



SÍNDIC ANNUAL REPORT 2010

SÍNDIC
EL DEFENSOR
DE LES
PERSONES

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Photos

Jordi Soteras: Front cover and pages 11, 12, 18, 19, 20, 21, 24, 27 and 28

Catalan Ombudsman: Pages 3 (right) 9, 14, 15, 17, 22, 23, 25, 26, 29, 30, 31, 32, 33 and 35

Parliament of Catalonia: Page 3 (left), 4 (left) and 10

Generalitat (Autonomous Government of Catalonia): Page 4 (right)

Local Council of Esparreguera: Page 34 (upper)

Local Council of Matadepera: Page 34 (lower)



For the Catalan Ombudsman, the year 2010 was marked by a landmark event that occurred at the end of 2009: on December 31, Law 24/2009 of December 23, on the Catalan Ombudsman came into force. One month later, I had the honour of being elected by the Parliament of Catalonia for a new term as Catalan Ombudsman. Thanks to the new mechanisms it has been granted by the legislative branch, my goal this term is to give the institution a new direction, based on excellence, quality and equality making a firm commitment to defend the rights of society's most marginalized members.

My commitment is to make the most of the opportunities derived from the new Catalan Ombudsman Act to better, more effectively defend the rights of all people. In the immediate future, we want more expediency in administrations' responses to our petitions, as we wish to effectively resolve any possible rights violations. For that reason, in 2010 we began to boost certain instruments and legal provisions for supervision, assessment and collaboration from and with the administrations. We will keep these actions up throughout the coming months.

The entire Catalan Ombudsman staff has made a commitment to advancing toward an institution of greater excellence. We hope that the criteria followed in our work will facilitate all supervised administrations and companies' permanent collaboration with the Catalan Ombudsman. As expressed in this 2010 Report, the percentage of non-collaborating administrations is very low. For the most part, our suggestions are accepted.

Despite this, we hope that all administrations without exception will collaborate, and that all decisions handed down by the Catalan Ombudsman be accepted, though we are fully aware of the difficulties brought on by the financial crisis when it comes to guaranteeing public policies, as well as the materialization of the rights that underpin equal opportunities.

Rafael Ribó
Catalan Ombudsman

OUTSTANDING FIGURES FOR 2010

The Catalan Ombudsman initiated 21,504 actions (6,095 complaints, 121 ex-officio actions and 15,288 queries) in 2010. The number of cases opened was higher than in prior years: the complaints rose by 2.6% and the ex-officio actions, by 15%.

The number of persons addressing the institution rose by some 3,000 over last year, with 31,344 being assisted in 2010.

The telephone, used to make 15,448 queries, was the most frequently-used means of contacting the Catalan Ombudsman. The most widely-used means of filing complaints was the website form (2,150). As for the language used, 70% of the complaints were filed in Catalan, while 30% were in Spanish, maintaining the same proportion as in 2009.

Violation of rights in 22% of processed cases

Of the total, 32% of actions were concluded once a correct action of the concerned administration has been verified. Of them, a distinction can be drawn between those resolved before the Catalan Ombudsman's investigation (16.19%) and those resolved once it concluded (15.9%). To the contrary, in 22% of the cases investigated, a rights violation by an administration has been detected, making it necessary for the Ombudsman to hand down a decision.

1,173 complaints on the public administration

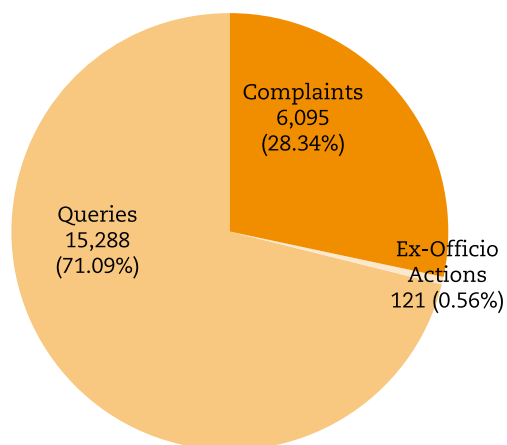
Most of the 6,095 complaints received had to do with the public administration (19%), territorial organization (14.4%) and social services (14.3%). On another note, the subjects that generated the fewest complaints were culture and language (1%), citizen participation (1.05%) and immigration (1.36%).

41 ex-officio actions on children and adolescent affairs

Over the past year, a total of 121 ex-officio actions were opened, of which 41 were on matters related to children and adolescent affairs, 20 on education and research and 12 on topics surrounding consumer affairs.



Number and type of actions in 2010

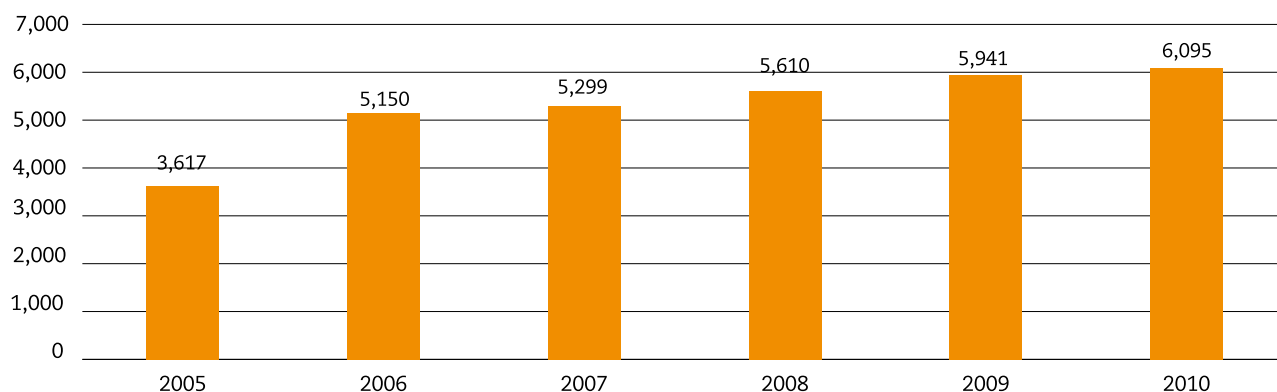


Complaints: actions promoted through disagreement, discontent or dissatisfaction with the action or lack of action by the public administration.

