



# The Ombudsman

Summary of the report to Parliament for 2003  
June 2004



## 17,389 complaints received in 2003

More than 36,000 complaints were received on intervention in Iraq which could not be dealt with because the scope of authority of the Ombudsman does not include any powers for determining or orientating foreign policy.

**I**n 2002, complaints from citizens received by the Ombudsman fell compared to those recorded the previous year, dropping from 21,191 in 2002 to 17,389 in 2003. Ex officio complaints rose from 152 to 165, respectively, while collective complaints fell from 9,221 to 4,612.

It has not been possible to process the more than 36,000 complaints stating their opposition to intervention in Iraq. Many of these complaints considered that the sending of troops represented a sure violation of section 8 of the Spanish Constitution. Some of them asked the Ombudsman to press for a referendum to be held and to file an appeal before the Constitutional Tribunal against the political decisions that had been adopted.

Given that the scope of authority of the Institution does not include any powers for determining or orientating the country's foreign policy, or the mission of the Armed Forces, nor for urging referendums in relation to the decisions of the State powers, such letters of complaint, though they overloaded the ordinary activity of the corresponding services, could not be admitted for processing. In the same way, after analysing the petitions of citizens, nor could they be materialised via any procedure that would enable government decisions to be questioned before the Constitutional Tribunal.

### More complaints from men than women

Bearing in mind the above statements, the number of complaints received during 2003, not including the more than 36,000 resulting from the Iraq situation, came to 17,389, of which, as we have highlighted in the introduction to this summary, 12,612 complaints had an individual origin, 4,612 were collective and 165 were ex officio. This gives a total that comes between those recorded for 2001 (13,365) and those for 2002 (21,191).

The figures offered also point to other characteristics of the complaints: a larger

number of complaints were submitted by men than by women, as occurred in preceding reports; in the same way, it was again confirmed that the immense majority come from within Spain, and in percentages by communities, the Madrid Community has the greatest weight in terms of origin of complaints (33.2%) and, by sectors of activity, total complaints relating to immigration/emigration (3,818), the administration

of justice (1,726), civil service (1,593) and health questions (1,495) need to be highlighted.

### State of processing

In addition to what has been stated on the large number of petitions related to the Iraq conflict, of the 17,389 complaints effectively



*Audience with H.M. Don Juan Carlos I, in the Palace of La Zarzuela, with the Ombudsmen participating in the conference on «Ombudsmen and Constitutional Rights», held on 27 and 28 October 2003 in the Senate Building on the occasion of the XXV anniversary of the Constitution. Photo Dalda.*

registered, 6,249 were accepted for processing, 9,476 were not admitted, and the other 1,664 were in a situation of pending a decision in this regard, due to various causes. The most frequent reasons for non-admission were lack of signs of any administrative irregularity, failure to observe any improper action by the public powers and a firm judgment or judicial intervention having taken place.

The situation of processing for the complaints admitted was, at 31 December of the year which this report concerns: concluded (41.3%), in suspension (0.3%) and in processing (58.4%). Those which were pending a decision were so because either they required additional information requested of the interested party or they required some complementary step or study, or they had some defect of form that needed correcting.

In terms of the situation of complaints carried over from previous years, 2,194 were admitted in 2003, another 348 were reopened and 24 whose processing was in a situation of suspension were reinstated.

### Efficacy of the control activity

The ordinary activity undertaken by the Institution during the year 2003 culminated in a series of resolutions aimed at the different administrations concerned. So, a total of 154 recommendations, 228 suggestions, 103 reminders of legal duties and 1 warning were formulated. Although there still remained an appreciable number of resolutions on which the administrations had not pronounced, at 31 December 2003 almost half the recommendations and suggestions formulated had been accepted, and around 23 percent had been rejected.

The study of interim public officials and temporary staff also gave rise to a total of 168 recommendations directed towards the public administrations.

### Most significant actions

The action in the Areas in which the processing of complaints is organised can be read in its entirety in the complete report and with greater detail on the basis of that of this summary. By way of introduction, we highlight here the most significant aspects of the work of each of them.

#### *Civil service and public employment*

Standing out here in addition to others of a general nature is the action for eliminating the upper age limits for admission to tests

for **access to the local civil service**; steps leading to acknowledgement of the right to paid holiday, comparable to that of marriage, for those formalising a stable de facto union; and the possibility of qualifications granted to persons with disabilities in tests within the reserve quotas being taken into account for what is known as free turn when they fail to obtain a place in them.

#### *Defence and Internal Affairs*

Of all the complaints and investigations dealt with in this area, those concerning prisons need to be underlined. The change in regulations that took place in 2003 as a consequence of passing up to four organic acts implies a series of measures that are of interest with regard to, for example, the system of carrying out sentences, the new profile of offences and misdemeanours and their impact **on the number of inmates which during the year this report is concerned with rose by 8.15%** which, in turn,

made it difficult for prisoners to be treated properly and for there to be adequate facilities available. Specifically, the Institution continued working on cases in which **deaths in prison** had occurred, on others involving presumed ill-treatment of inmates, inspecting prisons (15 penitentiary centres were visited) and paying special interest to the situation of women in prison.

With regard to citizenship and the security of citizens, various analyses have been conducted on the concept of **victim of terrorism**, as well as work on monitoring of presumed **police ill-treatment**, the use of video-cameras by the Ertzainza (the Basque Police), the situation of some court cells, the scope and suitability of certain summonses and arrests made by the police security forces, and watching over compliance with the guarantees established in the sanctioning administrative procedure in matters of **traffic** or situations of the **emergency health** services.

On the other hand, special attention has been paid to the **Yakolev 42 accident**

## SUMMARY

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which took place in Turkey, in which 62 Spanish military personnel who were returning from Afghanistan lost their lives.

### *Justice and domestic violence*

No solutions have yet been found for the problems of judicial delays and backlogs which, since the Ombudsman first started functioning, have not ceased to appear among the complaints he receives. Also standing out in this field of Justice are complaints on juvenile delinquency, to which special attention is being paid (visits to reform centres, care in transfers and following up of recommendations formulated as a result of the study on the application of Organic Act 5/2000); and problems concerning the abduction of children by either of their parents, particularly when the child is taken to a country which has not signed the applicable international conventions.

Another aspect of this area, as is detailed in the thorough summary given for each of them, is complaints received on the **growing number of cases of domestic violence**. The Ombudsman drew up a range of conclusions which were passed on to the State Public Prosecutor's Office. Likewise, there are the different questions raised by **legal aid for immigrants**, for which some specific conferences were even organised in order to facilitate this; the situation of Spanish prisoners abroad, particularly in relation to **loopholes in the foreign service**, delays in dealing with cases and deficient conditions in foreign prisons, and certain **delays in the activity of the offices of the Civil Register**.

### *Administration of the Economy*

Activity has been very much influenced both by the new regulations of an organic nature introduced into our code of laws and by technological progress and the spread in the use of telecommunications. Very specifically, studies have been conducted on matters relating to: the **exemption of benefits for the birth of children**, in the case of multiple births, with respect to personal income tax; the **notarial obligations on information**, in the execution of deeds, on payment of the tax assessed on the value of land of an urban nature; difficulties for an adequate supply provoked by **regulated trade margins for pharmacy stores**; investigations into the installation/disconnection procedures and sums billed by **telephone service** companies for high tariff lines and adult lines;

the circulation of an ever-growing number of vehicles lacking the obligatory insurance coverage, apparently favoured by the rejection, either directly or by means of charging exorbitant premiums, of **insurance for the young**, an aspect which, moreover, gave rise to an ex officio complaint.

### *Territorial Regulation*

Standing out in this section are **housing problems** where the presence of public action is weak, an excessive increase in sale prices and, as a consequence, a very high level of debt among families in relation to their disposable income; the urban development model, in need of proper planning and an essential coordination within some national schemes of development, to which must be included citizen participation; the **preservation of an adequate environment** for which there arise unthought-of and catastrophic «enemies» (the wreck of the Prestige) or those concerning questions whose gravity we are all aware of (acoustic pollution, atmospheric pollution, measures for complying with international commitments).

### *Health and Social Policy*

In matters of Health, it is necessary to highlight those matters concerning the organisational structure (administrative-functional ordering and coordination, **equipping and functioning of hospitals and health centres**, planning of transport) and also to do with different substantial perspectives (**presumed clinical errors, control over medicines, resources devoted to mental health, attention to uncommon diseases**).

As far as **social action** or policy is concerned, emphasis must be placed on the activity related to **minors** (protection and guardianship, adoption of foreign children), **disabled people** (recognition of disabilities and handicaps, delay in examinations, accessibility to residences and attention in them) or old people or those belonging to the stage of life known as the «third age» (living alone and tele-assistance programmes, admittance into public residences and transfers among them).

As far as the **Social Security** system is concerned, complaints were made on and, therefore, the activity of the Institution was directed towards: the collection procedure, deficiencies in reports on working life, the proper applications of EU regulations on recognition of rights, with regard

to benefits for temporary disability and in certain claims on pensions. In this last aspect, a report was produced on widowhood.

### *Immigration and Foreign Affairs*

The extraordinary range of subjects revealed in this area and in the corresponding activity affects not only complaints made by citizens but also the proliferation of analysis and studies caused by the appearance of updated regulations in the sector and by the support, with recommendations and suggestions, for the establishment of suitable criteria for the monitoring and integration of immigrants.

Within the very numerous and frequently urgent actions that were undertaken, emphasis can be placed on those conducted with regard to the **conditions of temporary stay centres for immigrants**, the situation of **foreign minors** (facilities and attention in centres, return of minors not considered to be in a situation of abandonment), the ordinary supervision of internment centres for adults, the **expulsion procedures** (irregularities in the processing, request for postponement, expiry of expulsion orders, centres fitted out for waiting for expulsion), respect for legality in transfers of immigrants within the country, the **functioning of centres and offices related to the regularisation of immigrants** (consular services, Government delegations and sub-delegations, employment service), and delays and insufficiencies detected in the processing and resolution of **applications for asylum**.

### *Education and Culture*

On the occasion of producing a monographic report on the schooling of **pupils who are children of immigrants** something was highlighted which was later on confirmed in the handling of some complaints: the concentration of these pupils has a material effect on certain schools which take them in at percentages very much higher than others in the same zone. These are percentages which, when a certain proportion is exceeded, alter the ordinary planned educational process. To the analysis and recommendations on a desirable redistribution in this matter must also be added the mention of what has been done with regard to **infant education** (mismatches in the offer of places aimed for children aged three); **delays in the approval of foreign qualifications**, especially in access to universities or the

obtaining of certain qualifications related to health sciences; the **exclusion of the profession of psychologist** apart from specialists in clinical psychology; **exclusion of health professions** and complaints regarding the criteria for the awarding of scholarships and grants for studying.

On the cultural side, worth highlighting here are actions related to **intellectual property**, especially with regard to payment of fees for private copying; and to the protection and **conservation of the historical-artistic heritage**, very particularly in activities related to urban development and construction.

### Increase in recommendations

Also to be highlighted is the broad increase in recommendations, suggestions and proposals as a consequence of the complaints received and investigations undertaken by the Ombudsman, with the conducting of monographic studies, such as the report on **«The schooling of immigrant pupils in Spain»** and that on the situation of **«Interim officials and temporary staff in public employment»**.

During the year forming the subject, the Ombudsman and his deputies multiplied their appearances before Parliament and in coordination meetings with the commissioners of the

Autonomous Communities, attendance at congress and international symposiums of ombudsmen, and activities on technical cooperation, and publicising and disseminating the Institution.

The mechanisms for relation with citizens have been updated, the technological renovation plan has been completed, and the website [www.defensordelpueblo.es](http://www.defensordelpueblo.es) has been updated, as has the computer system for handling complaints, as is discussed in detail further below. Parliament has provided the Ombudsman with a nearby building, in Zurbano 42, so that the different areas and services can be housed more comfortably and in order to contain the historic archive of complaints.

## Budgetary execution of 97.54%

**D**uring 2003, the index of budgetary execution of the Institution of the Ombudsman came to 97.54%, as did the continuity of the financial solvency of the Assets account. Contracts signed by the Body have been systematised, notable among which are the tender competitions for computing and the advance processing of the tender competition for cleaning for the year 2004, with 16 contracts in force being renewed, which meant the coverage of new needs and a saving of 9,000 euros.



A part from the contracting of the new complaints management system, which is going to improve the citizen service and the handling procedures, as described on page 62 in the section on Technical Renovation, the updating has been carried out of the Juridical Thesaurus by means of an agreement with the CINDOC, a body coming under the CSIC (Higher Centre for Research and Science), which is going to be very useful for advisors in dealing with complaints, plus the updating of the website [www.defensordelpueblo.es](http://www.defensordelpueblo.es).

In terms of corresponding areas, mono-

graphic reports have been produced on «Waiting lists in the National Health System», and «Schooling of pupils of immigrant origin in Spain: descriptive analysis and empirical study».

In February 2003, the CIS conducted a survey on the perception that citizens have on the role of the Institution in the protection of fundamental rights. The Ombudsman once again appears as the second most valued, after the Monarchy.

### New building and single counter

During 2003, the Directorate-General of State Assets awarded the contract for the works on fitting out of a building in Calle Zurbano, 42, very close to the central headquarters of the Institution. This building is going to signify an improvement in the citizen service since it will mean a «single counter», due to centralising all the areas dealing with complaints, as well as information, registry and mail.

Moreover, progress was made in the execution of the Institutional Agreement on cooperation between the Ombudsman, the Regional Ombudsman for Catalonia known as the «Sindic de Greuges de Catalunya» and the Association of Lawyers of Madrid, for developing a Plan of Action for the judicial and extrajudicial safeguarding of the rights of citizens in Serbia, with the execution of a pilot project on free legal aid in Nis.

*Annexe building of the Ombudsman, in Calle Zurbano 42*

# 12,612 individual complaints, 4,612 collective and 165 ex officio

The total number of complaints registered in 2003 was less than in the preceding year: 17,389 compared to 21,191, and higher than in 2001, when the figure was 13,365. Standing out is the increase in individual complaints compared to previous years, which went from 9,068 in 2001 to 11,818 in 2002, and 12,612 in 2003, and the increase in ex officio complaints compared to the previous year.

Table 1 shows the evolution in these three years, distinguishing in turn among the different types of complaints that were generated.

The greatest variation is that undergone in individual complaints, which has shown continual growth and risen by 6.7% compared to 2002, and also in ex officio complaints, with an 8.5% growth, while collective complaints showed a sharp rise in 2002, very much higher than in 2001 and 2003.

Table 2 contains a long series of the complaints filed annually since 1996, according to the sex of the person filing them (not including ex officio). As can be seen, the evolution with time oscillates, in both absolute terms and in percentage terms, since they have been rising or falling, from year to year, with a certain cyclic nature in both sexes.

## Distribution of complaints by geographical origin

Of the 17,224 complaints presented in 2003, not including ex officio, 16,823 (97.7%) were of national origin and 401 (2.3%) came from abroad. In 2002, the national figure was 20,164 (95.8%) and in 2001, 12,848 (97.4%).

From a reading of table 3, the strong weight of participation of the Madrid Community can be deduced, among other conclusions: 33.2% of those of national origin, a percentage which had already been exceeding 30% in recent years.

Moreover, it can be observed that the statistical weight of complaints from the Autonomous Community of Andalusia, 9.7%, which used to come second, has fallen to fourth, having been overtaken by the Autonomous Community of Catalonia with 10.9% and the Region of Valencia with 10.6%. The Autonomous Community of Castilla y León comes fifth in this aspect, having dropped down in relative terms since 2001.

The distribution of origin by provinces corresponds to that stated for the level of Autonomous Community. Madrid, Barcelona, Valencia and Alicante are the origin of the greatest number of complaints sent in.

Chart 1 offers a map of these complaints which are distributed as shown in table 4.

TABLE 1. Complaints registered in 2003, 2002 and 2001 and evolution compared to 2001 (Base = 100)

Types of complaint	2003		2002		2001	
	Number	% /2001	Number	%/2001	Number	Base = 100
Officio .....	165	92.2	152	84.9	179	100
Individual .....	12,612	139.1	11,818	130.3	9,068	100
Collective* .....	4,612	112	9,221	223.9	4,118	100
<b>TOTAL .....</b>	<b>17,389</b>	<b>130.1</b>	<b>21,191</b>	<b>158.6</b>	<b>13,365</b>	<b>100</b>

\* These are those which have been presented by groups or have been grouped together due to their claims being identical

TABLE 2. Complaints received differentiated by sex

	1996	1997	1998	1999	2000	2001	2002	2003
Women .....	12,969	6,504	7,176	4,905	11,568	4,164	7,292	6,539
Men .....	10,26	10,161	15,337	7,589	14,194	7,873	12,88	9,854
Not classifiable .....	2,534	1,352	1,451	1,057	1,112	1,149	867	831
<b>TOTAL .....</b>	<b>25,763</b>	<b>18,017</b>	<b>23,964</b>	<b>13,551</b>	<b>26,874</b>	<b>13,186</b>	<b>21,039</b>	<b>17,224</b>

CHART 1. Distribution of the origin of complaints by Autonomous Communities. Year 2003



If the data shown so far is detailed separating individual complaints from collective ones, then the results are as shown in tables 4 and 5, at the level of Autonomous Community.

TABLE 3. Individual complaints presented by Autonomous Communities

Autonomous Communities	Number		% over total	
	2003	2002	2003	2002
Autonomous Community of the Basque Region .....	262	236	2.1	2.1
Autonomous Community of Catalonia .....	1,111	881	9.0	7.6
Autonomous Community of Galicia .....	569	502	4.6	4.4
Autonomous Community of Andalusia .....	1,147	1,038	9.3	9.0
Principality of Asturias .....	354	347	2.9	3.0
Autonomous Community of Cantabria .....	182	161	1.5	1.4
Autonomous Community of La Rioja .....	100	86	0.8	0.8
Region of Murcia .....	294	274	2.4	2.4
Region of Valencia .....	1,347	1,152	11.0	10.0
Autonomous Community of Aragón .....	319	271	2.6	2.4
Autonomous Community of Castilla-La Mancha .....	359	355	2.9	3.1
Autonomous Community of Canary Islands .....	463	399	3.8	3.4
Autonomous Community of Navarra .....	97	98	0.8	0.8
Autonomous Community of Extremadura .....	252	258	2.0	2.2
Autonomous Community of Balearic Islands .....	246	206	2.0	1.8
Community of Madrid .....	4,195	4,176	34.1	36.2
Autonomous Community of Castilla y León .....	858	975	7.0	8.4
Autonomous Community of Ceuta .....	31	29	0.3	0.3
Autonomous Community of Melilla .....	107	80	0.9	0.7
<b>TOTAL .....</b>	<b>12,293</b>	<b>11,524</b>	<b>100.0</b>	<b>100.0</b>

TABLE 4. Complaints of national origin distributed by autonomous communities and provinces

Autonomous communities and provinces	Number			% / autonomous community			% / total		
	2003	2002	2001	2003	2002	2001	2003	2002	2001
<b>Autonomous Community of the Basque Region</b>									
Álava.....	100	110	51	23.31	25.23	21.43	0.59	0.55	0.4
Guipúzcoa.....	106	111	58	24.71	25.46	24.37	0.63	0.55	0.45
Vizcaya.....	223	215	129	51.98	49.31	54.2	1.33	1.07	1
<b>TOTAL .....</b>	<b>429</b>	<b>436</b>	<b>238</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>2.55</b>	<b>2.17</b>	<b>1.85</b>
<b>Autonomous Community of Catalonia</b>									
Barcelona.....	1,551	1,22	591	84.02	77.26	60.8	9.22	6.05	4.6
Girona.....	98	164	211	5.31	10.39	21.71	0.59	0.82	1.64
Lleida.....	81	71	111	4.39	4.5	11.42	0.49	0.36	0.86
Tarragona.....	116	124	59	6.28	7.85	6.07	0.69	0.62	0.46
<b>TOTAL .....</b>	<b>1,846</b>	<b>1,579</b>	<b>972</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>10.98</b>	<b>7.83</b>	<b>7.56</b>
<b>Autonomous Community of Galicia</b>									
A Coruña.....	309	618	214	48.51	59.59	44.67	1.84	3.07	1.66
Lugo.....	59	78	73	9.26	7.52	15.24	0.35	0.39	0.57
Ourense.....	79	119	59	12.4	11.48	12.32	0.47	0.59	0.47
Pontevedra.....	190	222	133	28.83	21.41	27.77	1.13	1.1	1.04
<b>TOTAL .....</b>	<b>637</b>	<b>1,037</b>	<b>479</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>3.79</b>	<b>5.15</b>	<b>3.73</b>
<b>Autonomous Community of Andalusia</b>									
Almería.....	189	106	60	11.55	3.72	4.56	1.12	0.53	0.47
Cádiz.....	266	244	190	16.26	8.55	14.45	1.58	1.21	1.48
Córdoba.....	122	1,023	259	7.46	35.84	19.69	0.73	5.08	2.02
Granada.....	214	460	162	13.08	16.12	12.32	1.27	2.29	1.26
Huelva.....	78	81	59	4.77	2.84	4.49	0.46	0.41	0.46
Jaén.....	109	205	94	6.66	7.18	7.15	0.65	1.02	0.73
Málaga.....	277	298	22	16.93	10.44	16.68	1.65	1.48	1.73
Sevilla.....	381	437	269	23.29	15.31	20.46	2.26	2.17	2.09
<b>TOTAL .....</b>	<b>1,636</b>	<b>2,854</b>	<b>1,315</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>9.72</b>	<b>14.16</b>	<b>10.24</b>
<b>Principality of Asturias</b>									
<b>TOTAL .....</b>	<b>408</b>	<b>625</b>	<b>870</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>2.43</b>	<b>3.1</b>	<b>6.77</b>
<b>Cantabria</b>									
<b>TOTAL .....</b>	<b>217</b>	<b>226</b>	<b>280</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>1.29</b>	<b>1.12</b>	<b>2.18</b>
<b>Autonomous Community of La Rioja</b>									
<b>TOTAL .....</b>	<b>137</b>	<b>195</b>	<b>91</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>0.81</b>	<b>0.97</b>	<b>0.71</b>
<b>Region of Murcia</b>									
<b>TOTAL .....</b>	<b>535</b>	<b>384</b>	<b>364</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>3.18</b>	<b>1.91</b>	<b>2.84</b>
<b>Region of Valencia</b>									
Alicante.....	609	579	444	33.93	33.47	46.74	3.62	2.88	3.46
Castellón.....	239	147	120	13.31	8.5	12.63	1.42	0.73	0.93
Valencia.....	947	1,004	386	52.76	58.03	40.63	5.63	4.98	3
<b>TOTAL .....</b>	<b>1,795</b>	<b>1,73</b>	<b>950</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>10.67</b>	<b>8.58</b>	<b>7.39</b>
<b>Autonomous Community of Aragón</b>									
Huesca.....	56	78	55	9.66	7.93	18.9	0.33	0.39	0.43
Teruel.....	58	42	35	10	4.27	12.03	0.34	0.21	0.27
Zaragoza.....	466	864	201	80.34	87.8	69.07	2.77	4.29	1.56
<b>TOTAL .....</b>	<b>580</b>	<b>984</b>	<b>291</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>3.45</b>	<b>4.88</b>	<b>2.26</b>
<b>Autonomous Community of Castilla-La Mancha</b>									
Albacete.....	62	320	116	13.48	38.65	21.68	0.37	1.59	0.9
Ciudad Real.....	115	113	154	25	13.65	28.79	0.68	0.56	1.2
Cuenca.....	50	181	39	10.87	21.86	7.29	0.3	0.9	0.3
Guadalajara.....	69	63	57	15	7.61	10.65	0.41	0.32	0.44
Toledo.....	164	151	169	35.65	18.24	31.59	0.97	0.75	1.32
<b>TOTAL .....</b>	<b>460</b>	<b>828</b>	<b>535</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>2.73</b>	<b>4.11</b>	<b>4.16</b>
<b>Autonomous Community of the Canary Islands</b>									
Las Palmas.....	251	245	196	50	49.4	48.28	1.49	1.22	1.53
Santa Cruz de Tenerife.....	251	251	210	50	50.6	51.72	1.49	1.25	1.63
<b>TOTAL .....</b>	<b>502</b>	<b>496</b>	<b>406</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>2.98</b>	<b>2.47</b>	<b>3.16</b>
<b>Autonomous Community of Navarra</b>									
<b>TOTAL .....</b>	<b>182</b>	<b>158</b>	<b>117</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>1.08</b>	<b>0.79</b>	<b>0.91</b>
<b>Autonomous Community of Extremadura</b>									
Badajoz.....	145	160	212	47.7	52.63	57.92	0.86	0.8	1.65
Cáceres.....	159	144	154	52.3	47.37	42.08	0.95	0.72	1.2
<b>TOTAL .....</b>	<b>304</b>	<b>304</b>	<b>366</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>1.81</b>	<b>1.51</b>	<b>2.85</b>

TABLE 4. Complaints of national origin distributed by autonomous communities and provinces (cont.)

Autonomous communities and provinces	Number			% / autonomous community			% / total		
	2003	2002	2001	2003	2002	2001	2003	2002	2001
<b>Autonomous Community of the Balearic Islands</b>									
<b>TOTAL .....</b>	<b>280</b>	<b>268</b>	<b>248</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>1.66</b>	<b>1.33</b>	<b>1.93</b>
<b>Community of Madrid</b>									
<b>TOTAL .....</b>	<b>5,594</b>	<b>6,202</b>	<b>3,899</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>33.25</b>	<b>30.76</b>	<b>30.35</b>
<b>Autonomous Community of Castilla y León</b>									
Ávila.....	59	60	152	5.16	3.47	12.43	0.35	0.3	1.18
Burgos .....	116	617	97	10.15	35.69	7.93	0.69	3.06	0.75
León.....	245	251	320	21.43	14.52	26.17	1.46	1.25	2.49
Palencia .....	173	116	95	15.14	6.71	7.77	1.03	0.58	0.74
Salamanca .....	150	191	183	13.12	11.05	14.96	0.89	0.95	1.42
Segovia .....	81	75	80	7.09	4.34	6.54	0.48	0.48	0.62
Soria .....	40	51	29	3.5	2.95	2.37	0.24	0.26	0.23
Valladolid .....	226	246	181	19.77	14.23	14.8	1.34	1.22	1.41
Zamora .....	53	122	86	4.64	7.06	7.03	0.32	0.61	0.67
<b>TOTAL .....</b>	<b>1,143</b>	<b>1,729</b>	<b>1,223</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>6.80</b>	<b>8.58</b>	<b>9.51</b>
<b>City of Ceuta</b>									
<b>TOTAL .....</b>	<b>31</b>	<b>30</b>	<b>23</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>0.18</b>	<b>0.15</b>	<b>0.18</b>
<b>City of Melilla</b>									
<b>TOTAL .....</b>	<b>107</b>	<b>99</b>	<b>181</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>0.64</b>	<b>0.49</b>	<b>1.41</b>
<b>TOTAL .....</b>	<b>16,823</b>	<b>20,164</b>	<b>12,848</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>100</b>	<b>100</b>	<b>100</b>

### Channel of origin of the complaints

The classification of the complaints according to their channels or routes via which they reached the Ombudsman is done

in a way similar to that used in the 2002 Report, and is contained in tables 5 and 6.

As can be seen, the most significant percentage variation has been in the channel of Autonomous Parliamentary Commissioners,

which was used for reaching the Ombudsman in 9.05% of complaints, excluding ex officio. In 2002, the percentage was 6.82.

As a consequence, the direct channel has fallen to 90.80% from the figure 92.98% registered in 2002.

TABLE 5. Origin of the complaints according to channel sent

Route	2003		2002	
	Number	%	Number	%
Direct	15,639	90.80	19,563	92.98
Via the Autonomous Parliamentary Commissioners...	1,558	9.05	1,435	6.82
Via various entities and organs of the Administrations.....	27	0.15	41	0.20
<b>TOTAL.....</b>	<b>17,224</b>	<b>100.00</b>	<b>21,039</b>	<b>100.00</b>

TABLE 6. Complaints received via the Autonomous Parliamentary Commissioners

Autonomous Parliamentary Commissioners .....	2003		2002	
	Number	%	Number	%
Arateko. Basque Region .....	79	5.0	58	4.0
Sindic de Greuges de Catalunya.....	144	9.2	136	9.5
Valedor de Pobo. Galicia .....	86	5.5	76	5.3
Defensor del Pueblo Andaluz.....	260	16.7	256	17.8
Sindic de Greuges de la C. Valenciana.....	322	20.7	286	19.9
Justicia de Aragón.....	121	7.8	100	7.0
Defensor del Pueblo de Castilla-La Mancha.....	31	2.0	13	0.9
Diputado de Común. Canarias.....	179	11.5	156	10.9
Arateko Navarra .....	28	1.8	30	2.1
Procurador del Común. Castilla y León.....	308	19.8	324	22.6
<b>TOTAL.....</b>	<b>1,558</b>	<b>100.0</b>	<b>1,435</b>	<b>100.0</b>

TABLE 7. Complaints channelled via various entities and organs of the Administration

Entities/Organs	Number
Comision de Peticiones y Defensa del Ciudadano .....	1
Defensor del Minor de la Comunidad de Madrid .....	3
European Ombudsman.....	3
Deputies .....	1
Oficina Municipal de Información al Consumidor.....	1
Organs of the Administration .....	1
Government Sub-Delegations .....	14
Constitutional Tribunal.....	1
Foreign Ombudsmen .....	2
<b>TOTAL</b>	<b>27</b>

### Complaints via various entities and organs of the Administration

As can be seen in table 8, the largest number of complaints come from Argentina,

CHART 2. Percentage distribution of complaints received via the Autonomous Parliamentary Commissioners. Year 2003

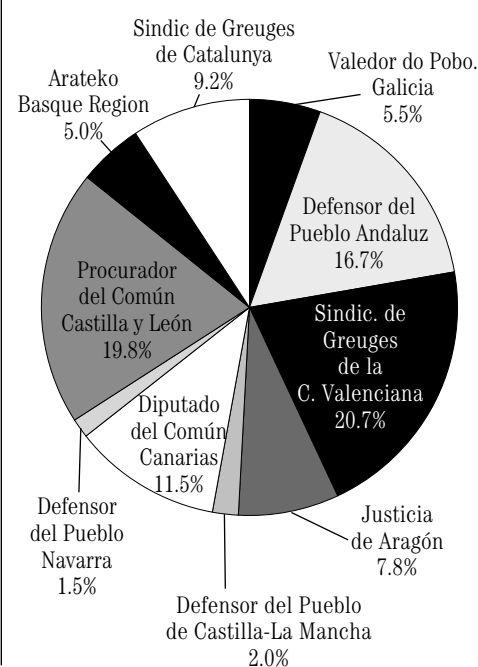


TABLE 8. Complaints coming from abroad distributed by country

Country of origin	Number			
	2003	2002	2001	2000
Germany.....	26	25	30	18
Algeria.....	1	1		
Argentina.....	83	158	21	22
Australia.....	5	4	7	2
Austria.....	4	1		
Belgium.....	17	3	13	6
Bolivia.....	3	2	1	1
Brazil.....	9	3	8	4
Cameroon.....	1			
Canada.....	3	9	2	1
Chile.....	5	11	2	3
Colombia.....	8	48	5	3
South Korea.....	1			
Ivory Coast.....	1			
Costa Rica.....	4	8	1	
Croatia.....			1	
Cuba.....	5	5	3	25
Denmark.....	2		1	1
Ecuador.....	6	8	12	1
Egypt.....	2	1		
El Salvador.....		1		
United Arab Emirates.....			1	2
United States.....	20	27	171	10
Finland.....	1	1	51	27
France.....	43	30		
Ghana.....	1			
Greece.....			1	
Guatemala.....		2	1	1
Guinea.....		1		
Holland.....	8	12	5	2
Honduras.....	8		2	
Hungary.....		1		
Ireland.....	2	2	2	3
Israel.....	1	1	1	
Italy.....	13	14	20	5
Japan.....		1		

Country of origin	Number			
	2003	2002	2001	2000
Jordan.....				1
Lithuania.....			1	
Luxembourg.....	1		2	
Morocco.....	20	27	27	29
Martinique.....				1
Mauritania.....		1		
Mexico.....	16	214	4	3
Nicaragua.....	3		1	
Norway.....			1	
Country unknown*.....			3	11
Pakistan.....			4	
Panama.....	3	1	2	1
Paraguay.....	1			1
Peru.....	6	28	2	9
Poland.....	2	2		
Portugal.....	4	16	10	8
Principality of Andorra.....		4	1	7
Puerto Rico.....	1	3	2	
United Kingdom.....	24	39	32	27
Dominican Rep.....	5	4	1	3
Czech Republic.....	4			
Republic of Benin.....		1		
Rumania.....			1	1
Russia.....	1			
Serbia and Montenegro.....	1			
Sweden.....	3	2	1	1
Switzerland.....	4	6	14	9
South Africa.....	2			2
Thailand.....	1	1		
Turkey.....			2	
Uruguay.....	5	38		2
Venezuela.....	14	104	5	6
Yemen.....			1	
Yugoslavia.....		1	1	
Zambia.....	1			
<b>TOTAL.....</b>	<b>401</b>	<b>875</b>	<b>338</b>	<b>260</b>

\* The country of origin is unknown due to complaints having been sent by e-mail without it being possible to check on their origin.

basically from immigrants, and from neighbouring European countries, such as France, related to settling in our country as residents in the process of buying properties.

#### Distribution of complaints by sectors of the Administration

Immigration, delays in the administration of justice, and in social action and

Social Security along with complaints from people seeking to enter the civil service: these account for the majority of claims presented before the Ombudsman.

TABLE 9. Distribution by sector of complaints processed during the year 2003

Sectors	Individuals	Collective	Ex officio	Total
Administration of justice.....	1,651	45	30	1,726
Rights of prisoners and their care by the prison authorities.....	493	0	25	518
Citizenship and public security.....	835	0	20	855
Military administration.....	62	0	2	64
Emigration and attention for Spanish citizens abroad.....	140	1,734	1	1,875
Immigration.....	1,915	0	28	1,943
Educational administration.....	566	367	4	937
Health administration.....	527	965	3	1,495
Social action and social security.....	1,028	10	1	1,039
Labour administration.....	160	0	1	161
Public treasury.....	526	139	18	683
Regulation of economic activity.....	640	303	3	946
Transport and communications.....	632	0	8	640
Environment.....	447	283	7	737
Urban development and housing.....	835	25	8	868
Local administration.....	183	44	0	227
Personnel at the service of Public Administrations.....	1,059	532	2	1,593
Administrative procedure.....	272		1	273
Other matters.....	641	165	3	809
<b>TOTAL.....</b>	<b>12,612</b>	<b>4,612</b>	<b>165</b>	<b>17,389</b>



# Processing by areas

In overall and percentage terms, table 10 summarises the distribution of complaints for their processing by the different areas into which the institution of the Ombudsman is structured.

With regard to «Admitted for processing with the Administrations», its particular situation at 31 December 2003 was as follows: a large part of individual and collective complaints had been admitted, plus all the ex officio ones. The

number of complaints concluded is determined by whether more information is requested of the interested parties during the course of the processing or, as the case might be, of the public administrations to which the complaint is directed, as shown in table 13.

At the end of the year, the 1,664 complaints pending were so because more information had been requested, either of the interested party or of the concerned administrations.

