

Record number of investigations opened without consultation and of resolutions delivered by the Spanish Ombudsman

- *Last year 24 381 complaints were processed*
- *500 investigations were opened without consultation, the highest record in the entire history of the Institution*
- *The number of resolutions also raised since 546 of them have been delivered in 2011 which is more than a 100 more than in 2010*
- *In the course of a term of office marked by the economic crisis, the Institution treated complaints relating to unemployment, social benefits, problems with the banks or access to housing*
- *The Institution insists on the need to reinforce the control over the management of public funds and criminalise squandering*
- *Only one organization hindered the work of the Spanish Ombudsman whereas in 2010, 14 administrations had impeded its work*
- *Last year, two monographic reports were published, one on age assessment practices and the other on the presence of democratic values in the educational system*

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The office of the Spanish Ombudsman ran by María Luisa Cava de Llano initiated last year 506 initiative investigations, a figure that represents a historical record. Spain is still going through an extremely complex economic and financial crisis which worsens the problems usually expressed by citizens through their complaints. This situation favoured the fact that the Institution increased the number of supervision procedures which are within its reach including the initiative inquiries, broadening to a maximum all its management capacity and doing his the objective of doing more with less.

On the other side, the number of resolutions delivered to the administration also raised to one of the highest figures in the history of the Institution as it reached 546 complaints, meaning more than a 100 more than in 2010. On the contrary, the number of complaints registered dropped because of the fall in the number of collective complaints.

Two of the principal characteristics of the 2011 term of office in comparison with the one of last year is on the one hand the number of individual complaints which remained steady and is similar to the one of 2010 although slightly dropping (- 2.42 %) and on the other hand, the rise registered in the initiative investigations (+ 8.58 %). The collective complaints, always submitted to wider variability as they are being determined by the number of subjects which have greater importance for the most people, dropped by 56.89 %.

In the end, over 24 381 complaints were registered last year. Among them, 16 353 were individual complaints, 7 522 were collective ones and 506 were initiative investigations.

Out of these, 125 were interventions by the Institution as National Preventive Mechanism against torture and other cruel, inhuman or degrading treatments (NPM). The control operations realised by the Mechanism were initiative investigation being preventive in nature.

As of the geographic distribution, the major part of the complaints originated from the autonomous community of Madrid (23.19 %), followed by Valencia (14.30%), Andalusia (14.09 %) and Catalonia (10.41 %).

546 resolutions delivered to the Administration

In 2011, the Spanish Ombudsman formulated 546 resolutions to various public administrations which presupposes a 22 % rise in comparison with last year. Amongst those, 154 were recommendations, 231 suggestions, 156 reminders of their legal duties and 5 were warnings. On December 31st, 70.83 % of the recommendations and 69.53% of the suggestions had been accepted without taking into consideration those which are pending resolution while waiting for the answers of the administration.

As for the recommendations pending resolution formulated in the course of the years 2009 and 2010, at the end of 2011, respectively 71.68 % and 71.70% of them had been accepted.

The administrations which hindered the work of the Spanish Ombudsman

An important drop has been registered in the number of administrations which have impeded the work of the Spanish Ombudsman by answering inadequately to its queries and requests and which, by doing so, failed to comply with their legal obligation to cooperate with other public administrations. In 2011, only one administration (the Toledo Bar Association) hindered the work carried out by the Spanish Ombudsman whereas in 2010, 14 administrations were concerned by this problem.

What are the Spanish complaining of ?

In 2011, complaints in connection with economic themes such as employment, social benefits, problems with the banks or access to housing stood out. Besides, citizens have expressed their concern for questions relating to the administration of justice and numerous complaints concerned delays, understaffing, lack of means and saturation of the various jurisdictional organs. Finally, amongst the preoccupations expressed by the citizens also stood out the aspects in relation with education, immigration, environment and civil service.

The economic administration

In 2011, the citizens sent to the Spanish Ombudsman over 3500 individual complaints and almost 2 300 collective complaints concerning economic themes.