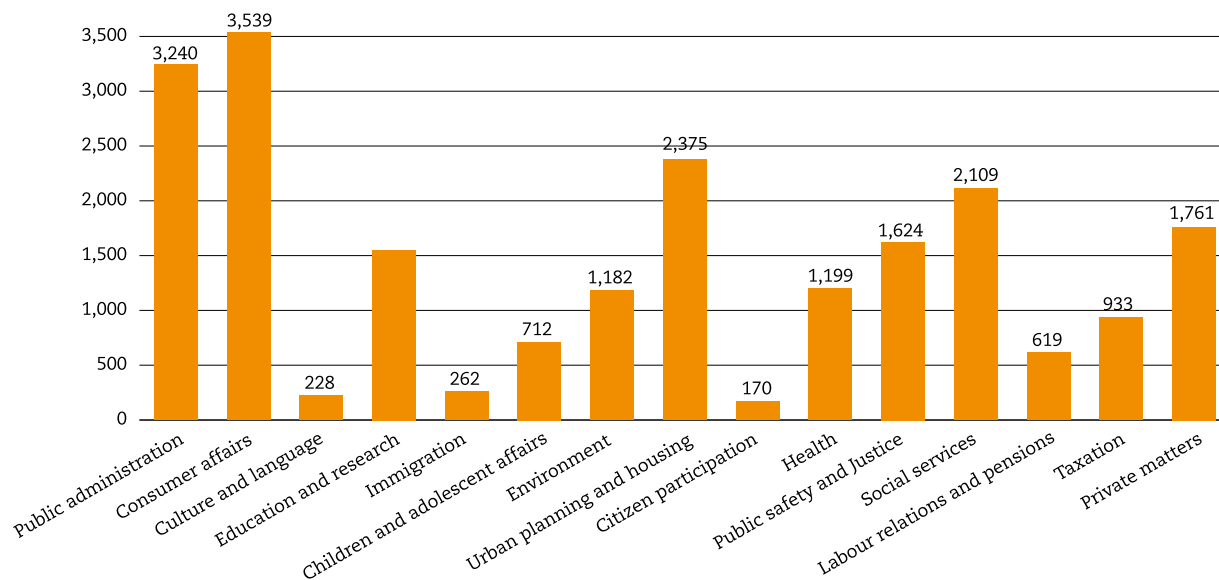
Queries: actions promoted to obtain information or guidance on a particular matter. If the case queried is suitable for a complaint, the person who has promoted/formulated it receives information about how to present it. If it is not, the person is advised on how to get information or resolve the matter.

Ex-officio actions: investigations begun at the initiative of the Síndic when it is considered appropriate to open a case in order to protect the rights of people, either to control the actions of public administrations or to uphold public rights in relevant social circumstances.

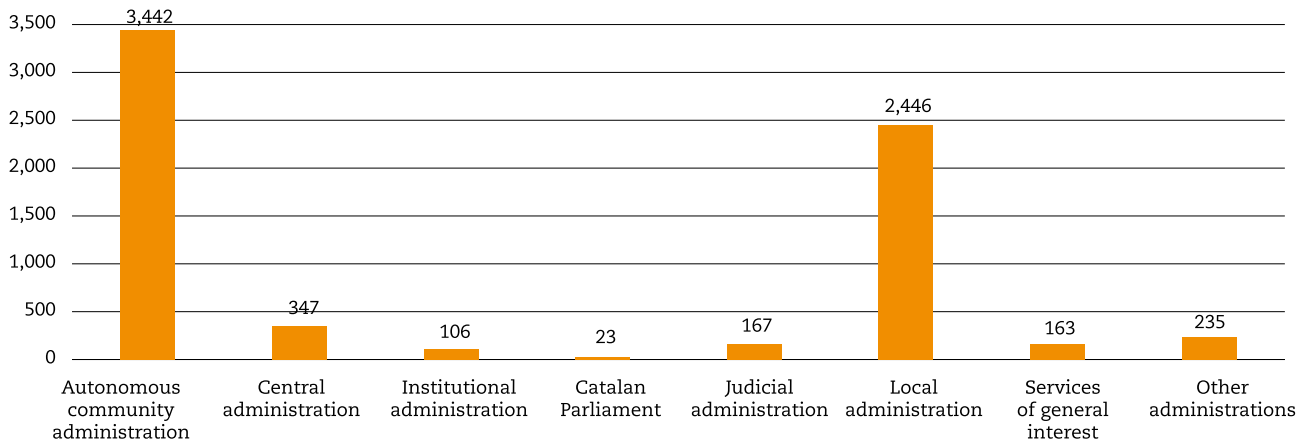
Evolution of complaints over recent years



Actions by subject



Complaints and ex-officio actions by affected Administration

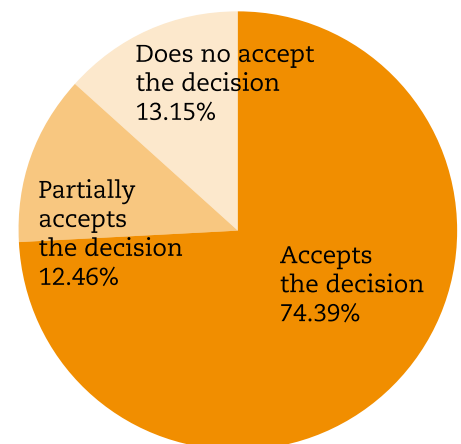


Result of the complaints and ex-officio actions conducted

Sum of the actions (complaints and ex-officio actions) handled throughout 2010; those initiated in 2010 (6,216) and those originating in previous years (4,652). A total of 10,868 have been handled.

Results	Total	
1 Being processed	4,545	42.72%
a Actions prior to Síndic's decision	3,952	37.15%
b Actions subsequent to Síndic's decision	593	5.57%
2 Actions concluded	5,789	54.41%
a Correct action of the Administration	3,241	32.16%
a ₁ Prior to the Síndic's intervention	1,722	16.19%
a ₂ After the Síndic's intervention	1,699	15.97%
b Accepts the decision	1,194	11.22%
c Partially accepts the decision	200	1.88%
d Does not accept the decision	211	1.98%
e Does not collaborate	10	0.09%
f Abandonment of claimant	439	4.13%
g Procedures with other institutions	314	2.95%
3 Rejected	305	2.87%