**TABLE 10. Percentage distribution of type of complaint by area, in 2003**

Area	Collective	Individual	Ex officio	Total
Civil service and public employment.....	11.5	8.4	1.2	9.1
Defence and Internal Affairs .....	—	11.0	28.5	8.3
Justice .....	0.9	10.8	18.2	8.3
Administration of the Economy.....	10.5	16.0	18.2	14.5
Territorial Regulation.....	6.7	10.2	9.1	9.3
Health and Social Policy .....	24.7	15.8	3.0	18.0
Immigration and Foreign Affairs.....	37.7	18.5	17.6	23.6
Education and Culture.....	8.0	9.3	3.6	8.9
Not classifiable .....	—	—	0.6	0.0
<b>TOTAL.....</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**TABLE 11. Situation of complaints registered in 2003, at 31 December 2003**

Situation	Ex officio	Individual	Collective	Total
Admitted for processing with the Administrations ...	165	5,063	1,021	6,249
Not admitted for processing .....	—	5,885	3,591	0,476
Pending for various reasons.....	—	1,664	—	1,664
<b>TOTAL.....</b>	<b>165</b>	<b>12,612</b>	<b>4,612</b>	<b>17,389</b>

**TABLE 12. Complaints admitted with the Administrations, at 31 December 2003**

Situation	Ex officio		Individual		Collective		Total	
	Number	%	Number	%	Number	%	Number	%
Concluded.....	41	24.8	1,918	37.9	618	60.5	2,577	41.3
In suspension .....	—	—	21	0.4	—	—	21	0.3
In processing.....	124	75.2	3,124	61.7	403	39.5	3,651	58.4
<b>TOTAL.....</b>	<b>165</b>	<b>100.0</b>	<b>5,063</b>	<b>100.0</b>	<b>1,021</b>	<b>100.0</b>	<b>6,249</b>	<b>100.0</b>

**TABLE 13. Distribution of complaints pending for various reasons**

	Number	%
Pending information requested of the interested party.....	563	32.2
Pending processing or study .....	1,123	67.5
Pending due to defect of form .....	5	0.3
<b>TOTAL.....</b>	<b>1,664</b>	<b>100.0</b>

## Individual complaints and reasons for non-admission

Table 14 specifies the number of individual complaints not admitted. The reasons for that decision are listed in the table.

**TABLE 14. Reasons for non-admission of individual complaints**

Reason for non-admission	Number
Administrative authority in matters of its competence .....	152
Lack of grounds.....	11
Non-existence of claim.....	12
Judicial intervention .....	313
Bad faith .....	1
Order of the national defence .....	2
No prior administration action .....	241
No action by the public powers.....	591
No reply to correctable defect .....	1
No reply to request for further data .....	97
No complaint, sending of information ..	110
No complaint, information requested...	131
No signs of administrative irregularity .....	2,844
No legitimate interest .....	13
Other reasons for non-admission .....	854
Period greater than one year .....	19
Anonymous complaint.....	1
Resolved without the intervention of the Ombudsman .....	68
Firm judgment .....	424
<b>TOTAL.....</b>	<b>5,885</b>

As has been stated in reports for previous years, in all these cases of non-admission of complaints for processing the interested party is informed of the reasons for non-admission and channels are suggested which the Institution of the Ombudsman considers to be more appropriate for the defence of their claims.

With regard to individual complaints processed with the public administrations, table 15 gives details of those which had to be sent to them.

**TABLE 15. Individual complaints received and administrations with which they are processed**

	In processing		In suspension		Concluded		Total	
	Number	%	Number	%	Number	%	Number	%
General Administration of the State .....	1,329	42.5	6	28.6	957	50.0	2,292	45.2
Autonomous Administration.....	323	10.3	4	19.0	264	13.8	591	11.7
Local Administration . State Public	409	13.1	8	38.1	202	10.5	619	12.2
Prosecutor .....	108	3.5	—	—	92	4.8	200	3.9
Investigation unnecessary .....	731	23.4	—	—	279	14.5	1,01	20.0
Other public bodies.....	63	2.0	1	4.8	81	4.2	145	2.9
Various Administrations.....	161	5.2	2	9.5	43	2.2	206	4.1
<b>TOTAL.....</b>	<b>3,134</b>	<b>100.0</b>	<b>21</b>	<b>100.0</b>	<b>1,918</b>	<b>100.0</b>	<b>5,063</b>	<b>100.0</b>

# Individual and ex officio complaints concluded

The relation with each of the Administrations in individual and ex officio complaints can be studied in greater detail, as can be seen in tables 16 and 17.

Another aspect of individual and ex officio complaints that can be analysed is their outcome, as shown in table 20.

Also included here, and for the sake of a thorough knowledge, is how individual complaints addressed to the General Administration of the State were distributed in terms of ministries and their reply at the end of 2003, as detailed in tables 18 and 19.

The same is presented for complaints processed with the Autonomous Administrations (see table 17).

## 165 ex officio complaints

Ex officio complaints are those brought or initiated by the Ombudsman himself, in accordance with the provisions of section 9 of the Ombudsman Organic Act, which permits him to act ex officio or at the request of any citizen in order to initiate an investigation aimed at clarifying the acts and resolutions of the Public Administration and its agents in relation to citizens. In general, these are investigations on subjects of varying degrees of topicality.

Of the 165 ex officio complaints presented in 2003, 49 referred to questions of immigrants or asylum, and to the situation in the temporary internment centres for immigrants; to the type of judicial assistance provided or the material and personal means made available to the aliens offices in each Autonomous Community, following the visits made to Ceuta by the First Deputy, Maria Luisa Cava de Llano. An ex officio complaint was also brought before the Ministry of Justice and the General Council of Barristers concerning legal aid for foreigners.

A large part of ex officio complaints concerned the situation in penitentiary centres: deaths of inmates in different prisons or any other matter related to the prison system, such as the overcrowding experienced in some jails, particularly in Ceuta or Tenerife II.

Ex officio complaints have also been presented on specific or chronic situations in reform centres for juvenile delinquents, the application of Personal Income Tax to large families, and the system or rights and duties of professional military personnel, and investigations were commenced in all Autonomous Communities on, among other

TABLE 16. Details of processing before the General Administration of the State\*

Ministries	In processing	In suspension	Concluded	Total	% concluded /total
Peripheral administration .....	417	—	158	575	27.5
Public Administrations.....	11	—	5	16	31.2
Agriculture, Fisheries and Food.....	2	—	2	4	50.0
Foreign Affairs.....	112	—	63	175	35.0
Science and Technology.....	18	—	10	28	35.7
Defence .....	25	3	17	45	37.8
Economy.....	21	—	17	38	44.7
Education, Culture and Sport .....	76	2	96	174	55.2
Public Works .....	109	—	88	197	44.7
Finance .....	58	—	76	134	56.7
Interior.....	229	1	131	361	36.3
Justice .....	113	—	50	163	30.7
Environment.....	52	—	10	62	16.1
Presidency.....	1	—	—	1	0.0
Health and Consumption.....	8	—	12	20	60.0
Work and Social Affairs.....	84	—	107	191	56.0
Various Administrations of the State	50	—	130	180	72.2
<b>TOTAL.....</b>	<b>1,386</b>	<b>6</b>	<b>972</b>	<b>2,364</b>	<b>41.1</b>

\* Includes ex officio complaints

TABLE 17. Details of processing before the Autonomous Administration\*

Autonomous Communities	In processing	In suspension	Concluded	Total	% concluded /total
A.C. of Andalusia .....	25	1	6	32	18.7
A.C. of Aragón.....	4	—	3	7	42.9
Region of Valencia .....	26	—	15	41	36.6
A.C. of the Canary Islands.....	12	—	3	15	20.0
A.C. of Cantabria.....	5	—	8	13	61.5
A.C. of Castilla-La Mancha.....	8	1	9	18	50.0
A.C. of Castilla y León .....	22	—	25	47	53.2
A.C. of Catalonia .....	20	—	14	34	41.2
A.C. of Extremadura .....	12	—	12	24	50.0
A.C. of Galicia.....	16	—	11	27	40.7
A.C. of the Balearic Islands .....	11	—	9	20	45.0
A.C. of La Rioja.....	7	—	3	10	30.0
C. of Madrid .....	125	1	122	248	49.0
Region of Murcia.....	13	1	8	22	36.4
C. of Navarra.....	—	—	3	3	100.0
A.C. of the Basque Region.....	2	—	4	6	66.6
Principality of Asturias.....	26	—	13	39	33.3
A. City of Ceuta .....	1	—	1	2	50.0
A. City of Melilla.....	5	—	—	5	0.0
Various Aut. Communities .....	5	—	—	5	0.0
<b>TOTAL.....</b>	<b>345</b>	<b>4</b>	<b>269</b>	<b>618</b>	<b>43.5</b>

\* Includes ex officio complaints

matters, the fiscal system of taxes on inheritances and donations, in *mortis causa* transfers from parents to children, and between spouses.

Finally, and without reproducing the complete list which can be consulted in the full report, other ex officio complaints referred to ambulance helicopter transport between Ibiza and Formentera; to the death of Spanish prisoners in a jail in Quito (Ecuador) and to the situation of other Spanish prisoners in the Detentiecentrum Zeist of Soesterberg (Netherlands), which was also visited by the First Deputy

Ombudsman; on various cases of women who were murdered by their husbands, in spite of having previously filed numerous accusations; on the conditions in which professional military personnel were demobilised when they leave the Armed Forces; delays in delivery of mail in urban housing estates in the province of Malaga; the adoption of measures for guaranteeing the presence of specialists in endoscopic inspections; delays in juvenile courts in Malaga; delays of ten years in delivery of houses by the IVIMA in the district of Valverde, in Fuencarral, Madrid; collapse in the offices

of INEM and SOIB, in Palma de Mallorca; different situations related to barriers to the handicapped or disabled; for example in the issuing of tickets by RENFE; or investigations

into the conditions in which sea transport is provided for hazardous goods in the proximity of Spanish coasts, in relation to the ships used.

Table 18 analyses the type of conclusions in individual and ex officio complaints, detailing the Administrations at which they were directed.

**TABLE 18. Type of conclusions in individual and ex officio complaints, according to Administrations**

Administration	Correct action		Corrected		Not corrected		Others		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%
General Administration of the State .....	692	71.2	253	26.0	9	0.9	18	1.9	972	100.0
Autonomous Administration.....	142	52.8	108	40.1	1	0.4	18	6.7	269	100.0
Local Administration.....	114	55.6	84	41.0	2	1.0	5	2.4	205	100.0
State Public Prosecutor .....	85	92.4	5	5.4	1	1.1	1	1.1	92	100.0
Investigation unnecessary.....	128	45.2	52	18.4	47	16.6	56	19.8	283	100.0
Other public bodies .....	52	58.4	26	29.2	0	0.0	11	12.4	89	100.0
Various Administrations .....	36	73.5	8	16.3	2	4.1	3	6.1	49	100.0
<b>TOTAL.....</b>	<b>1,249</b>	<b>63.7</b>	<b>536</b>	<b>27.4</b>	<b>62</b>	<b>3.2</b>	<b>112</b>	<b>5.7</b>	<b>1,959</b>	<b>100.0</b>

**TABLE 19. Type of conclusions in individual and ex officio complaints made to the General Administrations of the State**

General Administration of the State	Correct action		Corrected		Not corrected		Others		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%
Peripheral administration .....	122	77.2	35	22.2	1	0.6	—	—	158	100.0
Public Administrations.....	2	40.0	2	40.0	—	—	1	20.0	5	100.0
Agriculture, Fisheries and Food .....	1	50.0	1	50.0	—	—	—	—	2	100.0
Foreign Affairs .....	54	87.1	6	9.7	1	1.6	1	1.6	62	100.0
Science and Technology .....	7	70.0	3	30.0	—	—	—	—	10	100.0
Defence .....	12	70.0	2	11.8	1	5.9	2	11.8	17	100.0
Economy .....	11	64.7	5	29.4	1	5.9	—	—	17	100.0
Education, Culture and Sport .....	44	45.9	50	52.1	1	1.0	1	1.0	96	100.0
Public Works .....	52	59.2	34	38.6	1	1.1	1	1.1	88	100.0
Finance .....	42	55.3	33	43.4	1	1.3	—	—	76	100.0
Interior.....	200	83.0	34	14.1	2	0.8	5	2—1	241	100.0
Justice.....	43	82.7	9	17.3	—	—	—	—	52	100.0
Environment.....	7	70.0	3	30.0	—	—	—	—	10	100.0
Health and Consumption.....	6	50.0	5	41.7	—	—	1	8.36	12	100.0
Work and Social Affairs .....	75	70.0	26	24.3	—	—	6	5.6	107	100.0
Various Admins. of the State.....	14	73.7	5	26.3	—	—	—	—	19	100.0
<b>TOTAL.....</b>	<b>692</b>	<b>71.1</b>	<b>253</b>	<b>26.0</b>	<b>9</b>	<b>1.0</b>	<b>18</b>	<b>1.9</b>	<b>972</b>	<b>100.0</b>

**TABLE 20. Type of conclusions in individual and ex officio complaints made to the Autonomous Administrations**

Autonomous Communities	Correct action		Corrected		Not corrected		Others		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%
A.C. of Andalusia.....	3	50.0	2	33.3	—	—	1	16.7	6	100.0
A.C. of Aragón.....	2	66.7	1	33.3	—	—	—	—	3	100.0
Region of Valencia.....	11	73.3	4	26.7	—	—	—	—	15	100.0
A.C. of the Canary Islands .....	2	66.7	1	33.3	—	—	—	—	3	100.0
A.C. of Cantabria.....	7	87.5	1	12.5	—	—	—	—	8	100.0
A.C. of Castilla-La Mancha .....	4	44.4	5	55.6	—	—	—	—	9	100.0
A.C. of Castilla y León .....	13	52.0	10	40.0	—	—	2	8.0	25	100.0
A.C. of Catalonia.....	8	57.1	6	42.9	—	—	—	—	14	100.0
A.C. of Extremadura.....	8	66.7	4	33.3	—	—	—	—	12	100.0
A.C. of Galicia.....	3	27.3	7	63.6	—	—	1	9.1	11	100.0
A.C. of the Balearic Islands.....	2	22.2	7	77.8	—	—	—	—	9	100.0
A.C. of La Rioja.....	1	33.2	1	33.3	—	—	1	33.3	3	100.0
C. of Madrid .....	62	50.8	50	41.0	—	—	10	8.2	122	100.0
Region of Murcia.....	2	25.0	5	62.5	—	—	1	12.5	8	100.0
C. of Navarra .....	—	—	2	66.7	—	—	1	33.3	3	100.0
A.C. of the Basque Region .....	3	75.0	—	—	1	25.0	—	—	4	100.0
Principality of Asturias .....	11	84.6	1	7.7	—	—	1	7.7	13	100.0
A. City of Ceuta .....	—	—	1	100.0	—	—	—	—	1	100.0
A. City of Melilla .....	—	—	—	—	—	—	—	—	—	—
<b>TOTAL.....</b>	<b>142</b>	<b>52.8</b>	<b>108</b>	<b>40.1</b>	<b>1</b>	<b>0.42</b>	<b>18</b>	<b>6.7</b>	<b>269</b>	<b>100.0</b>

# Collective complaints

The state of processing collective complaints at the end of 2003 was as detailed in table 21.

**TABLE 21. Details of the processing of collective complaints at 31 December 2003**

Situation	Number	%
Complaints not admitted...	3,591	77.9
Complaints being processed...	403	8.7
Complaints concluded .....	618	13.4
<b>TOTAL .....</b>	<b>4,612</b>	<b>100.0</b>

The reasons why certain collective complaints were not admitted are contained in table 22.

**TABLE 22. Details of reasons for non-admission of collective complaints**

Reasons	Number
Administrative authority in matters of its competence .....	74
Judicial intervention .....	41
No signs of administrative irregularity .....	60
Other reasons for non-admission .....	2,866
<b>TOTAL .....</b>	<b>3,591</b>

As a synthesis of the above figures, the list of collective complaints presented in 2003 is specified. To these complaints must be added those assigned to collective complaints that were generated in previous years, even though they had been sent to the Ombudsman in the year mentioned.

The summary of the content of collective complaints is as follows:

— 74 people presented a complaint that the **retirement pension** acknowledged by the National Institute of Social Security should reach 100 percent of the salaries that they were receiving at the moment of retirement. The complaint was not admitted since it failed to meet the requisites set down in the Ombudsman Organic Act 3/1981, of 6 April.

— 73 interested persons complained in relation to problems affecting **coeliac sufferers** for

whom they propose the public financing of special products which they need for their nutrition. The complaint was not admitted, due to the fact that the Ministry of Health and Consumption had not previously accepted other similar complaints.

— 39 citizens, after stating that there existed **30,000 embryos left over from assisted human reproduction processes**, displayed their concerns about the destiny of these and their discomfort with their use for research purposes, in that the same results could be obtained by using adult stem cells. The complaint was not admitted since the question raised goes beyond the scope of powers attributed to the Ombudsman.

## Service hours of the Civil Guard

— 26 civil guards stated that, due to the fact of belonging to the Civil Guard for Traffic, they have repeatedly had their requests denied concerning the fact that the hours they do in day academies in firing practice and in replying to letters of defence should be counted as service hours, and therefore be paid. The Ombudsman has formulated a recommendation that such hours should be recognised. The recommendation was accepted and is therefore concluded.

## Vacations and leave for Post Office personnel

— 421 Post Office officials, together with certain union organisations present in the Post Office, formulated complaints with this institution since, in their opinion, the management bodies of the Post Office were making a restrictive interpretation of the legislation in force regarding vacations and leave, which implies a discrimination and inequality of treatment in relation to other State officials by failing to grant them the same rights. The complaint was not admitted

because — the Ombudsman considered — those new benefits acknowledged to officials of the General Administration of the State would need to be incorporated into the actual rules governing over the officials of the Post Office, by means of prior negotiation between the Directorate of Post and the appropriate unions.

— 171 interested persons requested the Ombudsman to intervene in drawing up regulations providing for the **reform of cyclic categories of university teaching** and of university qualifications of an official nature. The complaint was not admitted since it was the competence of the Council of University Coordination and the Government to establish the reform of cyclic categories of university teaching and of university qualifications of an official nature throughout the country.

— 283 people filed a complaint in which they claimed that the problem of the safety of the **Itoiz dam** (Navarra) has not been sufficiently clarified by the competent Administration. At 31 December 2003, a reply is waiting to be received.

— 112 promoters of a complaint and 84 of another refer to the negative results deriving from the process conducted in the State Schools «Monte Anaor» in Alguazas and «Sagrado Corazón» in Lebrilla (Murcia) for the introduction of an uninterrupted working day in them.

— 43 residents of a **housing estate in Majadahonda** (Madrid) filed a complaint on the low level of public transport existing between that estate and Majadahonda.

A new report has been requested of that Town Council and it has been required to reply in relation to the suggestion that was formulated on 8 May 2003. At the end of this year, the complaint was therefore in the processing stage.

— 136 workers of «Unión Naval de Levante, S.A.» who had taken early retirement expressed their disagreement with the final treatment of the sums received for their **early retirement**.

**TABLE 23. Collective complaints received in 2003 and processed with the Administration**

	In processing		Concluded		In suspension		Total	
	Number	%	Number	%	Number	%	Number	%
General Administration of the State .....	52	12.9	280	45.3	—	—	332	32.5
Autonomous Administration .....	—	—	118	19.1	—	—	118	11.6
Local Administration .....	25	6.2	—	—	—	—	25	2.4
State Public Prosecutor .....	—	—	—	—	—	—	—	—
Investigation unnecessary .....	326	80.9	220	35.6	—	—	546	53.5
Other public bodies .....	—	—	—	—	—	—	—	—
Various Administrations .....	—	—	—	—	—	—	—	—
<b>TOTAL .....</b>	<b>403</b>	<b>100.0</b>	<b>618</b>	<b>100.0</b>	<b>—</b>	<b>—</b>	<b>1,021</b>	<b>100.0</b>

TABLE 24. Details of the processing of collective complaints before the Autonomous Communities, in 2003

Autonomous Community	Number	%
Region of Murcia .....	112	94.9
Principality of Asturias .....	6	5.1
<b>TOTAL .....</b>	<b>118</b>	<b>100.0</b>

The Secretariat of State for Finance reported that the monthly benefits received by workers in a situation of early retirement, up to retirement age, has, for the purposes of settlement of Personal Income Tax (IRPF), the consideration of being regular income, and they therefore cannot benefit from the 40 percent reduction contained in section 17.2.a) of the Personal Income Tax Act 40/1988, of 9 December, and other tax regulations, in force since 1 January 2003. Therefore, the recommendation was not accepted.

### Social rights

— 135 people filed a complaint by which they requested the Institution of the Ombudsman to act before the public administrations so that the **rights to education, to a decent home, to work and to sufficient remuneration**, as contained in our Constitution, could be made a reality.

This could not be admitted as a complaint because, when assessing the possibilities of action by the Ombudsman, account had to be taken that what our fundamental regulating text guarantees for citizens in relation to social rights is that the public powers must orientate their actions in harmony with the

TABLE 25. Details of the processing of collective complaints before the General Administration of the State, in 2003

Ministries	In processing	%	Concluded	%	Total	%
Economy .....	—	—	277	99.0	277	83.5
Finance .....	—	—	3	—	3	0.9
Interior .....	26	50.0	—	—	26	7.8
Various Administrations....	26	50.0	—	1.0	26	7.8
<b>TOTAL.....</b>	<b>52</b>	<b>100.0</b>	<b>280</b>	<b>100.0</b>	<b>332</b>	<b>100.0</b>

guiding principles of social and economic policy. Consequently, the acknowledgement, respect and protection of social rights must be present in positive legislation, judicial practice and the actions of the public powers, and may only be pleaded before the ordinary jurisdiction in accordance with the provisions of the laws developing them.

The above notwithstanding, the Ombudsman fully shares the urgency of a reorientation of housing policy and the policies of administrations, of policies for sufficient employment and that the right to education should be guaranteed in all cases and situations.

### Referendum requested on the Iraq War

— 1,734 citizens, which were grouped by this Institution into two collective complaints of 1,679 and 55 senders, respectively, stated their disagreement with the situation and war in Iraq, and asked for a referendum in order to take decisions.

The complaints were not admitted, since they exceeded the scope of competence of the Ombudsman, and replies were sent to complainants informing them that the competencies of this Institution did not include those of setting policy guidelines, or promoting the call

for a consultation of the people in relation to decisions adopted by the powers of the State, or of questioning these decisions by means of appeal before the Constitutional Tribunal for which in the present case, at least so far, no procedural route at all appears to exist.

— 25 owners of plots of land belonging to the *Urtajo urban estate* in the municipality of Colmenar de Oreja (Madrid) filed a complaint occasioned by the Town Council against certain appeals formulated in 2002 against an agreement of the Compensation Board of that urban estate.

The Town Council agreed to accept the appeal presented by those who had filed the complaint.

### Ill-treatment of children

— 41 people filed complaints in order to express their concern for children who are the object of ill-treatment, especially with regard to child minders or carers, criticising court decisions in which people who cause ill-treatment to babies and children were set free.

The complaint could not be admitted since it concerned facts which, by their nature, were known to the judicial bodies.

## Complaints from previous years

The full report gives details of complaints deriving from previous years which had already been admitted but not closed, along with those which, also coming from previous years, had not yet been admitted until the year that we are concerned with, those which had been reopened for various reasons, even though they had been closed, or replies when they were in a state of suspension.

TABLE 26. Complaints whose investigation was initiated in 2003 or reopened

Type of complaint	Admissions	Reopenings	Reinstatements	Total
Individual .....	892	348	24	1,264
Collective .....	1,302	—	—	1,302
<b>TOTAL.....</b>	<b>2,194</b>	<b>348</b>	<b>24</b>	<b>2,566</b>

TABLE 27. State of processing of individual complaints coming from years prior to 31 December 2003

	In processing		Concluded		In suspension		Defect of form		Total	%
	Number	%	Number	%	Number	%	Number	%		
Admissions.....	244	27.4	602	67.5	13	1.5	33	3.6	892	100.0
Reopenings .....	200	57.4	146	42.0	2	0.6	—	—	358	100.0
Reinstatements .....	6	25.0	17	70.8	1	4.2	—	—	24	100.0
<b>TOTAL.....</b>	<b>450</b>	<b>35.6</b>	<b>765</b>	<b>60.5</b>	<b>16</b>	<b>1.3</b>	<b>33</b>	<b>3.6</b>	<b>1,264</b>	<b>100.0</b>

# Resolutions formulated in relation to complaints

Table 28 shows the number and percentages of resolutions issued, divided by type, to the public administrations. These figures do not include resolutions produced as a consequence of the monographic study on interim officials, which was conducted in the Institution of the Ombudsman and led to a number of these resolutions, which is contained in the full report and in the following tables.

If the above figures are examined in line with the Administration to which the resolutions were sent, then the result can be seen in table 29.

As far as suggestions are concerned, the distribution and situation are provided separately in table 30.

## Recommendations arising from extraordinary studies

In 2003, the Ombudsman drew up a monographic study with the title «Interim officials and temporary staff: provisionality and temporality in public employment» which, to quote verbatim from the introduction to the published book: «... seeks to tackle on a monographic basis the problems inherent to the existence of very

numerous groups of public employees performing their duties in the different administrations and public entities and bodies on an interim basis or who work in the public sector with temporary or short-term contracts, sometimes for long periods, with which situations are produced that are incompatible with the legal framework that must govern over access and permanence in the civil service.»

As a consequence of this work, 168 recommendations were drawn up which, due to their specific characteristics, are not included in the statistics that have been offered so far, but which are specifically detailed in the full report.

**TABLE 28. Resolutions presented to the Public Administrations by type and situation of complaints at 31 December 2003**

Resolutions	Admitted		Rejected		Pending		Total	
	Number	%	Number	%	Number	%	Number	%
Recommendations.....	71	46.1	37	24.0	46	29.9	154	100.0
Suggestions.....	105	46.0	51	22.4	72	31.6	228	100.0
Reminders of legal duties .....							103	100.0
Warnings .....							1	100.0
<b>TOTAL .....</b>	<b>176</b>	<b>36.2</b>	<b>88</b>	<b>18.1</b>	<b>118</b>	<b>24.3</b>	<b>486</b>	<b>100.0</b>

**TABLE 29. Resolutions presented to the Public Administrations. Situation at 31 December 2003**

Administrations	Formulated		Admitted		Rejected		Pending	
	Number	%	Number	%	Number	%	Number	%
General Administration of the State .....	94	100.0	42	44.7	27	28.7	25	26.6
Autonomous Administration.....	32	100.0	16	50.0	7	21.9	9	28.1
Local Administration .....	25	100.0	12	48.0	3	12.0	10	40.0
Investigation in various bodies .....	3	100.0	1	33.3	—	—	2	66.7
<b>TOTAL .....</b>	<b>154</b>	<b>100.0</b>	<b>71</b>	<b>46.1</b>	<b>37</b>	<b>24.0</b>	<b>46</b>	<b>29.9</b>

**TABLE 30. Suggestions presented to the Public Administrations. Situation at 31 December 2003**

Administrations	Formulated		Admitted		Rejected		Pending	
	Number	%	Number	%	Number	%	Number	%
General Administration of the State .....	99	100.0	48	48.5	29	29.3	22	22.2
Autonomous Administration.....	48	100.0	20	41.7	9	18.7	19	39.6
Local Administration .....	80	100.0	37	46.2	13	16.3	30	37.5
Investigation in various bodies .....	1	100.0	—	—	—	—	1	100.0
<b>TOTAL .....</b>	<b>228</b>	<b>100.0</b>	<b>105</b>	<b>46.0</b>	<b>51</b>	<b>22.4</b>	<b>72</b>	<b>31.6</b>

**TABLE 31. Resolutions presented to the Public Administrations, formulated in the monographic study on interim officials. Situation at 31 December 2003**

Administrations	Formulated		Admitted		Rejected		Pending	
	Number	%	Number	%	Number	%	Number	%
General Administration of the State .....	8	100.0	3	37.5	1	12.5	4	50.0
Autonomous Administration.....	159	100.0	25	15.7	—	—	134	84.3
Investigation in various bodies .....	1	100.0	—	—	—	1	100.0	
<b>TOTAL .....</b>	<b>168</b>	<b>100.0</b>	<b>28</b>	<b>16.7</b>	<b>1</b>	<b>0.6</b>	<b>139</b>	<b>82.7</b>

# Administrations that have failed to comply with the obligation to collaborate with the Ombudsman

Listed below is the attitude and behaviour towards the institution of the Ombudsman displayed by the different Public Administration, entities and organs which have either failed to provide a response to information requested of them or have done so subsequent to various demands or recommendations.

Section 18.2 of the Ombudsman Organic Act 3/1981, of 6 April, establishes: «The refusal or negligence of the official or of his superiors responsible for sending the initial report requested shall be able to be regarded by the Ombudsman as hostile to and hindering his functions, making this publicly known immediately and highlighting this assessment in its annual or special report, as appropriate, made to Parliament.»

Likewise, section 19 regulates the obligation on all public powers to provide preferential and urgent help to the Ombudsman in his investigations or inspections.

Pursuant to which, three chapters are now presented:

## Hindering Administrations

These are those which have hindered or obstructed the work of the Ombudsman, either because they have done so systematically or because they have undertaken some action which, due to being negative, deserves to be highlighted.

### Autonomous administration

**Region of Murcia**, Board of Public Works: relating to dredging in the La Isleta yachting club.

### Local administration

— **Barcelona City Council**, on acoustic contamination caused by refuse trucks.

— **Becerril de la Sierra Town Council (Madrid)** relating to defective rendering of public services and in relation to asphaltting in a housing estate.

— **Cartagena City Council (Murcia)** on a wastewater treatment plant in Mar Menor.

— **Hoyacasero Town Council (Ávila)** on demolition of a pavement due to widening of a road.

— **Jalón Town Council (Alicante)** relating to costs of a housing estate.

— **Ladrillar Town Council (Cáceres)** relating to municipal obstacles in the street preventing access to private property.

— **Lardero Town Council (La Rioja)** relating to disturbances produced by the opening and closing mechanism of a garage door.

— **Las Rozas Town Council (Madrid)** relating to urban development infringements: breach of a demolition order for execution of works without a licence; on the undefined cost of expenses of a housing estate and on general denouncements made in another housing estate.

— **Miajadas Town Council (Cáceres)** in the 2002 Report the will to hinder the action of the Ombudsman in case 0021586 was already made clear. After having received a first report, certain investigations were carried out and demands were made. Having received the corresponding report from this Council recommendations were made along with three demands for each of them, between the years 2002-2003, without having received any reply.

— **Navalafuente Town Council (Madrid)** relating to delays in possession of a house.

— **Pozuelo de Alarcón Town Council (Madrid)** relating to a denouncement of administrative silence and on the opening licence for an old people's home.

— **Real de Montroi Town Council (Valencia)** relating to denouncement of illegal works.

— **Soto del Real Town Council (Madrid)** relating to disturbances produced by a pub.

— **Sahagún Town Council (León)** relating to the height of a building exceeding regulations.

— **San Javier Town Council (Murcia)** relating to denouncement of illegal works without their being demolished.

— **Santa Cruz de Tenerife City Council**, relating disturbances caused by a pub.

— **Yeles Town Council (Toledo)** relating to the moving of a well in a plot of land.

### Others

— **Los Cerrajones Irrigators Community, Alora (Malaga)** relating to taking of water on a plot of land.

## Complaints which have had no reply in 2003, following the third demand

### General Administration of the State

#### *Ministry of Education, Culture and Sport*

— **Directorate-General of Universities**, information was requested on development or prospects for the creation of a degree qualification in the subject of Obstetrics-Gynaecology.

#### *Ministry of Work and Social Affairs*

— **Secretariat General of Employment**, a report was requested on 17 December 2002, in relation to the complaint filed by a citizen denouncing the fact that, for the granting of accreditation as auditor on health and safety at work, the Autonomous Community of La Rioja required a liability policy to be taken out for a sum of 200 million pesetas as a prior requisite.

### Autonomous administration

#### *Autonomous Community of Canary Islands*

— **Board of Health. Canary Island Health Service**, a report was requested on 21 January 2003 in relation to the denouncement brought by a citizen stating that the maternity/children's hospital of Las Palmas de Gran Canaria does not permit relatives to stay with children during admission.

#### *Autonomous Community of Galicia*

— **Board of Environment. Waters of Galicia**, a report was requested on 10 April 2003, relating to a fish preserves factory.

#### *Principality of Asturias*

— **Board of Housing and Social Welfare**, a report was requested on 4 February



*Lack of places in public residences for the elderly and deficiencies in the care they provide aroused numerous complaints.*

2003 on a complaint filed by a trade union association denouncing the deficiencies existing in an old people's home run by the autonomous body *Residential Establishments for Old People of Asturias*.

## Local Administration

— **Barcelona City Council**, an expansion of a report was requested in relation to the transfer of buses and subsequent demolition of the depot of the company Transportes de Barcelona, S.A.

— **Barcena de Cicero Town Council (Cantabria)** a report was requested in relation to the absence of a drinking water service in a house and on the poor state of conservation of the local road.

— **Benidorm Town Council (Alicante)** report on delay in replying to a case of proprietary responsibility for damage produced as a consequence of a fall in the promenade.

— **Cartagena City Council (Murcia)** in relation to the lack of reply to various claims made on account of the dangerous situation of certain pedestrian accesses close to a primary school and to a high school in La Manga del Mar Menor, and another report relating to the processing of expropriation of land for the construction of accesses to a high school and later execution of the works on their upgrading.

— **Estepona Town Council (Malaga)** on return of a deposit furnished in view of the cancellation and suspension of payments by way of the Tax on Land Value Increase without any reply having been made up to the moment in which the complaint had been filed.

— **Fisterra Town Council (A Coruña)** in relation to works carried out for unblocking a drainage pipe that was causing water to enter certain homes, without any final solution to the problem having been reached.

— **Galapagar Town Council (Madrid)** on steps carried out for providing a solution to the problems of drainage existing in various housing estates.

— **Jaén City Council**, on the impossibility of a citizen making charges in the Head Office of the Local Police on account

of the behaviour of certain officers of the municipal police due to their considering that the charge was not correct, their refusal to identify themselves and their attempt to hinder their identification by hiding their badge in their shirt pockets.

— **Llanes Town Council (Asturias)** on dumping on the beach.

— **Lugo City Council**, on municipal authorisation granted to a neighbour to locate a stop-cock for the supply of water on an adjoining plot of land and on the refusal to grant access to the owner of the plot to the data held in the file.

— **Málaga City Council**, relating to the poor state of conservation of the sports area annexed to the Guadaljaire sports centre.

— **Medina de Pomar Town Council (Burgos)**, on deficient attention provided to Losa District Council in relation to minimum services and refurbishment of the Romanesque church.

— **Mejorada del Campo Town Council (Madrid)** on the lack of response and rejection of a modification to the existing project for the correct execution of works on gymnasiums in the schools Pablo Picasso and Henares, in that municipality.

— **Miajadas Town Council (Cáceres)** a recommendation was drawn up on 1 August 2002 so that, when a police officer is involved in criminal actions due to events which might result in liabilities against him a disciplinary file should be opened which would remain suspended until the criminal proceedings have been concluded by means of a firm judgment, all this with the aim of preventing the possible infringement from exceeding the time bar.