Within this context, the lack of information on the risks arising from the buying of certain financial products continued to be the subject of many complaints. According to the Spanish Ombudsman, the claims department of the Banco de España is not fulfilling its duties in so far as it does not sufficiently guarantees the protection of the rights of bank clients. This conclusion is also the one of the monographic report on “Economic Crisis and Mortgage debtors” released at the beginning of 2012 and which has been drawn from various investigations realised last year. This special report calls for the granting of a better protection of mortgage debtors by the administration.

As regards the initiative investigations opened by the Institution, one was in relation with the Banco de España and the General direction of insurances and pension funds. It was decided after discovering on one side the lack of efficiency of life and unemployment insurances that some banks have been requiring as a condition to grant a mortgage and on the other side the fact that the insurances needed to be contracted with one of the companies belonging to the same corporation as the bank.

The other remarkable investigation has been the one opened with the General direction of registers and notary after receiving a great number of complaints stating the discontentment of citizens with some acts of the notaries.

In the same way, numerous cases were opened with the Banco de España and the State Secretary for economy on the development and diffusion of new insurance products for the interests of the mortgage loans and in order to clarify certain problems arising from the application of the law EHA/2899/2011 relating to transparency in the banking sector.

On the other side, the General direction of the State tax agency also took part in an initiative investigation because of the letter sent by the Treasury to over 90 000 tenants ordering them to cease paying their rent to their landlord and pay it directly to the Public Treasury in order to begin repaying the sum owed by the landlords to the State until the rent covers it entirely.

On a different topic, the Spanish Ombudsman also opened an investigation on the « *messages premium* ». They are a special kind of messages which the consumer never asked for and for which he never signed any new contract nor additional clause and which lead to abuses in the billing. Consequently, two investigations concerning this type of messages were opened : one with the State Secretary to telecommunications and for an information society and one with the Commission of supervision of the additional pricing services.

Security and justice

The citizens sent over 6 000 complaints concerning the topics of security and justice. Amongst those, nearly 3 000 were collective complaints and a little less than 2 900 were individual ones. Furthermore, the Spanish Ombudsman opened 22 initiative investigations.

Just like previous years, the Institution received complaints regarding delays, understaffing issues, lack of means and saturation of the different jurisdictional organs. However, in 2011, as regards the justice department, what stands out is that the acting Ombudsman asked, in the course of her audition before the Congress, to penalize the wasting of public funds as an offence. The government took on a commitment to classify it as an offence when it occurred under specific situations.

On the other hand, the institution is very pleased about the new law on terrorism victims, approved by consensus, which reflects the position defended by the office of the Ombudsman in this field according to which terrorism victims are victims of human rights violations.

In a different set of ideas, in 2011, investigations were opened in order to discover the origin of the decision to remove all the people belonging to the movement known as the “15-M” who were camping throughout Madrid.

As regards the penitentiary field, the office run by Cava de Llano choose to highlight the discussions with the prisoners during the visits carried out by the Institution in penitentiary centres and other kinds of places of freedom deprivation. On the other hand, investigations have been realised in various cases of alleged mistreatments and abuses perpetrated by civil servants and in the case of problems concerning the infrastructure of the penitentiary centres themselves.

Moreover, in the course of the duties granted to the Spanish Ombudsman, as High Commissioner of the *Cortes Generales* for the protection of human rights and as National Preventive Mechanism (NPM) the following places were visited : Madrid III (Valdemoro), Castellón I, Sevilla Mujeres (Alcalá de Guadaira), Unidad de Madres de Sevilla, Albolote (Granada), Figueres (Girona), Melilla, Madrid IV (Navalcarnero), Vilanubla (Valladolid), Barcelona Hombres, Salto del Negro (Las Palmas de Gran Canarias), Tenerife and the Hospital Psiquiátrico Penitenciario de Alicante. Amongst those visits, the ones realised at the centre of Castellón I, Sevilla Mujeres, Unidad de Madres de Sevilla and at the Centro Psiquiátrico Penitenciario de Alicante, have been carried out by multidisciplinary teams composed of members of the Ombudsman and of external lawyers, psychiatric experts, forensics and criminologists.

Health and social policy

All along the last term of office, 3 180 complaints have been treated. Amongst those, a majority concerned employment and social security (1 284) and social policy (1 113). Furthermore, 41 initiative investigations have been opened.