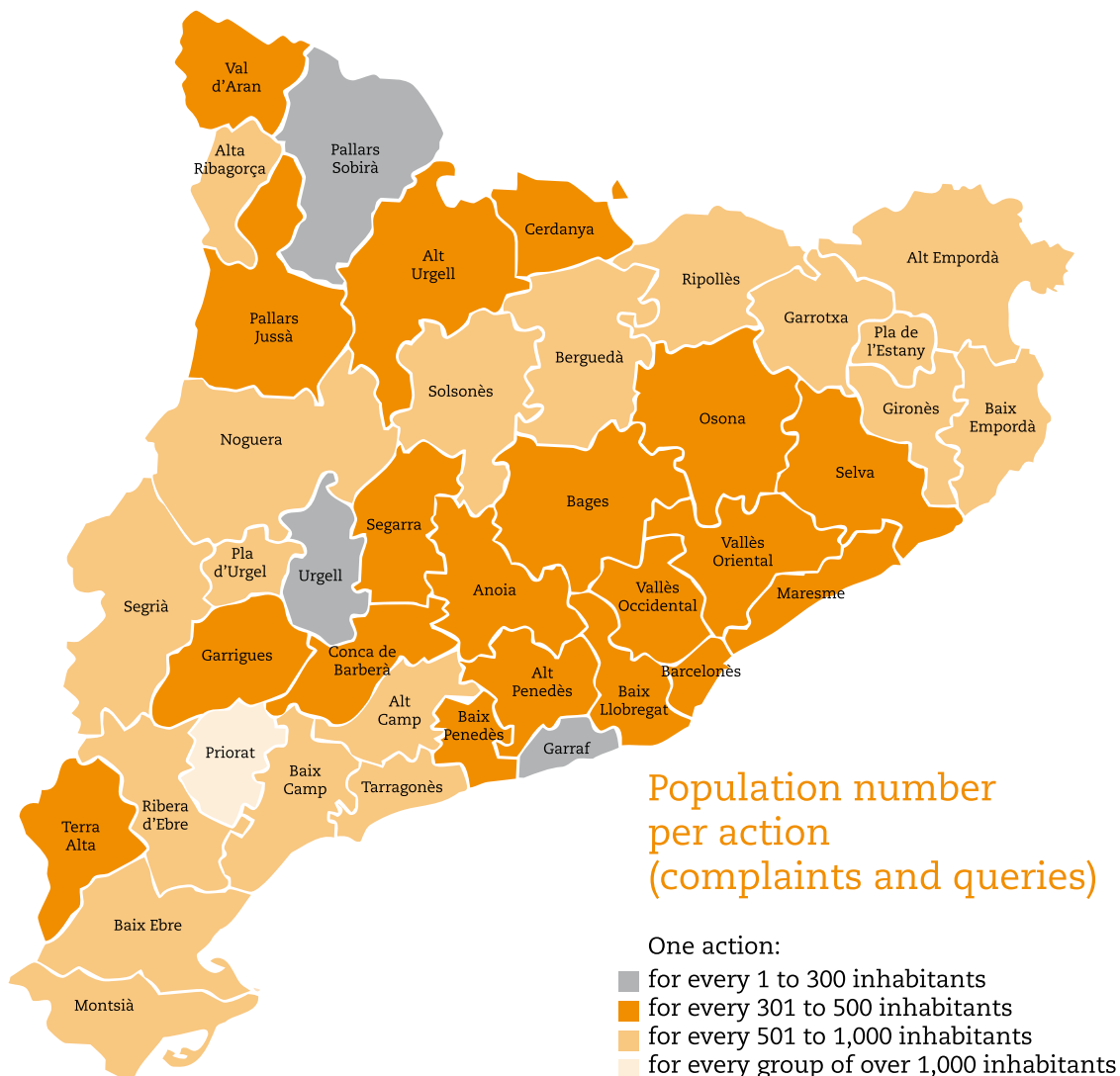
Degree of acceptance by Administration



Geographical distribution of complaints and queries

As for the ratio of actions per number of inhabitants, the majority of counties had one action per 301 to 1,000 inhabitants. Of them, those that had the highest proportion of complaints and queries coincide with areas where the Catalan Ombudsman's office travelled over 2010. This includes municipalities with individualized supervision agreements as well as those receiving occasional visits.

The Catalan Ombudsman's goal is to expand the office's visit program, and devote more attention to places where the complaints-per-inhabitant ratios are lower.



The Catalan Ombudsman's office doubles its visits

A total of 30 trips throughout Catalonia were taken in 2010, 15 more than in 2009. Of these, 18 were taken on the grounds of collaboration agreements in force between the Catalan Ombudsman and some local councils. The number of people served by the Catalan Ombudsman's team of advisors speaks to the importance that this activity has in bringing the institution closer to citizens.

On these visits, the Catalan Ombudsman's office gathered 346 complaints and 446 queries, making for a total of 765 actions. During these visits, in addition to the individualized attention received by citizens requesting an interview, visits are also made to organizations, facilities and other centres in the municipality or county.

The visits by members of the Catalan Ombudsman's staff, are made to gather first-hand information on the condition of public services, the benefits that these services offer to citizens and the conditions in which these services are rendered.

Municipality	Date of visit	Complaints	Queries	Visits*
Sant Adrià de Besòs	20/01/2010	4	6	10
Canet de Mar	28/01/2010	5	13	18
Castellar del Vallès	09/02/2010	14	14	28
Sant Sadurní d'Anoia	11/02/2010	9	13	22
Castelldefels	18/02/2010	26	27	53
Manlleu	25/02/2010	14	21	35
Torelló	25/02/2010	20	20	40
Cubelles	03/03/2010	10	9	19
Barberà del Vallès	11/03/2010	8	10	18
Sant Pere de Ribes	18/03/2010	5	8	13
Cardedeu	25/03/2010	5	11	16
Gavà	22/04/2010	23	26	49
Esparreguera	26/04/2010	21	16	35
Matadepera	27/04/2010	9	14	25
Tàrraga	29/04/2010	13	21	34
Castellar del Vallès	11/05/2010	4	7	11
Canet de Mar	19/05/2010	3	8	11
Salt	20/05/2010	11	12	23
Sant Adrià de Besòs	26/05/2010	3	5	8
Blanes	16/06/2010	9	28	36
Cervera	22/06/2010	12	17	27
Torelló	01/07/2010	13	13	20
Vielha	13/07/2010	5	4	9
Sant Sadurní d'Anoia	15/09/2010	7	4	11
Salou	16/09/2010	6	22	28
Sants-Montjuïc	30/09/2010	8	6	14
Rubí	14/10/2010	29	19	46
Sant Pere de Ribes	11/11/2010	7	16	19
Vilanova i la Geltrú	18/11/2010	29	30	52
Badalona	16/12/2010	14	26	35
Total		346	446	765

* The number of visits is not necessarily equal to the sum of complaints and queries.



Improvements in level of response by Administrations

With the application of the new Catalan Ombudsman Act of December 2009, Rafael Ribó, now in his second term as the head of the institution, implemented a number of case management improvements in accordance with the criteria established in the Catalan Ombudsman's Charter of Services.

The results of these measures show that the Administration's level of response rose by 22.26% in 2010 over 2009. Although the second quarter of 2010 saw a higher response level than the same period in 2009, the most significant increase came about in the month of September (59.28%).

The improvements made by the Catalan Ombudsman in the institution's case processing time translated into a major reduction in the time the Administration takes to respond (160.05 days in 2009 as compared to 88.49 in 2010).

Users are happy with the Ombudsman's service

The Catalan Ombudsman service questionnaire was completed by 1,443 people. This stands for 30% of the total users served, and whose cases were closed in 2010.

The overall average score given to the Catalan Ombudsman was 6.92 on a scale of 0 to 10. It can be concluded that 64% were very satisfied, 13.65% satisfied and 16.63% unsatisfied.

Some 91% of the users surveyed stated that it was easy or very easy to file a complaint, while 88% thought that the service received in the first contact was very good or good and that the professionalism of the Catalan Ombudsman's staff was satisfactory. The main unmet goal is the time taken to manage complaints, as 64% considered it too long.

Catalan Authority for the Prevention of Torture

Article 68 of Law 24/2009 on the Catalan Ombudsman grants the Catalan Ombudsman status as the Catalan Authority for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (CAPT).

The duties that the CAPT must fulfil are, among others, to regularly visit the sites which house persons deprived of liberty, make recommendations to the competent authorities, make proposals and observations on the draft bills on this subject matter and exercise any other duty attributed by the Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The essential link of civil society to the Catalan Ombudsman's role in torture prevention in Catalonia has been articulated through creation of an advisors council made up of

a multidisciplinary group of twelve professionals capable of covering, at the least, the specific fields related with the knowledge of law, health and human rights.

The mission of the Council, chosen by the Parliament of Catalonia on July 29, 2010, is to assist the Catalan Ombudsman in the exercise of his obligations as CAPT.