— **Murcia City Council**, a report was requested (expansion of investigation), on

11 July 2003, in relation to the withholding of authorisation by a local mayor to a neighbours association to hold its meetings in the premises of the municipal centre.

— **Noja Town Council (Cantabria)** a report was requested on 3 January 2003, in relation to the delay in requesting registration in the municipal census.

— **Oviedo City Council**, on lack of public lighting for the road joining Morente with La Manjoya.

— **Puente de Domingo Flórez Town Council (León)** regarding the danger represented by the transit of large lorries through Santa Lavilla (La Vegas de Yeres) due to the narrowness of the road, in addition to causing continuous damage to the balcony of a house.

— **Ruanes Town Council (Cáceres)** on delay in the delivery of a certification of enrolment in the municipal census. A report was also requested on failure to summon a councillor to Plenary Meetings and on the absence of a reply to letters sent by him asking for information.

— **Sieteiglesias Town Council (Madrid)** relating to the establishment of road signs which do not respect the boundaries of a private property.

— **Talamanca del Jarama Town Council (Madrid)** on a complaint formulated by a citizen denouncing the abuse of smoking in the old people's social centre in that town.

— **Torrelavega Town Council (Cantabria)** on the lack of a water connection for various homes located in the lower part of La Montaña, in spite of having paid the corresponding fees to the concessionaire company.

— **Villayón Town Council (Asturias)** relating to the poor condition of the road joining Villayón to Ponticella.

## Complaints which have been replied to on the third demand

### General Administration of the State

#### Ministry of Public Administrations

— **Government Delegation in the Madrid Community**, a suggestion was made on 3 April 2002 in relation to a request for a residence permit.



— **Sub-Government Delegation in Barcelona**, in relation to a request for a work permit and residence under the general system.

### **Ministry of Economy**

On the amount of retirement pension granted to ex-workers of Standard-ITT, which was acknowledged to them as a consequence of a job regulation action resulting from an industrial reconversion process.

### **Ministry of Education, Culture and Sport**

In relation to the execution of judgments favourable to the interested party.

— **Directorate-General of Universities**, a report was requested (expansion of the investigation) on 3 July 2002, on the need to establish a formula for preventing pregnant women from losing a year for enrolling in specialisation courses in Physical Education of the UNED when they cannot undertake the physical tests that are held each year. A report was also requested on 10 January 2003 on the introduction in the San Antonio Catholic University of Murcia of teaching directed towards obtaining the qualification corresponding to the speciality of Obstetrics-Gynaecology, which will be issued by the University of Siena (Italy).

— **Directorate-General of Books, Archives and Libraries**, on the way of obtaining a birth certificate deposited in the General Archive of the Administration.

— **Directorate-General of Economic Programming, Personnel and Services**, in relation to data corresponding to the working life of a worker who has provided services as an interim teacher.

— **Technical Secretariat General**, on an error in the publication of a resolution in the Official State Gazette in failing to include students of the University of Santiago de Compostela, a situation which has prevented them from receiving the sums that corresponded to them by way of being awarded a grant.

### **Ministry of Public Works**

— **Secretariat of State for Infrastructures**, in relation to the numerous steps undertaken with the Demarcation of State Roads in Eastern Andalusia for collecting the interest accrued due to delays in payment of the assessed price for expropriation of some land, on the occasion of the work Puerto Lumbreras – Baza highway.

— **Port Authority of Castellón**, the investigation was suspended on 30 July 2001, pending a communication from them

of the actions they have performed up to the final solution of the conflict.

### **Ministry of Justice**

— **Secretariat of State for Justice**, relating to the non-execution of a firm judgment for obtaining a higher qualification.

### **Ministry of Health and Consumption**

— **Directorate-General of the National Institute of Health**, on the lack of information regarding an announcement for filling positions for ATS/DUE.

## **Autonomous administration**

### **Autonomous Community of Andalusia**

— **Board of Public Works, Urban Development and Tourism**, on the elimination of architectural barriers.

### **Autonomous Community of Aragón**

— **Board of Environment**, on lack of a reply to a denouncement made against those responsible for the slaughter of an animal by means of shooting it in the locality of Belchite (Zaragoza).

— **University of Zaragoza**, on housing of a student participating in the Socrates-Erasmus programme in a camp site 15 kilometres from the Dutch university where he had to do his studies.

### **Autonomous Community of Asturias**

— **Board of Education and Science**, reports were requested on the possibility of modifying the Resolution of 26 April 2002 regulating the tests for access to training courses on specific vocational training for the purposes of carrying over a positive grade obtained in one of the two parts from one examination session to other successive ones, as well as the holding of those examinations sessions with a frequency greater than annual; in addition to another report so that an assessment could be made of the action undertaken by a school in Oviedo in relation to a pupil who suffered from behavioural disturbances and who was receiving



*Delays in payments of the assessed price for expropriations for public works are the object of complaints to the Ombudsman.*

medical treatment; a situation which the school handled by imposing disciplinary measures on the pupil and punishing him by means of a change of school.

### **Autonomous Community of Canary Islands**

— **Board of Education, Culture and Sport**, in relation to the investigation initiated ex officio due to the denouncement made before the communications media of the precarious situation that the facilities of around 17 state schools in Gran Canaria were in.

### **Autonomous Community of Cantabria**

— **Board of Education and Youth**, a report was requested ex officio in order to learn of the plans of the Board with regard to the creation of new places for the first course of infant education, once the periods established for the full implementation of the educational system regulated in the LOGSE had expired.

### **Autonomous Community of Galicia**

— **Board of Environment**, on delays in resolving a claim for proprietary responsibility as a consequence of damages produced by the overflowing of the Mera Laguna in Oleiros (A Coruña).

### **Community of Madrid**

— **Board of Education**, reports were requested on the lack of reply from the Madrid Institute of Sport, Relaxation and Recreation to a claim for a refund of part of the price paid by way of a 50% reduction in



*Some Town Councils have started to remove antennas for mobile telephony in view of complaints made by citizens to the Ombudsman.*

a residence to a retired person due to complete incapacity. And equally so that the appropriate instructions could be sent with regard to a new assessment of special educational needs of a pupil under an internment system. In the same letter, a study was recommended on the need for internee places in special education centres in the Madrid Community.

— **Board of Work. Directorate-General of Employment**, on the denouncement presented by an association referring to possible discrimination in a job offer, which excluded women and people above the age of 30.

— **Board of Public Works, Urban Development and Transport**, relating to delays in the execution of urban development plans of action (PAU).

### *Region of Murcia*

— **Board of Agriculture**, on ploughing up of irrigated land in a regional park and on access to information with regard to the environment

— **Board of Education and Culture**, reports were requested on: learning the forecasts of the Board regarding the creation of new places for the first course of infant education, once the periods established for the full implementation of the educational system regulated in the

LOGSE had expired; on the need to provide a state school in **Los Alcázares (Murcia)** with new spaces so that schooling could be provided for the ever-growing number of pupils demanding places in the centre, without having to withdraw communal spaces from the use for which they were planned; and in relation to the steps conducted with **Torre Pacheco Town Council** in order to conclude a collaboration agreement aimed at carrying out actions for repairing the structure of infant education buildings in that town.

### *Region of Valencia*

— **Board of Economy, Finance and Employment**, in relation to the denouncement made regarding various public administrations concerning the existence of clandestine workshops for the manufacture of calico cigarettes in the entire area of Valencia, especially in the area of Poblados Marítimos of that city, where 6,000 kilograms of tobacco leaf were arriving which, once processed into cigarettes, were equivalent to the manufacture of 3,700,000 cigarettes a month.

### *Autonomous City of Melilla*

— **Board of Social Welfare and Health**, in relation to irregularities detected in repatriation processes of unaccompanied foreign minors in the Autonomous City of Melilla; and also the steps for obtaining a residence card for unaccompanied foreign minors when they have completed the period of stay needed for obtaining papers.

### *Local administration*

— **A Pobra do Caramiñal Town Council (A Coruña)**, in relation to the appearance of a party in the land register as owner of an urban property of which it is not the owner, due to which A Pobra do Caramiñal Town Council (A Coruña) demanded payment of Property Tax.

— **Alcorcón Town Council (Madrid)**, on a denouncement made against the owner of a potentially dangerous dog due to its being kept off the lead and without a muzzle.

— **Algeciras City Council (Cádiz)**, relating to the effect of the general plan for the drinking water network.

— **Arganda del Rey Town Council (Madrid)**, on disagreement with the refusal of the Town Council to hold an examination on office automation in a competitive examination process.

— **Barcelona City Council**, a reminder of legal duty was issued on 19 June 2003, binding the Mayor's Office to complying with the provisions contained in Act 39/1981 which regulates the use of the Spanish flag and of other flags and other emblems.

— **Bedmar Town Council (Jaén)**, on lack of information to a meeting of neighbours in relation to segregation proceedings concerning municipal districts.

— **Burgos City Council**, relating to disturbances occasioned by a clinic.

— **Busot Town Council (Alicante)**, on a claim regarding a poor refuse collection service and lack of cleaning of containers since more than a year.

— **Camarena Town Council (Toledo)**, relating to compliance with that ordered by the Sub-Government Delegation in Toledo on expiry of an infringement presumably committed by a minor, filing of the actions being brought against him and publication of the child's innocence in the Town Hall notice board.

— **Canencia de la Sierra Town Council (Madrid)**, in relation to the request, made on 26 June 2001, to that Town Council for economic information and budgets for recent years, without obtaining any reply whatsoever.

— **Cartagena City Council (Murcia)**, relating to connection to the drains.

— **Castro Urdiales Town Council (Cantabria)**, on delay in resolution of a case of proprietary responsibility, due to damages suffered as a consequence of a fall on account of the poor condition of a pavement.

— **Ceutí Town Council (Murcia)**, on denouncement due to the installation of sound bands on a road that have occasioned cracks in a building as a result of the vibrations, which gave rise to the opening of proceedings for proprietary responsibility.

— **Gozón-Luanco Town Council (Asturias)**, relating to noise produced by a discotheque.

— **Guadassuar Town Council (Valencia)**, relating to disturbances caused by gases coming from a ceramics factory.

— **Hervás Town Council (Cáceres)**, a recommendation was drawn up to proceed with the compulsory enforcement of a plenary agreement on the ex officio recovery of a local path.

— **Hoyocasero Town Council (Avila)**, in relation to works denounced by the interested party, along with actions carried out by the Territorial Service for the Promotion of Avila, by virtue of a writ filed by the party denouncing supposed urban development irregularities in the construction

of a building located on the C-500 road, section between Venta del Obispo and El Barraco, k.p. 5.750, left hand road-side, urban zone, at a distance of 7.40 metres from the edge of the carriageway for the road.

— **Llanes Town Council (Asturias)**, on the unjustified opening of informative proceedings prior to the instigation of disciplinary measures.

— **Luanco Town Council (Asturias)**, relating to an illegal rubbish dump.

— **Madrid City Council**, reports were requested on: reply to a letter sent to the City Council requesting the declaration of nullity as a matter of law of various penalties due to traffic infringements; on disturbances produced by certain bars; relating to insalubrious housing, on the resolution of disciplinary proceedings brought against a member of the local police; and relating to irregularities in the activity of a garage.

— **Málaga City Council**, on disturbances caused by some cinemas.

— **Manises Town Council (Valencia)**, on the installation of mobile telephony repeaters.

— **Merindad de Valdeporres Town Council (Burgos)**, on a licence for fences.

— **Monachil Town Council (Granada)**, relating to the withdrawal of a vehicle from the door of a hotel because it was hindering the work of removing snow and ice existing in the street and square proving access to the hotel, without any warning being given of this.

— **Móstoles Town Council (Madrid)**, on failure to reply to a letter sent by a citizen stating his claims for compensation in relation to damages suffered by his vehicle caused by some bollards installed within the carriageway.

— **Navalmoral de la Mata Town Council (Cáceres)**, relating to saturation of bars.

— **Orihuela Town Council (Alicante)**, relating to the halting of illegal works.

— **Pancrudo Town Council (Teruel)**, a reminder of legal duties was sent due to lack of an express resolution to an appeal for review.

— **Ponferrada Town Council (León)**, relating to the lack of an identification plate for a street.

— **Pozuelo de Alarcón Town Council (Madrid)**, relating to disagreement with the expiry of an infringement.

— **Pulianas Town Council (Granada)**, on lack of reply to numerous denouncements due to the situation of general abandonment in which a housing estate in the town is to be found.

— **Rafal Town Council (Alicante)**, on lack of reply to various claims in relation to

the deficient state of public lighting and pavements.

— **Requena Town Council (Valencia)**, relating to disturbances due to the installation of a telephone post.

— **Riaza Town Council (Segovia)**, relating to odours generated by a restaurant.

— **San Cristóbal de la Laguna Town Council (Santa Cruz de Tenerife)**, relating to the change of use granted to some land.

— **San Roque Town Council (Cádiz)**, in relation to the lack of reply to a letter sent on 2 April 2001.

— **Santomera Town Council (Murcia)**, relating to disturbances produced by a factory and a farm.

— **Selva Town Council (Balearic Islands)**, on actions undertaken for carrying out works on improvement and maintenance of a public path in poor condition.

— **Torrelavega Town Council (Cantabria)**, relating to the invasion of a public path; on disturbances occasioned by a supermarket; and in relation to the failure to make any express reply to the motion to set aside presented by a citizen.

— **Valdemorillo Town Council (Madrid)**, a report was requested due to failure to reply to a request for information concerning the

post held by a councillor and the date on which he took possession if it, for the purposes of its accreditation in another administrative file.

— **Valle de Mena Town Council (Burgos)**, relating to the installation of mobile telephony antennas.

— **Villamediana de Iregua Town Council (La Rioja)**, on measures that have been adopted or are going to be adopted in order to solve the problem stated by a citizen who denounced before the Town Council problems of access to a piece of land that he owns.

— **Zafrilla Town Council (Cuenca)**, relating to the opening of a bar in a centre for pensioners in that town, the use of which is disturbing the peace of the old people.

## Others

— **Association of Lawyers of Badajoz**, relating to disagreement with the action of an official lawyer in a criminal case.

— **Official Medical Association of Madrid**, on the opening of sanctioning proceedings against a member denounced for presumed professional malpractice as a consequence of which a child died.

# Reminders of legal duties

**The Ombudsman drew up ten reminders of legal duties to as many Ministries of the General Administration of the State; a further ten to different boards of Autonomous Communities and 33 to various town halls and local bodies, in addition to one to each of the Associations of Lawyers of Cáceres, Guadalajara and Oviedo.**

Notable among the reminders of legal duties sent by the Ombudsman to Ministries in 2003 was that addressed to the Technical Secretariat General «on the legal duty of all public powers to provide preferential and urgent help to the Ombudsman in his investigations or inspections.»

The executive or governing bodies of the different departments or boards of Autonomous Communities and Town Halls listed in the full report were reminded of their obligation to reply to requests and claims and resolve on them, in due time and manner;

to correct deficiencies, to reply in writing, expressly and in a reasoned manner, to letters from citizens, to provide efficacious solutions and not to delay proceedings, at all times complying scrupulously with the laws in force in each case and in particular with Act 30/1992, of 26 November, on the Juridical System of Public Administrations and the Common Administrative Procedure.

Details of these reminders of legal duties can be consulted in the full report.

## Warning

**The Ombudsman has sent a warning to Alarcón Town Council (Madrid) on the duty to provide help for this Institution due to its issuing a report without taking the background of the case into consideration, as if «the aim were to get out of a fix.»**

# Recommendations and suggestions admitted

In 2003, the Ombudsman sent out 654 resolutions to different Public Administrations. Of them, 71 recommendations and 105 suggestions were accepted. At the end of the year, there were 45 and 72, respectively, pending a reply. 37 recommendations and 51 suggestions were later on rejected. This calculation does not include recommendations and suggestions issued with the monographic report on «Interim officials and temporary personnel: provisionality and temporality in public employment.»

Below, we offer a summary of the recommendations admitted. The list of those rejected or pending can be consulted in the full report offered in the Ombudsman's website *www.defensordelpueblo.es*. Some of those pending were replied to in 2004 in the manner stated in the full report.

## General Administration of the State

### Ministry of Public Administrations

**To the Minister**, in order to demand an academic qualification of intermediate grade or a higher grade for gaining access to the **subscale of Secretariat-Auditing**.

To the Government Delegation in the Autonomous City of Ceuta in order to adopt the appropriate measures for **improving the processing of requests for asylum**; for detecting situations of saturation of the service with greater fluency; and so that that a record can be kept of the reason which it is considered necessary to commence expulsion proceedings for applicants for asylum who have had their request rejected.

**To the Government Delegation in the Autonomous City of Melilla**, so that, in cases of requests from citizens who have been cared for by the Spanish Administration (especially minors) for a sufficient length of time for having acquired the right to obtain papers, they are not required to produce documents which have to be in possession of the Administration, and that they provide those citizens with those documents.

**To the Sub-Government Delegation in Girona**, on instructions to the different units coming under it with regard to admission and registration of applications, for example for the ratification of foreign studies.

### Ministry of Foreign Affairs

**To the Directorate-General of Consular Affairs and Protection of Spaniards abroad**, for the Spanish Embassy in Accra (Ghana) to issue its visa decisions in Spanish, notwithstanding the fact that when the interested party is unfamiliar with that language then it should be accompanied by a translation.

**Another recommendation is that, in the election of councillors for the Councils of Spanish Residents, the necessary measures should be adopted for ensuring that electors have an effective knowledge of that process**, with special attention being paid to participation fees in associations and

TABLE 1. Resolutions formulated before the Public Administrations.  
By class and situation at 31 December 2003

Resolutions	Admitted		Rejected		Pending		Total	
	Number	%	Number	%	Number	%	Number	%
Recommendations...	71	46.1	37	24.0	46	29.9	154	100.0
Suggestions .....	105	46.0	51	22.4	72	31.6	228	100.0
Reminders of legal duties.....							103	100.0
Warnings.....							1	100.0
<b>TOTAL.....</b>	<b>176</b>	<b>36.2</b>	<b>88</b>	<b>18.1</b>	<b>118</b>	<b>24.3</b>	<b>486</b>	<b>100.0</b>

the geographical spread of Spanish residents in each zone.

### Ministry of Defence

**To the Under-Secretariat, the following recommendations:**

**Economic repercussions of the succession in command; publication of a draft bill for adapting the legal code of national defence and the system of rights and duties of military personnel to the model of the professional Armed Forces;** itemisation of sums demanded in requests to **abandon the status of military personnel** and on the immediate correction of **errors in pay-rolls** in order to avoid annoying situations and unnecessary injury.

### Ministry of Education, Culture and Sport

To the Under-Secretariat, on upgrading of the qualification of **Specialist Technician in Vocational Training to the qualification of higher technician in the corresponding speciality**.

The Directorate-General of Universities accepted the recommendation on breach of the bases of announcing grants for the Spanish Seneca Assistance Programme and took on the commitment to rigorously observe the bases of the corresponding announcements.

### Ministry of Public Works

The **Secretariat of State for Infrastructures** accepted the recommendation on

insecurity of the **access to the Mariblanca housing estate in Torres de la Alameda (Madrid)**, as a consequence of the construction of the roadbed for the High Speed Line Madrid-Zaragoza-Barcelona-French Border.

The **Secretariat of State for Infrastructures**; the Spanish Authority for Airports and Air Navigation accepted the recommendation on **further details for concerned parties regarding the use of land subject to expropriation, necessary for the development of the Master Plan for Madrid-Barajas Airport**.

### Ministry of Finance

The **Under-Secretariat. Department of Human Resources and Economic Administration** of this department accepted the recommendation on **compliance of the period set down in certain announcements for recruitment**.

### Ministry of Interior

The **Minister** accepted the recommendation for granting visa exemption for the **spouse of a Community resident** residing outside Spain, without any need for the required period of one year of co-habitation required having to take place in Spanish territory.

For its part, the **Directorate-General of Aliens and Immigration**, following a visit to Ceuta paid by the First Deputy Ombudsman, **María Luisa Cava de Llano**, accepted a recommendation from the Ombudsman

**not to delay the formalisation of requests for asylum**; that a record should be made of the first appearance independently of the format in which it is presented; that the right of applicants should be preserved so that delays attributable to the administration do not cause them any injury; and that the express resolution of petitions should be made.

The **Directorate-General of the Civil Guard** admitted the following recommendations: **for «succession in command» times to be assessed in the professional career of civil guards; for times spent in firing practice or in replying to letters of defence to be calculated as hours of service; and for attendance at training courses, transfer due to residence or forced transfer due to residence to be indemnified without delay.**

The **Directorate-General of Penitentiary Institutions** accepted the following recommendations:

— The development of intervention programmes favouring the **re-education and social re-insertion of gypsy women in prison**; on the studies of personnel required in order to know what the **necessary increase is in officers** in order to prevent in whatsoever case the custody and protection of groups of more than a hundred inmates being assigned to just one officer and, as the case might be, on the passing on of the appropriate reports and proposals on **staff increases** to the competent authorities. Penitentiary Institutions also accepted the Ombudsman's recommendation **on the training of prison officers in the use of extinction and self-protection elements so that they could act efficiently in the event of a fire in cells.** And equally, the recommendation on issuing of internal rules which would clearly determine for penitentiary purposes the nature of certain **postal mailings**, so as to avoid the situation in which the same mailing has a different nature and effects in terms of reception by the prisoner depending on the prison to which it is being sent. Also accepted was the recommendation on conservation of **urine samples of inmates** in penitentiary centres so that counter-analysis can be carried out as appropriate; as well as the recommendation that inmates should be informed of their **Social Security membership number**; on the correction of certain defects in relation to the practice of notifying inmates of administrative resolutions. And finally, Penitentiary Institutions accepted the recommendation on **expansion of the range of recreational material on offer in Villabona penitentiary centre** and the increase, both in that centre and in others

of similar characteristics, of the number of specialist professionals in sports activities.

— For its part, the **Directorate-General of Police** admitted the recommendation to publish new instructions on the management of **police data files of a personal nature** so that it can be brought into line with the existing Organic Act 15/1999, of 13 December on Protection of Personal Data; to be able to attend at any moment to the claims of associations and unions of the Police; and also that rules should be issued for notification to police officers when they are summoned for a check-up when they are at home or on sick leave; also that rules should be issued on the action of the National Police so that they can be especially careful not to limit the right to freedom of expression of citizens in demonstrations.

The **Directorate-General of Traffic** for its part accepted the following recommendations:

— Instructions for the Provincial Superintendencies of Traffic to adequately inform interested parties who so require on the procedure and steps they must follow in order not to continue appearing as the **registered owner of a vehicle** which he or she had transferred prior to the coming into force of the General Regulation on Vehicles in compliance with the obligations which the Highway Code imposed on transferors; recommendation on the importance of instructions to Provincial Superintendencies of Traffic on the **automation of denouncements**; on the issuing of specific instructions to the Provincial Superintendency of Traffic of A Coruña for it to verify whether writs of allegations have been presented; and on instructions to all Provincial Superintendencies of Traffic so that, in **denouncements formulated voluntarily**, interested parties can be informed of that circumstance, sending the accused a copy of the charge sheet as appropriate.

#### *Ministry of Justice*

The Ministry accepted a recommendation from the Ombudsman to modify section 525 of the Civil Procedure Act with the aim that **judgments relating to fundamental rights affecting honour, privacy or self-image should not be provisionally enforceable.**

#### *Ministry of the Presidency*

A recommendation from the Ombudsman was accepted concerning the **internal**

**investigation into the administrative services in the prevention, detection and reaction towards the catastrophe caused by the wreck of the oil tanker «Prestige».**

#### *Ministry of Health and Consumption*

The **Under-Secretariat** accepted a recommendation on the **urgency of drawing up the draft bill on the Framework Statute for Personnel of the National Health System.**

The **Directorate-General of Pharmacy and Health Products** accepted a recommendation on the application of Royal Decree Act 5/2000, of 23 June, for the **pharmaceutical margins and billing to Social Security by pharmacies.**

#### *Ministry of Work and Social Affairs*

The **Secretariat of State for Social Security** admitted a recommendation on **membership of the General System of Social Security for personnel of the Autonomous Community of Navarra and of its local bodies.**

#### **Autonomous administration**

##### *Autonomous Community of Aragón*

The **University of Zaragoza** accepted a recommendation from the Ombudsman on **deletion of personal data in the copy of the registration form intended for payment of academic fees by students.**

##### *Principality of Asturias*

The **Board of Education and Culture** accepted a recommendation on **compliance with the principles of transparency and speed in the processes of challenging public tender competitions.**

The **Board of Health and Health Services. Health Service** accepted a recommendation on the need to adopt **safety and surveillance measures for psychiatric patients** admitted into the Psychiatric Unit of the hospital of San Agustín de Avilés, especially in the event of there being any danger of self-injury.

##### *Autonomous Community of Castilla y León*

The **Board of Family and Equal Opportunities. Social Services Management** accepted a recommendation on the advisability of

public bodies requesting, on behalf of minors being cared for, of the **allowance per child in one's charge provided for in section 180 et seq. of the revised text of the General Social Security Act**, independently of whether or not they are in a situation of having been taken in by a family.

#### *Autonomous Community of Catalonia*

The **Department of Justice and Interior** accepted a recommendation on modification of the criterion currently being followed by the **Catalan Traffic Service** of not including in the sanctioning files the letters of pleas presented by interested parties in which an error has been made in transcribing the file number, when sufficient data is included in that letter for enabling the file to be identified.

The **Department of Work, Industry, Trade and Tourism** of Catalonia accepted a recommendation on **availability of versions in Spanish (as well as in Catalan) of certain forms in the Job Offices of the Regional Government**.

#### *Autonomous Community of Galicia*

The **Presidency of the Council of Galicia** accepted a recommendation on **internal investigation of the administrative services in the prevention, detection and reaction with regard to the catastrophe caused by the wreck of the «Prestige» and the sending of the results to different institutions**.

The **Board of Economy and Finance, Territorial Delegation in A Coruña** accepted a recommendation from the Ombudsman on **linguistic rights of interested parties in the field of administrative proceedings**.

The **Board of Environment** accepted another recommendation on **obligation on regulatory development and autonomous supervision of the activity of protection against noise in a Town Council**.

The **Board of Health and Social Services. Directorate-General of the Human Resources Division of the Galician Health Service** accepted a recommendation from the Ombudsman on **inclusion in temporary recruitment lists**.

#### *Community of Madrid*

The **Board of Environment** accepted a recommendation on **autonomous supervision of the municipal activity of**

**protection against noise in Parla Town Council**.

The **Board of Health** accepted a recommendation on the advisability of initiating actions for the **creation of specific care units for brain damage in the single health system for public use of Madrid**.

#### *Region of Murcia*

The **Board of Education and Culture** accepted a recommendation on **the right of candidates for interim officials not to present documents which are already in the possession of the Administration**.

The **Board of Health** accepted a recommendation on **irregularities in the occupancy by statutory personnel of certain civil servant posts without the necessary legal coverage**.

#### *Region of Valencia*

The **Board of Culture, Education and Science** accepted a recommendation on the **assessment of academic qualifications obtained abroad**.

The **University of Valencia** accepted a recommendation on **recruitment of teaching staff**.

#### **Local administration**

**Ceutí Town Council (Murcia)** admitted a recommendation on resolution and notification to the interested party of a case on **proprietary responsibility**.

**Fuente del Maestre Town Council (Badajoz)** accepted a recommendation on disciplinary responsibility of officials of the Local Police for **guaranteeing the free exercise of the rights and freedoms and citizen security**.

**Guadalajara City Council** accepted a recommendation on defect in the notification of the **order for execution of conservation works on properties**.

**Hervás Town Council (Cáceres)** accepted a recommendation on the ex officio **recovery** by the Council of a **public path occupied by a neighbour**.

**Logroño City Council** took on the **recommendation** on a denouncement by the Local Police of Logroño City Council of concerning **presumed infringements of the Criminal Code not related to vehicle traffic, committed by citizens, during the course of actions related to traffic control**.

**Madrid City Council** accepted a recommendation on the issuing of appropriate instructions so that, in all cases, prior to proceeding to **remove a vehicle** the owner of it should be notified of the processing of the corresponding case.

**Navalvillar de Pela Town Council (Badajoz)** admitted a recommendation so that, in the **recruitment of official personnel and of labourers** the principles of equality, merit, ability and publicity should be respected.

**Oviedo City Council** admitted a recommendation for adopting the appropriate measures so that the **switchboard of the Local Police receiving calls from citizens** can put them in touch with the corresponding service of the Local Police, and also that the appropriate instructions should be issued for the commencement of sanctioning proceedings when knowledge is had of an infringement of the provisions of the Traffic, Circulation of Motor Vehicles and Road Safety Act.

**Palma de Mallorca City Council** admitted a recommendation on the initiation of sanctioning proceedings for infringement of section 72.3 of the Traffic, Circulation of Motor Vehicles and Road Safety Act, so that they can be initiated when it becomes known that the owner of a vehicle has allowed a period of fifteen days granted for that purpose to pass, **without having provided details of the driver of his or her vehicle**.

**Santander City Council** took on a recommendation on **prevention and correction of the noise generated by disturbing activities**.

**Las Torres de Cotillas Town Council (Murcia)** accepted a recommendation on the duty to **inform workers' representatives of its staff policy**.

The **Provincial Deputation of Tarragona** took on a recommendation on bringing the **action of the Local Tax Management Agency** of that Deputation into line with the procedural provisions in force, relating to the language of administrative procedures.

#### **Others**

The **Association of Lawyers of Cádiz** took on a recommendation in relation to the way in which free legal aid is provided for immigrants in the judicial district of Algeciras. The recommendation was passed on by the Ombudsman following an investigation in order to learn of the **legal aid provided for a group of aliens taken to Algeciras on 1 March 2003 after being detained in Palos de la Frontera**.

## 228 suggestions

In the report from the Ombudsman for 2003, 228 suggestions are listed – see the complete version in the website *www.defensorpueblo.es* – to different administrations, 105 of which were accepted and, at the end of the year, 72 were pending a reply and 51 had been rejected.

Among those suggestions admitted were a great many that concerned procedures affecting applicants for asylum, immigrants and the processing of their work and residence permits, expulsion as the case might be, granting of nationality, entry into the census of residents, authorisation to travel, etc.

Suggestions were also made to the Ministry of Interior, which were admitted – details of which can be consulted in the full report – in relation to the actions of the Civil Guard and of the National Police when making

arrests, or in relation to the Directorate-General of Traffic on questions related to fines.

There are other suggestions on questions of procedure or application of the rules to different ministries, autonomous communities and local councils. Also standing out are various suggestions on the Environment, Official Protection Housing, payment of the assessed price without delay to citizens subject to expropriations on account of public works, and also suggestions to different local councils in relation to various services or the proper application of existing regulations.

*The application of traffic fines by Local Councils originates numerous complaints to the Ombudsman. Photo EFE.*



## Appeals of unconstitutionality

**D**uring the year 2003, the Ombudsman was asked to file appeals of unconstitutionality against different aspects of the following Acts:

— Act 36/2002, of 8 October, on modification of the Civil Code in matters of nationality.

— Act 44/2002, of 22 November, on Reform Measures to the financial system.

— Act 46/2002, of 18 December, on Partial Reform of Personal Income Tax and by which the laws on corporation tax and on non-residents income tax are modified.

— Organic Act 10/2002, of 23 December, on Educational Quality.

— Act of Castilla y León 21/2002, of 27 December, on Economic, Fiscal and Administrative Measures.

— Act 52/2002, of 30 December, on the State General Budgets for 2003.

— Act 53/2002, of 30 December, on fiscal, administrative measures and those of a social nature.

— Act of the Parliament of Cantabria 11/2002, of 23 December, on fiscal measures in matters of taxes ceded by the State.

— Act of the Principality of Asturias 15/2002, of 27 December, on budgetary, administrative and fiscal measures.

— Act of Galicia 9/2002, of 30 December, on town planning and protection of the rural environment.

— Act of the Parliament of Valencia 4/2003, of 26 February, on Public Events and Establishments and Recreational Activities.

— Organic Act 1/2003, of 10 March for the guarantee of democracy in Local Councils and the safety of councillors.

— Act of Castilla y León 11/2003 of 8 April, on environmental protection.

— Act 29/2003, of 8 October, on partial modification to the Land Transport Planning Act.

None of these requests for appeal was upheld by the Ombudsman since he failed to find sufficient grounds in them of violation of the Constitution or because appeals had previously been lodged by other bodies constitutionally authorised to do so.

### Judgments lapsed

On 22 May 2003, the Constitutional Tribunal pronounced judgment on the appeal brought by the Ombudsman on 12 April 1996 against the phrase «legally residing in Spain» of paragraph a) of section 2 of Act 1/1996, of 10 January, on

Free Legal Aid. The Constitutional Tribunal substantially accepted the arguments used by this Institution, by considering that the deprivation by the legislator of the right to free justice for a group of individuals who met the economic conditions provided on a general basis for gaining access to that right implies an injury to the fundamental right to effective judicial protection which, instrumentally, has to result from the legislative development of section 119 of the Constitution, since if the right to free justice is not acknowledged to them, then their right to effective judicial protection would become merely theoretical and would be lacking in effectiveness.

Owing to this, the Constitutional Tribunal declared that the phrase «legally» included in paragraph a) of section 2 of Act 1/1996, of 10 January, on Free Legal Aid is unconstitutional and therefore null and void. It also declared that the term «residing» likewise contained in said paragraph and section is constitutional only if it is interpreted in the sense stated in Legal Grounds 7 of the resolution of the Constitutional Tribunal.

**During the year 2003, the Ombudsman received no request for the filing of an appeal for constitutional relief.**



# Problems in access to the Civil Service

**N**umerous public officials, or candidates for being such, have stated their disagreement with certain actions of the Public Administration which, they consider, harmed some of the rights contained in their system of statutes, in the case of officials, or because they considered that those actions failed to recognise the constitutional principles of access to the civil service and public posts under conditions of equality, merit and ability set down in sections 23.2 and 103.3 of the Constitution.

In recent years, complaints have been received because numerous announcements of competitive examinations for access to the local administration have included the requirement that candidates should be aged 18 or over and be no less than ten years from the age of compulsory retirement in order to be able to gain access to the corresponding selection tests.

On the basis of the modification of Legislative Royal Decree 781/1986, carried out by Act 62/2003, of 30 December, on Fiscal, Administrative Measures and those of a Social Nature, the sole age requirement **for being admitted to the access tests for the local civil service** is that of being 18 or over, and therefore the problem raised has been solved in accordance with the recommendation formulated at the time by the Ombudsman.

In general, and with regard to the local level, various investigations that have been conducted have been able to confirm the extreme difficulty that candidates have for being finally selected if they have no previous working connections with the Administration holding the examinations.

A recommendation has also been raised with the Directorate-General of Civil Service

of the Ministry of Public Administrations, which has been accepted, so that the qualifications obtained by disabled candidates, who pass the corresponding selection process and do not obtain a place through the reserve quota system, can be taken into account as if those candidates had opted for the free turn.

Likewise, on becoming aware that two officials have formed themselves into a de facto union, they have been denied the fifteen days' holiday granted for couples getting married. As the same Administration and the Inland Revenue Service have, in different fields (request for grant for children, plan of social action, other permits and licences, etc.), been placing de facto couples on the same footing as marriages, so the Ministry of Public Administrations was recommended to also acknowledge de facto couples the right to enjoy fifteen days' holiday for those who formalise a stable de facto union.