Numerous complaints have been received regarding employment agencies. They were about the information received by citizens as well as on the management of the procedures which need to be completed through the internet in order to get social benefits. The Spanish Ombudsman has encouraged, in the course of these past years, the creation of an effective coordination system which the royal decree 3/2011 as well as the law 27/2011 regarding urgent measures to improve the opportunities to work and reform the politics of active employment finally set up a information service common to all employment public services.

Concerning the unemployment benefits, the Institution reiterated the need for more efficiency in the examination of the applications for social benefits and allowances. Moreover, an important part of the complaints in relation to social politics had to do with unemployment issues and to the ever-growing number of people who are on the edge of social exclusion. Finally, the delays in the recognition of a right to access social benefits have also been a matter of concern for citizens.

For that matter, the Institution has maintained a continuous attention to the problems affecting infancy and especially the issues relative to endangered minors. Following the investigations opened in the course of recent years, in 2011, the Institution opened an initiative investigation in all autonomous communities in order to know the criteria currently used by public entities in charge of minors' protection for the determination of situation of abandonment. Similarly, information have been requested in order to know

which practical measures are taken in the course of the procedure prior to the setting up of protective measures.

As regards dependency situations, in the course of 2011, numerous complaints have been received concerning the application of law 39/2006 in relation to the promotion of personal autonomy and to the care given to people in dependency situations. Although the Institution did indeed notice certain improvements, other aspects remain unacceptable such as the assessment of the autonomy of those concerned as well as in the notification of the decision concerning the degree of dependence established or even the ulterior approbation to the individual programme of care. The acknowledgement of those delays led the Institution to express reminders of the legal obligation to answer in due form and within the allotted time to the requests presented before them.

Within the framework of the pension funds, numerous complaints focused on the effects produced by dispositions such as those contained in royal decree 8/2010 and law 27/2011 on the actualization, adequacy and modernisation of the social security system and for the hardship felt by the citizens for the cuts in social benefits. A lot of them had to revise their income forecast downwards for they had calculated it on the basis of a norm which was no longer in force and despite the fact that they had already established that they had been paying contribution for an extensive period of time.

As for health, the confidentiality of the information and of the documents given by the hospitals, the lack of financial means for people with mental disorders, patient insurance and the time needed to access first aid or specific health services, have continued to form the most important part of the complaints presented. Furthermore, in 2011, the Institution opened an initiative investigation aiming at guaranteeing health care to every citizens regardless of the place where they live.

Urbanism, housing and environment

In the course of 2011, 2 322 complaints in relation to these subjects have been filed before the Ombudsman and the Institution opened 43 initiative investigations. The most numerous complaints were about housing – almost a thousand – to which 220 ongoing investigations of past years need to be added.

Because of the budget cuts, the Institution urged the administrations to implement more active, coordinated and efficient-oriented politics, which should meet the realities of the demands in terms of housing and social needs. In this context, an initiative investigation deserves to be mentioned : it concerns all autonomous communities including the cities of Ceuta and Melilla and seeks to investigate on the presumed existence of non occupied subsidized housing.

Another type of complaint which has been subject to follow up is the one regarding the malfunctions in the management of requests for housing subsidies for young people. Given the very elevated number of complaints received in the course of recent years, a method of simplified communication has been set up with the central administration of housing which allowed to shorten the response time to beneficiaries who had lodged complaints for the delays experienced in the payment of subsidies to which they were entitled.

In the same way, problems in the management of the contracts signed between private landlords and the public society of renting led, in many cases, to the modification of

the conditions stipulated in the contracts which had been signed, leaving without effect the payment guarantee for the rent which had been included in the contract.

As for the complaints concerning environment, once more, citizens have denounced the current tendency to break, by law, the chain of administrative and judicial decisions and to weaken the responsibility system for damages to the environment. On the other side, investigations have been opened on Cañada Real, Valdemingómez, the Catalogue of Protected Canary Species and an initiative investigation has been opened as well on the opportunity to realise a soundproofing campaign.

Migration and equality of treatment

In 2011, citizens conveyed 2094 complaints in relation to migration and equality of treatment to which must be added 86 initiative investigations. Furthermore, in this area has also been presented the monographic report “Children or adults ? Age assessment practices” and the Institution is putting the final touch to a new report on human trafficking.