The persons designated by Parliament for the Council are: Lídia Condal and Pedro Yúfera, proposed by the bar associations; Mariona Creus and Miquel Vilardell, proposed by professional associations of health care providers; Sabina Puig, Olga Casado, Eva Labarta and Joan Merelo-Barberà, proposed by NGO's for the defence of human rights; Santiago Redondo and Victòria Camps, proposed by university centres devoted to human rights research; José Maria Mena and Jaume Saura, two professionals in the field of torture prevention and in work with persons deprived of liberty.





The Catalan Ombudsman performs the duties assigned to him as CAPT through a special task force. The staff proposed by the Catalan Ombudsman, ratified by the Catalan Ombudsman Commission last October 1, is made up by Rafael Ribó, as Catalan Ombudsman, Eva Labarta and José Maria Mena, as members of the Catalan Ombudsman Advisors Committee for the Prevention of Torture, and Ignasi Garcia-Clavel and Mar Torrecillas, as professionals working for the Catalan Ombudsman Institution.

While waiting for the Spanish government to notify the United Nations that the Catalan Ombudsman is the Catalan Authority for the Prevention of Torture, the Ombudsman has suggested that the President of the Catalan Government request that the Spanish Government do so urgently.

At present, all of the duties outlined in Law 24/2009 are fully in force within the Catalan Ombudsman's realm of self-government. In its first months of activity, the CAPT has drawn up its regulations, and the Advisors Council as well as the standing task force have begun work to fulfil their assigned duties. On December 31, 2010, the Catalan Ombudsman delivered the first annual report on the activities conducted by the CAPT to the President of the Parliament of Catalonia.

Report on school transport and lunchroom services

In May 2010, Rafael Ribó delivered the special report entitled *Provision and access to school transport and lunchroom services*. A total of 69 complaints related with school transport, and 73 related with school lunchrooms, were received between 2007 and 2009.

The report demonstrates that there are autonomous communities that have passed regulations to expand free services, and that include criteria of geographic distance, urban configuration, financial and educational needs, and, in addition, are not limited to mandatory education. None of these cases are applicable in Catalonia.

The Catalan Ombudsman proposes inclusion of geographic distance and income criteria to qualify for this service free of charge, and not just enrolment in a school in a municipality other than that of the student's residence, the only eligible case under current regulations. The Catalan Ombudsman believes that the two services may be fundamental to guarantee the equality of educational opportunities. In some cases, the presence or absence of these benefits can be a factor that conditions school absenteeism or the possibilities of preventing drop-outs.

OUTSTANDING ACTIONS BY SUBJECT

The right to public information, the requisites of some local councils for registration in the local census and delays in financial liability procedures have formed part of the Ombudsman's activities in public administration, the area with the most complaints. As for consumers' rights, the area with the most actions, (counting complaints, queries and ex-officio actions) especially noteworthy were topics such as the cost of water and the social fares and the integrated fare system of the public transit network.

The Catalan Ombudsman has observed that budget cuts and a lack of administrative coordination violate people's rights. Many complaints received on education, the Dependency Act and housing are evidence of this infringement.

As in prior years, complaints continued to be filed on several recurrent topics, such as the structural shortcomings of judiciary bodies, reconciliation of work and family life, waiting lists, public transport accessibility and the vulnerability of unaccompanied foreign minors.



	<i>Complaints</i>	<i>Queries</i>	<i>Ex-officio actions</i>	<i>Total</i>
Right to good administratióon	856	1.677	5	2.538
Consumer's rights	341	3.186	12	3.539
Rights of penitentiary centre inmates	287	65	-	352
Linguistic and cultural rights	61	164	3	228
Education	608	923	20	2.551
Civil service	317	384	1	702
Elderly people	330	194	1	525
Immigration	83	177	2	262
Children and adolescent affairs	188	483	41	712
Freedom, safety and Justice Administration	334	932	6	1.272
Environment	421	759	2	1.182
Rights to participate	64	104	2	170
Persons with disabilities	411	683	4	1.098
Labour relations and pensions	131	485	3	853
Health care	357	831	11	1.199
Marginalization situations	132	354	-	486
Taxation	297	633	3	933
Urban planning and housing	877	1.499	5	2.375
Private or unspecific matters	-	1.761	-	1.761
Total	6.095	15.288	121	21.504

Right to good administration

The Síndic questions certain requisites for municipal census registration

Several issues arose around the municipal census registration procedures and documentary accreditation demands by local councils beyond the requirements of the regulations in force.

The Catalan Ombudsman took the opportunity to study the case of a local council that requires persons applying for registration to accredit by documentary means the certificate validating the occupation of the home for which they request municipal census registration. The Ombudsman analyzed once again whether this is compliant with the legal framework, and if requiring the certificate of occupancy for municipal census registration is an infringement of rights.

The situation of persons requesting municipal census registration without a fixed domicile in the municipality was also studied. Other cases had to do with irregularities committed in proceedings for ex-officio removal from the municipal census registry.

A law to regulate access to public information is needed

The Catalan Ombudsman believes there is a need for a legislative decree to comprehensively and specifically regulate the rights of access to public information. It must feature a definition of what is understood by public documentation in the terms determined by the Council of Europe Convention. The law must recognize all persons without their having to justify their interest or purpose. It should also determine the exceptions to the right to access in a limited manner, as long as they are necessary in democratic society and subject to criteria of the public interest.

Further, such a law must also include, within the public entities obliged to respect this right, the private companies rendering public services. Last, this law must stipulate the obligation of giving a rapid response to the petitions made in the exercise of this right.

Beyond these regulatory modifications, it is also essential that this right be known by all persons and respected by public servants.





Thus, the Catalan Ombudsman advocates administrations that are proactive in the dissemination of information as well as in the response to information requests, as delays or silence vis-à-vis these requests are unacceptable.

Delays in financial liability proceedings

Financial liability proceedings are subject to the criterion of expediency and must be promoted ex-officio in all their formalities. The Catalan Ombudsman believes that a significant delay in the administrative proceedings could generate financial liability attributable to the administration.

In the case of major public works that could cause damages to third parties, it is recommended that the administration establish a system of immediate assessment of any possible damages by works management.

Consumers' rights

Higher water rates for users not registered in the municipal census

Over the course of the year, several people addressed the Catalan Ombudsman to express their disagreement with the practice of certain municipalities where they had second homes. These local councils applied higher water rates to the occasional residents as they were not registered in the municipal census as full-time residents.

As the setting of different rates for users depending on whether they are registered in the municipal census must be considered discriminatory, the Ombudsman suggested a change in the rates system in the cases brought forth.

The Catalan Ombudsman reiterated that case law establishes that the application of different rates for a public service based on the users' residence status generates discrimination.

Complaints on social benefits for the transport system

Complaints were still received from citizens either because they can not use certain passes with social benefits on their usual commute, or because their condition allows them to access a subsidized pass with a given operator, but not others. Many public transport companies apply specific rates for different groups (youth, the elderly, persons with disabilities, large families, and others) to facilitate their access to the service and their right to mobility. The profile of the beneficiaries, the requisites to be entitled to the benefits and type of benefit vary widely.

Other complaints have to do with the impossibility of obtaining a duplicate of personal multitrip passes. An ex-officio action was begun regarding the passes for the companions of persons with disability who are unable to use public transport autonomously.