## Statutory personnel of the health services

One of the main questions that we have been concerned with regarding such personnel

in previous annual reports made to Parliament was the absence of a basic regulating norm for the working conditions of these officials. The failure to solve this problem led to the formulation of a recommendation to the Ministry of Health and Consumption for the Government to approve the corresponding Act, so that it could be sent to Parliament, which has been put into practice via Act 55/2003, of 16 December, on the Framework Statute for health service personnel, which culminates the aim of the General Health Act to provide these specific personnel with a basic regulating framework.

As far as social protection of what are known as reinforcement personnel for the carrying out of continual attention is concerned, a matter on which a recommendation was also formulated, additional provision fourteen of the aforementioned Framework Statute Act qualifies statutory personnel with a part-time appointment so that additional provision seven of the General Social Security Act can apply to them.

Said Act 55/2003 accepted to solve the legal situation, which was also the object of a recommendation from the Ombudsman, so that non-medical health personnel who were on compulsory leave following the expiry of temporary incapacity would have their situation of temporary incapacity calculated as being active service, without distinguishing between their initial period and their extended period.

With regard to statutory personnel, progress continues to be made in the process of consolidating temporary employment and provision of places that was commenced by Act 16/2001 of 21 November, and for its development and execution an extension of up to 31 December 2004 has been provided for in Act 62/2003, of 30 December, on Fiscal and Administrative Measures and those of a Social Nature.

## State employed teachers

### *Non-university teaching*

As in previous years, complaints have been received due to disagreement with the conducting of the selection processes for access to non-university teaching, in the



Numerous complaints have been made in relation to the system of access to the Civil Service. Photo EFE.



different autonomous communities having powers in education, and also in the autonomous cities of Ceuta and Melilla. In this regard, complainants have been reminded that this Institution lacks the authority to control the activity of assessing committees or tribunals when they operate within the scope of action presided over by technical criteria, apart from in those cases in which there can be considered to exist a deficient application of the regulating elements of the norms governing these selection processes and which constitute arbitrariness or a deviation of power.

Worth highlighting are the difficulties which some citizens run into in particular autonomous communities so that the qualifications obtained in foreign academic centres can be made comparable — for the purpose of assessment of merit — to the Spanish system when the former do not contain any numerical or literal references.

In relation to access to competitive examinations for posts, given that, so it seems, the Government sub-delegations no longer receive requests and the official gazettes with the bases for complying with them, a reminder must be made that the Ministry of Public Administrations has started up what is known as the «Citizens' Portal» on the Internet ([www.administracion.es/portadas/home.html](http://www.administracion.es/portadas/home.html)) which provides very easy access to information, which is particularly complete with regard to selection tests of the State Administration, the Autonomous Administration and the Local Administration and that said action has been included by way of regulation in additional provision four of Royal Decree 215/2003, of 21 February, approving the offer of public employment for the year 2003, which provides for the inclusion of an address devoted to selection processes in the website of the different ministries and bodies offering places.

As far as the salaries of teachers at non-university levels are concerned, standing out here is a complaint from teachers of Melilla, who are owed their salaries by the Education Administration from the moment they started to provide their services on a contractual basis, some of them going back more than a year at the moment they filed their complaint. The situation has finally been sorted out.

### University teaching

Complaints have been received relating to access to different university staffs as well as in relation to the procedure for prior national qualification, contained in section 62 of the Universities Organic Act 6/2001, of

21 December, and developed by Royal Decree 774/2002, of 26 July.

Likewise, complaints were received on the processes of prior evaluation conducted by the National Quality and Accreditation Evaluation Agency or by the evaluation bodies of the autonomous communities in order to contract the services of doctorate level assistant lecturers, collaborator lecturers and doctorate level contracted lecturers in public universities as well as teaching and research staff for private universities, in accordance with the provisions of sections 50, 51, 52 and 72.2 of the said Organic Act 6/2001.

The complaints raised refer to the delay by the Agency in issuing the reports and to the content of those with a negative evaluation, having noted that no explanation is given of the specific circumstances for why the complainants did not obtain a positive report.

At the moment of closing this report, a recommendation is being prepared for sending to the erstwhile Ministry of Education, Culture and Sport, with the aim of promoting a modification to Royal Decree 1052/2002, of 11 October, which regulates the evaluation procedure for the contracting of university teaching and research staff, as well as the Resolution of 17 October 2002, of the Directorate-General of Universities, so that provision can be made in the regulations for the period in which an express resolution must be issued, in addition to the period assigned for resolving the evaluation process for candidates, and finally, that a determination should be made of the effects that might be produced by administrative silence.

Equally, in order to guarantee transparency in that said evaluation procedure and with the aim of preserving the principle of objectivity (section 103.1 of the Spanish Constitution) and the prohibition on arbitrariness (section 9.3 of the Constitution), it is considered necessary that certain numerical scales of maxima and minima should be included for each evaluation criterion among those provided for in Appendix IV thereof, which would permit their application to all candidates equally.

In similar terms is a complaint which was raised in relation to the action of the Quality Accreditation and Evaluation Committee of Valencia.

A problem which remains unresolved, and which has already been stated in earlier parliamentary reports, is that raised by a group of teachers of the National University for Education at a Distance, who provide their teaching services in the Madrid Associated Centre, regarding the lack of a definition of

the juridical nature of the figure of the tutor teacher, given that they have no job contract, nor are they included in the General System of Social Security.

### Personnel at the service of the Administration of Justice

As in previous years, complaints have been received relating to possible irregularities in the selection procedures for access to the different fields at the service of the Administration of Justice, and also complaints referring to management of the jobs market for access to the said bodies on an interim basis.

Likewise, some citizens have requested that the establishment of a competitive examination system should be promoted for the selection of officials at the service of the Administration of Justice.

Organic Act 19/2003, of 23 December, on Modification of the Organic Act of the Judiciary 6/1985, has introduced a new regulation into the legal statute of bodies of officials at the service of the Administration of Justice, establishing, on an exceptional basis, the system of competitive examination in selective tests for access to those bodies, as well as demarcating the functions of the personnel and offering new solutions to various imbalances which the current system is suffering from, in which the said officials share the same tasks.

### Officials of Penitentiary Institutions

Actions have continued that were initiated on account of the complaint presented by officials of the prison medical staff in relation to the increase in their timetable for physical presence in penitentiary centres, in which they are present for up to 78 hours a week.

It has to be highlighted once again that some autonomous communities (Andalusia, Aragón, Cantabria, Balearic Islands and the Basque Region) have still not put into effect the provisions of Organic Act 1/1990, of 3 October, on the General Ordering of the Educational System (known as the LOGSE), with regard to additional provision ten.3 on the integration of officials of the teaching staff of basic general education for Penitentiary Centres into the staff of primary level teachers, and in Royal Decree 1203/1999, of 9 July, by which officials belonging to the teaching staff of basic general education for Penitentiary Centres are integrated into the staff of primary level teachers and the rules of functioning of the educational

units of penitentiary establishments are made available.

### Personnel at the service of the Military Administration

The Military Administration has been asked to inform those concerned on how to itemise the economic quantity which has to be indemnified to the State by members of the Armed Forces abandoning their military status, recommending that resolutions should specify the different items, which has been accepted.

It was also recommended to the Ministry of Defence to draw up the appropriate draft bill as soon as possible in order to adapt the legal code on national defence and the system of **rights and duties of military personnel** to the model of the professional Armed Forces, since the legal time stated in additional provision seven of Act 17/1999 has been exceeded by too long a period. This recommendation has also been accepted.

In relation to the advertising broadcasted for joining the Armed Forces, it has been recommended that the appropriate means should be adopted so that this advertising can come into line with the existing regulations in all its terms and that no wrongful statements should be introduced that might lead candidates into error or arouse false expectations.

An ex officio investigation has been started in relation to the **penalty of arrest for minor misdemeanour** considered in the Armed Forces Disciplinary Act 8/1998, of 2 December, in order to determine whether the cited ministerial department has any plans concerning its modification or elimination.

This Institution considers that the said sanctioning measure which is restrictive of freedom, has demonstrated its lack of efficacy and usefulness, that it implies a lessening of the dignity of members of the Armed Forces and can in many cases produce serious consequences of a psychiatric and psychological nature. It has therefore been recommended to the Ministry that it should draw up the corresponding draft bill for modifying the Armed Forces Disciplinary Act 8/1998, of 2 December, in such a way that sanctions that are imposed in the exercise of disciplinary powers maintain just proportionality with the individual conduct motivating them, with their intentionality and with whether or not the infringer has repeated the conduct. This recommendation has not been accepted, and so our disagreement with the criterion maintained by that Department must therefore be set down on record.

It has been recommended that, in the regulations on corps, promotion lists and specialities of members of the Armed Forces, consideration should be given to the economic repercussions of the situation of **succession in command**, so that those acceding to it and who take on the consequent responsibilities can receive the corresponding economic remunerations in order to compensate for that greater responsibility, a recommendation which has not been accepted.

Actions have continued with regard to the problems affecting **reserve personnel and professional troops and seamen who have ceased to serve in the Armed Forces**, so that they can be offered all the possibilities of reinsertion into the jobs market provided for in the regulations.

### Personnel of the State Security Forces and Corps

In relation to the means of control used for checking the truthfulness of **sick leave claimed by members of the National Police Force**, it was recommended to the Directorate-General that the conditions in which the notifying action is carried out should accord with the nature of the act that it is intended to be made known, in conformity with the principle of graduation and proportionality, since the way in which the notification that gave rise to these actions had been carried out, which was that two police officials would turn up at the home of the interested party, is not considered proportionate. Said recommendation has been accepted.

A police union stated that medical personnel coming under the Regional Health Unit of the Higher Superintendency of Police of Catalonia were performing duties that did not correspond to them, specifically, the permanent and urgent medical care for prisoners, much of this being on account of pathologies that did not have the nature of being urgent or acute, which as a consequence meant that they were neglecting the proper duties that they were supposed to be performing.

Having commenced the appropriate investigation, discrepancies were observed between the concept of urgency mentioned by the said Superintendency and that sustained by repeated constitutional doctrine and case-law, plus the fact that a matter of such importance was being regulated by means of an administrative procedure which established rules of a provisional nature, which created a situation of juridical insecurity. It was therefore considered appropriate to recommend to the competent services

that they should adopt the proper measures so that the criteria of organisation, dependence and functions of the health service of the Directorate-General of Police could be regulated by means of rules of a permanent nature.

### Union claims

Union representatives of a certain police station stated that various complaints has been made to the Directorate-General of Police in relation to staff shortages, and also the lack of security measures, without having received a reply. The Directorate-General reported that these union representatives had failed to follow the procedure and timetable set down in the regulations and were seeking to open a new channel of claims aside from the one contained therein, for which reason no reply had been made to the letters sent to it.

This Institution told that Administration that, independently of the fact that the regulations establish certain periods for union associations and representation bodies to file claims as they saw fit, any problem that arises outside that period and which is brought to their notice by other means must be attended to. This recommendation has been accepted.

### Civil Guard

Numerous civil guards have stated their disagreement with the treatment given to certificates issued by military medical tribunals after conducting check-ups to determine their psycho-physical aptitude, due to considering that their notification was not made with due guarantees of confidentiality. It was recommended to the Directorate-General that it should provide a more efficient guarantee for safeguarding the right to individual freedom and confidentiality of clinical information. The Directorate-General of the Civil Guard stated that it considered that the measures that were being adopted were sufficient.

During 2003, this Institution has continued the ex officio actions on the processing of Organic Act 11/1991, of 17 June, on the **Disciplinary System of the Civil Guard** which, according to the terms of the draft to which access has been had, will imply a modification of that law in various aspects, notably the elimination of the sanction of house arrest for minor misdemeanour, which we trust will be maintained in the final text.

Various members of the Civil Guard have stated that, as a result of a transfer, they had



Thanks to the action of the Ombudsman, the time that Civil Guards belonging to the Traffic Division spend devoted to firing practice and to replying to letters of defence concerning fines that have been imposed is now calculated as being hours of service. Photo ORIS.

requested the corresponding compensation in due time and manner but, their cases having been concluded and their right to compensation having been acknowledged, after more than three years they have not received any sum. The Directorate-General of the Civil Guard was therefore recommended that, once it has made payment, it should issue the appropriate instructions so that proper provision of the necessary budgetary authorisations can be issued in order to prevent such delays from occurring in the future. This recommendation was accepted.

In relation to the denial of this **compensation for transfer of residence for the de facto partner of a civil guard**, this force has been informed that such a denial implies a restrictive interpretation of the rule, which could cause a situation that is prejudicial, unjust and even discriminating for those affected, and it is therefore recommended that the right to compensation should be recognised for the compulsory transfer of residence for a person living on a marital basis with the person being transferred, as should compensation for their expenses under the same terms as provided for in the existing legislation for the spouse, always provided that the permanence and stability of that relation is demonstrated. As a consequence, the wording of section 22 of General Order No. 20 of 16 July 1998 must be modified. Said recommendation has been accepted.

#### Calculation of hours of service

Numerous civil guards belonging to the Traffic Division have claimed that their requests have been repeatedly turned down that the time spent in day academies, **in firing practice and in replying to letters of defence** against charges should be

calculated as being hours of service, that even though such activities were related to the service and were done on regulation paper, they were carried out in uniform, and they were therefore obligatory.

This Institution recommended to the Directorate-General of the Civil Guard that it should modify the corresponding Order so that time spent in the said activities can be calculated as hours of service. The recommendation was accepted in part.

#### Labour personnel

There are two general problems that have most occupied our activity with regard to this group of personnel, whose working relation ties them to the Public Administrations but whose services are subject to the Labour Code.

The first of these problems concerns the existence of a *high rate of interim contracts in public employment*, which led the Ombudsman to undertake an investigation in order to inquire into its origins and extent and to propose corrective measures.

The second question refers to the *inter-administrative mobility of labour personnel* at the service of the Public Administrations. Given that, within the scope of civil service personnel, agreements have been reached with the different autonomous communities so that this mobility can be effective, it was therefore considered necessary to open an investigation regarding the actions that were carried out in this direction for labour personnel.

In relation to the recommendation drawn up by the Ombudsman on the management procedure for situations of temporary incapacity and the establishment of a normative framework that would permit the **confidentiality of the medical diagnosis of officials belonging to the Mutualidad General de**

**Funcionarios Civiles del Estado** (Muface, the Mutual Society for State Civil Servants) to be preserved, it must be highlighted that the General Regulation on Administrative Mutual Societies, approved by Decree 375/2003, of 28 March, has now come into force, as has Order APU/2210/2003, of 17 July, regulating the procedure of situations of temporary incapacity and risk during pregnancy, under the Special System of Social Security of State Civil Servants.

#### Social Institute of the Armed Forces

Among the actions carried out in relation to the Social Institute of the Armed Forces (Isfas) can be highlighted the modification to the regulations that will permit citizens who request to be enrolled in the Social Institute of the Armed Forces, and who are beneficiaries of another system of Social Security, to opt for that which they consider is most favourable to their interests. In compliance with the suggestion made by the Ombudsman, Instruction AB-7/2003 has been published, on application of the Special System of Social Security of the Armed Forces, section 3.4.5. of which, «rights of option», provides a solution to the problem raised. This solution states that those receiving widow's or widower's pensions or orphan's allowances, relatives of those attached to the Pensioners System whose status of pensioner derives from a person who was a member of this Special System, pensioners of a Public System of Social Security or the actual Pensioners System, by any of the above categories, with the right thereby to receive health care, will be able to join or continue to belong to the Social Institute of the Armed Forces, once they have renounced the right to health care under any other system.

## 8.15 percent increase in the prison population

**I**n 2003, 468 new complaints were presented in the prison sector, and 25 ex officio investigations were commenced in relation to this subject. According to official figures from the Ministry of Interior, the number of inmates in penitentiary centres continued to grow in 2003. If, on 3 January, their number came to 51,878, on 26 December the level reached 56,108, implying an increase in the year of 8.15%. This increase affects both the number of convicts and the number of prisoners under preventive custody. The number of convicts went from 40,013 to 43,502 (taking as reference the starting and ending dates for the year stated above), and prisoners in custody went from 11,865 to 12,606 on the same dates.

The year 2003, which coincided with the end of the VII Legislature of Parliament, also meant the passing of important laws having an impact on prisons. In this regard, mention can be made, in chronological order, of **Organic Act 7/2003, of 30 June, on reform measures for full and effective serving of sentences; Organic Act 11/2003, of 29 September, on specific measures in matters of citizen security, domestic violence and social integration of aliens; Organic Act 13/2003, of 24 October, on reform of the Criminal Procedure Act in matters of provisional custody, and finally, the wide-ranging reform made to the Criminal Code which was produced by virtue of Organic Act 15/2003, of 25 November, modifying Organic Act 10/1995, of 23 November, on the Criminal Code.** The last of these Acts will, in its substantial aspects, be coming into force on 1 October 2004, while the first three Acts came into force at various moments during the second half of 2003.

It is evident that measures such as making it more difficult to gain access to the third grade of penitentiary treatment and to conditional release, the expansion of the maximum limit for serving sentences, the generalisation of the system of expulsion from Spanish territory for aliens who are not legally resident in Spain and who have been convicted to prison sentences of less than six years, the modification of the requisites set down in the Criminal Procedure Act for being able to decree provisional custody, the change in the system of obtaining the benefit of suspended sentences, or the new category of offences and misdemeanours that has been established, all of them have and will have an undoubted impact on the number of inmates in penitentiary centres.

The measures that have been put into practice do not permit any categorical conclusions to be drawn on whether there is going to an increase or a decrease in the number of prisoners in the medium term. Indeed, although measures such as making it more difficult to gain access to provisional release or increasing the maximum length of

time for serving prison sentences seem to be favouring an increase in the number of prisoners, others such as the expulsion of aliens who have committed crimes punished with prison sentences of less than six years point in the opposite direction. In any case, what this Institution is interested in is whether prisons are sufficient and adequate for the number of inmates actually existing and for treating them properly as set down in the Constitution and, in this respect, what can be regarded as true for the time being is that **the number of inmates has increased in 2003 by 4,230**, which implies an increase in the prison population of 8.15%, figures that are certainly significant.

Although there could be various reasons for the increase in the prison population, not all of them necessarily associated with specific legal reforms (greater police efficiency, greater number of jail sentences, start-up of what is known as «fast trials», etc.), what does seem clear is that an increase as significant as 8.15% in a single year has to entail a major effort in adapting the personal and material means of the Prison Administration. In this regard, it has to be pointed out that the modernisation of the oldest prisons and the construction of new ones is not sufficiently intense for meeting the existing needs and for treating inmates appropriately. In short, the budgets aimed at this objective must be increased resolutely.

### Deaths

In 2003, the Institution commenced eight actions related to deaths in the penitentiary field, four of the actions being ex officio and four by virtue of complaint. At the same time, there was activity in a further 32 cases from previous years, 16 of them being commenced ex officio and 6 by means of complaint. As a common factor to this type of case, the Institution verifies the opening of internal information proceedings and judicial steps, requesting reports from both the Directorate-General

of Penitentiary Institutions and from the State Public Prosecutor.

### Physical integrity

When news is learned of supposed ill-treatment of inmates, the Institution opens an ex officio investigation in which conflicting versions are usually recorded, and in which it is difficult to demarcate the line between the proper exercise of coercive powers and conduct by officers that deserves to be classified as ill-treatment. In this regard, the Institution verifies the opening of the corresponding confidential information proceedings and, if any accusation is filed by the interested party and criminal actions are brought, then the appropriate judicial actions are followed.

### Inspection of jails

Notwithstanding the ex officio investigations made as a result of news appearing in the communications media, and complaints received from inmates and others, one of the fundamental elements which the Institution turns to for learning of the state of prisons is the periodical visits paid to them.

In 2003, the institution visited the following penitentiary centres: Madrid I (Alcalá-Meco), Málaga (Alhaurín de la Torre), San Sebastián (Martutene), Ceuta, Doroca (Zaragoza), Algeciras (Cádiz), Bilbao (Vizcaya), Alcalá de Guadaira (Sevilla), Villabona (Asturias), Herrera de la Mancha (Ciudad Real), Bonxe (Lugo), Cuenca, Puerto de Santa María I (Cádiz), Puerto de Santa María II (Cádiz) and Brieva (Ávila).

### Women in prison

Yet again this year, it has to be repeated that the situation of women in prison is worse than that of men. The modules in which they are housed are, in general terms, worse. An exception ought to be made of those prisoners assigned to «standard» type



Cell in Ceuta Jail, one of the most overcrowded in Spain. Photo: Joaquín Sánchez, courtesy of «El Faro de Ceuta».

prisons, in other words, those built since 1991. Even in these, the possibilities of accessing paid activities and jobs are more limited. In men's prisons, it is also not permitted to carry out paid work, under the pretext of security problems, and in spite of positive experiences with regard to performing working tasks in what are known as mixed workshops.

During the period which this report concerns, most of the women's prisons in Spain have been visited: Alcalá de Guadaira (Sevilla), Brieva (Ávila) and Madrid (Alcalá-Meco). The women's wings of the following prisons were also visited: Málaga, San Sebastián, Ceuta, Algeciras, Villabona, Bonxe, Cuenca and Puerto de Santa María II.

### Citizenship and public security

There were two complaints that stood out in the year 2003: one relating to the refusal by the Administration to consider a person who was murdered due being confused with another person who was the object of a criminal action that took place in 1979 as being a victim of terrorism. The Institution formulated a suggestion for this citizen to be declared victim of terrorism, which did not finally take place for reasons of a legal nature. At the same time, during the year, the Institution took an interest in victims of

the fire in the hotel Corona de Aragón, which also occurred in 1979, to whom extraordinary pensions were granted by virtue of additional provision fourteen three of Act 62/2003, of 30 December, on Fiscal and Administrative and those of a Social Nature.

When the Institution opens proceedings on **presumed police ill-treatment**, either ex officio or by means of a complaint from a citizen, the corresponding report is obtained, the opening of disciplinary proceedings is confirmed, and the judicial steps are followed. This Institution has a known position in the sense that, in accordance with section 8.3 of Organic Act 2/1986, of 13 March, on the Security Forces and Corps, the initiation of criminal proceedings against members of the Security Forces and Corps shall not prevent the instigation and processing of governmental or disciplinary actions for the same events, though the final resolution on the case may only take place when the judgment that has been reached in the criminal sphere becomes firm, by virtue of the principle of criminal prejudiciality. Also, the declaration of proven facts will be binding on the Administration. Moreover, section 27.2 of the said Act provides that the time bar shall be interrupted at the moment the disciplinary proceedings are commenced, and it classifies as very serious misdemeanour «any conduct constituting a fraudulent

offence» for which the time bar of the infringement shall be for six years. Within this framework, in order to avoid any disciplinary impunity, it is necessary to commence the corresponding disciplinary proceedings without prejudice to the fact that it becomes suspended until the conclusion of the criminal proceedings.

### Use of video cameras by the Ertzaintza

The Institution became aware through the communications media of the action of certain officers of the Ertzaintza who made a video recording of a demonstration held by the group BASTA YA on 12 January 2003 in support of the previous parish priest for the town of Maruri, when it was considered not necessary to record the demonstration which had been announced weeks earlier by other groups in opposition to the priest in relation to the opinions held by him in the past. On this subject, the Institution considered that the criteria for action of the Board of Interior of the Basque Government had not been sufficiently justified.

### Police cells

In view of different complaints, the Institution inquired into the situation of various police cells and of those of the Civil Guard, the state of which very often left a great deal to be desired. The Institution has recently decided to turn to the Secretary of State for Security, opening an investigation on a general basis into the hygiene and habitability conditions of those facilities, and also their safety towards fires.

### Summonses and arrests by the Security Forces and Corps

It has been the concern of the Institution that the summons and arrests made of citizens should be carried out with strict respect for the law. In particular, it is not acceptable for a summons to be made in which the citizen is not informed of the reason for the appearance prior to his or her appearing in the police station, since this goes against the fundamental right to defence; nor is it acceptable for a citizen to be arrested if the presumed guilt of a certain offence is not to be found in any of the suppositions provided for in section 492 of the Criminal Procedure Act, in that this too goes against the fundamental right to defence. Specifically, it is not acceptable to arrest a citizen who is accused of a mere



*There was an increase in traffic accidents caused by reckless driving by certain youngsters, above all during weekends, and the increase in drivers driving without a licence.*

misdeemeanor and much less so if his or her conduct does not even fall within that category. In 2003 complaints were received pointing to an improper application of the law in matters of summonses and arrests, because of which this Institution had to turn to the appropriate administrations.

### Traffic

In matters of traffic, the Institution kept a close eye on, above all else, full compliance with the guarantees set down in the sanctioning administrative proceedings. By way of an example, it is essential that the Administration in all cases expressly resolves all appeals presented to it in matters of traffic, even if the number of appeals is very high and this means assigning considerable means to this task, and the Administration cannot argue the thesis of presumed abusive filing of appeals by citizens; likewise, it is necessary that the duty of the owner of a vehicle to identify the driver of it, within the framework of a traffic sanction, cannot

become exorbitant, and it has to suffice that sufficient data for the identification be noted without demanding further details, such as the identity card number.

### Emergencies

In this section, the Institution took an interest in the situation of ambulance air transport between Elvissa and Formentera, in order to make sure that the helicopter covering that route met all the conditions necessary for fulfilling its mission with full guarantees of operationality.

It is also necessary to highlight a complaint from the Fireman's Section of the Trade Union «Comisiones Obreras» of the Autonomous Community of Madrid in relation to the situation of the emergency health services, as well as the actual structure of the fire brigade services and the lack of crew in certain areas. This com-

plaint gave rise to various recommendations from the Institution to the Autonomous Community of Madrid and the proposal, which was accepted by both sides, to hold a meeting on this problem in the headquarters of the Institution.

### Military Administration

Around thirty complaints have been received in relation to the greatest military tragedy of 2003, the **accident to the Yakolev 42 aircraft that took place in Turkey** in May, in which 62 Spanish military personnel who were returning from Afghanistan lost their lives. The Institution asked the Ministry of Defence to provide information on the causes of the accident and on the measures of all kinds that had been adopted in favour of the relatives of the deceased.

The Ministry of Defence has provided the Institution with the information available up to that moment, showing a broad range of actions that have been taken in favour of relatives, including the passing

on of information and the conclusion, which is necessarily provisional with the data available to date, that the cause of the accident was due to human error. So far, the work of the International Investigation Commission on the accident has not yet been concluded and when this does take place and the final conclusions are made available, this Institution will be forming its assessment on this event.

The Institution has also been interested in the situation of a group of professional military personnel whose ties with the Armed Forces had to come to an end once and for all on 31 December 2003, advocating either that they should continue in the Armed Forces or that they should be provided with effective professional outlets. This problem has been partially solved, though many of the citizens affected find themselves in a situation of unemployment.



*The Spanish Armed Forces, on continual humanitarian missions outside the country, raised complaints with the Ombudsman on their professional situation. In the photo, soldiers of the KFOR boarding for a mission in Macedonia. Photo EFE.*

# Delays and backlogs in judicial proceedings

**Yet again this year, mention must inevitably be made of the investigations conducted by the Ombudsman in relation to delays detected in some judicial bodies. Worth highlighting in 2003 is the situation of the Supreme Court, especially the Civil Chamber and the Contentious-Administrative Chamber.**

As far as the Civil Chamber is concerned, the figures referred to cases currently pending are worrying, to say the least, and there has been no improvement in the current situation compared to previous years. In the statistics supplied by the General Council of the Judiciary, it can be seen that on the date 30 June 2003 there were 2,886 cases that had been registered and 2,639 that had been resolved which means that, far from reducing the number of cases pending, the figure rose to reach the level of 14,725 on that date. Indeed, at the end of 2002, Chamber I of the Supreme Court had 14,472 cases outstanding and on 30 June 2003 it had 14,725, revealing a progression requiring the adoption of measures in order to alleviate this increase.

In one of the complaints dealt with, a citizen stated that he had had an appeal of cassation lodged since 2000 and up to June 2003 it had not been resolved. To the existing backlogs must be added that the facts giving rise to the actions took place twelve years ago. Naturally, the letters sent by the citizen expressed his indignation and concern.

With regard to the Contentious-Administrative Chamber, the delay times are very similar to those shown by the Civil Chamber. An example that illustrates the time it takes to resolve appeals in that Chamber can be appreciated in the complaint filed by the Personnel Board of the Health Area of the Council of Castilla-León, which appeared before this Institution stating that it had filed certain appeals of cassation in relation to an administrative decision regulating the process of admission into the Promotion Lists for Health Officials of the Council of Castilla-León, and in spite of the fact that the appeal concerned appointments for the year 1994, six of the appeals filed had still not been resolved in 2002. According to information sent to the Ombudsman from the State Public Prosecutor's Office, on 22 December of 2003, five out of the six appeals of cassation that had been presented were pending designation. The only one that had been resolved had been by judgment of 28 April 2003.

In terms of other bodies investigated during the course of 2003 in relation to delays in proceedings, mention can be made of the

Contentious-Administrative Chambers of the Higher Courts of Justice of Madrid, Andalusia (in its Málaga and Sevilla courts) and Asturias.

## Minors, authors of criminal deeds

Ever since Organic Act 5/2000, of 12 January, regulating the Criminal Liability of Minors, was passed, the Ombudsman has devoted special attention to all those aspects related to the application of that law.

Within actions carried out in this field, emphasis can be placed on visits to reform centres for minors. During 2003, the following centres were visited: «Punta Blanca» in Ceuta, «San Vicente Ferrer» and «Pi i Margall» in Godella (Valencia), «Sograndio» in San Claudio (Asturias), «La Cañada» in Ciudad Real, «Los Rosales» in Madrid, «El Limonar» in Sevilla and «La Janda» in Puerto Real (Cádiz). During the visits, as well as checking on the state of the facilities and the equipping of the centres, interviews were also held with their managers, with the educators and with the children, and any actions considered necessary for finding out about which problems or difficulties existed for the correct application of the law stated above were instigated ex officio.

So, for example, on the occasion of the visits paid to the centres of «La Janda» in Cádiz and «El Limonar» in Sevilla, the assessors from this Institution were informed that

transfers of minors, when this was done by members of the Civil Guard, were carried out in vehicles with official markings (vans) and that the officers taking part wore official uniforms. In the particular case of the centre known as «La Janda», these transfers concerned girls who as a result of the transfer suffered from nausea and even vomiting. On one occasion, at the end of the trip the child causing the vomit was required to clean it up. During those transfers, an educator was not allowed to accompany the minor in the official vehicle, which meant that the educator had to travel in another vehicle behind the Civil Guard van. On the other hand, transfers made by the Higher Corps of Police were made in vehicles without any police marking and by police officers who did not wear official uniform, and an educator was also allowed to travel with the minor in that vehicle.

The problem deriving from the transfer of minors outside the centres was tackled by this Institution on the occasion of the monographic report on the first year in force of Organic Act 5/2000. In that report, a recommendation was sent to the Ministry of Interior urging that transfers should be carried out in vehicles without any police markings, at the same time requesting that educators should accompany the minors in the police vehicles. This recommendation was adopted in full by that Ministry. Owing to this, and in view of new information obtained during visits paid to the «La Janda» and «El Limonar» centres, an ex officio investigation was commenced in December 2003 and the collaboration has been requested of the Directorate-General of the Civil Guard.

Within this section, all the recommendations that were included in the monographic report on the first year of force of Organic Act 5/2000 were followed up in 2003. In general, it can be stated that the proposals included in those recommendations relating to regulatory reforms were not accepted. Those directed towards improving the human and material means, however, were. The insufficient number of places existing in some Autonomous Communities for housing juvenile delinquents was also tackled, as was the general lack of centres for providing therapeutic care.



*Facilities of the «Los Rosales» Reform Centre for minors housed in some old buildings of Carabanchel prison.*



### Abduction of minors by either of their parents

In the report for last year, mention was made of the legislative reform effected by Organic Act 9/2002 of 10 December, which introduced modifications at the civil and criminal levels with regard to interparental abduction. As a result of this, abduction was categorised as an autonomous offence with the abductor being punished with prison sentences of two to four years.

In spite of this legislative novelty, there are certain details which remain unresolved and which basically affect those cases in which the person taking the child belongs to a country which has not signed the international conventions that are used by the majority of States for settling this type of conflict. The situation becomes even more complex when, in addition to not ratifying those conventions, the country in question is governed by Islamic principles which differ substantially from the rules regulating this type of deed in western society.

One aspect to bear in mind in this field is that relating to legal aid received by Spanish citizens outside our country, when they find that they have to initiate some kind of judicial claim in order to recover their children. On this point, the need must be emphasised to reform the Free Legal Aid Law for those cases in which the country where the suit has to be brought for custody of the minor has created restrictions on free legal advice provided for in The Hague Convention of 1980. It seems that the countries which have introduced such restrictions are, among others, the United States of America, Germany, France and the United Kingdom. The paradox thus occurs that citizens of those countries receive free qualified legal aid from a State lawyer when they sue in our country by virtue of The Hague Convention, while Spanish citizens suing outside our country are obliged to pay the fees of the lawyers that they engage.

### Domestic violence

During the course of 2003, investigations were continued that were opened during the previous year in relation to what is referred to as violence against women in the home, which has sadly led to a considerable number of victims in the last 12 months, in turn leading to the opening of new investigations.

Special mention must be made of the investigation opened following the death of a woman at the hands of her ex-husband in the Autonomous Community of Navarra, aimed at learning the measures adopted following the twenty denouncements made by

her against this individual. Once the reports requested from the Municipal Police of Villava and from the Public Prosecutor's Office had been received, this Institution, in view of the power assigned to it and the legal impossibility of reviewing the functioning of the Administration of Justice, conveyed to the Public Prosecutor's Office its concerns regarding some of the events appearing in the reports it had received. In particular, four conclusions were drawn up whose contents were as follows:

1. From 12 January to 8 April, the deceased appeared in police stations on nine occasions to denounce her ex-husband, sometimes because of threats and ill-treatment, on other occasions due to breach of the precautionary measure on prohibiting him from approaching her, and on yet others due to his failure to respect judicial decisions issued by the court dealing with their separation proceedings.

2. The three proceedings initiated in the criminal courts of Pamplona as a consequence of repeated breaches of the precautionary measure on prohibition on approach were discontinued and filed; on some occasions because the perpetration of the crime which had led to the instigation of the proceedings was not duly proven and on others due to considering that the facts that were being denounced did not constitute a crime.

3. In another of the preliminary proceedings brought in which the initial threats suffered by the deceased, and which she was receiving time and again, were investigated, it was agreed on 14 January 2002 to prohibit the approach of the murderer to within 500 metres of his spouse, for which notice was

sent to the national police for it to verify compliance with this measure. Nevertheless, the municipal police for the town where the victim lived was not informed.

On 11 March 2002, it was the interested party herself who voluntarily appeared in the offices of the municipal police of the town where she lived in order to explain the situation that she was in. According to the report issued by the municipal police, this resolution had not been passed on to it, even though it was known that the address of the person suffering the threats and ill-treatment lay within its jurisdiction.

4. In this same proceeding, a series of measures was requested by the Public Prosecutor's Office on 4 March 2002, which were not provided until 19 April 2002. On the 8<sup>th</sup> of that month, the death of the victim took place following the attacks committed by the ex-spouse. It must also be borne in mind that, from the moment the preliminary proceedings had been instigated, the victim had appeared as many as eight times in police offices to denounce her ex-husband for events which had a direct relation with their marital crisis. These conclusions were passed on to the State Public Prosecutor's Office and to the General Council of the Judiciary.

