense University, Ombudsman Course on "Protection of Human Rights for Children with Behavioural Disorders and Social Difficulties". Inauguration by the Ombudsman with a speech on "Protection for Minors in Spain among the Ombudsman's Duties". The Deputy Ombudsmen and the Secretary General also participated in various workshops, as did advisors, independent experts, and representatives from various public administrations. El Escorial (Madrid), 13-17 July.
- Master's Program on International Safeguards for Human Rights, School of Law at the University of Alcalá. The Ombudsman officially inaugurated the 6th session of the master's program. As in previous years, in the section of face-to-face classes, the organizers of the Master's Program dedicated a week to the subject of defence of human rights by the Ombudsman Institution with participation by several Ombudsman representatives as visiting lecturers.

### Visits, tributes, and official events

Throughout the year, the Ombudsman, the Deputies to the Ombudsman, or the Secretary General had the opportunity to attend various official events with authorities or representatives civilian organizations, including acts of commemoration and award ceremonies for noteworthy achievements:

- Attendance by the Second Deputy at the presentation of the UNICEF report on "Global Conditions for Childhood 2009". Madrid, 15 January.
- Ceremony to bestow the Officer's Badge of the National Order of the Legion of Honor on Enrique Mugica Herzog, awarded by the French Ambassador to Spain, Bruno Delaye. Residence of the French Embassy. Madrid, 21 January.
- Attendance by the Ombudsman at various events commemorating the Official Day of Holocaust Remembrance and Prevention of Crimes against Humanity (Assembly of Madrid and the Complutense University of Madrid), the



The French Ambassador to Spain, Bruno Delaye, bestows upon Enrique Múgica Herzog the Officer's Badge of the National Order of the Legion of Honour.

launching in Spain of a Spanish-language version of the *Yad Vashem* website, and the forming the Advisory and Institutional Councils of the *Casa Sefarad-Israel*. Ministry of Foreign Affairs and Cooperation (Madrid), 27 January.

- Attendance by First Deputy at the ceremony to bestow honorary doctoral degrees upon Fernando Alvarez de Miranda and Antonio Fontan. Auditorium of the University of Alcalá. Alcalá de Henares (Madrid), 24 February.
- Attendance by the Second Deputy at the ceremony for the first World Day for Rare Diseases. The Senate Building. Madrid, 10 March.
- Bestowal of the *Master de Oro* upon the Ombudsman's Second Deputy, awarded by the Senior Management Forum. Madrid, 16 March.
- Attendance by the Ombudsman at the inauguration and various events organized on occasion of the Conference in Homage to the Generation of 1956. The Senate. Madrid, 30 March.
- Solemn ceremony of the 3rd annual King of Spain Award for Human Rights, organized by the University of Alcalá and the Ombudsman, bestowed upon the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM), presided by Their Royal Highnesses the King and Queen of Spain. University of Alcalá. Alcalá de Henares (Madrid), 31 March.
- Fellowship Speech delivered by the Ombudsman at the conclusion of the 2008 ceremony of the Fernando Abril Martorell Foundation Fellowship Award, which was presented to Sabino Fernández Campo. Madrid, 23 April.
- Attendance by the Ombudsman at the bestowal of the 5th annual *ABC Solidario* Prize, upon whose jury he served as a member. The APASCIDE Association, dedicated to improving conditions for the deaf-blind, was deemed worthy of this award. Madrid, 6 May.
- Attendance by the First Deputy at events in celebration of the 10th anniversary of the declaration of Ibiza as a World Heritage Site. Eivissa (Balearic Islands), 8 May.
- Bestowal upon the Ombudsman, Enrique Mugica Herzog, of the medal commemorating the 75th Anniversary of the Registrars Association of Spain for the former Ministers of



TRH King Juan Carlos and Queen Sofia at the University of Alcalá de Henares with the University Chancellor at the time, Virgilio Zapatero, the Ombudsman, Enrique Múgica, and representatives of CLADEM, Norma Enríquez and Mónica de las Casas, after this organization was bestowed the King of Spain Prize for Human Rights in the third annual award ceremony.

Justice of the democracy. Real Academia de Bellas Artes de San Fernando. Madrid, 28 May.