Rights of penitentiary centre inmates

Ex-officio action on the management of the shops in five prisons

In 2008, the Centre for Reinsertion Initiatives (CIRE) received two commissions to manage the shops in the Brians 1, Brians 2 and Quatre Camins prisons and the juvenile detention centres of Quatre Camins and Lledoners.

To manage this type of shop service, the CIRE published a tender on the Catalan Government's public contracting platform. The innovative aspect of the management commission resided in the destination of shop profits. The successful bidder pays royalties to the CIRE to make possible the creation of jobs for inmates.

In addition to these royalties, the penitentiary centres involved make a quarterly payment of different amounts to the CIRE for the shop service. Therefore, the CIRE has annual revenue of 1,614,496.12 € for shop management.

38% of this amount is devoted to the remuneration of the CIRE's internal personnel. Theoretically, the remaining 62% is payment to cover inmates' jobs. Nonetheless, the analysis carried out revealed that the part truly devoted to the creation and payment of jobs for inmates was only 34%.

Prices in the shops in penitentiary centres with CIRE shops were compared with those of centres with internally managed shops.

Following the ex-officio action on this matter, the Catalan Ombudsman concluded that the management commission model is very costly. He also found that inmates at centres with this management commission pay a much higher price for the same products than inmates being held in other centres where the prison shop is internally managed.

Last, the Catalan Ombudsman concluded that the destination of the remaining 28% of the funds received by the CIRE for shop management is unknown, as the analysis carried out showed that not all of the money was being put toward the creation and payment of jobs for inmates.

Linguistic rights

Complaints on linguistic capabilities of foreign health care providers

Many complaints were received that show the impossibility some health care users face in using their right to linguistic choice when speaking in Catalan to the medical personnel attending them.

The response received from the Catalan Ministry of Health regarding the existence of a welcome program for foreign professionals, and its content, gave rise to doubt on how the linguistic training of the recipients was handled.

Education

Infringement of the right to equal opportunities

The elimination of educational offerings in socially underprivileged schools or neighbourhoods, such as day and night-time pre-university secondary school courses, can have a negative effect on the right to equal opportunities in education. Many of the complaints filed have to do with difficulties in meeting the costs for access to extracurricular activities in state-subsidized private schools, school lunchroom and transport services, and the offering of non-mandatory courses, the economic accessibility of which is less protected by the legislation now in force.

One noteworthy example is that the budgetary restrictions on the special non-mandatory school lunchroom provision of 15 million euros provided by the Department of Education to county councils in 2009 to cover the rise in needs was practically done away with in the 2010 fiscal year.



The right to attend an ordinary school

The Catalan Ombudsman received a complaint about a disabled student who was not admitted to the lunchroom service or extracurricular activities organized by their public school in the city of Barcelona. The school council sent the interested party a letter in which it stated that the student concerned could not use the lunchroom service or participate in the after-school activities as of September 28, 2009 as the school did not have the necessary resources to meet their needs.

The Barcelona Education Consortium backed this decision, mainly based on the following grounds: (1) the lunchroom service and after-school program are extracurricular activities and (2) the school's pedagogical advisory staff had issued an opinion on the student in question, who was enrolled in an ordinary school, proposing that they enrol in a special education centre. This proposal was not accepted by the family, who also rejected a later proposal for shared enrolment.

According to the information provided by the administration affected, the school had worked to ensure appropriate attention to the student's special educational needs, with internal reorganizations and the support of supplementary resources, always within the school's teaching period.

In this case, the Catalan Ombudsman issued a reminder on the right of students to be enrolled in an ordinary school, in accordance with the principle of school inclusion that governs Catalonia's educational system, and that this enrolment must take place within a context of equal opportunities. This also applies to the educational activities organized outside the teaching period.





Civil service

Right to reconciliation of work and family life

Complaints often arise regarding the right to reconcile one's personal, family and work life. People who form part of a family seek to exercise their right to enjoy special breaks, permits and reduced schedules. In fact, difficulties in reconciling caring for one's children and professional life is one of the most frequent causes of complaint.

To make these rights effective, and in light of the many different situations that could exist, the Catalan Ombudsman has suggested in several decisions the incorporation of measures which, although not stipulated in the laws in force, could be effective in achieving the desired aim of reconciliation.

Elderly people

Measures to resolve dependency cases in the event of death of the affected party

The Catalan Ombudsman suggested that the Catalan Ministry of Social Activity and Citizenship take appropriate steps to expediently process and resolve dependency proceedings in which the affected party has passed away.

He has also suggested that the acknowledgment of a dependency situation have effects as long as the dependency of the applicant has been accredited. Further, that the death of the applicant not necessarily lead to a winding-up of the proceedings, and that the beneficiaries of dependent persons have their economic rights stemming from a situation of dependency recognized.

Nevertheless, these recommendations were not accepted by the Administration, which reiterated to the Catalan Ombudsman that it will only acknowledge the rights of heirs to receive the economic benefits that would have been received by the interested party if the decision on the individual service program has been handed down before their death.

Immigration

Lack of coordination among administrations

Some of the complaints filed with the Catalan Ombudsman indicate delays in resolving work and residency permits, as well as in modifications of foreign persons' legal stay situations. The Autonomous Government of Catalonia holds recognized executive competencies in authorization of work permits for foreigners conducting work activity in Catalonia.

This competency covers the processing and resolution of initial work authorizations for self or third-party employment. As the Spanish Government holds the competency for foreigners' entries into the country and residency, and processes and resolves residency authorizations, the Catalan Government exercises its competency in coordination with Spain.

The Ombudsman found that the delays in work and residency authorization decisions were attributable to lack of coordination in the exercise of coordinated competencies.

That is why the Catalan Ombudsman insisted that for an agile resolution of initial authorizations, there must be a coordinated execution of these competencies between the Spanish and Catalan governments.



Children and adolescent affairs

More protection mechanisms for unaccompanied foreign minors

Throughout 2010, the Catalan Ombudsman received complaints on the lack of support by the Catalan Ministry of Social Activity and Citizenship for foreign youth without family in Catalonia who are expelled from the system when they reach adult age as proven by medical tests.

In light of these complaints, the Catalan Ombudsman holds that no young person for whom there is any doubt as to whether they are minors should be removed from the minor protection system.

Medical tests used to determine adult age have significant margins of error, and should only be performed in cases of undocumented young persons, or in cases in which there is no indication that they could be minors.

As this suggestion was not accepted, at this time, the Ombudsman is asking competent administrations to alternatively provide, if not full protection, maximum possible accompaniment for these youth who are minors according to their legal documentation, and who are expelled from the protection system.

If there is even a minimum indication of possible minor status, and considering their lack of family in Catalonia, these young people should receive specialized treatment and follow-up.

According to the information available, this specialized attention is only provided to certain young people on whom the Support Unit for Protected and Formerly Protected Youth and the Social Services Consortium of Barcelona are taking action.



Although many young people receive this support, either with access to residential resources, or in the processing of documentation, or referral to certain educational resources, this accompaniment is not guaranteed for all young people without families who abandon the protection system because they are of legal adult age or are considered adults on the basis of bone tests.

In accordance with these considerations, and with the relevant European directives in hand, the Catalan Ombudsman asked that the Ministry of Social Action and Citizenship establish mechanisms for transition to adult age to respond to the needs derived from the diversity of unaccompanied youth without family in this country.