In another of the cases investigated, a woman informed the Ombudsman that she had suffered a serious sexual assault as a consequence of which she suffered injuries of a physical and psychological nature. The corresponding preliminary proceedings having been brought in a criminal court of Ceuta, the precautionary measure was adopted that the aggressor could not approach the victim to within 100 metres,



*The Ombudsman keeps a particularly close eye on all cases of domestic violence. Photo EFE.*





*The transfers of irregular black African immigrants from the Canary Islands to the south of the Peninsula is giving rise to numerous complaints, especially when it comes to receiving free legal aid with regard to their expulsion from the country. Photo EFE.*

which did not seem to be proportional to the extreme seriousness of the crime and the threats which the victim had received. For this reason, the State Public Prosecutor's Office was asked to collaborate in finding out the state of the proceedings, at the same time informing it of its surprise that provisional custody of the accused had not been agreed to, all the more so given that the sexual aggression had taken place within the home of the accused. In particular, the accused had had his victim enclosed for four hours, repeatedly attacking her and humiliating her, and raping her on several occasions. Later on, he repeatedly threatened her not to denounce the fact.

Among the documentation received, it appeared that the Women's Advice Centre of the Board of Social Welfare of Ceuta had turned to the criminal court of Ceuta in order to learn the facts so that it could be full party to the appeal for amendment presented by the defence for the woman which sought the provisional imprisonment of the accused, communicated and without bail. This same writ addressed to the court denounced the irregularities existing in the proceeding due to the fact that certain fundamental evidence had been destroyed. The lawyer acting on behalf of the victim also addressed the court in the same terms. In particular, that lawyer informed the criminal court of the following irregularities: the doctor on duty in the hospital that attended to the victim did not request the presence of a gynaecologist nor of a forensic expert in

order to examine the woman. This doctor decided to sedate her and put her to sleep, thereby making it difficult to carry out any immediate identification of the attacker and to arrest him. At no time did a psychologist provide any assistance and treatment that the woman needed. The police, instead of arresting the attacker once he had been identified, phoned him to come to the police station, which the accused did an hour and a quarter after the time he was asked to do so; he had previously spoken to a witness in order to bring him up to date on the facts. The visual inspection of the place of the events was conducted without either the judge or the clerk of the court being present and without the police gathering objects that were directly related to the crime. Finally, the victim was not informed that the aggressor had been temporarily released.

In the letter that was received, it was noted that the situation of panic of the victim was such that she even spoke of her determination to leave the city and move to the peninsula. She was therefore recommended to go to the social services of her new place of residence in order to find out about the possibility of obtaining an official protection home.

In the report issued by the State Public Prosecutor's Office, it was revealed that the said proceeding was at the trial phase awaiting reception of the analysis of the samples that had been sent. It was also stated that the accused was in a situation of provisional imprisonment. After learning this information, the collaboration of this Office was again sought with regard to those irregularities that had been revealed by the lawyer for the plaintiff. A report was also asked of the Directorate-General of Police on possible irregularities that might have been committed in the initial moments of the investigation.

### Legal aid for immigrants

The problem deriving from legal aid for alien citizens arriving in our country had led this Institution to opening a permanent forum of debate in the ombudsman's website, where citizens, professionals of the law or associations of all kinds can freely express their opinions on this question.

Parallel with this, during the course of 2003 a series of conferences was organised which served to bring together in the headquarters of the Ombudsman the heads of the central and autonomous administration, lawyers, judges, public prosecutors and non-governmental organisations, with the aim of preparing a monographic report during 2004 in which this question is going to be studied.

It cannot be overlooked that the right of immigrants arriving in Spain to a defence has been an important object of the tasks and concerns of the Ombudsman. In April 1996, this institution filed an appeal of unconstitutionality against the phrase «legally residing in Spain» of paragraph a) of section 2 of Act 1/1996, of 10 January, on Free Legal Aid, due to the fact that it limits the subjective range of the right to free legal aid. This appeal was accepted by the Constitutional Tribunal under the terms asked for, in a judgment pronounced on 22 May 2003.

### Transfers

The Ombudsman investigated the transfer of a very large group of immigrants from Algeciras to Palos de la Frontera on 1 March 2003. For this, it had the collaboration of the Directorate-General of Institutions and Cooperation with Justice of the Council of Andalusia.

According to information received from that Directorate-General, during the second half-year of 2001, 5,466 actions were carried out within the executive route in the judicial district of Algeciras on matters concerning aliens. The content of those 5,466 writs were, according to the Directorate-General, weak and with little legal basis. In fact, it was stated that a large number of them consisted of photocopies in which the only change that had been made was to the name of the alien citizen concerned with the corresponding proceedings. In one case, the same writ had been presented 145 times; and in another, it had been presented around 120 times.

The economic effort made by the Council of Andalusia in order to provide the Association of Lawyers of Cádiz with economic means obtained from the public budget had not been reflected in a general improvement in the quality and efficacy of the legal aid, as would have been desired. As an example of this economic effort, the quantities which Decree 273/2001 of the Board of Justice and Public Administrations of the Council of Andalusia established for the assistance provided for immigrants by duty lawyers can be quoted: each duty lawyer is paid 126.21 euros (21,000 ptas.) when no more than 6 assistances are provided; if that figure is exceeded the fee becomes 252.43 euros (42,000 ptas.). Also, for each action in the executive route (writ of pleadings or remedy of appeal), for both immigration and asylum, they receive a fee of 60.10 euros (10,000 ptas.).

These fees have meant that, in the first three months of 2003, some lawyers, in addition to receiving 126.21 euros or 252.43

euros on each occasion they were on duty, also received 60.10 euros for each of the executive actions they performed. Table 1 provides an illustration of this and shows the fees corresponding to some lawyers by way of pleadings and appeals which they state they have formulated.

In view of the entire foregoing, this Institution, on the basis of its acknowledgement and admiration for all lawyers practising with rigour and professionalism in the judicial district of Algeciras, lodged a recommendation with the Association of Lawyers of Cádiz for it to organise the necessary professional training and improvement courses so that lawyers providing their professional services in free legal aid for immigrants can receive the proper preparation and training that would permit them to give legal advice with the quality and guarantees demanded by law. The said Association was also urged to commence the pertinent disciplinary actions in order to discover and, as appropriate, sanction, possible irregularities that might have existed in the way in which certain lawyers have been providing their legal aid in the judicial district of Algeciras. Finally, it was requested that a copy of the resolution be sent to all lawyers in that association.

In its reply to this recommendation, the Association of Lawyers of Cádiz noted its profound indignation at the way in which this question had been handled, as well as the publicity given to the action of this Institution, adding moreover, that the recommendation sent «does not exactly abound with rigour».

Bearing in mind the arguments used by the said Association, the Ombudsman informed it that as far as this Institution was concerned, it was not questioning the juridical arguments used by lawyers when it comes to providing technical assistance for immigrants, but instead the real concern lay in the non-existence of juridical arguments on the part of a group of lawyers. It is not possible to talk of legal aid when a considerable number of cases are being dispatched with writs of pleadings or with appeals that are exactly the same, in which **there is no individualisation of the personal circumstances of the immigrants**. Nor does there exist legal aid when legal provisions that have been repealed are cited, or when appeals are filed too late (in some case 30 days too late) or when it is asked for the internment to be declared null and void for a group of people who have never been interned. In all these cases, the lawyers intervening were manifestly in breach of the functions contained in section 1 of their Statute (Royal Decree 658/2001, of 22 June) for the legal profession, since they did not

TABLE I

Initials of the lawyer who provided the assistance	Number of pleadings or appeals presented	Amount in Euros	Amount in Pesetas	Remarks
F.J.C.S.	54	3,245.60	539,989	Uses the same form in all cases. The names are put in by pen.
E.M.C.H.	53	3,185.30	529,989	Uses an identical form for all cases. Only cites sect. 62.1 a) Act 30/92
A.H.J.	97	5,829.70	969,98	He has no record of the content of his writs
M.L.G.	53	3,185.30	529,989	Uses an identical form for all cases. Only cites sect. 62.1 a) Act 30/92
A.O.P.	72	4,327.20	719,985	Uses an identical form for all cases. Only cites sect. 62.1 a) Act 30/92
J.R.L.	53	3,185.30	529,989	In remedies of appeal he uses identical forms independently of the act being appealed against
I.M.S.G.	73	4,387.30	729,985	Uses just two forms for all cases
A.S.L.	53	3,185.30	529,989	Uses just two forms for all cases

make it possible for the rights and freedoms of the people they assisted to be made effective. These conclusions cannot be branded as subjective, all the more so since the omissions and irregularities mentioned can be easily objectified and checked if the Association were to have made use of the inspection and supervision functions attributed to it by the General Statute of the Spanish Legal Profession (sections 4-1 h, 46-2<sup>nd</sup> and 81) in order to assign the disciplinary responsibilities resulting from these anomalies.

The Association of Lawyers of Cádiz was also informed that this Institution knows and is aware of the fact that the circumstances occurring in the province of Cádiz do not occur in other parts of Spain, but nevertheless the massive influx of immigrants in no way justifies the disappearance or depreciation of a right proclaimed by the Constitution and set down positively by the laws. The right to legal aid cannot be subordinated to the number of people who have to receive it. The correct rendering of their right must be the same in Cádiz as in the other provinces of Spain.

### Spanish prisoners abroad

During 2003, complaints continued to be received from Spaniards who were imprisoned outside our country. Most of these complaints came from, in descending order, France, Ecuador, United States, Portugal, Argentina and Venezuela. To a lesser degree, letters have also been received from Spaniards in Brazil, Italy or the United Kingdom, among other countries. Continuing with a practice that started some years ago, the First Deputy Ombudsman took advantage of an official visit to the Netherlands in

order to visit a prison known as «Detentiecentrum Zeist», in Soesterberg, where she had the opportunity to meet four women and one man of Spanish nationality who were serving their sentence there. The problems stated by these Spanish citizens were passed on to the diplomatic authorities of our country in order to try to offer them a solution.

**The letters received in this Institution do not differ greatly from others received in previous years, and can be summarised in three major groups: discontent with the action of the Spanish diplomatic delegation in that country, delays in dealing with transfer proceedings and the poor conditions of foreign prisons.**

Regarding the poor conditions of foreign prisons, numerous situations can be mentioned that are unthinkable in our country. The main problems refer to lack of security, of food, of hygiene and health that are to be found in many prisons, which are the inevitable cause of illness for which the penitentiary system does not have the necessary medical treatment. These shortcomings were suffered by a Spanish inmate in Ibarra prison, in Ecuador, who caught tuberculosis as a result of the conditions in that prison. Since he was not being supplied with the medicines he needed, a niece of his had to take charge of buying them. She also had to deal with his admission to hospital so that he could receive the medical care his situation required. The expenses occasioned by his hospitalisation were partly met by an extraordinary assistance granted by the Ministry of Foreign Affairs. Such was his situation that the Ecuadorian authorities granted him a pardon on 14 November 2002 on humanitarian grounds, so that he could return to Spain.

The Spanish Embassy in Quito carried out numerous steps with different airline companies who showed themselves to be reluctant to carry a passenger with an infectious disease. A flight was finally obtained in which he would be accompanied by a doctor, for 22 December 2002. Unfortunately, the patient died the day before owing to a cardiac arrest caused by the seriousness of his clinical symptoms.

Two other Spaniards also died in Ecuador, according to reports from the communications media. Knowledge of this fact was obtained by means of complaints received from other compatriots. In these letters, **the Spanish Embassy in Quito was denounced for the lack of concern shown with regard to the situation of these people, in spite of having knowledge of them from the numerous telephone calls made and letters sent in this regard.** Also, in the letters received,

it was stated that a further four Spanish prisoners were in very delicate health. One of them, suffering from AIDS, was attended to by a doctor from an Ecuadorian NGO who, in view of his health, alerted the Embassy for them to take charge of him. Another of the sick prisoners, who was suffering from hepatitis B as well as having a contagious disease, was enclosed by the prison wardens in a cell without any light or water, isolating him from the rest of the inmates, and without the Embassy doing anything about it. The third prisoner had to be operated on for appendicitis for which he had to pay the entire cost of the operation. The last was waiting for the Embassy to authorise an expense of 25 dollars so that some medical analyses could be conducted. While he was waiting, this patient suffered a fall in his blood sugar level due to his ailment not having been diagnosed in time.

Having started the investigation with the Directorate-General of Consular Affairs and Protection of Spaniards Abroad in view of the facts that were denounced, a report was received in which it was basically stated that the Consulate had acted diligently in all the situations listed, concerning itself for the situation of each of the four sick prisoners, who were visited assiduously at least every fortnight. They were being periodically provided with economic aid, provisions, the press and medicines, and in some cases also the cost of clinical analyses and various medical expenses were being borne.

With regard to the death of the two Spaniards mentioned, it was possible to learn that one of them died as a consequence of the tuberculosis he suffered from, and the second died on account of injuries sustained due to falling from the second floor of the prison where he was being held.

## Delays in the Civil Register

With regard to the actions carried out concerning the Civil Register, it must be pointed out that, first of all, no modification has yet been made to section 191 of the Civil Register regulations, according to which in birth registrations, when just the maternal details are noted, a name must be stated ex officio in the place intended for recording the details of the father. The reform of this stipulation, which was accepted in 2000 by the Ministry of Justice at the proposal of this Institution, has become subordinated to a substantial review of those regulations which is still underway, even though this Institution considers that sufficient time has passed for putting the reform into effect.

Another of the aspects in which the Ombudsman has particularly concerned himself during the course of the year is the progressive incorporation of new technologies into the work of the register in order to facilitate access to registrations without having to know precisely all the details of the entries it is wished to locate.

Turning to a different matter, it needs to be made clear that in the Central Register there persists a work-load that makes it impossible to provide a service having the minimum flexibility. From the complaints received, it seems to be the case that the telephone information and public attention services are insufficient and there are delays in handling cases. So, the registration of marriages taking place outside Spain

between Spaniards and aliens is suffering an average delay of six months. A similar period seems to be necessary for the registration of those who have gained Spanish nationality.

During the course of 2003, there were persistent delays in the registration of marriages in the Spanish Consulate in Havana, Cuba, held between Spaniards and aliens, and major delays were also noticed in the registration of marriages in the Spanish Consulate in Buenos Aires, Argentina.

### Delays in nationality cases

As far as access to Spanish nationality is concerned, emphasis must be placed on the chronic delays undergone in acquiring Spanish nationality by virtue of residence, which on average is taking approximately two years to go through. Given the new demographic reality and the foreseeable

increase in applications in the coming years, the means available to the services in charge of performing these functions need to be increased.

This Institution received various requests for lodging appeals of unconstitutionality against Act 36/2002, which modified the Civil Code in matters of nationality. Following the appropriate study, the formulation of that appeal was not considered viable. Nevertheless, its opinion must be stated regarding the need to consider the juridical and social situation of descendants of Spaniards who had to emigrate for political or economic reasons, with effective solutions being found for those who cannot opt for Spanish nationality due to one of their progenitors failing to meet the status of being Spanish and born in Spain.

The overload of work in certain consulates as a result of the coming into force of this Act must also be pointed to. This has had a particular impact on the consulates of Caracas and Buenos Aires, where extraordinary measures have had to be established for dealing with the thousands of applications that have been made.

Finally, mention must be made of a suggestion sent to the Registry Administration to facilitate the rectification of details of a political nature which could appear in the death certificate for deaths related to our civil war, since they go beyond the actual scope of the civil register and distort its proper function by introducing mere value judgements.



*Civil Register of Madrid.*

# Tax relief on aid for multiple delivery

**I**t has been recommended to the Secretariat of State that the benefits which families receive for birth or multiple delivery should be exempt from Personal Income Tax.

Royal Decree Act 1/2000, of 14 January, reviewing the allowances granted per dependent child, creates two new benefits, for the birth of children and for multiple deliveries, thus improving the protective content of Social Security benefits. Nevertheless, the rule does not provide for these new benefits to be declared tax free when it comes to paying personal income tax.

In the opinion of this Institution, it seemed a contradiction to create a new social benefit and then make it subject to taxation, all the more so when other benefits previously regulated in that Royal Decree Act were exempt. The unique nature of the Administration obliges it to act in accordance with its own acts and to respect the principle of coherence which requires the taking of unitary decisions ensuring a uniform treatment of certain problems, with the aim of achieving the objectives that are sought and which, in this case, it seems is not being complied with.

The absence of tax relief could mean that the purpose for which the benefit was created becomes lost since it implies that many tax payers are obliged to present a tax return for personal income tax or they could find their tax basis for the family unit increased, and it could occur that, as in the case that has been raised, other social benefits are denied.

The Secretariat of State for Finance did not consider it appropriate to introduce the modification at the moment it was raised, though it stated that it will be studying the recommendation for its possible inclusion in future reforms on personal income tax. Finally, Act 62/2003, of 30 December, on Fiscal, Administrative Measures and those of a Social Nature, has contained the exemption of benefits received for multiple delivery, though the Secretariat of State has not informed us of the conclusion of that study.

## Advice from Notaries

Section 194 of the Notaries Register sets down the obligation on Notaries during the execution of a deed to state the legal reservations and warnings contained in both the Civil Code and in the Code of Commerce or special laws, and thereby provide verbal advice in all matters raised in a transaction.

Nevertheless, Act 39/1988, of 28 December, regulating the local tax offices does not impose the obligation on notaries to inform on payment of the tax on the increase in the value of urban land, though he is required to send the local council a comprehensive list or statement of contents of the documents which he has authorised

which contain juridical acts or steps revealing the carrying out of the event forming the basis of that tax.

This led to a recommendation being made to the Ministry of Finance that the next legal modification to the Local Tax Offices Act should include this obligation. This modification ought to be directed towards requiring that a written note be made in the public instrument of the obligation taken on by the obligor as a consequence of the transaction carried out, which would imply an additional guarantee for the client, who would always be duly informed, and for the Notary, who would be making a written note of having complied with his duty to give warning in relation to this tax.

This recommendation has been accepted and set down in section 111 of the Local Tax Offices Act by virtue of Act 62/2003, of 30 December, on Fiscal, Administrative Measures and those of a Social Nature, which has added a new paragraph to clause 7 obliging notaries to give express warning to their clients in the documents which they authorise concerning the period within which the latter are obliged to present tax returns on the said tax and, likewise, on the liabilities which they would be incurring due to failing to present returns. A similar modification has also been introduced with regard to property tax.

## Trade margin of pharmacies

Since the coming into force of section 3 of Royal Decree Act 5/2000, of 23 June, on Urgent Measures for Containing Public Pharmaceutical Spending and Rationalisation of the Use of Medicines, the maximum amount which pharmacies can receive for a medicine comes to 33.57 euros, irrespective of whether that medicine has a higher price. Also, pharmacies invoicing Social Security for more than 27,646 euros in prescriptions per month have to refund a percentage of their invoicing to the State. As far as some highly priced medicines are concerned, these conditions are causing a real economic loss since the pharmacist not only does not receive a sum equal to the price of that medicine but he or she also has to pay for providing a service to society, and this

means, moreover, that a certain difficulty was arising in obtaining this type of medicine. This led to the opening of an ex officio complaint.

The Directorate-General of Pharmacy and Health Products did not share the opinion of this Institution and stated that it had not received any communication from the Health Services of the Autonomous Communities regarding complaints from users as a consequence of difficulties of pharmacies dispensing pharmaceutical specialities prescribed in medical prescriptions of the National Health System.

The report confirmed that stated by this Institution in different complaints, and so it was recommended to work out a measure that would correct the distorting effects created in practice by section 3 of Royal Decree Act 5/2000, of 23 June, either by means of modifying the fixed margin by a percentage adapted to the current circumstances, or by means of excluding this type of medicine when it comes to calculating the discount, or by means of any other system that would result in citizens receiving a better service without having to burden the professional in the pharmacies. It was also argued that the inclusion of value added tax in calculating the total invoicing for applying the discounts diminishes the neutral nature of that tax.

This recommendation was initially rejected by the Under-Secretariat of the Ministry of Health and Consumption. Nevertheless, later on, approval was given to Royal Decree 1328/2003, of 24 October, which implies partial acceptance of the recommendation with regard to the exclusion of pharmaceutical specialities having a laboratory sale price of more than 78.34 euros from the calculation of the monthly invoicing, for the purposes of the reduction percentage. Nevertheless, the inclusion of value added tax for the calculation of the monthly invoicing has not been modified.

It was reminded once again that value added tax has a neutral nature and its inclusion in the global invoicing makes it easier to reach the threshold of amounts for which the partial discounts have to be made, in other words, the taxation in itself is creating a situation which ought to be taking place independently of it.

## High tariff lines

Complaints have been filed by numerous citizens who find themselves disagreeing with the amounts billed by telephone companies for calls, and also for connections via the Internet, made to high tariff lines, the old 903 and 906 lines, which are now provided via the prefixes 803, 806 and 807.

The Ministry of Science and Technology reported that such services have now ceased to be regarded as being telecommunication services, which means that no qualifying certificate is required for providing them, which in turn limits the capacity for administrative control over them. This control has to a large degree been replaced by self-regulation mechanisms of the agents themselves who are involved, by means of their being subjected to an approved code of conduct, compliance with which is going to be overseen by a Supervising Commission consisting of representatives of the Ministries of Health and Consumption and Science and Technology, consumers and businessmen in the sector.

**The new regulation establishes that services for adults shall be provided solely with the prefix 803, those for leisure and entertainment with 806 and those of a professional nature with 807.**

In accordance with the current regulation, **subscribers have the right to ask their companies to disconnect them from those prefixes, which must be done within a period of ten days, and not to be cut off in the event of non-payment of a bill corresponding exclusively to calls made to those numbers.** However, the telecommunications administration declares itself to be incompetent for resolving on correction of amounts billed, since those services have ceased to be considered as being telecommunications. The interpretation can be made that the only channels for complaining on the background of the matter are the Arbitration Court of Consumption and the Civil Jurisdiction.

As far as the code of conduct is concerned, drawn up by the parties involved and whose monitoring corresponds to the Supervising Commission for high tariff services, that code obliges the provider of the service to sign a standard contract with the telecommunications company, to identify itself and to provide an address for the purposes of notification, as well as to inform on the price of the service, with the service having to be cut off automatically after a maximum period of use of thirty minutes.

The said Commission can, ex officio or as a result of denouncements from users, initiate the appropriate procedure for closing down lines 803, 806 or 807 that infringe the

code of conduct. Finally, the use of lines 803, 806 and 807 for the transmission of data is prohibited, and so too, therefore, is their access via the Internet.

In relation to this subject, the aforementioned Ministry has been asked to provide complementary information on requests for disconnection of these lines and compliance by the telephone companies with their obligation to grant such requests within the required periods. It has also been asked whether the disconnection is made for all lines 803, 806 and 807 independently of whether they come under one operator or another, or whether, as seems to be the case from some complaints that have been received, there are lines that escape disconnection due to problems of coordination among operators.

## Lines for adults

Confirmation has been requested of whether, in accordance with the classification approved by the Supervising Commission, erotic or adult services are being provided exclusively via the prefix 803 and that, on the contrary, they are not being hidden under lines 806. A request has also been made to confirm that the telephone operators are complying with the obligation not to cut off subscribers in the event of non-payment of charges being disputed for supposed calls made to these prefixes, always provided that the subscriber has paid the part of the bill corresponding to the basic service.

Given that, in matters of telecommunications, the Administration declares itself to be powerless to resolve on the lawfulness of disputed charges, it is therefore necessary



*High tariff lines 803, 806 and 807 are the subject of numerous complaints due to lack of information to users that they can issue orders to their telephone company to automatically disconnect the services offered by those prefixes.*

for subscribers to have access to data on the companies providing those services so that they can undertake the appropriate civil actions. It is therefore of interest to learn whether operators are providing this information to subscribers under conditions of normality.

Finally, information has been requested on actions instigated for closing down these lines, classified according to the reasons for breach of conditions and on the solution for problems of fraud consisting of the installation in the computers of internauts of «diallers» which change the configuration in order to make unwanted connections to this type of line.

## Motor insurance for the young

In the first few months of 2003, there appeared in the communications media a series of reports denouncing insurance companies in the motor branch who were rejecting requests for insurance made by those under a certain age, which varied between 24 and 26 years old. Or they were demanding exorbitant premiums of them, sometimes in excess of 5,000 euros a year, with a clearly dissuading effect. The insurance companies justified this way of acting by pointing to the high claims levels occurring among young drivers, according to statistics from the Directorate-General of Traffic. This situation encourages **an ever-increasing number of vehicles on the road without the obligatory motor insurance, which is reaching worrying proportions.**

An ex officio investigation was commenced with the Directorate-General of Insurance and Pension Funds of the Ministry of Economy, which considered that the obligation on insurance imposes solely the duty to take out insurance for the person who is obliged to comply with that obligation but not, on the contrary, with regard to the insurance bodies, for whom insurance has a voluntary nature and which enters into the field of the insurer's private activity, which is governed by the principle of the free market, though subject to the regulations ruling over that insurance activity and over the bodies practising it. Therefore, the contracting of insurance has to be done in conformity with the practice of the insurance market and the insurance technique. There also exist mechanisms for making up for the lack of coverage by the insurance market via the Insurance Compensation Consortium which, among the functions attributed to it by its Legal Statute in relation to compulsory civil liability motor insurance, includes that of providing coverage for risks that are not accepted by the insurance companies.

# Heavy indebtedness by Spanish homeowners due to growing speculation in housing

**I**n 2003, public action in matters of housing did not display the efficacy required in the face of the alarming signs that are undoubtedly present: 16.9 percent increase during the first three quarters; heavy indebtedness of Spanish homeowners with regard to their disposable income, going from 51.8 percent in 1997 to 83.3 percent in December 2002, with the average access effort for first-time buyers for an average house going from 29.5 percent of his or her disposable income in 1997 to 42.1 percent in October 2003.

Any political option with regard to housing has to concern the regulating of benefits relating to all the phases of production and use of the home, establishing a complete administrative ordering of this sector of activity in order to transform it into a genuine service activity aimed at increasingly large sectors of the population, without ignoring the priority in protection of the most disfavoured, and the repression of speculation.

**T**he number of public promotion homes being built and awarded continues to be very low in comparison with the growing demand for them. An example of this is to be found in Madrid, where 35,591 people turned up for 1,125 homes being offered in the 12<sup>th</sup> Announcement held by the EMV, which recorded 5,573 requests for participating in the draw being made on the special needs quota held in the presence of the Directorate-General of Architecture and Housing, of the Board of Environment and Territorial Regulation, with just 518 of the applicants being awarded homes.

The considerable delays taking place in the processing of aid considered in the state and autonomous housing plans has been roundly condemned, with these delays sometimes lasting for more than three years.

In order to confront known fraudulent practices in the process of selling protected homes, consisting of demanding payment of sums that exceed the maximum authorised price (for which payment no record is made, obviously) as a condition for signing the contracts, it has

been recommended to the Public Administrations that they should determine the functions of the competent autonomous administration in matters of control, monitoring and authorisations needed in the private promotion of protected housing, including the signing of sale and purchase contracts or the awarding of homes to people meeting the legally and contractually demanded requisites and able to take on the economic commitments. It was furthermore claimed that an urgent updating should be carried out of the scant regulation set down in sections 16 to 20 of Royal Decree 3148/1978 and 79 to 88 of Decree 2114/1968, since they are now rules that have perhaps become disconnected from the social reality to which they continue to be applied.

## Persecution of fraud in the sale of protected housing

Measures must be adopted so that those citizens who were acknowledged the economic aid considered in the 1991-1998 housing

plans can again be granted the right to continue benefiting from the subsidy on the interest they pay to the bank with which they have arranged the novation or subrogation of the initial qualified loans which they resorted to and which, with the fall in interest rates, have become clearly higher than those granted on the open market.

The Ombudsman has issued a reminder that the infringement of the regulating provisions in matters of private insurance, by means of which it is possible for the public to learn of the situation of illegality of certain insurance bodies regarding sums handed over on account of housing under construction, would have helped to avoid or mitigate cases of fraud such as that of the CPV.

The initiative of a certain public body which has been offering official protection housing subjected to an access system different from that of ownership, at prices very much higher than those established by way of annual amortisation in their respective contracts, is roundly disputed, since it overlooks not just their specific legal system but also the considerable economic vulnerability of the people at whom offers are targeted.

It is also regretted that Act 23/2003, of 10 July, on Guarantees in the Sale of Capital Goods, which modifies the regulation of letting processes in the existing Civil Procedure Act (Act 1/2000), did not consider some compensation of a fiscal nature in favour of landlords who, in the eviction demand due to failure to pay rents, are permitted to renounce all or part of the debt and the costs, provided that the tenant vacates the property voluntarily within the set period.

## Urgent need to redefine the urban development model

If, from the perspective of housing, it seems essential for updating to be carried out of the regulating framework which, on the one hand, would provide a response to the current and growing problem of housing in Spain and, on the other, bring housing policies within the system of urban development



*Delays in the construction of official protection housing in the Urban Action Estates (PAUs) have contributed towards increasing house prices, as well as all types of fraud in their sale. In the photo, the PAU of Montecarmelo, in Fuencarral (Madrid), still under construction.*

legislation – a process which was commenced timidly in the year 1990 and is not yet concluded – combining the classical techniques of development with the planning and tying of the land to the purposes of satisfying the right to housing, then from the urban development perspective there can be no postponing a redefinition of our urban model, which has perhaps been affected in recent years by options which, seeking to place land on the market under a system of competition in line with existing experience, have not only failed to help solve this problem, but have also raised doubts on the internal coherence of the overall urban development system. This makes an appeal to a new view of the role of the State in urban development matters, moving away from the persistent approach of the division of competence with the autonomous communities which restores their role in promoting the final coherence of the system and of coordination with the competence of the autonomous communities, which is exclusive in matters of territorial regulation and town planning.

As an indication of what is suggested, it suffices to point to the example of undoubted topicality that the urban development approach understood as the instrument which determines the future model of a city and the way in which the different activities are to be planned in the territory, entails a considerable impact on services and on the environment, which have to be evaluated and corrected, in order to choose the territorial strategies that imply less of a sacrifice of resources and support systems for our development management model, which is the aim of the environmental evaluation of urban development plans and programmes. In line with what was already pointed out by this Institution in its Parliamentary report for 2002, the need must be stressed to accept the criteria of sustainability as the informing principle of municipal planning and therefore incorporate it into the planning phase, at that moment and on the basis of the territorial model that is designed, opting for the alternatives that imply least environmental impact and least consumption of natural resources. In fact, some autonomous communities, though not all, have already approved legislation in matters of environmental impact evaluation, with town planning being included in the actions subjected to evaluation. These initiatives are very positively valued.

Nevertheless, the balance in the way of producing a city that would permit a sustainable development for us cannot be achieved solely and exclusively by means of regulating obligations. They must also in the future be the outcome of consensus and agreement of all agents involved in the

urban production programme: the different public administrations, social agents and citizens; a consensus which must necessarily be accompanied by a major effort of synthesis of what town planning is. In this way, the Plan could thus become converted into a flexible and open document that would include among its guidelines the idea of sustainable development, introducing environmental values and good practices throughout the entire process of preparation of the planning in such a way that a complex environmental evaluation of the Plan made *a posteriori* can be avoided.

The new conception of town planning that is sought, and which is fortunately being implemented though more slowly than would be desirable, will make the environmental evaluation less burdensome and disconnected from the process of formulating the plan, with these plans being drawn up giving priority to the environmental variable in a broad sense – the urban environment, natural preservation of the ecological values of the territory, compatibility of uses with the medium that sustains them, preservation of the cultural and artistic heritage and of social diversity, etc. – and not just variables that merely concern development.

### Citizen participation in the urbanising process

As far as the execution of the planning is concerned, as the Ombudsman pointed out in the Parliamentary report for 2002, it has already been noted that there has been a progressive increase in the number of complaints presented by citizens of the autonomous

communities of Castilla-La Mancha and Valencia stating their disagreement with the new system of execution introduced into their respective laws and, in particular, with the figure of the urbanising agent, and this is in spite of the fact that this model has been in operation in those communities for several years. It must be repeated once again, in order to mitigate as far as possible the drawbacks described by citizens, that it seems advisable to establish measures that would strengthen as much as possible the transparency and publicity for the decision taking processes relating to the awarding of urbanising actions.

Also, and with regard to the procedural aspects, the acting administrations must of necessity make an effort – which right now they are not doing very satisfactorily – to guarantee that citizen participation in the urbanising process is real. This Institution therefore urges local councils to offer the maximum information for owners affected by these actions and to guarantee that these public information processes are effective. This greater transparency and participation will without any doubt contribute to improving the practical application of the model and its adaptation to social demands.

The autonomous communities whose laws are most recent have also been introducing these new systems of urban execution in addition to the traditional systems of action (compensation, cooperation and appropriation): in some cases they have been introduced via what is usually known as «urbanising work concession», by which the administration commissions a non-owner private individual, in other words, an urbanising agent, to carry out an urban development work and the reparcelling, with the



Cleaning work on the pollution suffered by spillage from the tanker «Prestige». Photo from the website of the Ministry of Environment.





*One of the stations measuring environmental and sound pollution in Madrid.*

agent being paid for his services by the owners of the land, usually on terrain classified as buildable. And in other cases it incorporates this figure as an «anomaly» within the classical systems established in the actual urban development laws, who operates in the event that the private execution systems turn out to be inefficient.

It is very early yet for making an assessment regarding the complaints that are in disagreement with these techniques for carrying out development, and it therefore seems advisable to wait for a prudential period of time so that the degree of implementation of these laws can permit a general assessment to be made on the efficacy and degree of acceptance of these systems.

Turning to another matter though also in the field of urban execution, a gradual increase has been noticed in the number of complaints received each year from buyers of parcels of land on urban estates that were constructed some years ago, in some cases on urban terrain which was developed without any planning or legal coverage at all, in other words on land not qualified for urban development, and in other cases, the most frequent, on development which have had their corresponding planning figure approved – generally a Partial Plan – yet nevertheless they were not executed in accordance with those plans, or they were only partially executed thus. In all cases the most injured parties are the buyers of those parcels and of the houses that were built irregularly, due to the fact that most of them lack an adequate supply of basic services – including those stated as being obligatory in Act 7/1985, of 2 April, Regulating the Basis of the Local System, and whose provision must in all cases be guaranteed by the municipalities – which without

any doubt places them in a position of inequality with respect to their neighbours who do indeed enjoy that provision under normal conditions. In these cases, a certain passivity is noticed in some administrations when it comes to adopting control measures so that the necessary infrastructure works incumbent on the developer can be carried out. Nevertheless, a perusal of these complaints enables it to be confirmed that the interest shown by the majority of municipal chiefs in putting an end to this very old problem is also not very great.

## Environment

As far as the environment is concerned, the main shortcomings found in the activity of the environmental administration continue to be located in the technical and material functions. Complaints do not usually have a juridical background but instead mostly concern the persistence of physical events which the administration does not prevent or correct unless the applicable rules and regulations require them to do so. The main difficulties lie in material prevention, in the effective restoration of damage and in checking of the facts; in short, in a technical activity rather than in the determination of the juridical grounds applicable to the results obtained.

The catastrophe of the ship «Prestige» off the coast of Galicia was undoubtedly the focus of the greatest concerns of public opinion in the environmental field, with its inevitable reflection in the complaints received. More than sixty complaints primarily recommended that the State and autonomous administrations should act urgently in line with the seriousness of the circumstances and solve the most immediate needs, that they should manage the catastrophe with transparency and inform in a way that is objective. They also demanded responsibilities in the political, criminal and economic levels of the heads of the governing bodies of the administrations.