The Ombudsman is satisfied with the legislative reforms carried out in the course of 2011 which have given way to its recommendations. Organic law 10/2011 also provided for the right of any foreign citizen in irregular situation who happens to be a victim of gender-based violence to file a complaint without fear of being deported on the occasion of his or her going to the police station. Moreover, the law hallows great march in the field of human trafficking. Finally, the regulation on foreigners recognizes as exceptional circumstance constitutive of family settling, the condition of being a parent of a Spanish minor.

In the course of 2011, members of the migration department and of the National Preventive Mechanism (NPM) visited detention centres in Las Palmas in Gran Canaria, Santa Cruz de Tenerife, Valencia and Madrid. In the same way, during the first days of 2012, within the framework of multidisciplinary visits carried out by the Institution, the detention centre for third country nationals in Barcelona have been visited with a forensic external expert. The follow up of the visits carried out in 2011 will be presented in the annual report submitted by the Spanish Ombudsman as National Preventive Mechanism.

On another level, as regards equality of treatment, the investigation opened with the General direction of the police on identity checks targeting foreign citizens all over national territory was continued as well as the one opened with the General commission for foreigners and borders on the subject of the restrictive interpretation given by this entity of circular 1/2010 which limits the rights of foreign citizens.

Those two investigations led to recommendations and reminders of their legal duties to both entities aforementioned.

Education and culture

Some 3 100 complaints in relation to the field of education and culture have been filed. Among those, 2091 were individual complaints, 938 were collective complaints and 71 initiative investigations. Within the same area have also been included complaints in relation to free association right, to electoral system and to the organisation of municipalities.

As regards education, the citizens' complaints regarding the premises, the admission criteria in the course of admission procedures and problems in relation with school buses were frequent. As of university, citizens have handed over complaints in relation to grants, financial aids as well as to qualification systems. This last topic led the Institution to open an investigation to a national level with 48 public universities which brought the Institution to make a recommendation to the Ministry of education in order for it to establish, as clearly as possible, the criteria that all Spanish universities should apply when gauging the average grade of the academic files of the students as well as the information which ought to be indicated on the academic certificates.

The other initiative investigation opened by the Ombudsman had to do with the strike which took place in the public education sector and especially within different secondary schools and high schools. The Institution expressed its concern for a conflicting situation which remained unresolved at the beginning of the school year, specifically as regards the negative incidence it could have had on the children's education. The cancellation of numerous courses which affected the students justified the opening of an investigation aiming at identifying the means introduced or about to be introduced by the Ministry of education of the autonomous community of Madrid to catch up on those missing courses.

On the other part, the Ombudsman also opened an initiative investigation on the problems generated by the systematic delays in the handing in to Spanish citizens living abroad of the necessary documentation to vote by mail during the general elections of November 20th 2011.

Finally, the Institution submitted a monographic report on: «The presence of democratic values in the educational system».

Civil Service

Last year, civil servants of the three administrative levels, the members of the Army and of the Security Corps as well as the judges and prosecutors filed some 1789 complaints. Moreover, the Spanish Ombudsman opened 37 initiative investigations on questions relating to this department. Amongst those initiative investigations, those opened with the Deputy of the Ministry of education and with all autonomous communities and in the towns of Ceuta and Melilla deserve to be mentioned. They were about the management procedures of the interim workers within state education. Furthermore, initiative investigations have also been carried out with all competent authorities within the autonomous communities concerning health and social benefits and with the National institute of health management about professionals who temporarily work as family doctors without however being graduated in the relevant speciality of family medicine.

National Preventive Mechanism

One of this year's novelty has been the incorporation, together with the staff of the NPM, of external experts such as forensics, psychiatrists and psychologists specialised in the treatment of people deprived of liberty. With their help, the Institution counts on a thorough and multidisciplinary evaluation during the inspection-visits in places of deprivation of liberty.

In the course of its second year of functioning, the NPM realised 77 visits, focused essentially on the living conditions, the intervention protocols and above all on listening to those deprived of their freedom and confront their declarations to other available elements of the procedure. These visits were the starting point of over 125 initiative investigations.

The detailed account of the activities carried out by the NPM in the course of 2011 shall be outlined in a specific report submitted to the *Cortes Generales* and to the Subcommittee on Prevention of Torture.