Shortcomings in the detention space for minors in the City of Justice

The Catalan Ombudsman made several visits to the minor detention area and the Office for Minor Services of the City of Justice of Barcelona and l'Hospitalet de Llobregat, which entered service in 2009. He saw that certain structural shortcomings still persisted from the former facility.

In fact, in 2006 the Catalan Ministry of Justice informed the Catalan Ombudsman of the plans to relocate the facilities to the Juvenile Affairs Prosecutor's Office in the City of Justice of Barcelona and l'Hospitalet de Llobregat, and that this new location would allow organization and use of a space ideal to guarantee appropriate treatment of minors. Among others, the improvement planned for the new facilities was to enable a better separation of the "reform" minors, for whom the facilities are used as detention areas, from "protection" minors, for whom the same facilities are used as custody spaces.

Nevertheless, the Catalan Ombudsman has made the unfortunate discovery that the minors detention area in the new City of Justice continues to suffer significant shortcomings that make them inappropriate for the treatment of minors, and especially in the case of minors in protection circuits.

The Catalan Ombudsman has requested that the Catalan Ministry of Justice, the Catalan Ministry of the Interior and the Catalan Ministry of Social Action and Citizenship prepare a new waiting area suited to care for protection minors. They were advised to review certain aspects of the handling of reform minors (and now, protection minors as well), for example, the quality of meals. Authorities should make greater efforts to reduce the time reform minors (and now, protection minors) spend in the detention area. It was recommended that they review the circuit of services for children who have fled from protection centres, for them to be taken in by educators from the centres and not taken to the detention area, and that the authorities guarantee necessary the staff with specialized training in children's affairs.



Freedom, safety and Justice Administration

Complaints on slow processing

Complaints filed on the Justice Administration demonstrated that delays in the processing of certain judicial matters have their roots in structural deficiencies in the judicial body.

These deficiencies eventually cause a violation of the right to proceedings without undue delays, established in Article 24 of the Constitution. Attention must also be directed to the delays in services provided by the registry offices as major dysfunctions that generate complaints.



The complaints shed light on these deficiencies as the result of structural causes and an excessive workload. The fact that, in light of this situation, the persons making up the judicial bodies have been exonerated of responsibility is not equivalent to concluding that the delays are justified, just as it does not limit citizens' fundamental right to react to this delay.

The gaps in judicial organization, especially in human and material resources, were also detected in the registry offices in large cities.

Among the inefficiencies detected in these registry offices following the complaints received, by type of problem, those on the slow processing of marriage licenses and nationality certificates stand out. In all cases, claimants decried the waiting period involved in the processing of this type of documents.

According to the information sent by the Catalan Ministry of Justice, different organizational analyses have been conducted in these offices, and improvement plans implemented on various fronts (business hours, allocation of human and material resources, telephone service, etc.). Within the ex-officio action opened by the Catalan Ombudsman on registry offices, the institution was informed of the lines of improvement launched and the actions carried out in these offices.

Even so, as complaints are still received on this matter, the Ministry staff must conduct a follow-up of these offices and work together with those responsible for their management to guarantee and improve the service provided to citizens.

Environment

The Catalan Ombudsman received complaints from citizens on nuisances caused by urban waste collection, such as noise from the emptying of rubbish bins, disagreement with the bin placement sites, odours due to inadequate maintenance and cleaning or the accumulation of rubbish and dirtiness around the bins.

Waste collection and street cleaning are among the mandatory services provided by all local councils no matter the municipality's population. Waste collection is an indispensable service and must be provided by the public administration, along with the supply of drinking water or street lighting. A case in which this service was not provided led to a serious disturbance to citizen's quality of life and public health because of rubbish heaping.

The local council agrees to change placement of bins

Citizens from the municipality of Collbató contacted the Ombudsman due to their local council's alleged lack of reaction to their complaints on insufficient cleaning of bins, the presence of rubbish around them and their placement on sidewalks, impeding pedestrians' right of way.

Although the matters of cleaning and dirtiness were resolved, the placement of the bins led the Catalan Ombudsman to suggest the change, as it could be in violation of the stipulations of Law 20/1991, of November 25, on the promotion of accessibility and elimination of architectural barriers, and other concordant rules. The Local Council responded that the bins had been relocated to other sites and that they no longer affected the passage of pedestrians.





Persons with disabilities

Accessibility of public transportation must be guaranteed and prioritised

In recent years, administrations and transport management entities have made major efforts to improve accessibility conditions of public transportation vehicles. Yet many difficulties are still faced by persons with disabilities to autonomously use the transportation system.

The Catalan Ombudsman has received numerous complaints on accessibility conditions of the vehicles, infrastructures, stops or stations and service conditions in which these difficulties, as well as the need to keep working to achieve true accessibility, have been brought to light.

On occasion, the measures necessary to improve accessibility can come into conflict with other plans, also meant to favour citizens: for example, if adaptation works for a bus stop imply elimination of a space meant for parking.

In this regard, the Catalan Ombudsman has stated that the different interests must be weighed so that, when faced with a situation in which it is impossible to make both goals compatible, individual interests yield to more general ones, thus promoting the use of public transportation, and guaranteeing fulfilment of accessibility regulations.

Other complaints were also received on technical problems in the vehicles, and on insufficient maintenance, or the difficulties due to the reduction in interurban transportation services in certain periods, that especially affect persons with reduced mobility.

Based on all these situations, the Catalan Ombudsman made the suggestion to the department competent for transportation that it consider expanding adapted vehicle services and ensure that in low-service periods persons with reduced mobility are not negatively affected.

Labour relations and pensions

Unemployment benefits incompatible with transportation benefits

The Catalan Employment Services (SOC) denied transportation benefits applied for by a claimant on the grounds that they were receiving unemployment benefits at the same time they attended a vocational training course. This claimant stated that, by this criterion, the transportation benefit would have no real beneficiaries because persons receiving no assistance or unemployment benefits, despite being entitled to it, do not have training as their main priority, but rather focus on covering their basic needs, such as sustenance. They went on to state that the low amount of the benefit should not justify their exclusion as a beneficiary of the transportation aid.

The Catalan Ombudsman deemed the incompatibility of receiving unemployment and transportation benefits illogical, and

petitioned the SOC for information. The SOC cited the legislation in force.

In light of this, the Catalan Ombudsman considered the intervention closed, as there was no violation of the legal framework in force. Nonetheless, he urged the Catalan Ministry of Labour to look into this incompatibility.

Health care

Complaints on waiting lists and the difficult access to certain medications

Citizens made it clear that waiting times, with relation to initial visits, as well as for diagnostic testing or surgeries, are too long. Additionally, the information provided to them during the waiting period was considered insufficient or unthoroughly prepared.

The Catalan Ombudsman once again urged the Administration to continue applying corrective measures to reduce these periods in





general, and in cases of surgical procedures with guaranteed maximum waiting times, recommended to the Administration that it expedite procedures for the intervention to take place as soon as possible.

Other complaints had to do with difficulties in obtaining medications or products necessary for health, or, in cases of certain pathologies, special difficulties faced by patients to access the health care services they required due to the insufficiency of health care services. In this area, special mention is deserved by the complaints of persons affected by fibromyalgia or chronic fatigue syndrome.