The gravity of the facts made it advisable to request a general report from the First Vice-Presidency of the Government and Ministry of the Presidency, the coordinating body for state administrative action, and from the Presidency of the Council of Galicia, which contributed documentation with

major omissions. Nevertheless, it was possible to conclude that the catastrophe of the «Prestige» was not properly assessed by the administrations in the aspects of organisation (lack of clarity in the determination of the command and of coordination), prevention (plans that had not been updated), correction (activation of remedies without sufficient evaluation and with improvisation) and information (lack of systematics). The Ombudsman recommended as a consequence that an internal investigation should be opened that would elucidate the causes that had contributed to the situation and the adoption of measures aimed at preventing the occurrence of a similar disaster. Although there was no express acceptance of the recommendations, the bodies concerned have reported on the measures that they are adopting.

## Sound pollution

On another issue, there were important citizen initiatives in reaction to a state of pollution due to noise which the authorities are not managing to stem successfully. Special treatment by the Ombudsman has taken place concerning the noise originating from infrastructures (railways, roads and airports). This Institution considers that the obligations on noise prevention, which in general are being breached, predate by a long way the recent Noise Act.

The basis of the complaints lies in the constitutional rights of a decent home in a suitable environment, while the administration bases its rejection of this on arguments that do not appear sufficient. In particular, the airport and road authorities have not paid sufficient attention to environmental regulations, and have even regarded them as being at the opposite pole to economic development. This has led to various recommendations, suggestions and reminders of legal duties being made, mainly so that civil and military airports can adopt plans of actions that would prevent, reduce and repair the adverse effects of the noise they generate.

**The burden of repair due to excess acoustic pollution should not be borne by those who suffer from it but instead be the responsibility of those who generate it, the promoter of the infrastructure.** The adoption of prevention measures, reduction of acoustic pollution and coverage for damages and injuries is obligatory for the Public Administration by virtue of constitutional and legal mandates, even when those suffering the damage become legally installed or enjoy a house subsequent to the existence of the source of the noise.





*Emissions of gases in Spain rose by 33.7% between 1990 and 2000. Photo from the website of «Los Verdes» of Huelva.*

### Increase in atmospheric pollution

The concern among citizens created by climatic change has led the Ombudsman to take an interest in the increase in greenhouse gas emissions in our country. In fact, emissions of greenhouse gases between 1990 and 2000 rose by 33.7%, a figure that stands very much higher than the increase taken on by Spain for the period 2008-2012, which must not exceed 15% of the emissions produced in 1992 (Annexe II of the Council Decision 2002/358/EC, relating to the joint compliance of commitments taken on by virtue of the Kyoto Protocol).

However, given that the Kyoto Protocol has not come into force, it does not yet have full legal efficacy nor are the obligations deriving from its clauses binding on the contracting parties. Hence, the only obligation on the States and Organisations who have expressed their commitment to obeying the Protocol (which is the case of Spain, of the European Community and of its other member states) is to refrain from carrying out acts which might frustrate the object and aim of the Treaty. Nor is it possible to commit a breach of a Community Decision which, even though it is in force, establishes a series of commitments within the framework of another legal instrument,

the Kyoto Protocol, as a result of which it will not take effect until this other instrument comes into force.

### The Kyoto commitment

To the foregoing can be added that the requirement of not exceeding a certain percentage of emissions (15% for Spain) refers to what is known as the first commitment period, which has not started, since it runs from the year 2008 to 2012. Therefore the fact that emissions were 33% higher in 2000 does not for the time being imply any breach at all. Moreover, the figure of 33.7% refers to gross emissions, while the 15% commitment refers to net emissions. This means that gross emissions would have to discount not just the tons of CO<sub>2</sub> absorbed by the carbon scrubbers but also the credits obtained via what are known as flexibility mechanisms considered in the Kyoto Protocol (such as the trading of emission rights for greenhouse gases within the Community, the system for which has recently been established by Directive 2003/87/EC of the Parliament and of the Council, of 13 October 2003).

Nevertheless, when deciding to comply with the commitments adopted in the framework of the Kyoto Protocol in a joint way, the European

Community and member states share the responsibility for this being done effectively. As a consequence, and in conformity with section 10 of the founding Treaty of the European Community, member states, both individually and collectively, have the obligation to take the appropriate general or particular measures in order to ensure compliance with the obligations derived from the actions of the Institutions of the Community. This implies adopting measures aimed at ensuring compliance with the quantified commitment to reduce emissions contracted by the Community by virtue of the Kyoto Protocol, to facilitate the carrying out of that commitment and to refrain from adopting any measure that would endanger its attainment.

The problem lies in the fact that in the year 2000 emissions had already exceeded 33.7% of those for the year 1992, and this means that the future compliance of the obligations derived from both juridical instruments on the day when they come into force is going to find itself frustrated. This is in spite of the fact that the final calculation of emissions will have to discount the tons of CO<sub>2</sub> absorbed by the carbon scrubbers and the credits obtained from the flexibility mechanisms permitted by the Kyoto Protocol. The above is deduced from the imbalance that seems to exist between the objectives that will be binding on Spain regarding the reduction of carbon dioxide emissions once the Kyoto Protocol comes into force and the current level of emissions, as well as their upwards tendency. This is a tendency regarding which virtually no measure has been advanced that would permit the costs of the necessary decrease in greenhouse gases to be taken on in a way that is gradual, nor any measure aimed at solving the problems raised by the distribution of those costs among the emitter sectors.

So, in the opinion of this Institution, all measures necessary for ensuring the future compliance of the obligations derived from the said Protocol must be planned, adopted and applied with no further delay, including the quantified commitment to reduce emissions contracted by the European Community for the first period, in accordance with the distribution and allocation of emission levels stipulated in Annexe II of Decision 2002/358/EC. In this regard, it must not be forgotten that the ultimate objective of the United Nations Convention on Climatic Change is to achieve a stabilisation of the concentrations of greenhouse gases in the atmosphere at a level that would prevent any dangerous interference in the climatic system within a reasonable period of time, which would permit ecosystems to adapt naturally to climatic change and ensure that the production of food is not threatened and that economic development is pursued in a way that is sustainable.

# Delays and insufficiencies in health care

**A**ccessibility to services, the participation of users and professionals and the progressive shift in demands made by citizens from quantitative aspects to qualitative ones, in other words, towards quality and excellence, are three core aspects underlying the complaints raised with the Ombudsman on health matters.

First of all, standing out are complaints on the need to probe into the strategy of the regulatory ordering of benefits and of strengthening the coordination mechanisms, especially the Interterritorial Council of the National Health System. These complaints find their justification in the noting of territorial imbalances and differences, which are becoming increasingly great, in the portfolios of the Health Services. In this context, particular mention deserves to be made of the large number of complaints on the application of assisted reproduction techniques, the handling of which complaints has highlighting once again that the public health system very often does not provide citizens with a health system that is direct and financed and paid for by State funds allocated to health.

Another important number of complaints is focused on the organisation and functioning of hospitals and clinics. The lack of correspondence in some cases between the size of the staff in primary care teams and the demand for care; the virtual non-existence of specific units for brain damage care in the National Health System; the quality of the care processes and results; the organisation and functioning of the hospital emergency

services; and the existence of lengthy delays in providing health care: these are some of the aspects highlighted in these complaints.

The abnormal functioning of health transport in the Madrid Community has become a serious problem, not just on account of the large number of complaints but also fundamentally because of the conclusions reached in the investigations that were made, in which the abnormal functioning of the service has been noted in some cases. Standing out here on account of their extreme seriousness are delays in emergency care. Although the Madrid Institute of Health has on different occasions reported on the adoption of measures for improving the service, the truth is that complaints continued to be received by the Ombudsman on this subject, revealing that serious shortcomings continue to persist in this important field of care.

## Clinical errors

The existence of presumed **clinical errors** and the need to investigate the circumstances present in the care that was provided are to be found in a good number of complaints in relation to professional

practice. Although in the health systems of neighbouring countries an increasing concern can be seen for possible errors in professional practice, and as a consequence various kinds of initiatives have been adopted for controlling them, in our country there does not yet seem to exist a sufficient culture of acknowledging errors and the complexity of processes is still being used as an excuse for failing to investigate into possible disfunctions in professional practice.

The pharmaceutical service and control over medicines; dispensing medicines without a prescription for them; the direct relation between the consumption of aspirins in children and the appearance of what is known as *Reye's syndrome*, a matter on which the Ministry of Health and Consumption reported concerning the introduction of recommendations for the prescription and dispensation of specialities containing acetylsalicylic acid; the exclusion from public financing of urine incontinence absorbents for the infant population, based on strictly economic rather than care reasons; the exclusion from public financing of solar protectors, which are essential for albinos and other groups if they are to maintain an adequate level of health, and the sale of slimming products with a supposedly sanitary aim, all account for another significant number of complaints in the health field.

## Mental health

As in previous years, citizens turning to the Ombudsman claim that one of the main problems of the National Health System is in relation to the provision of resources in the field of mental health. The notorious insufficiency of basic community-orientated structures and apparatus, and as a consequence of this the extreme difficulty in designing and starting up rehabilitation programmes, along with the precarious situation of the families of mental patients, who have to bear a large part of the cost of the care these people need, are core aspects of the complaints on this category of care.

Finally, there were no lack of complaints on **rare or infrequent diseases** which affect approximately two million people in Spain and which have taken on particular importance in recent years, a fact that is reflected



*The abnormal functioning of health transport in Madrid, above all in delays of an urgent nature, is giving rise to a large number of complaints.*

in the demands made by citizens sent to this Institution in relation to pathologies such as achondroplasia, bone dysplasias, epidermolysis bullosa, cystic fibrosis, Sjögger's syndrome, Zellweger's syndrome, Pompe's disease and narcolepsy, among others. The common denominator of these complaints concerns the serious problems of people affected by infrequent diseases as a result of the considerable difficulties in their diagnosis and treatment, largely due to the non-existence of specific centres for referral. It is therefore necessary to improve knowledge in this field through basic and clinical research and well as promote an adequate policy aimed at obtaining effective drugs for these diseases.

## Social actions

### Minors

The Civil Code attributes a very wide range of functions to bodies responsible for the protection of minors who would otherwise be unprotected. As well as adopting material means for looking after the child they are also attributed the guardianship of the child with the suspension of the parental custody and of the ordinary guardianship. This implies taking on the legal representation of the minor and his or her possible interests in terms of property. In this latter aspect, the public body looking after and administering the possible goods and rights of minors in need of protection must also watch over their economic interests, managing the benefits to which they might have a legitimate right.

As a consequence, the Ombudsman considered it necessary to formulate a recommendation to the Social Services Management of the Council of Castilla y León so that, in the interest of minors in the custody of that body, they might proceed to request in their name the child allowance provided for in sections 180 et seq. of the revised text of the General Social Security Act. This recommendation was accepted, the said Administration informing this Institution that the instructions issued to the competent bodies for territorial management of social services coincided with the content of that recommendation. Moreover, a series of additional instructions was sent out reminding those bodies of this fact.

The problems related to the **adoption of children coming from other countries** continues to be a subject of great interest. Numerous complaints have been handled concerning specific problems deriving from

the changes to the laws made in the countries of origin, which have affected a considerable number of Spanish citizens. Examples include changes in Rumania or the internal conflict occurring in the Indian state of Andra Pradesh, in which the only thing that can be done is to seek the support and information of our diplomatic representations, or making our provisions more flexible in order to permit another process to be started in a different country.

In the present year, alarm bells sounded on the occasion of news concerning the epidemic of severe acute respiratory syndrome which led the Chinese authorities into suspending the sending of allocations of minors, postponing trips due to be made by families who had already received their allocations, and not sending the official invitation documents to Spain for them to travel to China to carry out the adoption.

Nevertheless, with the favourable evolution of that syndrome, once the World Health Organisation had announced the lifting of the recommendation not to travel to China, the authorities in the adoption centres there recommenced the usual process for trips to China for adopting parents who were waiting to go there.

In some cases, as well as problems in the country of origin of the children, it has been possible to confirm that the action of the Spanish Administration ought to be more efficient.

The report sent by the Board of Social Affairs of the Council of Andalusia stated the sharp increase undergone in the demand for international adoption in a short period of

time – from 42 cases dealt with in 1994 to 242 in 1998 and 650 in 2000. For this reason, the administration of Andalusia, with an infrastructure and resources dimensioned in accordance with the needs of the protection system for minors, explained its difficulties in offering a flexible response to the new demand until new systems for the provision of personnel can be introduced along with regulations permitting greater celerity without loss of guarantees.

### Disabled people

The year 2003 was declared «**European Year of People with Disabilities**». This has meant a greater attention from the public powers and a greater knowledge among society in general concerning the problems that affect these people in their daily lives. A reflection of the first of these would be the approval of a range of legal provisions which, from different perspectives, serve to comply with the requirements of section 9.2 of the Constitution, which imposes on the public powers the duty to promote conditions so that the freedom and equality of people can be real and effective.

Among the specific provisions approved can be mentioned Act 41/2003, of 18 November, on Protection of the Assets of People with Disabilities; Act 51/2003, of 2 December, on equal opportunities, non-discrimination and universal accessibility of people with disabilities; and Act 53/2003, of 10 December, on the public employment of the disabled.



*Tele-assistance for elderly people living alone is a service that has been introduced in several Autonomous Communities. In the photo, emergency alarm. Photo EFE.*

Standing out among this set of provisions is Act 51/2003, section 1 of which has introduced an important modification with regard to acknowledging the acceptance of handicaps and disabilities, a question on which complaints have frequently been brought before the Ombudsman. Similarly, some complaints have been made on the slowness in carrying out examinations or in reaching decisions. In this regard, our Institution has carried out steps with the Council of Castilla y León as a result of which the assessment teams in the four most deficient provinces have been strengthened with the aim of reducing the waiting lists for examination, declaration and classification of the degree of disability, and at the same time priority has been given to caring for minors so that, by means of early care programmes, the after-effects of possible disabilities in children aged zero to six years old can be prevented or diminished.

As in previous years, the Ombudsman has carried out certain interventions with the aim of facilitating compliance with provisions already in existence on accessibility to public offices and buildings. On this subject, the Directorate-General of Traffic reported on the structural problems existing in the Provincial Superintendency of Traffic of Valencia for access by disabled people to the first floor, which has led to the creation of a specific work post with a counter located on the ground floor in order to attend to any matters requested by physically handicapped people.

National Heritage also reported on the measures adopted in the Museum of the Monastery of El Escorial in order to facilitate access for people with reduced mobility, notable among which was the installation of removable ramps, the creation of two grooves cut into the stone of the threshold of the access door to the museum and alternative routes in order to avoid certain changes in height that are difficult to overcome. It also stated that a study is currently underway on the possibility of extending these measures to other areas of the museum with platform hoists.

The need to gain access to residential resources where the disabled can receive attention, stimulation and care in accordance with their disability continues to be a subject that is often raised. In this regard, the need has been stressed to encourage collaboration among the different administrations in order to provide responses that are favourable to demands that are undoubtedly pressing. So, the collaboration agreement signed between Viveiro Town Council (Lugo) and the Board of Social Matters, Employment and Labour Relations for the maintenance of places in an occupational centre and its expansion via the creation of a care unit in order to attend to people with serious mental handicaps, is going to allow a suitable response to be provided for people who previously had to stay in their homes since they are unable to join in fully with the occupational tasks.

### *The elderly*

In relation to the problems affecting old people, mention can be made of the favourable response for better social coverage for those looking after the elderly, the disabled or the sick, provided for in new wording given to section 180 of the revised text of the General Social Security Act 52/2003, of 10 December, on Specific Provisions of Social Security, which extends the consideration of period covered by the Social Security quota to the first year of leave for the care of relatives.

Moreover, in relation to **people living on their own**, particularly in major cities, the investigation started last year has been continued in order to find out about the degree of implementation of the tele-assistance programme for company, alert, intervention and monitoring of the elderly in Madrid, with special care concerning the increase in the risk which the winter represents for these people. The information that has been sent highlights the inclusion of a greater number of workers who are going to be making calls in order to recruit users aged over 80 living on their own. The resources that are being allocated permit a thousand calls a day to be made.

During the first six months of starting up this programme, a census of those aged over 65 was conducted, with proven data being used for a total of 43,000 people over the age of 80, out of the 50,210 such people resident in this Community. The recruitment and training of specific workers for starting up the programme has also been gone ahead with and aid has also been announced aimed at bodies and associations of volunteers in order to strengthen the effectiveness of the programme.

The demand for places in **publicly-owned old people's homes** continues to be among the complaints that are most repeatedly made to the Ombudsman by old people and their families. In this field, even though the increase in places, in both publicly-owned residences and those arranged with private homes, is considerable, the reality is that some very pressing cases continue to remain unattended.

In relation to this matter, this Institution cannot instigate actions for old people to be awarded places in a particular centre, since, as entry is determined by order of points obtained by means of applying the corresponding scale, so any intervention in this regard could go against the greater right of another person. Nevertheless, when situations of delays occur in replying, or when the applicants claim that their applications have not been handled properly, then informative actions are carried out so that the



*Dealing with emergencies in public hospitals is the focus of a large number of complaints.*

Ombudsman can have more precise knowledge of the replies which the public administrations give to citizens in order to provide the process with the maximum transparency.

The limitation just referred to leads to the rejection of a considerable number of complaints in which citizens state the difficulties existing for attending to old people adequately. These complaints continue to raise the scarcity of residential resources, which implies the need to have a high score in order to gain access to the places being applied for. There are also frequent complaints on the transfer of residences to a different autonomous community, a matter that has been stated in previous reports and to which no favourable reply has yet been received from the administrations involved.

### Social Security

As in other years, standing out in the field of Social Security is the large number of complaints received in which citizens stated their disagreement with the collection procedures followed by the General Treasury of Social Security, especially in the executive route, and basically referring to the Special System for Self-employed Workers, or to a lesser degree to other systems, due to deficits in payments made to them. Also, various complaints have been dealt with concerning other procedures instigated as a consequence of reimbursing contributions that should not have been received.

In relation to these complaints, the pertinent actions have been carried out with the Common Service, in some cases adopting the necessary measures for correcting the procedural defects that might have taken place.

Equally, actions have been taken with the General Treasury in relation to defects noticed in the issuing of reports on working life in those cases in which the concerned parties denounced that the periods of enrolment in Social Security stated in those reports did not agree with the jobs actually carried out by the claimants. Investigations were also made into the question raised in one complaint on the deficiencies observed in applying the RED System (Electronic Sending of Data).

Actions were carried out with regard to the Secretariat of State for Social Security in relation to the applications of the regulations of the European Union on Social Security, with the aim of acknowledging the right to health care for a citizen having extra-Community nationality who is married to a Spanish national who works on an employed basis in our country. In view of the refusal by

the Administration to issue the corresponding form in order to take advantage of that benefit in trips to member countries of the European Union, the Ombudsman addressed the Secretariat of State asking that department to draw up a new rule that would include European regulations on this matter into our internal laws. As a result of the investigations made, the said body proceeded to publish Regulation 859/2003, of 14 May, on application of Community regulations in this matter to nationals of outside countries. Nevertheless, the same has not occurred with the possibility of access to the Public Health System for Spanish citizens with a foreign Social Security pension due to not meeting the requirements demanded for this, especially in relation to incomes received.

On benefits for **temporary disability**, complaints have also been dealt with concerning the National Institute of Social Security, along with other claims in which citizens stated their disagreement with the steps followed and the decisions reached by the Mutual Societies for work accidents and occupational illnesses, with the corresponding actions being conducted before the Directorate-General of Economic Planning of the Social Security.

### Pensions

In matters of **pensions**, a considerable number of complaints referred to people obtaining their retirement pensions at the age of 60. In them, citizens stated their disagreement with the reducing coefficients applied for determining the amount of those

pensions, bearing in mind that these people had very often been contributing for over 35 years. On this point, and from the beginning of the Institution's actions, we have been carrying out a range of steps with the Secretariat of State for Social Security with the aim of finding a solution to the problem raised.

On account of a report drawn up on **widow's pensions** in the field of Social Security, which has been duly passed on to the Ministry of Work and Social Affairs, to the Commission of the Toledo Pact and to other interested persons, it has been proposed that a study should be made on eliminating the incompatibility existing between the reception of pensions of the Obligatory Insurance for Old Age and Invalidity and the condition of pensioner for widowhood of any Regime of the Social Security.

In relation to pensions for widowhood, other proposals have also been put forward relating to eliminating the requirement of the worker being enrolled, or in a similar situation, at the moment of his or her death in order to be able to receive that benefit. It has likewise been proposed to establish a temporary widow's subsidy if there are dependent children or a lack of resources whenever it is not possible to accede to a pension; the protection of what are known as «de facto unions»; the suppression of the requisite, demanded in some special systems, of being up to date in payment of quotas in order to give rise to death and survival benefits; and finally, the increase in widow's pensions for those aged under 60, so that the amount of those pensions can be comparable to the same minimum amount for those who are above that age.



Assemblies of widows associations ask the Ombudsman to press for an the increase in their low pensions. Photo EFE.

# Insufficiencies in the Internment Centre and delays in regularisation of Immigrants

**D**uring 2003, visits were made to police stations and offices of the ports of Valencia, Algeciras and Tarifa, and an investigation was also carried out in relation to the functioning of Ceuta's land border. Moreover, the task of supervising the actions of Spanish police authorities in charge of controlling the entrance of aliens through airport border posts was also continued, with visits being made to those with the largest number of non-Community flights, with the aim of learning in detail about the way they function and the state of their offices.

**A**s far as the **Temporary Stay Centres for Immigrants** are concerned, during the visit made to Ceuta it was possible to note that, owing to the mass presence of foreigners in this city, the centre, whose facilities are highly adequate, is not sufficient for meeting the structural needs which can in no case be regarded as being circumstantial, as the Administration maintains. In the opinion of the Ombudsman, the solution to the problem does not necessarily entail an increase in the number of places in the centres but instead the carrying out of an integral plan that considers alternative resources that could be used in the event of cases of mass arrivals of immigrants.

Investigations conducted with respect to the situation of **alien minors** who are unaccompanied on national territory have revolved around three aspects: repeating the need to individualise the circumstances of each minor with the aim of deciding on the appropriateness or otherwise of their being regrouped with their families; insisting on the obligation to comply with the regulations on immigration which, in essence, implies granting residence permits to those minors who remain in the care of the Administration once nine months have passed since they were turned over to the protection entity; and supervising the treatment and resources of Centres for attending to minors in care. The basic investigations were conducted with the Autonomous Communities of Madrid, Andalusia and Canary Islands, as well as with the Autonomous Cities of Melilla and Ceuta.

In terms of the facilities and treatment received by minors in the Centres, it has again been noted that some of these centres fail to meet the necessary requisites for providing adequate attention. Evidence has also been found that staff providing their services in certain centres do not have the right profile for the job. This has contributed towards some serious situations being produced in some centres, and it cannot be understood how such a level of seriousness has been reached, given the obligation of supervision incumbent on the

Administration. In particular, we have stated this to the autonomous administration of the Canary Islands with regard to the now disappeared centre of «La Montañera».

Instruction 3/2003, from the State Public Prosecutor's Office, on **return of alien minors** in which the situation of non-protection is not present has been the object of special attention by the Ombudsman.

The Instruction raised various questions and had as its main objective to achieve the inhibition of the Public Prosecutor's Office when unaccompanied alien minors are intercepted who are aged 16 or over, due to considering that these minors would be emancipated.

In the opinion of this Institution, from the juridical point of view the Instruction is unacceptable. First of all, because emancipation is governed by personal law, in other words, by that of the nationality of the minor and not by Spanish law. Moreover, in the case of unaccompanied alien minors arriving in our country, the Instruction takes the fact of irregular entrance into Spain as a tacit presumption of paternal authorisation. Nevertheless, in Spanish law, emancipation requires the consent of the parents, which must be granted beyond any doubts. Even in cases in which some parents could have encouraged their children to leave their country and go to Spain, it does not seem that this conduct, which places the minor at obvious risk (for example, due to crossing the Strait of Gibraltar in the small and inadequate boats known as «pateras»), makes it advisable to adopt the immediate measure of returning the minors to their country of origin. At the same time, the Instruction means that the minors are being dealt with in a way that is different depending on their nationality, since similar actions carried out by Spanish parents would lead to the immediate adoption of protection measures.

The Ombudsman requested the State Public Prosecutor's Office to withdraw the Instruction. The reply from that Office stated that the Instruction was not created as a closed and final instrument, though so far it

has not been withdrawn. On the occasion of the publication of the report, the Institution repeated its conviction of the advisability of rendering that Instruction null and void.

## Alien Immigrants Internment Centres

The Institution has regularly directed its ordinary supervision activities towards alien internment centres throughout the entire country. In 2003, visits were paid to the centres of Algeciras, Barcelona, Málaga, Murcia and Valencia; the first of these being newly built.

During the visits, it was observed that in the centres in general the officers providing their services do not usually wear their police badge, which makes their identification difficult for internees, lawyers and visitors. The Ombudsman considers that this practice must be changed, with consideration being given to the possibility of producing ID cards with a non-metallic material if the problem of wearing them is related to reasons of security, as has been stated.

Other general questions observed are related to telephone communications. All internment centres have public telephone from which calls can freely be made, but they cannot be received. Also, in all centres it is normal practice to take away mobile phones from internees for security reasons.

Nevertheless, the Administration must provide telephone communications, and it must make the necessary technical modifications so that the public telephones can permit reception of calls, as well as permitting the use of mobile phones by internees.

The importance must also be stated of access to lawyers being permitted in internment centres without any restrictions on times, as a means of providing due assistance, as well as relaxing the criteria for access to family cohabitation modules in centres that have them.

In some centres, medical services are not provided throughout the entire year, in spite of this being an obligatory and essential duty

for the correct functioning of the centres (Málaga and Murcia). This same shortcoming was noticed in terms of social welfare in the centres of Algeciras, Barcelona and Valencia. In the other centres, this task is being carried out by non-governmental organisations.

During the visits, special attention was paid to fire-fighting means and safety plans. In this field, efforts have been made to provide certain elements (fireproof blankets and mattresses, push-button alarms in case of fire, smoke detectors), though it has to be pointed out that there is a general lack of centralised opening of dormitory doors in cases of emergency and of fire-proof doors.

Coming down to the individual inspection of centres, it has to be stated that the Algeciras centre, opened this year, has been created in the building of the old city prison. The suitability of the centre is diminished in part by the actual prison structure of the facilities since all the passive security measures such as the portcullis and bars have been retained.

The Barcelona centre has to make its living system more flexible, so that it is no longer obligatory to remain in the dormitories during siesta time and instead internees can stay in the leisure room, as occurs in other centres.

The Málaga centre, which has recently been reformed, has a room in the men's quarters that is used as a day room and canteen. This double use means that hygienic conditions are not adequate, and alternatives must be sought. It would also be advisable to provide dormitories with suitable furniture and sufficient heating.

In relation to the Murcia centre, it is essential to point out the insalubriousness of the dormitories due to lack of ventilation, along with the need to allow the windows to be opened. It must also be stated that the visiting room has partitions preventing direct contact between internees and their families and lawyers, and the recommendation from this Institution to remove them has not yet been heeded, as had been announced.

In the Valencia centre, standing out here is the obligation imposed on internees to eat in their dormitories, as a consequence of certain disturbances that occurred in the canteen. This practice is not justified as a general rule.

### Expulsion proceedings

During the course of 2003, it was noted that the Administration had dealt with expulsion proceedings due to irregular residence against

aliens to whom it had denied documentation within the procedure for rootedness by virtue of the provisions of section 31.4 of the Aliens Act, without taking into consideration that the appeals for reversal brought against those negative decisions had still not been resolved. This Institution disagrees with that criterion and has recommended its modification, bearing in mind the serious harm which expulsion entails in these cases and the disfunctions detected during the course of the proceedings. This recommendation has so far not been accepted.

In certain cases, the need has also been emphasised to heed the criteria of proportionality in the adoption of expulsion measures, as well as the accessory prohibition on entry into the Schengen territory, bearing in mind the circumstances present in each case.

Various specific actions have also been carried out requesting the governing authority to postpone the expulsion so that a possible judicial suspension of the agreed administrative expulsion order can be made effective. These requests are generally heeded by the governing authority.

Moreover, it is also necessary to highlight the reluctance of the Government Delegation of Ceuta to acknowledge the lapsing of expulsion orders that have not been put into effect against persons who have not left national territory.

In the year 2003, the practice became widespread of carrying out expulsions by means of flights specially chartered for that purpose, so that in a single flight around a hundred aliens could be boarded with the necessary police custody. For this purpose, in August 2003 a building at one end of Madrid-Barajas airport was fitted out for housing people who were going to be the object of this measure.

The facilities there are adequate for the custody of these people, and their use as a substitute for the airport cells for the custody of aliens about to be expelled is highly satisfactory. Nevertheless, a different assessment deserves to be made of putting people in those facilities by virtue of an internment order issued by the judicial authority, a situation that is occurring in some cases.

The creation of internment centres must in all cases be provided for through a joint ministerial order from the Ministries of Interior and Public Administrations and this has not occurred in the present case. These facilities lack the obligatory services which internment centres have to have (permanent medical and social welfare service). It must also be pointed out that their location, away from the airport terminals, makes it difficult for relatives and lawyers to exer-



*The Ombudsman stated his disagreement with the application of expulsion proceedings for black African immigrant irregularly arriving in the country.*

cise their visiting rights on a regular basis, to the point that this becomes virtually impossible.

On account of the foregoing, this Institution considers that people should only be kept in this centre for a maximum period of 72 hours and the extension of their stay beyond that length of time is not admissible.

### Transfers

In March 2003, the State Security Forces and Corps proceeded to detain approximately a hundred aliens in Palos de la Frontera. Noting the large number of detainees, the Government Sub-Delegation in Huelva carried out steps for locating a place where the process for identifying these people, presumably in an irregular situation, could be carried out. Given the non-existence of premises of such characteristics in Palos de la Frontera and the lack of police officers for carrying out the identification process, the General Police Station for Immigration and Documentation ordered their transfer to Algeciras (Cádiz).

In the small hours of the day following the detention, the aliens reached Algeciras, having been driven there by the Civil Guard. A total of 59 expulsion cases due to irregular residence and participation in an unauthorised concentration were dealt with, and of these, internment was requested for 46 of them with the other 13 being set free due to the lack of places in the centres. The question of internment or freedom was decided on a purely random basis since internment was requested in the order in which the detainees appeared in the list being used by the police authorities.

The remaining aliens were set free when it was found that they already had non-executable expulsion orders issued against them. These people remained on the streets



of Algeciras without any economic resources whatsoever until the City Council's social services took charge of them and enabled them to return to their point of origin.

The First Deputy Ombudsman went to Algeciras in order to learn in depth about what had happened in this out of the ordinary action. During the course of the investigation, she found out that these people had not been informed of their rights until they reached Algeciras, more than 24 hours following their detention. This omission prevented the detainees from being able to state their desire to receive legal advice in the place of their detention or to request interpreters through whom they could inform the officers of their particular circumstances so that the latter could assess the advisability of continuing with the action or of setting the detainees free.

For this reason, the pertinent recommendations were made to the Directorate-General of the Civil Guard, the Directorate-General of Police and the Government Delegation in Andalusia so that, within the scopes of their respective powers, they could issue instructions so that in the future the necessary measures would be adopted for preventing such a situation as that described from occurring again.

Therefore, it has been recommended to the Civil Guard that, when it is not possible to hand aliens over to the National Police Force immediately, it should proceed to read them their rights. It has also been recommended to adopt structural measures in the Police Force so that the identification and processing of cases relating to aliens can be done within the territorial limit of the province where they were detained, and in relation to internments it has been requested that when there do not exist sufficient places in internment centres, the personal circumstances of each detainee should be weight up individually so that the adoption of that measure can be done with the criteria of objectivity and not on a purely random basis. The need has also been stated for coordination actions to be carried out among the different administrations in order to prevent possible situations of social emergency.

### Consular offices

In terms of services abroad, different actions have been carried out aimed at informing the Ministry of Foreign Affairs of the advisability of increasing the number of consular offices in Colombia, given the size of that country and its importance as a point of origin for the flow of workers.

The importance of the consular service having the necessary staff and material means, plus the need to increase the services abroad, is evident following the change made by our country which has come to be an important destination for immigrants. In this regard, delays have been noted in the processing that is carried out abroad, and some of these delays must be severely questioned. So, in the family regroupings of descendants, it has been seen in some cases that no distinction is made between whether the delay is due to the Administration or not when it comes to denying a regrouping due to the descendant being of majority age.

The reception of complaints from citizens who have found their request turned down for a short-stay visa so that they could enter Spain in order to visit relatives led to the advisability being raised with the Directorate-General of Consular Affairs that greater justification should be made in their cases so that applicants can learn the reason for the denial.

### Delays in resolutions on regularisation

The regularisation processes that have existed since the coming into force of Organic Act 4/2000, of 11 January, have led to a very large volume of cases in the different government delegations and sub-delegations. The notable effort being made to tackle resolutions on proceedings has not been enough, and during 2003 there persisted a widespread delay in the functioning of these services in those provinces where the highest alien populations are recorded.

**From the investigations made, it is revealed that the situation is particularly alarming in the Government Delegations of Madrid, Barcelona, Valencia, Autonomous Community of the Balearic Islands, Murcia, and in the Government Sub-Delegations of Alicante, Castellón, Málaga, Las Palmas de Gran Canaria and Tenerife.**

So, by way of example, it can be pointed out that in the Government Delegation of Madrid at the end of 2003 there remained 7,000 appeals for reversal yet to be decided upon which had been filed within what is known as the documentation process for rootedness, which closed in July 2001. It was estimated that it would take a year for this situation to become normalised. Initial work permits are being issued within an average period of one year and their renewals require more than six months, which means that the maximum period stated by law for resolving these proceedings is easily being exceeded.

The Government Sub-Delegation of Barcelona continues to have more than 30,000 appeals unresolved that have been presented against denials of documentation for rootedness, without the appeals having even been entered into the computing system. The Government Delegation of the Balearic Islands requires over a year to decide on work residence permits under the general system.

In the Government Sub-Delegation of Castellón, the handling of permits under the general system was halted during the rootedness process, which meant that at the end of the year 2003 requests for initial work permits that had been presented in 2001 had still not been resolved.

The rest of the immigration offices in the country have virtually concluded the rootedness process. Nevertheless, serious delays are still habitually occurring in dealing with other applications, which as a rule still require at least six months until they are settled.

### Insufficient means in the immigration office

This Institution cannot yet evaluate the impact that the latest reform of the Aliens Act is going to have on the volume of cases to be dealt with in each of the Government delegations and sub-delegations and especially the consequences derived from the obligation concerning the personal and direct appearance of the applicant for carrying out most of the processes. Nevertheless, in view of the known data, it can be asserted that the means currently existing are not sufficient for putting an end in the short or medium term to the backlog that has accumulated so that the new situation can be adapted to quickly.

For this reason, the reports received from the administrations involved and the conclusions of visits made are going to be passed on the Ministry of Public Administrations and the Ministry of Interior with the aim of the necessary measures being adopted in each case so that the administrative action in this field can accord with the principle of efficacy which has to preside over the functioning of the Public Administrations, as set down in section 103 of the Constitution.