- Awarding of the “Escudo de Oro” badge to the Ombudsman, Enrique Mugica Herzog, by the Board of Trustees of the La Rioja Centre of Madrid, on 6 June 2009.
- Attendance by the Ombudsman at the ceremony to award the *Mariano de Cavia*, *Luca de Tena*, and *Mingote* prizes. Casa de ABC. Madrid, 13 July.
- Attendance by First Deputy at the opening of a new Alien Affairs office in Ibiza, established based on a recommendation made by the Ombudsman. Eivissa (Balearic Islands), 16 September.
- Attendance by the Ombudsman at the solemn opening ceremony of the Judicial Year, presided by His Majesty the King. Palace of Justice of Madrid, 21 September.
- Bestowal by the Ombudsman of the Bayard Publishing House’s “Personaje 50 Plus” Award (“Plus es más” Awards) to Father Angel Garcia of *Mensajeros de la Paz*. Madrid, 1 October.
- In celebration of the National Festival of Spain, attendance at the solemn event to pay tribute to the national flag, at the military parade and at a reception hosted at the Royal Palace. Madrid, 12 October.
- Participation by the First Deputy as a Judge in the 11th Session of Human Rights Prizes convened by the General Council of Bar Associations. Madrid, 20 October.
- Attendance by the Ombudsman at the award ceremony for the 15th Pelayo Prize for Prestigious Jurists, bestowed upon Juan Antonio Xiol Rios, President of the First Chamber of the Supreme Court. Casino de Madrid, 12 November.
- Bestowal upon the Ombudsman of the 2009 *Magisterio* Award for Outstanding Educators, by the Siena Group in recognition of the Ombudsman Institution, particularly their special reports on the state of education in Spain and their commitment to enhancing social harmony at schools. Madrid, 17 November.

- Attendance by the Second Deputy at the inauguration of the “UNICEF-Joaquín Ruiz-Giménez” Library, donated by the Spanish Committee of UNICEF at the Autonomous University of Madrid. Madrid, 24 November.
- 8th Reading of the Universal Declaration of Human Rights and bestowal of the 2009 Ombudsman Awards. Chaired by the First Vice President of Congress, Teresa Cunillera, accompanied by the Ombudsman and his Secretary General, along with representatives of the Valencia Human Rights Foundation. *Salón de Columnas* at the Congress of Deputies building. Madrid, 30 November.
- On occasion of the 50th anniversary of the Declaration on the Children’s Rights, participation by the Ombudsman at the reading of the Principles and the Declaration of Children’s Rights as well as at the awards ceremony for the short film and photography contest. Organized by the General Council of Bar Associations. Council Headquarters. Madrid, 10 December.
- Attendance by the Ombudsman at the inauguration of the headquarters of the General Council of Solicitors of Spain. Madrid, 17 December.
- Bestowal by the Ombudsman of the 8th *Aequitas* Foundation Prize for legislative investigation regarding prevention, rehabilitation, social integration and support issues for disabled persons, the elderly, immigrants and refugees. The first prize was awarded to Mr. Djamil Tony Kahale Carrillo for his work entitled “*The Right to Asylum regarding Gender-Based Violence*”, and the second prize went to Mr. David Mendoza Moreno. General Council of Bar Associations (Madrid), 21 December.

## Agreements

The following agreements were signed over the course of 2009:

- Collaboration agreement between the Ombudsman and the Complutense University of Madrid to organize a course entitled “*Protecting the Rights of Children with Behavioural Disorders and Social Difficulties*”. Signed in Madrid on 22 April 2009.
- Collaboration agreement between the Ombudsman and the Autonomous University of Madrid (University Institute UAM-Unicef for the needs and rights of Children and Adolescents, IUNDIA). Signed in Madrid on 11 May 2009.
- Collaboration agreement between the Ombudsman of Ecuador and the Ombudsman of Spain. Signed in Madrid on 29 May 2009.
- Collaboration agreement between the Ombudsman of Spain and the Ombudsman of the Region of Murcia. Signed in Cartagena (Murcia) on 1 June 2009.
- Agreements with the Comillas Pontifical University of Madrid (signed in Madrid on 3 June 2009):
  - Academic collaboration agreement between the Ombudsman and the Comillas Pontifical University of Madrid.
  - Specific collaboration agreement between the Comillas Pontifical University of Madrid and the Ombudsman.



- Framework collaboration agreement between the Comillas Pontifical University of Madrid and the Ombudsman.
- Signing of the Fourth Protocol annex to the collaboration agreement between the Spanish Committee of the United Nations Fund for Children (UNICEF) and the Ombudsman Institution, referring to the undertaking of a study in which high school students express their opinions with regard to respect for their fundamental rights in television programming and Internet content. Signed in Madrid on 16 July 2009.
- Collaboration agreement between the Ombudsman and the Valsáin Foundation for the Defence and Promotion of Democratic Values for the undertaking of bilateral activities, exchange of publications, development of research projects, studies and reports, and organization of joint training sessions on fundamental rights. Signed in Madrid on 15 September 2009.