There was also acknowledgement of public health care users' right to have their preferences of doctor and facility respected, although this is now only valid in primary care. There have been complaints on this matter from persons who, due to a new primary care clinic opening in their municipality, were assigned to a new primary care staff. For different reasons, the users expressed their desire to continue under treatment by professionals at the former facility.

Taxation

Lack of criteria by local councils levying special taxes

The Catalan Ombudsman received several complaints on the levying of special taxes by local councils. Some called the criteria behind the taxation into question. In others, the discrepancy between citizens and their local councils had to do with the criteria used to calculate and levy the tax.

In still other cases, the complaint was due to the lack of grounded information provided by the local council, as such a shortcoming could impinge upon the taxpayers' right to appeal and defence.

A common element has been found throughout all complaints handled: a lack of criteria by local entities in the grounds and justification of the existence of a valid benefit for taxpayers in the weighing of the public and private interests at stake.

One of the most controversial matters is the specification and determination of the benefit that a work or service generates for taxpayers toward the general benefit affecting the entire municipality, and consequently, the weighing process to establish the tax base, quantified as a function of the cost incurred to obtain the benefit.

A rapid, effective intervention is needed when the most underprivileged groups are unable to exercise their right to housing. Maximum expediency is needed in the formalities required for housing benefits, at the time the requisites are checked as well as when making payment so that applicants can make their rental or mortgage payments in a timely manner.

Urban planning and housing

The right to housing must be guaranteed for society's most underprivileged

Many citizens reiterated the problems caused by the slow processing of rent payment aid with the consequent delay in assistance payouts. Young people continued to be especially affected by the problems still caused by the processing of the basic emancipation benefits. The Catalan Ombudsman continues to receive complaints on the financial aid to renovate buildings.

In cases of benefit refusal, an effort must be made for the decision document to clearly state the grounds for denial.

This year, young people have especially suffered from the slow processing and payment of basic emancipation benefits and the settlement of any irregularity in their application. This was exacerbated by the lack of clear, easy-to-understand information telling the person why they will not receive the assistance they are entitled to, or the reason why they have suddenly stopped receiving it.



INSTITUTIONAL AND INTERNATIONAL ACTIVITIES



Barcelona hosted the Conference and Assembly of the European Executive

The IOI defends immigrants' rights at its Barcelona Conference

Over October 4-5, under the title "Europe: an open society", over 130 state, regional and local representatives of the IOI (International Ombudsman Institute) member Ombudsman institutions from all over Europe discussed in Barcelona the rights of immigrants residing on the continent and the task of Ombudsmen. This debate took place in the framework of the Conference and Assembly, held every four years at a different site. This year's running was assigned to the Catalan Ombudsman during the fifth meeting of the European Executive Council of the IOI, held in Jerusalem in March 2006.

Especially noteworthy was the participation by the commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, European Ombudsman, Nikiforos Diamandouros, the World President of the IOI and Swedish Ombudsman, Mats Melin, the President of the Autonomous Government of Catalonia, José Montilla, and conference host, President of the IOI European Division and Catalan Ombudsman, Rafael Ribó.

A conference by Michael Villan, Chair of the European Committee on Migration of the Council of Europe, gave way to four separate workshops on immigrant rights, from four different standpoints: political participation, children's affairs, social exclusion and crisis, and integration or assimilation. There, the Ombudsmen discussed their experience defending the rights of immigrants living in our societies.

A second topic discussed was the application of the United Nations Treaty on the prevention of torture and other cruel, inhuman or degrading treatment or punishment and the role of the ombudsmen.

Also present were Malcolm David Evans (Subcommittee on Prevention of Torture, of the United Nations), Mauro Palma (European Committee for the Prevention of Torture, of the Council of Europe) and Barbara Berneth (Association for the Prevention of Torture).

Support for local Italian Ombudsmen

Given the situation of local Italian Ombudsmen, many of whom saw their offices eliminated by an article of the 2010 Italian Budget Act, the Catalan Ombudsman attended the Italian Ombudsmen's coordination meeting as a show of the IOI's support for them. He also met with the President of the Italian Republic, Giorgio Napolitano, to discuss this situation.

Rafael Ribó spoke on the protection of children at an AOMF symposium

The Catalan Ombudsman took part in the conferences held by the Association des Ombudsman et Médiateurs de la Francophonie, with the title "Petits hommes: un symposium international sur les droits de l'enfant", held October 21 to 23 in Moncton (New Brunswick, Canada).

At the symposium, Rafael Ribó gave a presentation based on the monographic report entitled *The Protection of Children at High Social Risk in Catalonia* and other important activities carried out by the Catalan Ombudsman in the realm of child protection.

Ribó proposed, among the conclusions, the need to have a code of best practices in the field of children's affairs to guide public policies meant to guarantee children's rights.

The Catalan Ombudsman presents best practices at an FIO seminar

Parallel to the Latin American Ombudsman Federation conference, from September 13-15, the 26th Workshop-Seminar on best practices of Ombudsmen on the Local Level, was held. It was organized by PRADI (Regional Support Program for Ombudsmen's Office of Latin America) in Montevideo.

The Catalan Ombudsman's Director of Administration and Social Affairs, Sílvia Vèrnia, represented the institution at this seminar, and gave a presentation on the Code of Best Administrative Practices, with special reference made to the practices in access to information, publicity and transparency, and on the right to participation.



As President of the European Division of the IOI, Rafael Ribó met with Italian President, Giorgio Napolitano, in support for local Italian Ombudsmen.



Members of the Serbian and Belgrade Ombudsmen's offices visited the Catalan Ombudsman in June, 2010.

The ENOC debates the inclusion of children in the defence of their rights

The annual meeting of the ENOC (European Network of Ombudspersons for Children) was held in Strasbourg from October 7-9. It was organized by the Children's Ombudsman of France, and attended by Maria Jesús Larios, Deputy Ombudswoman for the Defence of Children's and Adolescents' Rights. A meeting of youth advisors participating in the ENYA project was held over the same dates in Strasbourg, and with two members of the Catalan Ombudsman's Youth Advisors Council, Georgina Terribas and Maria Solaguren-Beascoa, as well as Youth Advisors Council facilitator Estel Buch, attending.

The central topic of the ENOC annual meeting was "Listening to children and including them in the fulfilment of their rights". The meeting was marked by presentations from Maud de Boer, Deputy Secretary General of the Council of Europe, Jean Zermatten, Vice-President of the U.N. Committee on the Rights of the Child and Marta Santo Pais, the United Nations Secretary General's Special Representative on Violence against Children.

International cooperation

The Catalan Ombudsman's Office continues to conduct international cooperation activities and earmarks a part of its staff and budget to international cooperation projects, in light of this institution's wish to contribute to a safer, fairer and more supportive international community. Additionally, it makes use of resources from the Catalan Agency for Development Cooperation (ACCD), the Spanish Agency for International Development Cooperation (AECID) and other international organizations, such as the Organization for Security and Cooperation in Europe (OSCE) Mission to Serbia, that co-finance its projects.

With this work the Catalan Ombudsman has intended to contribute to the strengthening of the rule of law, the justice administration, and promotion and defence of human rights in other countries through specific projects, study exchange visits, training seminars, round table discussions, conferences and continuous technical advising in the public institutions of other countries.