Also with regard to the rootedness process, this Institution has stated its disagreement with the criterion followed by the Administration of turning down requests for temporary work and residence permits filed within this process in which the job offer is presented subsequent to the coming into force of the Royal Decree



864/2001, of 20 July, on execution of the Aliens Act.

According to the understanding of this Institution, the circumstances surrounding the rootedness procedure and the actual aim of it, namely regularisation of aliens who have found jobs, ought to mean that cases should be settled with a minimum of rigidity in terms of the dates of presentation of the offers, provided that such offers are real and that they have been presented prior to the resolution of the case.

### Work and residence permits

During 2003, the Ombudsman became aware of the general practice of denying requests for initial work permits in which the employment services had issued a certificate stating that there does not exist any job seekers willing to fill the post on offer, due to the fact that the Government delegations and sub-delegations consider that the mere existence of a quota means that it is considered that there are sufficient workers throughout the country with the skills for filling the particular post being offered.

The Ombudsman has stated his disagreement with this criterion by means of various suggestions, due to understanding that legislation on immigration in all cases requires dealing with the employment process carried out on behalf of aliens resident in Spain, with a specific examination having to be made of whether there really exist workers willing to take on the specific job offers made.

The annulment of a clause in the Immigration Regulations by the Supreme Court, which, for the granting of a visa exemption requested by one of the spouses, used to require that they should have been living together in Spain, led this Institution to recommend to the Ministry of Interior that this same clause ought to be changed in the Community Regulations, where such a requirement is likewise to be found. It has also been recommended that, until such a change can be instigated, instructions should be issued so that the requirement of co-habitation in Spain is not demanded.

The reduction of periods in which renewal of the student card can be requested, which is contained in the immigration regulations, has meant that many interested persons have been unable to carry out that renewal due to being unaware of that modification to the regulations. The Administration was therefore requested to work out a temporary mechanism so that affected students do not need to recommence the

process by having to go to their own countries in order to apply for a new student's visa.

### Delays in granting asylum

In 2003, special attention was paid to the procedures followed in matters of asylum, and this Institution highlighted, among other questions, the insufficiency of the system currently followed for informing applicants, which consists of issuing them with an explanatory leaflet containing, among other matters, information that has not been updated.

It was likewise considered essential to conduct an investigation in the city of Ceuta where a considerable number of people had gathered who were seeking to formalise their requests for asylum. For this purpose, the First Deputy went that autonomous city in February 2003 in order to gather data first-hand.

The Institution considered that the practice of deferring appointments with applicants until several months after the date on which they made their application to the Administration was incorrect and left them in a situation of juridical insecurity. It was therefore recommended to adopt measures for ensuring swifter attention to these people. It was also stated that cases in which the **delay in dealing with and resolving on admission for processing of requests for asylum within**

**the national territory exceeds 60 working days due to causes attributable to the Administration** must lead to the admission of these applications for processing by virtue of positive administrative silence, and that it is not acceptable to set a date for the start of proceedings different from that of the first appearance, which was what was found to be occurring in Ceuta.

In general terms, the advisability has been stressed that in resolutions on the non-admission for processing, the reasons forming the basis of this decision should be specified in greater detail, and standard forms should be avoided. It was also recommended that an explicit reply should be made when the applicant asks on a subsidiary basis for his or her stay in Spain to be authorised on humanitarian grounds.

Finally, the Ombudsman recommended to the Government Delegation in Ceuta that in resolving on expulsion proceedings opened against aliens who had previously had their request for asylum turned down, a note should be made of the reason why it is considered appropriate in each case to adopt such sanctioning proceedings rather than issuing an order for obligatory departure from national territory. In this way, the aim is to link up both procedures so that a possible judicial suspension of the non-admission of the asylum application for processing should be sufficient for rendering the agreeing expulsion null and void.



Immigrants queuing in order to obtain work and residence permits. Photo EFE.

# The concentration of the children of immigrants in some centres is hindering the education process

**R**eferring to education at pre-university levels, the report from the Ombudsman refers to the urgency of the appropriate public administrations adopting new measures aimed at obtaining a balanced distribution of pupils with special educational needs of a compensatory nature among all schools that are supported by public funds in each zone. The aim is to correct situations in which these pupils are concentrated in a certain percentage of schools, both state and private coordinated, which is hindering the proper development of the educational activity and is having a negative effect on the right of pupils to an education.

Both the processing of complaints on this subject and the results deriving from the monographic report produced by the Ombudsman on the schooling of pupils of immigrant origin in Spain – who frequently display special educational needs of a compensatory nature – have enabled it to be confirmed that the concentration of these pupils in particular schools is not an isolated fact but is instead something which occurs repeatedly and in most cases affects specific state schools who are taking in pupils with compensatory needs in percentages that are far higher than in other schools in the same zone.

It has also been confirmed that the mostly positive assessment made by teachers and pupils towards the schooling of immigrant children in their schools becomes negative when the concentration exceeds 30% of the pupils, a situation that is prejudicial to the educational process and to co-existence in schools. Moreover, it has also been possible to confirm the inadequacy of the measures being put into practice by the majority of education authorities which are also entirely limited to preventing the phenomenon from worsening rather than efficiently tackling the already existing situations of high concentration.

## Redistribution of pupils

Nevertheless, the negative impact of these situations on the educational activity of schools, would, according to that stated in the report, require firm measures for supervising the regularisation of admission processes of pupils and improving and expanding the means, especially of the teaching staff and of other support personnel in these schools, and eventually, the redistribution of pupils with compensatory needs among all schools that are sustained with public funds in each zone when the existing situation prevents or seriously hinders the provision of the educational services in schools showing high concentration indices of these pupils and this is having a negative effect on the right of pupils to an education.

## Infant education

Turning to another matter, some appreciable imbalances can be seen in the offer of places for children aged three, as is referred to in the report, and this has led to the education authorities being urged to improve the planning instruments that they use so that, irrespective of the difficulties determined by the non-obligatory nature of this educational

stage, this offer can be made to accord better with the demand for places coming from parents of those pupils.

It seems to be especially necessary that the education authorities should give due consideration to the growing tendency of parents to send their children to school at an ever earlier age, since these parents are becoming aware of the positive repercussions that early schooling has on

children in later stages of their school life. The authorities should also make an adequate assessment of the impact which the urban development processes being undergone by certain zones is having on the demand for school places since, in general, given the structure of the population moving into those zones, this demand is focused on the early stages of infant education.

In matters of university education, the subjects discussed in this report are based on problems already dealt with in previous years, though the major innovations undergone by the regulations during the period being analysed mean that certain changes can be foreseen in the evolution of some of the questions most frequently raised with the Ombudsman.

## Delays in approval of foreign qualifications

This situation particularly affects access systems to university, though at the moment of drawing up this report there exists a notable degree of uncertainty surrounding the final form of those systems, along with the problem deriving from the mass increase in requests for approval of foreign university qualifications, since the modification of the conditions and procedures for approval have now been approved, with mechanisms being introduced for a faster and more efficient processing of requests.

Actions have already been carried out on monitoring certain training systems for obtaining university qualifications in health sciences, in which the urgent drawing up of rules of procedure has been required, and which are still pending, for obtaining the qualification of Specialist Pharmacist which basically does not require any hospital training. Various steps have also been carried out with the educational and health authorities which ended with the elimination of the training programme which a private centre sought to provide for the obtaining of the qualification of Specialist Nurse in Obstetric-Gynaecological Nursing, in which the requirements and guarantees of rigour that are provided for in the existing legislation on specialised training in nursing were overlooked.



The Ombudsman published a report on the concentration of pupils who are children of immigrants in state schools. Photo by Rafael Martínez, courtesy of «Comunidad Escolar».

## Psychologists

In this same field, the worrying volume of complaints raised by professionals and students in psychology has to be highlighted with regard to the approval of the Act on the Ordering of the Health Professions, Act 44/2003, since, with the exception of Clinical Psychology, it does not include the profession of psychology among them. This is an exclusion that is considered to be incompatible with the markedly health nature of the training contents of the study plans leading to gaining a Degree in Psychology, and which moreover places this highly numerous group of students and professionals in psychology in an uncertain situation which is having a notable effect on present and future professional expectations. This report therefore draws attention to the advisability of examining this problem in detail and, on the basis of the conclusions reached therein, deciding whether it is appropriate to review the exclusion made of the profession or psychology from the health professions.

In matters of **study grants and assistance**, a certain increase has taken place this year in the number of complaints provoked in part by the inclusion of certain requisites for the granting of compensatory aid for the awards made for the academic year 2002-2003 which, for those made in 2003-2004 the Ministry of Education, Culture and Sport agreed to regard as being mere criteria for the preferential ordering of applications, in the sense proposed by the Ombudsman. Also in this year, the proposal was accepted to modify the criterion which had been preventing students of education at a distance from obtaining compensatory aid due to the erroneous presumption that they were only able to receive aid for teaching material and for occasional trips made to the teaching centre.

In matters of **intellectual property**, this report supports the complaint raised by a large group which disagrees with the requirement of payment of the fee for private copy, specifically on the retail price of certain digital supports (CD, DVD, etc.) in application of section 25 of the Intellectual Property Act. The signatories of this complaint claim that payment to the holders of the intellectual property rights must be borne by those who use those supports for reproducing those works but not by those who use them in their habitual work – as is the case of computer scientists, professionals, etc. – and only for safeguarding or reproducing the result of their own activity and not that of others.

This Institution has stated its comprehension of this opinion, though it considers that the legality of what is known as the «royalty for private copy» cannot be questioned, all



*The Ombudsman receives the singer-songwriter Caco Senante (on his left) as chairman of the Network of Music Authors and Performers (ROAIN) and Teo Cardalda (on the right of the Ombudsman), chairman of the Association of Music Composers and Authors (ACAM) who asked for help in combating the phenomenon known as «top manta»: the street sale of pirated CDs. Also attending the meeting was the Second Deputy Ombudsman, Manuel Ángel Aguilar Belda (left) and his Head of Staff, José Manuel Sánchez Saudinos (right).*

the more so as its requirement is provided for in the existing Intellectual Property Act and it is the system habitually used in countries of the European Union and in other developed countries for protecting and guaranteeing the rights of intellectual property of those who, with their artistic, scientific or technical production and creation, contribute towards the development of our society.

In any case, and bearing in mind the vertiginous progress of techniques in the field of reproduction of works of all kinds and the opportunity in this regard provided by the duty to transpose Directive 2001/29/EC of the European Parliament and of the Council of 22 May to our internal code of laws, it would be advisable to review the regulations existing in the field of intellectual property and to draw up measures that will combine the most efficient protection of that right, which is today under continual attack, and the materialisation of the corresponding obligations for those who in any way use or benefit from the work of others.

In matters of **protection and conservation of the historical-artistic heritage** a certain increase in complaints has been noticed during the year denouncing actions – generally concerning urban development – which could imply a violation both of the existing Spanish Historical Heritage Act and of autonomous legislation in this field. The processing of various such complaints has revealed that additional problems are very often raised for the protection and conservation of our historic-artistic heritage due to deficient collaboration and coordination

among the different authorities – central, autonomous and local – that are involved and which have connected or overlapping powers.

Among the interventions that have detected problems of this or other nature, mention can be made of that relating to the conservation of what is known as «Casa del Piñón», declared to be a property of cultural interest, in the municipality of La Unión (Murcia); the halting of the project that had been approved at the time for the consolidation of the ruins or walls and columns of the Cathedral of Santa María in Cartagena (Murcia), and of another later project on the integral rehabilitation of the complex made up of the Cathedral and the Roman Theatre; the halting also of the execution of the project for the restoration and consolidation of the wall of Salamanca in order to lessen the consequences of demolishing the tower and the adjoining stretch of wall in the area of Huerto de Calixto and Melibea, on account of which the residents of certain houses backing on to the ruined section had to be evacuated; the conservation of the architectural and archaeological heritage of the city of Tui (Orense); the situation of abandonment of the Royal Mint in Segovia, founded in 1583 by Philip II and the work of Juan de Herrera; the consequences of signing an Agreement between Boadilla del Monte Council (Madrid) and the Ministry of Defence for assignment of the use of the Palace of the Infante D. Luis and its gardens; and finally, the numerous vicissitudes undergone in the execution of the project on the rehabilitation of Cartagena City Hall, a building declared to be a property of cultural interest.

# Parliamentary relations

**T**he Ombudsman, Enrique Múgica, deposited the 2003 annual report in both houses, Congress and Senate, on 26 May. The chair of the Congress-Senate Mixed Commission for the Ombudsman summoned him to defend it on 10 June. Once it had received the unanimous approval of the Commission, the Ombudsman then presented the 2003 report before the plenary sessions of Congress on 19 June and of Senate on 25 June, respectively.

**T**he other institutional appearances in parliamentary buildings took place with the appearance of the Ombudsman before the 59<sup>th</sup> Human Rights Commission of the UN, on «**The situation of the victims of terrorism in Spain**», held in the Palace of the Nations of Geneva on 10 April, which we shall be reporting on further below.

By delegation of the Ombudsman, his Second Deputy, **Manuel Ángel Aguilar Belda**, appeared in the Congress of Deputies on 24 June in order to present the monographic paper on «**Descriptive analysis of the conditions of schooling of pupils of alien or immigrant origin**».

On 29 September, the Ombudsman reported to and answered questions from the **Special Senate Commission on international**

**adoption**. And finally, the last appearance made by the Ombudsman before the Mixed Commission, in the VII Legislature of Parliament, took place on 11 November last in order to present the monographic study that has already been mentioned, on «**Interim officials and temporary staff: provisionality and temporality in public employment**».

In Parliament, the Ombudsman also attended the act of homage and presentation of the book **The Spanish Constitution of 1978, on its XXV Anniversary**. He collaborated closely with the chairman of the Congress-Senate Mixed Commission for the Ombudsman, the deputy of the Popular Group for La Rioja, José Luis Bermejo; he received a visit from the Fourth Vice-President of the Congress of Deputies, **José**



*Appearance by the Ombudsman, Enrique Múgica, in the Plenary Session of the Congress of Deputies for the presentation of the 2003 Report. Photo Povedano.*

**López de Lerma**; and he met with the Deputy for Lugo, **Julio Padilla Carballada**.

## Relations with the autonomous commissioners

Mention can be made of interviews with the Ombudsman of Castilla-La Mancha, **Henar Merino Senovilla** held in the headquarters of the Institution, and also of the visit by the Síndic de Greuges (Ombudsman) of Catalonia, **Antón Cañellas**; the meeting with the heads of the Pilot Project on free legal aid in NIS (AECL, Síndic de Greuges of Catalonia and the Association of Lawyers of Madrid), and finally, the attendance at the **XVIII Conference on Coordination of Ombudsmen** held on 20 and 21 October in Toledo and Albacete, organised by the aforementioned Ombudsman of Castilla-La Mancha.

During this conference, the topics previously studied by working groups in various workshops held in different cities were debated, with the participation of experts and personnel from various parliamentary commissions, and the conclusions and proposals that were reached were passed on in the form of recommendations to the appropriate public



*On 11 November 2003, the final session of the VII Legislature of the Parliament was held of the previous Congress-Senate Mixed Commission for the Ombudsman, in which Enrique Múgica presented the report on interim public officials. At the top table (from left to right) are: the First Deputy Ombudsman, María Luisa Cava de Llano i Carrió; the deputy from PSOE and first secretary of the Commission, Carlos Navarrete, the first vice-chairman and senator of PP for Alicante, Miquel Barceló; The Ombudsman, Enrique Múgica; the chairman of the Commission, PP deputy José Luis Bermejo; the legal adviser Federico Trenor, the PSOE deputy Cipriá Ciscar, second vice-chairman; José Ignacio Marín Izquierdo (second secretary), PP deputy for Burgos, and the Second Deputy Ombudsman, Manuel Ángel Aguilar Belda. Photo Povedano.*



*Parliamentary commissioners attending the XVIII Conference on Coordination with the Ombudsman.*

administrations at the same time as strengthening the commitment of parliamentary commissioners to conduct a specific monitoring of these social problems in their respective fields.

As a novelty, the full report, which can be consulted in the website mentioned earlier -

[www.defensordelpueblo.es](http://www.defensordelpueblo.es) - includes the transcription of debates and contributions made in those workshops dealing with «The rights of people with disabilities» (held in Vitoria); «The right of access to housing» (held in León); and «Domestic violence» (held in Zaragoza).

here was the speech made by the Professor of Psychiatry of the University of the Basque Region and of the University of Geneva, and WHO expert José Guimón, titled: «**The public and private system of Social and Health Care for persons with mental illness in Spain**».

In that XVIII Conference on coordination of parliamentary commissioners, held in Toledo and Albacete, some round tables were also held on «**Care services and resources in attending to mental health**»; «**The mental patient as a subject of rights**»; and on «**Supports for mental health: families and associations, and the integration of persons with mental illness**».

Coinciding with the Conference, the **II Forum on Citizen Rights** was also held. This was an event open to all groups of citizens who are aware of the reality of mental health care, and standing out



*Ombudsmen and their teams in the XVIII Conference on Coordination between the national Ombudsman and the Autonomous Commissioners.*



*Reading of the Declaration of Human Rights in the Congress of Deputies on 10 December 2003. From left to right, Arturo Arnau, chairman of the NGO «Globalización Social y Política de Valencia»; the First Deputy Ombudsman, María Luisa Cava de Llano, the President of the Congress of Deputies in the VII Legislature, Luisa Fernanda Rudí Ubeda, and the judge Baltasar Garzón.*

# International relations

**I**n the year 2003, a notable diversification took place in the field of international relations with regard to the Ombudsman and his Deputies.

The Ombudsman, Enrique Múgica, took part in, among other events (details of which can be found in the website *www.defensordelpueblo.es*), the following events at the international level:

— In **La Paz (Bolivia)**, on the occasion of celebrating five years of the institution of the Ombudsman for that sister nation, he held a colloquium with the civil society on 11 March; he gave a **speech in the Departmental Association of Lawyers of Bolivia** on «Protection of the victim», on that same day, and he participated in a colloquium held in the Auditorium of the **Supreme Court of Justice** with a speech on «Justice as human right», in Sucre (Bolivia), on 12 March and another speech on 13 March in the Tomás Frías University of Potosí on the rules and forms of action of the Ombudsman of Spain. During the Ombudsman's trip to Bolivia, at the invitation of the Ombudsman of that country, he paid a visit to various authorities, among them the Vice-President of the Republic, Carlos Mesa Gisbert; and he was awarded the title of Distinguished Guest of the Mayor's Office of La Paz.

— He attended the **swearing in of the European Ombudsman**, Nikiforos Diamandouros (Luxembourg, 31 March) and the **meeting of the regional Ombudsman of the European Union** (Valencia, 10 and 11 April).

## Defence of victims of terrorism before the United Nations

In the appearance made by the Ombudsman before the **59<sup>th</sup> Human Rights Commission within topic 18.b)** on «**The situation of the victims of terrorism in Spain**» held in Geneva, in the Palace of the Nations on 10 April, he gave a speech, the text of which we summarise here, though its complete content can be consulted in the full report.

The Ombudsman, as the High Commissioner of the Spanish Parliament for the defence of human rights, began by recalling that the total number of deaths in Spain due to terrorist attacks, between the years 1968 and 2002, came to 919. The number of wounded for the same reason during that period was 2,234. Kidnappings amounted to

77, and there were 7,273 so-called 'street terrorism actions'. As is evident, the number of people harmed by these criminal actions is very much higher bearing in mind the multiplicity of circumstances affecting human co-existence.»

«I must, moreover, highlight», added the Ombudsman, «that modern penal systems are becoming ever more respectful of victims. The appearance of victimology and specialised works that they have given rise to; the basic principles of justice whose application is acknowledged to the victims of crime and of the abuse of power; the regulation contained in the Statute of the International Criminal Court, and the norms and plans of action drawn up by the Council of Europe and by the European Union are some of the pillars for the construction of a common space of freedom, security and justice in democratic societies. Among others, mention can be made of the contents of the Law on aid and assistance for the victims of violent crime, the regulation developing it and, in the particular case of victims of terrorist crime, the Law on solidarity with victims of terrorism in order to mitigate on the economic side the needs of people who have suffered the effects of crime, whether directly or indirectly. These provisions form part of a framework of norms having obligatory reference, and were in part induced by the recommendations of the Ombudsman and likewise backed by other institutions in the country.»

The Ombudsman sketched out some brief points which, in his opinion, have to characterise an adequate policy of human rights for victims of terrorism in Spain, among which arose the extension of the concept of victim to that considered by the United Nations itself, and which establishes them as being those who «individually or collectively have suffered harm, including physical or mental injury, emotional suffering, financial loss or substantial diminution of fundamental rights, as a consequence of actions or omissions that violate the special legislation of Member States...» The Ombudsman stated that: «This concept acquires particular importance on account of its generalising scope, if it is borne in mind furthermore that, owing to the effect of the duration and

extent of terrorist actions originated in the Basque Region, there is a tendency towards the implantation of a kind of eusko-nazism<sup>1</sup> whose potential victims are liable to suffer a growing accumulation of harmful consequences.»

Enrique Múgica affirmed before the 59<sup>th</sup> Human Rights Commission of the United Nations that «the response to ETA terrorism by the public powers of self-government, who have authorities attributed to them in matters of security, and in certain instances related to the Catholic Church, has been insufficient and timid in my Basque Region.» The use of ambiguous language, which avoids mentioning the word terrorism; the placing of victims and executioners on the same footing, as being parties equally to blame in the conflict; the perverse use of dialogue as solution, forgetting the circumstances which must preside of the dialoguing relation which inevitably updates and recalls certain regrettable historical situations and their horrific consequences (for example, the Munich agreements); the exploitation of criminal inertia and of the terror caused by attacks in order to propose false solutions to the situation, such as the widely publicised sovereignist and secessionist solutions, or secret agreements between political groups, these are all samples and examples of the weakening of the will of those institutions to reinstate human rights in their entirety in the Basque Region following the erosion that has taken place as a result of terrorist crimes.»

The Ombudsman concluded by proposing Justice as the solid basis of peace. «Today, as yesterday,» he asserted, in accordance with Kant's famous statement, «the greatest and most repeated form of misery to which human beings are exposed consists of injustice rather than misfortune». **The real meaning of peace, which is precisely what victims of terrorist actions have been demanding for a long time, rests»,** Enrique Múgica concluded, **«on a genuine and effective application of the principle of justice. A principle which, above all else, demands a knowledge of the truth in order to avoid past mistakes and to achieve the consolidation of a democratic co-existence based on respect for human rights.»**

1. Translator's Note: «eusko» meaning «Basque» in the Basque language.



# VIII Congress of the FIO: the «Panama Declaration»

**T**he Ombudsman, Enrique Múgica, played a major role in the VIII Annual Congress and Assembly of the Ibero-American Federation of Ombudsmen (FIO), attended by 85 Ombudsmen, Lawyers and Human Rights Commissioners from Latin America, Spain and Portugal. The central topic of the Congress, held in Panama City from 17 to 21 November, was «Democracy and Human Rights», and a meeting of the Network of Ombudsmen for Women was also held.

In that Congress, approval was given to what is known as the **Panama Declaration** in which Ombudsmen, Lawyers, Attorneys, Commissioners and Chairs of Public Commissions on Human Rights gathered there made a call concerning the problems suffered by democracies in Latin America, and repeated, among other affirmations, the need for disarmament in Central America, for demilitarisation and control over private security services; they recommended that States in the region should introduce an integral public policy for emigration, applying the rules of the United Nations in this regard; they repeated their call to States to ratify or abide by international and regional instruments on human rights, as well as to commit themselves to collaborating with the Technical Secretariat of the Ibero-American Summit of Presidents and Heads of State, furthermore recommending States who have not yet done so to sign and then ratify the Optional Protocol to the United Nations Convention against Torture, adopted in December 2002, which instigates a novel mechanism for prevention of torture by means of a national and international procedure of visits paid to detention centres.

The ombudsmen met in Panama rejected «acts of harassment and pestering against the Ombudsmen for Human Rights and the institutions they represent, due to considering that they constitute attacks on democracy and the validity of human rights»; they stated «their serious concern for the scarce budgetary support for Ombudsmen in the region, which is weakening their work in the promotion and protection of human rights and the monitoring of commitments taken on by States in international instruments on this subject», and they repeated their «support for the work being carried out by the Attorney's Office for Human Rights of Guatemala, rejecting any act aimed at undermining his mission.»

Likewise, «they reject the threats targeted at the Attorney for the Defence of Human Rights of El Salvador and his officers, and they back the work being undertaken in favour of human rights of that nation, as well as the recommendations for support emanating from the Human Rights Commission of the United Nations Organisation.»

They also repeated «their support for the work of the Ombudsman of Colombia in a difficult context on account of its risk, marked by a heightening of the internal

armed conflict and the serious violations of human rights. And they express their satisfaction at the resumption of parliamentary efforts for the creation of the institution of the Ombudsman in Chile. They furthermore ask that the processes for his establishment in the Dominican Republic, Brazil and Uruguay be culminated.

The Ombudsman took part in this VIII Annual Congress of the FIO, with a speech on «Challenges for assuring the protection of migrants: the vision of Europe», as part of the topic «Transparency and democracy».

## Other internal interventions

The Ombudsman gave a speech on the commemoration of the «**Centenary of the Republic of Panama and the XXV Anniversary of the Spanish Constitution**» organised by the Spanish Embassy and the National Association of Lawyers of Panama City, with the title «The Spanish Constitution, Constitution of Liberties» (Panama City, 21 November); he attended the **second meeting of the Special Fund for Ombudsmen and National Institutions of Human Rights of Latin America and the Caribbean** (Copenhagen, 3 and 4 December) and he took part in the commemorative acts of the **World Human Rights Day organised by Human Rights in the Congress of Deputies**, with a speech on «Children and the culture of human rights» (Madrid, 10 December).

## Other international meetings

In Copenhagen on 23 and 24 June, the Ombudsman held a working meeting in the headquarters of the Danish Ombudsman, on the background, constitution and development of a Special Fund for promoting **collaboration among national institutions for the defence of human rights in Europe and Latin America**; he attended the conference on «**Towards a uniform and dynamic implementation of anti-discriminatory legislation of the European Union: the role of specialised organisations**» in Utrecht (Holland), on 23-24 June; he took part in the **Training Programme for University Volunteers**, University Network, Helsinki Spain Human Dimension, with a speech «**Casistry of the violation of human rights and reports in violation of human rights**» (Madrid, 23 September); in the **Annual meeting of members with voting rights of the European Region of the International Institute of the Ombudsman** (Cyprus, 9-11 October); in the **First Bulgarian-Spanish Juridical Conference «The reform of the judicial system in the process of Bulgaria's membership of the European Union»** with a speech from the Ombudsman of Spain (Bulgaria, 16 October).

— The Ombudsman and his Office Chief attended the **8<sup>th</sup> Round Table of European Ombudsmen** organised by the European Commissioner for Human Rights and the Norwegian Ombudsman (Oslo, 3-5 November).



*Ombudsmen attending the VIII Annual Congress and Assembly of the FIO, held in Panama from 17 to 21 November 2003.*

# Visits and Audiences

Among the official visits and acts, whether organised by the Institution or participating in other gatherings or forums, we can highlight the visit of the **United Nations High Commissioner for Refugees**, Carlos Boggio, and his Head of the Protection Unit, Deborah Elizondo, and the meeting with the High Commissioner in the headquarters of the UNHCR; attendance at the **Opening Ceremony of the European Year of people with disabilities**, organised by the Ministry of Work and Social Affairs; the visit of the **United Nations High Commissioner for Human Rights**, Sergio Viera de Mello, accompanied by the Spanish Ambassador in Geneva before the United Nations, Joaquín Pérez Villanueva, and other persons from the Commission and from the Ministry of Foreign Affairs (Pablo Spiniella, Advisor, and Juan Manuel Cabrera, Director of the Office of Human Rights); the visit of the **Israeli Ambassador**, Herzl Invar; and the attendance at the solemn Eucharist officiated by the **Pope, John Paul II**, held in Madrid on the occasion of the canonisation of **their Blesseds Pedro Poveda, José María Rubio, Genoveva Torres, Ángela de la Cruz and María Maravillas de Jesús**.

Among the international visits, we can highlight those made with the **Chairwoman of the Association of Women for World Peace**, Marcia de Abreu Rodríguez, and with the Director of the International Inter-religious Federation for World Peace in Spain, Armando Lozano Hernández; the visit of a **delegation from the Czech Republic**, headed by the President of Kralovehradecký Region, Pavel Bradík; the visit of the **Chairman of the Consultative Council of Human Rights of the Kingdom of Morocco and Chairman of the Hassan II Foundation**, Omar Azziman, accompanied by the Ambassador of that country, Abdeslam Banka.

— Interview with the **Secretary of State in the Presidency of the Government of**

**Poland**, Plenipotentiary of the Government for Equality of Rights for Women and Men, Izabela Jaruga-Nowacka, accompanied by the Adviser of the Secretariat of State, the Board Member for Education and Communication Media, the Board Member for Cooperation with NGOs and the Cultural Attaché of the Polish Embassy in Spain.

— Visit of the **European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, chaired by Silvia Casale.

— Interview with the **Special Reporter on the rights of immigrants of the United Nations Commission for Human Rights**, Gabriela Rodríguez Pizarro, accompanied by, among other persons, the Spanish Ambassador and Permanent Representative before the Office of the United Nations, Joaquín Pérez Villanueva.

— Visit from the **Director of the Centre for Cooperation Initiatives for Development**, Manuel Guedán, and from the **ex-High Commissioner for Peace of the Colombian Government**, Camilo Gómez.

— Visit from the **Special Reporter on Torture of the United Nations Commission for Human Rights**, Theodor Cornelis van Boven.

— Interview with the **Director-General of Police**, Agustín Díaz de Mera y García Consuegra.

— Visit from the **adviser to the United States Embassy in Spain**, Joseph R. Babb.

— Visit from the **Member of the National Parliament of the Democratic Republic of East Timor and Chairman of the Parliamentary Commission on Infrastructures**, José Lobato.

— Visit from the **Attorney for Human Rights of Guatemala**, Sergio Fernando Morales Alvarado.

— Visit from the **Ombudsman of the Bolivarian Republic of Venezuela**, Germán Mundaraín, and from the **Ombudsman of the Republic of Ecuador**, Claudio Mueckay.

— **Conference in the headquarters of the Greek Ombudsman** and the participation of him in a joint session on «The consolidation of constitutional democracy and the role of the Ombudsman in Greece and in Spain». Dinner with Spanish ex-patriots, visit to the Greek Minister of Interior, Costas Skandalidis, and meeting with journalists.

— Attendance at the **Hispano-Irani Meeting on dialogue of civilisations** organised by the Ministry of Foreign Affairs.

— Visit from the **Chairman of the National Commission of Human Rights of Korea**, Chang-Kuk Kim,

accompanied by a delegation of five members and by the Adviser for Economic and Cultural Affairs of the Embassy of the Republic of Korea, Kyung-Tae Hwang.

— Visit from the **Director and head of the juridical programme of the Centre for Studies in Democracy in Bulgaria**, Vladimir Yordanov, accompanied by the head of that programme, Maria Yordanova, and by the Political Adviser from the Bulgarian Embassy in Spain, Kostadin Kodzabashev.

— Interview with the **Adviser for Scientific Cooperation from the Chilean Embassy**, Omar Jara.

— **Interview with the** Ambassadors of the Republic of Cuba, **Isabel Allende**.

— Visit from the **Under-Secretary for Work of the Dominican Republic**, Sonia Díaz.

— Interview with the **Commissioner of the Ombudsman of Peru**, Eduardo Vega Luna.

The full report gives details of the visits, audiences and meetings held in the headquarters of the Ombudsman during the course of the year, in which in the majority of cases the head of the Institution, Enrique Múgica Herzog, was accompanied by his deputies, María Luisa Cava de Llano i Carrió (First Deputy) and the Second Deputy, Manuel Ángel Aguilar Belda.

## Conventions and agreements

Standing out among the *conventions and protocols* signed are a **Convention between the Institutional Programme of Cooperation** (headed by the Ombudsman of Spain, the Association of Lawyers of Madrid and the Síndic de Greuges (Ombudsman) of Catalonia) and the **Association of Lawyers of Nis and Nis City Council**, already referred to; the course, «**Lawyers and resources with regard to international organs for the protection of fundamental rights**» in the Balkans region (25 April); the interview with the **Rector of the University of Alcalá**, Virgilio Zapatero and the titular professor, José Enrique Bustos, in relation to the activities provided for in the framework of the **Chair of Democracy and Human Rights (15 July)**.

Establishment of preliminary contacts, drawing up of the appropriate draft project, processing and selection by the Institution of the Ombudsman as *Leader Project* of the European programme TACIS aimed at the development of basic institutions, with the objective of **supporting the establishment and first steps of the Office of the Ombudsman in the Republic of Kazakhstan**, a European programme which will have to extend its actions during 2004.



A talk by the Ombudsman during the course on international high studies, organised by the Society for International Studies. On his left in the photo, the Rector and the Second Deputy, Manuel Aguilar Belda.



Standing out among the activities on technical cooperation, dissemination and publicity are various meetings with the Organising Committee of the Commemorative Acts of the XXV Anniversary of the Spanish Constitution; the presentation in the Institution of the **Manifesto/Declaration «For a quality television for our children and teenagers»**. Signed by the Ombudsman, the Ombudsman for Minors of the Madrid Community, UNICEF, the International Federation of the Red Cross and Red Crescent Societies, UNESCO, the trade union Comisiones Obreras of Madrid, the Grouping of Television Viewers and Radio Listeners, the Association of Communication Users, the Federation of Press Associations of Spain, the Catholic Federation of Associations of Parents of Families and Parents of Pupils of Madrid, the Regional Federation of Neighbours Associations of Madrid, the Madrid Regional Federation of Associations of Fathers and Mothers of Pupils «Francisco Giner de los Ríos», the Spectators Forum, the European Watchdog for Children's Television, the Consumers and Users Organisation, the Platform of Infants Organisations and the trade union Unión General de Trabajadores.

Also standing out in cooperation relations with various institutions and entities are:

— The **Collaboration convention between the Ombudsman and the company Gestión de Mecenazgo, S.L.**; the visit from the Member of the General Council of the Judiciary in charge of relations with the Ombudsman, **Enrique Miguez Alvarellós**, and of the Member of the General Council of the Judiciary **María Ángeles García García**; the visit to the President of the General Council of the Spanish Legal Profession, **Carlos Carnicer**; the attendance at the awarding of the **XI Manuel Broseta Co-Existence Prize in the Monastery of San Miguel de los Reyes in Valencia**; the interview with the **Mayor of Santa Coloma de Gramanet** (Barcelona), Bartolomé Muñoz y Salvador Clotas; the visit by the **Director of the Data Protection Agency**, José Luis Piñar Matas, and his Deputy Director, Jesús Rubí; and interview with the **Secretary of State for International Cooperation**, Miguel Ángel Cortés, accompanied by the **Director-General of Inter-American Cooperation**, Juan López-Dóriga, and his Office Chief, Santiago Miralles Huete; and attendance at the awarding of the **«Co-Existence Prize»** by the Ermua 2002 Forum to the **Judge of the National High Court, Baltasar Garzón (Vitoria)**; the interview with the **professor of the Department of International Law of the University of Chile**, Mario Ramírez Necochea, and with the **First Secretary of the Chilean Embassy in Spain**, Francisco Gormaz.

— Other interventions from the Ombudsman took place in the **closing ceremony of the VIII Congress of Notaries** with a speech titled «Right to enjoy a dignified and adequate home»

(Madrid); the attendance at the presentation of the book **Los años de plomo** (The lead years) by Isabel San Sebastián, organised by the Foundation Victims of Terrorism and Topics of Today (Madrid); the interview with **students of the Aliter Business School**, from Madrid; attendance at the **homage to Ex-Political Prisoners Against Franco** (Burgos); interview with the **President of Attorneys**, Juan Carlos Estévez; he spoke some words in the presentation of the book **Juan Negrín. La República en guerra** (Juan Negrín. The Republic at war), written by Ricardo Miralles and published by Temas de Hoy (Casa de América, Madrid) and he participated in the corresponding session of the **Conference on Victims of Terrorism**, with some **«Reflections on the meaning of the Ermua Forum and of the 'Basta Ya' Initiative** (University of Alcalá, Madrid).

— In the Rioja Athenaeum the Ombudsman received the **V «José Prat» Prize for Tolerance**, organised by the Association of Athenaeums of Spain (Logroño); as well as the awarding of the **Medal of the Spanish Association of Family Lawyers** on the occasion of holding the X Meeting of that Association (Madrid); the participation in the **Training Seminar for Ombudsmen: «The Ombudsman with regard to mediation and negotiation in social conflicts»** (in Antigua, Guatemala); attendance at the **XIII Gathering of Lawyers on the Rights of Aliens**, organised by the Aliens Sub-Commission of the General Council of the Spanish Legal Profession and the Association of Lawyers of the Balearic Islands (Palma de Mallorca); the **meeting with the Secretariat-General of Employment**, Carmen Lucía de Miguel; with the **Director-General of Work**, Soledad Córdova Garrido; with the **Deputy Director-General of Normative Regulations**, Raúl Riesco Roche; and with the **Director-General of Migrations and Social Services**, Antonio Lis Darder (Madrid); attendance at the Debate Forum **«Prostitution, a question of gender violence»**, organised by Altadis, on the occasion of the XX Anniversary of the Commission for Investigation into Ill-Treatment of Women (Madrid); the **meeting with Judges, Public Prosecutors and Magistrates** for drawing up the monographic report on **«Legal aid for aliens in Spain»**; intervention in the **Gathering organised by the Telefónica Foundation on schooling of pupils of immigrant origin in Spain** (Madrid); **meetings with representatives of UNICEF** on the same topic; with the **Under-Secretary of the Ministry of Health and Consumption**, Pablo Vázquez Vega, with the **Directorate-General of Top Inspection and Coordination of the Health System**, Ana Sánchez, and the **Director of Human Resources**, Jaime Aubia; intervention in the **closing ceremony of the XIV Gathering of School Boards of the Autonomous Communities and of the School Board of the State**,

devoted to the subject «Innovation and Education», with a speech on schooling of pupils of immigrant origin in Spain (Salamanca); interview with the representatives of the **Executive Commission of the «Unión General de Trabajadores» of the Basque Region**; intervention in the **Seminar «Discrimination and the Gypsy Community. The promotion bodies for equality of treatment»**, organised by the Gypsy General Secretariat Foundation, in the headquarters of the European Parliament in Madrid; interview with the **General Secretary of the Teaching Federation of «Comisiones Obreras»**; meetings with Daniel Cano and other **representatives of Adoption Agencies**; with the **members of the Executive of the National Agency of Evolution of Quality and Accreditation**; with the **Chairman of the Pharmacists Association of Ciudad Real**, Juan Ignacio Calero, with the **Chairwoman of the Pharmacists Association of Toledo**, Ana López Casero; and interview with the **Director-General of Ibero-American Cooperation**, Juan López-Dóriga Pérez.

## Cultural activities

Among the activities in which the Ombudsman sought to emphasise through his presence the connection of the Institution with civil society, or in which he utilised the acts in which he participated in order to publicise its activity, mention can be made of his attendance at numerous cultural acts, such as the presentation of books. He attended the presentation of the book by **Juan Peñafiel** «A golpe de memoria» (Madrid); at the delivery of the X Balquerra prize to **Jorge Semprún**; at the **Course of Higher International Studies**, «Towards a new international society: peace, human rights and sustainable development», with a speech on the subject «The generations of human rights» (Madrid).

The Ombudsman gave a speech in the **Antares Foro Foundation** with the title «The Ombudsman and Constitutional Rights» (Sevilla); he took part in the **VII Conference on the autonomous system of Castilla-La Mancha** with a speech on «The Ombudsman in Spain» (Cuenca); he attended the ceremony of homage and presentation of the book **«La Constitución Española de 1978 en su XXV Aniversario»** («The Spanish Constitution of 1978 on its XXV Anniversary»); held in the House of the Congress of Deputies (Madrid); he gave a lesson to a class of civil servants undergoing practice in the **Diplomatic School** with the speech/colloquium «The Ombudsman, constitutional institution» (Madrid); he participated in the commemorative acts of **Book Day** in the continual reading of Don Quixote, held for the seventh year, organised by the Circulo de Bellas Artes (Madrid); he gave a commemorative

speech on the **XXV Anniversary of the Spanish Constitution** as part of the season «Police and Constitution», organised by the Directorate-General of Police, with the title «The guarantee of constitutional rights and freedoms» (Vitoria); he presented a book containing the monographic study conducted by the Institution on «**The schooling of pupils of immigrant origin in Spain: descriptive analysis and empirical study**»; together with Unicef in the Institution of the Ombudsman; he participated, together with Jaime Mayor Oreja, Antonio Basagoiti and Gotzone Mora, in the presentation of the Book «**Sabino Arana o la sentimentalidad totalitaria**» («Sabino Arana or the totalitarian sentimentality») by Iñaki Ezquerro, in the Circulo de Bellas Artes (Madrid); in the presentation of the book «**La fiesta de los toros ante el Derecho**» («Bullfighting and the Law»); in a cultural session organised by the Union of Bullfighting Fans of Spain in collaboration with the Spanish Courier-Press Group, in the Circulo de Lectores (Madrid); in the ceremony of awarding the **VI International Human Rights Prize** held by the Hispano-Cuban Foundation with a speech titled «Freedom, Democracy and Human Rights»

(Madrid); he received the «**Golden Scales of Justice**» Award from the Association of Barristers of Madrid in a ceremony held by the General Council of Barristers of Spain and the Governing Board of the Madrid Association; he attended the signing of the act of constitution of the **Coordinator of Ex-Students of the Law Faculty of Albacete**, where Enrique Múgica Herzog was nominated Honorary Chairman, and he intervened in the act of celebration of the XIII Degree Graduation Year and the VI Graduation Year for Management and Public Administration in that Faculty; he held a master-class in the closing ceremony of the 2002-2003 academic year, in commemoration of ten years of the **School of Juridical Practice of the Association of Lawyers of Tarragona** pronounced by the Ombudsman with the title «The Ombudsman and the development of Human Rights»; he inaugurated the conference season on «**Terrorism, new challenges and social responses**», within the El Escorial Summer Courses, organised by the Miguel Ángel Blanco Foundation, in collaboration with the Victims of Terrorism Foundation; he attended a concert organised by the Association of Friends of the

Romantic Museum, in the headquarters of the Institution, as part of the season of Music and Palaces; he gave the inaugural lesson for the year to the students of the **Centre for Juridical Studies of the Administration of Justice**, with the title «The Ombudsman and the Administration of Justice», which was held in the headquarters of the Institution; he conducted the closing ceremony for the **X Conference on «Citizenship and politics» organised by the Spanish Association of Parliamentary Lawyers** in the headquarters of the Parliament of Aragón (Zaragoza) and the Ombudsman master-class in the **closing act for the 2002-2003 academic year** and the awarding of diplomas in the Master's courses, with the title «Constitutional rights and the Ombudsman»; organised by the **Centre for Financial Studies** (House of Congress, Madrid); he attended the presentation ceremony of the **National Association of Civil Guards «Marqués de las Amarillas»** (Vitoria) and he participated in the presentation of the «**Campaign against gender violence**» which took place in the headquarters of the Ombudsman for the Autonomy Community of Navarra (Pamplona).

## Conferences on Ombudsmen

As part of the commemorative acts of the XXV anniversary of the Spanish Constitution, the Ombudsman organised a Conference on Ombudsmen and Constitutional Law, in collaboration with the Spanish Agency for International Cooperation, the Senate and the University of Alcalá, which was held in the House of the Senate on 27 and 28 October, with the participation of numerous personalities from Constitutional Law, the Judiciary and Ombudsmen of other countries, such as the Ombudsman of the Argentine Nation, Eduardo Mondino.



The Second Deputy Ombudsman (right) attends the conference on Ombudsmen and Constitutional Rights with the Rector of the University of Alcalá de Henares, held in the Senate on 27 and 28 October 2003. Photo Povedano.

The Ombudsman took part in the presentation ceremony of the **Abbot Foundation** in the Conference on «Spanish Constitution and Health», with a speech titled «Citizens, Health and the Ombudsman» (Madrid); he attended the ceremony for the «**prizes of the VII National Competition for Awards for Excellence in the Prevention of Risks at Work**», organised by Acropol (Madrid); he gave a speech as part of the commemorative conference on **XXV years of Constitutional Justice**, organised by the Law Faculty of the University of Extremadura, with the title

«Evolution and development of Human Rights» (Cáceres); he attended the acts on the occasion of celebrating **100 years of the establishment of the Marist Brothers in Toledo**, with a speech on «The generations of Human Rights» (Toledo).

— The Ombudsman also took part in the **V Conference on international protection of Human Rights** organised by the Area of International Law of the King Juan Carlos University, with a speech on «Reflections surrounding the Administration of Justice and its relations to the Ombudsman» (Vicálvaro,

Madrid); in the **Round Table on «Constitution and Human Rights»**, organised by the State Society for Cultural Commemorations, with the collaboration of the King Juan Carlos University and the Francisco de Vitoria University (Pozuelo, Madrid).

— The Ombudsman opened the award ceremony for the **IX Pelayo Prize for Jurists of Acknowledged Prestige**, organised by the Board of Directors of Pelayo, Mutua de Seguros, with a «Brief mention of the contribution by Landelino Lavilla, from his political and juridical activity» (Madrid).

## Acts in commemoration of the XXV Anniversary of the Constitution

— Apart from the actual acts organised by the Institution for commemorating the XXV anniversary of the Spanish Constitution, which we have referred to above, the Ombudsman took part in other acts organised by different institutions, to which he

was invited. For example, during the season «Spanish democracy: profiles of a process of change and modernisation», organised by the **Menéndez Pelayo International University and the Board of Education and Culture of the Balearic Islands** and with

the collaboration of the Cercle Artistisc de Ciutadella y Ateneo de Maó, he gave a speech on «The efficacy of constitutional rights» (in Ciutadella, Menorca).

— The Ombudsman opened the inaugural act of the «**Gathering of professionals**

related to the **Organic Act on the Criminal Liability of Minors**», organised by the Pontifical University of Comillas (Madrid).

— Organised by the **National Organising Committee of Commemorative Acts of the 25<sup>th</sup> Anniversary of the Spanish Constitution**», he

gave a speech on «Human rights in the Spanish Constitution» (Burgos).

— He attended the closing ceremony and seminar «**Basque Region: Constitution, Statute and Freedom**», organised by the **San Pablo-CEU University** (Madrid); the

award ceremony for the **2003 New Economic Forum Prizes**, granted to the authors of the Spanish Constitution (Madrid), and he took part in the presentation ceremony of the **Emilio Barbón Foundation**: «In memory of Emilio Barbón» (Oviedo).

## Articles, declarations and interviews

Among the numerous interviews, declarations, articles in the press, radio and TV, which the Ombudsman gave or published during 2003, many of them in relation to the XXV Anniversary of the Spanish Constitution, we can highlight the articles for the **Liaison Bulletin of the European Ombudsman «Twenty years acting on behalf of the most unfavoured groups»**.

— The collaboration for the **Parme Bulletin** (*Support Programme for Reform and Modernisation of the State*) on: «The Ombudsman in Spain: the Institution and its challenges» (Dominican Republic).

— The contribution to the book «**La vida de la Constitución de 1978. Obra conmemorativa**

**del XXV aniversario de la Constitución Española**» («The life of the 1978 Constitution. Commemorative work of the XXV anniversary of the Spanish Constitution»). Initiative of the King Juan Carlos University, sponsored by the ICO Foundation and directed by Sabino Fernández Campo.

— The replies to questions on the Spanish Constitution, intended for publication in the **official website of the Ministry of Education, Culture and Sport** for the commemoration of the XXV anniversary of the Constitution, with pupils in Primary Education, Secondary Education, and School Certificate Education.

— Article sent on the occasion of the publication of issue 100 of the magazine **Actualidad**

**del Derecho Sanitario** with the title «Contributing to the improvement of health management».

— Article for the **Revista España Real**, of the Spanish Institutional Foundation, in the section «Signed by the Guest»: «The Constitution, in the heart».

— Article for the special commemorative supplement on the XXV anniversary of the Spanish Constitution for the **Diario Jaén, S.A.**: «25 years of the Spanish Constitution».

— Article requested by **Muñíos Council** (Ourense) for the holding of an exhibition commemorating the 25 years of the Spanish Constitution: «The Spanish Constitution on its 25<sup>th</sup> birthday».

## Other interventions

— Attendance at the **Third Working Conference of the Standing Juridical Watchdog on Migratory Phenomena** (Palma de Mallorca); meeting with members of the **Pharmacists Association**; intervention in the **Conference on Gender Violence** organised by the Federation of Associations of Separated and Divorced Women, with a speech titled «Situation of gender violence in Spain» (Madrid); participation in the **II World Forum of Women and Youth for Human Rights**, organised by the Board of Presidency (Women's Institute of the Region of Murcia), with a speech titled: «Violence against women» (Murcia); participation in the **Symposium «The Migratory Phenomenon: new responses to new realities»** organised by the Chair of Immigration, Rights and Citizenship of the University of Girona with a speech «Immigration and citizenship. Rights and duties of immigrants» (Girona); in the **III Forum on Violence against women**, organised by the School of Journalism and Communication in collaboration with Altadis, with the speech «Actions by the Ombudsman's Office on accusations of gender violence» (Madrid); in the **II Conference on Immigration**, organised by Els Verds, with the speech «The right to citizenship. Between acknowledgement and exercise» (Ibiza); in the closing ceremony of the conference «**Proposals for a strategy of**

**social protection for childhood**» organised by the Government of Cantabria (Santander); in the **Conference on «Differences between sex discrimination and discrimination in other spheres»**, organised by the European Group on Migratory Policies (Vienna, Austria); he held separate meetings with lawyers and representatives of the Public Administration on the occasion of drawing up the **Monographic report «Legal aid for aliens in Spain»**; he participated in the **Course on gender violence and Family** organised by the Polytechnic University of Cartagena (Murcia), with the speech «Institutional resources of the State» and he held interviews with **different Associations in relation to the publication of the book «Todas putas» («All whores»)**.

— Likewise, the Ombudsman participated in the **X National Congress on Health Law**, organised by the National Association of Health Law, with the speech «Rights of patients» (Madrid); in the **Conference on Domestic Violence organised by the Foundation for Justice and the Association of Lawyers of Valencia**, with the speech «A view from the Ombudsman. Projects and latest reforms» (Valencia); in the **LXV Course for Access to the Schools of Officials of the Civil Guard** with the speech «Organisation, powers and functioning of the institution of the Ombudsman» (San Lorenzo de El

Escorial, Madrid); in the **Course on Constitution, Democracy and Human Rights organised by the Chair of Democracy and Human Rights of the University of Alcalá**, with the speech «The role of the Ombudsman in the defence of fundamental rights» (Alcalá de Henares, Madrid); he took part in the **Round Table on «Immigration and Education. A perspective from the view of certain immigrant groups»**, organised by the School Board of the State (Madrid); in the **Summer Courses of the Complutense University of Madrid**, invited by the Lilly Foundation, with a speech on «Medicine and Society: Ageing, fragility and dependence» (San Lorenzo de El Escorial, Madrid); in the **International Conference on «Interculturality in secular societies»**, organised by the Cives Foundation (Cádiz); and in a **Round Table in the Academy of Television on «Infancy and Youth»** (Madrid).

— He held interviews in the Institution of the Ombudsman with **students of the Mendaur University Hall of Residence, of the University of Navarra**; with teachers and pupils of **Training Cycles of the Administrative Family of the Baix Camp de Reus State High School** (Tarragona); he received a visit from **students of the Law Faculty of Granada**; from the **Vice-Rector of Institutional Relations of the Menéndez Pelayo International University**, Santos Miguel



Judges and staff of the Ombudsman who took part in a conferences on legal aid for immigrants held in the Institution's headquarters and coordinated by the First Deputy Ombudsman, María Luisa Cava de Llano i Carrió (first on the right). Photo Povedano.

Ruesga Benito, and the Ombudsman received the **Friend of Honour Prize** (Palacio de Cristal de la Arganzuela, Madrid).

In addition to certain visits and homages already mentioned, also standing out was the attendance by the Ombudsman at other interviews, receptions of visits, audiences and participation in various acts, such as the **swearing in of the Chairman of the Council of State, José Manuel Romay Beccaría**; attendance at the reception of the **Madrid Community Day**, at the invitation of the President of the Community; attendance at the **special obituary session in the Council of State and funeral in memory of Iñigo Caverro, who used to be its Chairman**; visit from the **Ombudsman for Minors of the Madrid Community, Pedro Núñez Morgades**; visit from **Javier Nort**, lawyer representing a Spanish prisoner in the United States base of Guantanamo (United States); interview with the **Government Delegate for Aliens and Immigrants, Jaime González González**; attendance at the **investiture of an Honorary Doctorate on Fernando Savater**, by the University of Alcalá (Alcalá de Henares, Madrid); visit from representatives of the **Teaching Federation of the trade union Comisiones Obreras**, headed by the General Secretary, Fernando Lezcano; visit from the **Director-General of Roads of the Madrid Community, Francisco Javier de Águeda Martín**; visit from a **delegation of the Union of Retired Persons and Pensioners of Madrid**; the General Secretary, José Sillero Pérez, and the Organisation Secretary, Luis Fernández Santos; visit from the **Presiding Judge of the**

**Courts of Madrid, José Luis González Armengol**; visit from the **Councillor of Madrid City Council responsible for the Elderly and International Cooperation, Pilar Estébanez Estébanez**; attendance at the **commemoration ceremony of the XXV anniversary of the Constitution, in the Francisco Largo Caballero Foundation**.

The Ombudsman took part in the Audience with His Majesty the King and other members of the Committee of Honour for the Commemoration of the XXV Anniversary of the Spanish Constitution.

The Ombudsman received visits from the **General Commissioner for Citizen Security, Santiago Cuadros**, and from his General Coordinator, José Luis Esteban; from the **Director of the Centre for Financial Studies, Roque de las Heras**; he attended the acts on the occasion of the **Spanish Police Day**, with the awarding of decorations; at the solemn act of **Homage to the National Flag** and at the **Military Parade, on the occasion of the Spanish National Festival Day**.

He held interviews with the **Second Secretary of the Wellington Foundation, Eloy García**, with the **Professor of the University of Zaragoza, Manuel Ramírez**; he received the **Secretary of State for Infrastructures, Benigno Blanco**, accompanied by his adviser, Fernando Marín; the **Director-General of Environmental Quality, Germán Laría**; and the **Deputy Director of Environmental Quality, Mariano González**; the **Chairman of the Casa Argentina, Enrique Borcel**, and companions; the **Vice-Councillor for Health of the Autonomous Community of Madrid, Federico Plaza y Piñol**; he held an interview

with the **Minister of Environment, Jaume Matas**; with the **Professor of Constitutional Law of the Juan Carlos I University, Enrique Álvarez Conde**; with the **Chairman of the Spanish Professional Association of Commercial Pilots and Maintenance Technicians of Helicopters, Marino Aguilera**; with the head of **Immigration Affairs of the Association of Lawyers of Madrid, Fernando Oliván**; with the lawyer of the **Association for the Disappearance of Ana Eva Guasch Melis, of Palma de Mallorca, Miguel Mais**; with the **Manager of the Autonomous Body for Penitentiary Work and Benefits, Dionisia Manteca**.

The Ombudsman also attended the act of **Awarding of Medals to Ex-Deputies of the Island Council of Ibiza**; he held an interview in his office with the **representatives of the Confederation of Unions of Education Workers**; with the **lawyers representing applicants for health authorisation for the preparation known as Biobac**; the **representative of a group of transsexuals from Catalonia, xxx xxx**; the **Association of Early Retired and Retired Persons, Fermín Figueres**; with the **Deputy for Málaga, José Luis Centella**; and with persons making up the Grouping «Casas Bermejas toll highway»; with the **Sintel Company Committee**; with the **Mayor of Turís (Valencia)** and other members of the corporation.

He attended the **presentation of the 2002 Report from Imsero on the situation of the elderly in Spain**; he received the representatives of the «**El Alfar**» **Association of Madrid**; representatives of the **Epidermolysis bullosa Association of Spain**; he held meetings with the members of the **Ex-body of Information and Tourism Technicians of the Administration**; with the **Technical General Secretary of the Ministry of Promotion, Francisco Sanz Gandasegui**; with the **Director-General of Roads of the Madrid Community, Francisco de Águeda Martín**; with a **delegation of stevedores from the port of Gandía (Valencia)**; with representatives of «**Colegas**», **Federation of Gays, Lesbians and Transsexuals**; and he received the **Federal Spokesman for the Greens, José María Mendiluce**.

The Ombudsman likewise attended the **swearing in of the Judge of Chamber Three of the Supreme Court, Santiago Martínez-Vares García**; the ceremony for **Awarding of the Grand Cross of the Order of Isabel La Católica to the Mayor of A Coruña, Francisco Vázquez Vázquez**, at the ceremony for **awarding of the Grand Cross of Civil Merit to Olegario Vázquez Raña**; and at the ceremony for **awarding of the Grand Cross of San Raimundo de Peñafort to José María Muguruza**.

# New Congress-Senate Mixed Commission on Relations with the Ombudsman

**O**n the occasion of the general elections of 14 March 2004 and the constitution of the VIII Legislature of Parliament, the composition of the Congress-Senate Mixed Commission on Relations with the Ombudsman was renovated and its composition is now as follows:

## CHAIR

CERDÀ I ARGENT, Agustí Deputy (GER-ERC)

## FIRST VICE-CHAIR

PENA LINARES, Juan Miguel Senator (GS)

## SECOND VICE-CHAIR

CAMILLERI HERNANDEZ, María José Senator (GPP)

## FIRST SECRETARY

NIÑO RICO, Encarnación Deputy (GS)

## SECOND SECRETARY

SÁNCHEZ MENÉNDEZ, José Avelino Deputy (GP)

## SPOKESPEOPLE

LABORDETA SUBÍAS, José Antonio Deputy (GMx)  
MALDONADO I GILI, Josep Deputy (GC-CiU)  
MARDONES SEVILLA, Luis Deputy (GCC)  
PUCHE RODRIGUEZ-ACOSTA, Gabino Deputy (GP)  
RASCÓN ORTEGA, Juan Luis Deputy (GS)  
SALAZAR BELLO, María Isabel (Assistant) Deputy (GS)

## MEMBERS

ACEBES PANIAGUA, Ángel Jesús Deputy (GP)  
BAÓN RAMÍREZ, Rogelio Deputy (GP)  
BATLLE I FARRÁN, Josep María Senator (GPECP)  
BURRIEL ALLOZA, José Antonio Senator (GPP)  
CANEDO ALLER, Antonio Senator (GS)  
CASTILLEJO HERNANDEZ, Carolina Deputy (GS)  
CONTRERAS OLMEDO, María Begoña Senator (GPP)

## MEMBERS (cont.)

CONTRERAS PÉREZ, Francisco Deputy (GS)  
DELGADO ARCE, Celso Luis Deputy (GP)  
FERNÁNDEZ SANTOS, Luis Deputy (GS)  
FUENTES GARCÍA, Rafaela Senator (GS)  
GONZÁLEZ GARCÍA, Sixto Senator (GPP)  
GUTIÉRREZ GONZÁLEZ, Carlos Senator (GPP)  
HERRERA MARTÍNEZ-CAMPOS, Íñigo Deputy (GP)  
LAVILLA MARTÍNEZ, Félix Senator (GS)  
LÓPEZ-MEDEL BASCONES, Jesús Deputy (GP)  
MAQUEDA LAFUENTE, Francisco Javier Senator (GPSNV)  
MARÓN BELTRÁN, Carmen Deputy (GS)  
MONTESINOS DE MIGUEL, Macarena Deputy (GP)  
MURCIA BARCELÓ, Francisco Deputy (GP)  
NAVARRO CASILLAS, Isaura Deputy (GIV-IU-ICV)  
PADILLA CAMEJO, Ana del Pilar Senator (GPP)  
PARDO GABALDÓN, Rogelio Senator (GPP)  
PÉREZ DOMÍNGUEZ, María Soledad Deputy (GS)  
RIVERO ALCOVER, Gloria Elena Deputy (GS)  
ROMÁN GUERRERO, Rafael Deputy (GS)  
SALVADOR GARCÍA, Luis Miguel Senator (GS)  
SEDANO PÉREZ, Jesús Andrés Senator (GPP)  
SOPEÑA VELASCO, Javier Senator (GPP)  
URQUIZA GONZÁLEZ, Miguel Angel Senator (GS)  
VILLAGRASA PÉREZ, María Teresa Deputy (GS)

## ASSIGNED

## LEGAL ADVISER

SÁINZ MORENO, Fernando



Constitution in the Senate, on 26 May 2004, of the new Congress-Senate Mixed Commission for the Ombudsman in the current VIII Legislature of Parliament. Appearing in the centre of the photo is the new Chair of the Commission, Agustí Cerdà i Argent, ERC deputy for Barcelona, on his right the First Vice-Chair, PSOE senator for Almería, Juan Miguel Peña Linares and the First Secretary, Encarnación Niño Rico, PSOE deputy for Cádiz, and on his left the Second Vice-Chair, PP senator for the Autonomous Community of Andalusia, María José Camilleri. Photo Povedano.

# The technology renovation plan of the Ombudsman

The technology renovation plan for the Institution, which started in 2001, is, apart from minor actions and expansions, going to be concluded during the course of 2004 with the start-up during these years of the projects included in it, among which can be mentioned the following as the main actions for 2003:

The drawing up of the new **management system for complaints files**, which will be coming into operation at the end of 2004.

This system, which is being constructing with the latest computing technology, will enable citizens to send their complaints via the Internet, digitally certified, and to receive letters from the Institution digitally signed by this means.



Home menu for the new complaints management system.

The system is going to have tools for documents management and knowledge management in order to facilitate the search, retrieval and administration of information on complaints files and documents collections of the Institution, as well as a workflow engine for managing the different procedures of the files, which will permit the processing procedures to be made more flexible and improve the citizen service.

It will include a structure of physical and logic security complying with all the regulations of the Data Protection Organic Act and the Ombudsman Organic Act, as well as with internal rules on security.

It can be pointed out that during the present year the Institution is going to be provided with new offices, located in Calle Zurbarano 42, which will alleviate the current limitations of physical space. These offices are going to be fitted out with modern infrastructures for communications, computing and security. A second data processing centre is being set up, linked to the central

headquarters in Fortuny 22 by means of optical fibre, which will be able to act as a back-up centre for the latter, with the corresponding contingency plan against unforeseen eventualities.

Another aspect to be highlighted is the start-up in June 2003 of the new **website for the Institution** ([www.defensordelpueblo.es](http://www.defensordelpueblo.es)) with a philosophy of accessibility adapted to people with physical disabilities, complying with the regulations of the World Wide Web Consortium Web Accessibility Initiative (W3C/WAI) at level A.

The main information is set down in four major blocks: **Complaints via the Internet** from which any citizen can send his or her complaint quickly and simply, with full



Home page for the Ombudsman website ([www.defensordelpueblo.es](http://www.defensordelpueblo.es))

assistance being provided in order to guide them on how they have to formalise their letter; **Citizen Service**, where general information is offered on the telephone service, the 24-hour service, the visitor room and information on complaints and global statistics; **About the Ombudsman**, where citizens can learn about the Institution by navigating its different sections. What is it? Who is it? Competencies, Organisation Chart and Background, and

finally, **Reports and Documents**, which permit the different official documents offered by the Institution's documents collection to be consulted.

It has to be emphasised that, since the new site came into operation, the service for complaints via the Internet has been very well received among citizens, and this medium now channels 24% of the total, as shown in the table below, where the comparison can be seen with complaints received via the usual means (table 1).

The web also provides complementary sections such as: **Forum** for facilitating exchange and debate on current topics; **Press**, where the Institution posts its press releases as they are issued along with a selection of the more relevant news items referring to present-day actions by the Institution; **Your opinion**, where citizens can freely state what they think about the Institution; the **Site map**, for facilitating navigation and the contents of the site and schematically displaying its structure; **Links**, with the postal addresses and websites of institutions and organisations related to the Ombudsman's field; and **Contact us**, with a map showing the location of the Institution.

The site can be consulted in French and English for those sections that are suitable for translation.

Work is currently being carried out on the service of sending complaints by means of digital certificate and in new section such as **Events and Novelties**.

The Institution continues to back the modernisation of its infrastructures in computing and communication technology, with the aim of optimising and improving its external services, and making it easier to get closer to and communicate with its targets (citizens, institutions and administrations), as well as its internal services through improving its own management

TABLE 1. Comparison of complaints filed by citizens through the web as against using the postal service

Entrance channel .....	June	July	August	September	October	November	December	Total
Web .....	291	335	237	426	443	362	294	2,388
Post.....	1,375	928	1,048	1,515	1,172	768	654	7,46
<b>TOTAL.....</b>	<b>1,666</b>	<b>1,263</b>	<b>1,285</b>	<b>1,941</b>	<b>1,615</b>	<b>1,13</b>	<b>948</b>	<b>9,848</b>



## Information for citizens

The Ombudsman considers that it is of interest to measure certain aspects reflecting the activity of the Institution, such as the telephone service that is provided, visits attended to by the Institution's staff in the actual headquarters and calls received via the freephone line 900, basically asking for information.

**Number of calls made  
or visits received, in 2003,  
in order to provide  
citizen services**

	Visitor Room	Telephone	900 Line
January	208	662	397
February	207	733	320
March	251	759	310
April	142	504	161
May	205	680	292
June	256	760	268
July	227	455	177
August	124	397	122
September	24	608	125
October	151	689	326
November	224	580	481
December	244	423	252
<b>TOTAL</b>	<b>2,263</b>	<b>7,25</b>	<b>3,231</b>

During 2003, a total of 7,250 calls were received in the Ombudsman's telephone switchboard: 91 432 79 00, from people asking about how to make a complaint or inquiring about a complaint in the process of being dealt with.

Via the visitor room, a total of 2,263 citizens were attended to who had turned up in order to present their complaints in person in the Public Attention Service, in Eduardo Dato 31, or in order to ask for help in presenting them.

For the same purposes of receiving information, 3,227 calls were answered on the freephone line for the public 900 10 10 25.

As can be seen in table 1 on the previous page, as well as receiving one of out every four complaints made, the website [www.defensor-delpueblo.es](http://www.defensor-delpueblo.es) also handled numerous requests for information.

Complaints are also received via the following email address:

**[registro@defensordelpueblo.es](mailto:registro@defensordelpueblo.es)**



*Access to the Public Information Office in Calle Eduardo Dato, 31, Madrid.*



*The Information Registry Office and scanning of complaints.*

## New publications

During 2003, the Ombudsman Publications Service produced the following books:

— **El libro del Defensor del Pueblo** (The book of the Ombudsman)

— **Tutela de los Derechos Humanos** (Reunión Intercontinental Unión Europea/ América Latina-Caribe, 24 y 25 de abril 2002). (Safeguarding Human Rights (European Union/ Latin America-Caribbean Intercontinental Meeting, 24 and 25 April 2002)).

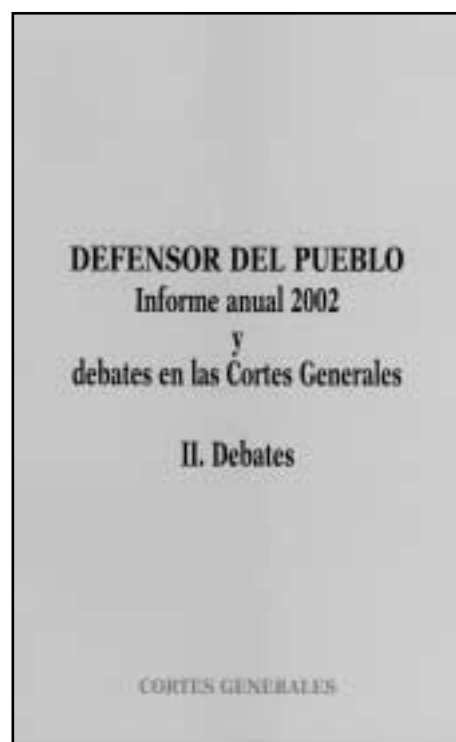
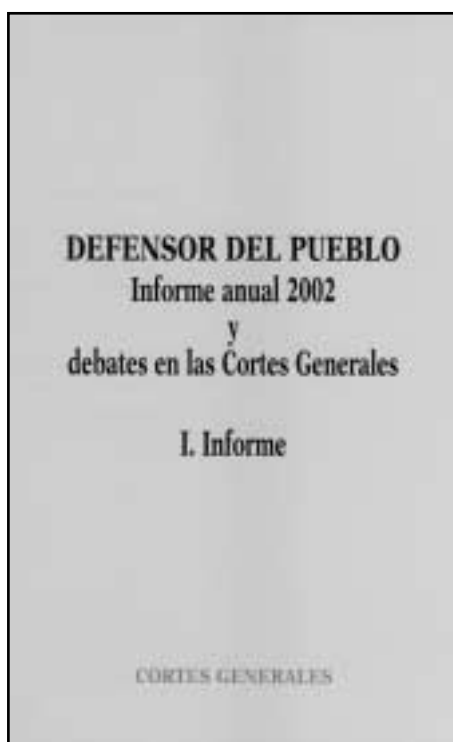
— **Recursos ante el Tribunal Constitucional 1993-2002** (Appeals made to the Constitutional Tribunal 1993-2002).

— **Informe anual 2002 del Defensor del Pueblo y debates en las Cortes Generales** (Annual Report from the Ombudsman and debates in Parliament).

Also, the following monographic reports published by the Institution itself appeared:

— **The schooling of pupils of immigrant origin in Spain: Descriptive analysis and empirical study.**

— **Waiting lists in the national health system.**



### CITIZEN SERVICE IN THE OMBUDSMAN HEADQUARTERS: LOCATION

Postal address		
The Ombudsman	Paseo de Eduardo Dato, 31	28010 MADRID
Telephone numbers of interest		
Switchboard for all services		91 432 79 00
General information on the Ombudsman (900)		900 10 10 25
Telephone service for the deaf		91 432 79 75
Fax for all services		91 308 11 58
Email		
Information and general register		registro@defensordelpueblo.es
Press office		prensa@defensordelpueblo.es
Visitor room		
Attendance to individual consultations with the following timetable	Mondays to Fridays Mondays to Thursdays	Mornings: 9 a.m. to 2 p.m. Afternoons: 4 to 6 p.m.