Since it began, the Catalan Ombudsman office's cooperation activity has mainly been carried out in the Balkans, especially in Bosnia and Herzegovina and in Serbia.

There, it has worked with other ombudsman institutions, members of parliament, judges, prosecutors, attorneys and other officers of the administration.

To mark the tenth anniversary of the cooperation projects' implementation, in 2009 an informative publication was released. It outlined and presented the work done in this realm over the past ten years. This year it was published and distributed in Catalan, Spanish and English.

Over 2010, the Catalan Ombudsman worked in projects such as the one to support the Serbian Ombudsman in the areas of children's affairs and persons deprived of liberty, support for the Belgrade Ombudsman and free legal aid in Vojvodina (Serbia).

Support for the Serbian Ombudsman

This project began in 2009 following formalization of the second memorandum of understanding between the Catalan Ombudsman and the OSCE Mission to Serbia, with the aim of strengthening two specific areas of the Serbian institution, the one for persons deprived of liberty and that devoted to children's rights.

It was also meant to develop the institution's external communication strategy and its relationship with citizens. The project activities, conducted until the month of November 2010, were financed by the Catalan Ombudsman, the AECID and the OSCE.

From June 8 to 11, the head of the External Communications Department, the Deputy Secretary General responsible for processing complaints and four other advisors from the Serbian Ombudsman's office travelled to Barcelona, with a delegation from the Belgrade Ombudsman's office, to take part in working sessions on user service techniques and methods, strategies for communication with citizens, the office's trips around the territory, and relations with local Ombudsmen.

Two outcomes from this exchange of experiences between Catalan Ombudsman and Serbian Ombudsman personnel were first, a plan drafted by the Serbian institution's staff for communication with children and youth, and second, another communication plan for persons deprived of liberty. These documents, along with others from the project, were presented in Belgrade at a press conference held by the Catalan Ombudsman, Serbian Ombudsman and the OSCE in November.

The Catalan Ombudsman has distributed a publication, published in three languages, devoted to institution's 10 years of international cooperation.





During a seminar held at the institution's main offices, the Ombudsman urged the Catalan Government to regulate the right to access public information.

Support for the Belgrade Ombudsman

This project was carried out in 2010 with co-financing from the Catalan Ombudsman and the AECID.

Through the organization of study visits to Catalonia and work meetings in Belgrade, a boost has been provided to the Belgrade Ombudsman staff's training for processing complaints and ex-officio actions in the areas of health, education, environment, and architectural barriers. The support was based on the exchange of experiences with the Catalan Ombudsman and Barcelona Ombudswoman.

Additionally, training has been completed for Ombudsman personnel in citizen relations (interviews, telephone service, etc.) and in the dissemination of the institution: promotional activities aimed at citizens and for media coverage. Within this effort, the Catalan Ombudsman also advised the Serbian institution on the design of their communication strategy.

Seminar on Access to Public Information

During the seminar, the Catalan Ombudsman announced that he would ask the Catalan Government to regulate the right to access public information. He has since addressed the Catalan Government urging it to support the effort.

Among others, the following five considerations were the most outstanding Seminar conclusions: 1) The Ombudsman believes that the government should be aware that citizens have the right to access the information held by the public sector, and the exception to this right must be interpreted in a restrictive direction; 2) Transparency allows citizens to evaluate public management, to know the realities of public spending, and thus help prevent fraudulent or corrupt practices; 3) Administrations must be proactive in the dissemination of the information and must always respond to citizens' requests for information; 4) Administrations must always respond quickly to citizens' requests for information; 5) International experience indicates that the right to information access must be guaranteed by an independent body.

New agreements for individualized follow-up of local councils

The Catalan Ombudsman formalized six more individualized agreements this year: Tàrrega, Esparreguera and Matadepera (January 20), Torelló (February 25) Roses (May 20) and Sant Andreu de Llavaneres (November 16). With these, there are now 14 local councils with which the Catalan Ombudsman has signed this type of agreement. The institution also has an agreement with the Conselh Generau d’Aran.

Pursuant to the agreements, Catalan Ombudsman advisors travel to every participating municipality to meet with local residents in person. The Catalan Ombudsman has also produced an annual report describing the actions taken by the institution in the areas relevant to each local council. The reports can be viewed on the Catalan Ombudsman’s website.

The Catalan Ombudsman, Rafael Ribó, signed a follow-up agreement with the mayoress of Esparreguera, Francesca Fosalba.



Mireia Solsona, mayoress of Matadepera, also signed a follow-up agreement with the Catalan Ombudsman in 2010.



Students of the Bernat el Ferrer Secondary School of Molins de Rei (right) and the CIM school of Terrassa (left) visited the Catalan Ombudsman's offices in 2010.

Visit to Aran Valley as *Proò*

The trip to Vielha tallied 9 appointments, resulting in five complaints and four queries. The complaints had to do with administrative and fines procedures, justice, and the actions of law enforcement agencies. Social services and health care were the subjects of the queries.

The Catalan Ombudsman, who in the Aran Valley operates under the name of *Proò* *dera Val*, and members of his staff visited the Pompiers fire station, the Vielha Mossos d'Esquadra police station, and also met with members of the Lengua Viua Aranese language defence organization.

The visit concluded with an institutional meeting with Valley authorities, led by Francés Boya. During the meeting, the data from the first individualized follow-up report, a result of the agreement between the Conselh General d'Aran and the Catalan Ombudsman, were presented.

Twenty years of Local Ombudsmen

On November 20, 2010, the 20th anniversary of the establishment of the Local Ombudsman of Lleida was celebrated. A training session for local ombudsmen was held there the same day.

The Catalan Ombudsman was invited to the main session of this commemoration, where he gave an address to the audience, along with President of the Catalan Parliament, Ernest Benach, the Mayor of Lleida, Àngel Ros, and the President of the Local Ombudsmen's Forum, Josep Escartín. During the ceremony, a tribute was paid to Simeó Miquel, former Lleida Ombudsman.

Over 230 students visit the Síndic

Like every year, in 2010 the Catalan Ombudsman opened the doors of the institution to persons and groups interested in discovering more about the work done there. Thus, over 2010, the Catalan Ombudsman was visited by approximately 230 secondary students and others from training cycles. The students came from the Massana School, of Barcelona; the Bernat el Ferrer Secondary School, of Molins de Rei; the Bisaura Secondary School, of Sant Quirze de Besora; the Bastida Secondary School, of Santa Coloma de Gramenet; the EL CIM school, of Terrassa

University students were also welcomed, specifically those in the Barcelona-New York Masters in Journalism Program of the University of Barcelona, students from the Masters in Social Management, of the Universidad Pontificia Católica of Peru, and a group from the University of Cork, in Ireland.



The Síndic de Greuges de Catalunya (Catalan Ombudsman) is a member of:

IOI (International Ombudsman Institute)

FIO (Ibero-American Federation of Ombudsman)

AOMF (Association of Francophonie Ombudsman and Mediators)

ENOC (European Network of Ombudspersons for children)

European Network of Ombudsmen

The Síndic also participates in:

Round Table of Ombudsmen of the Council of Europe

Association of Mediterranean Ombudsmen

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