



SÍNDIC ANNUAL REPORT 2011

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PERSONES

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Catalan Ombudsman: Pages 3 (left), 10, 12, 14, 15, 21, 22, 25, 26, 29, 31, 32, 34 and 35

Jordi Soteras: Front cover and pages 16, 17, 18, 19, 20, 24, 27, 28 and 30

Parliament of Catalonia: Page 3 (right), 4 (right) and 11

Rubén Moreno (Autonomous Govt. of Catalonia [Generalitat]): Page 4 (left)

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Throughout 2011, the Síndic de Greuges's (Catalan Ombudsman's) activities were especially marked by the financial downturn and budget cutbacks derived from it. I am aware of the magnitude and consequences of the financial crisis and limited room for action that administrations face when establishing the limits of their budgetary expenditures. Notwithstanding this context, we should never forget that public authorities still have the discretion necessary to establish, within given boundaries, a prioritization of their budgetary items and focal points of public policies.

For that reason, and given the responsibilities vested in me as Catalan Ombudsman, I would like to remind the Catalan government and parliament of the need to be more cautious in their budget cuts. And most especially, to be more cautious when setting priorities that prevent these cutbacks from affecting social rights and the universal nature of the protection systems in place today. The policies that make up the pillars of the welfare state, and more specifically, those that guarantee social inclusion, must be preserved above others when it comes to public budget reduction policies.

Still and all, I would also like it to be known that the Catalan Ombudsman's Office, like all other administrations, as well as the country's institutions and companies, has worked throughout 2011 to achieve greater efficiency, while still vying to be more effective. Along these lines, the budget that the Catalan Ombudsman sent to the Parliament of Catalonia in 2011 featured a reduction of over 10%. Following the same rationale, the Ombudsman's office has drawn up its 2012 budget with another reduction, in this case, nearly 12%.

With this decision, we have sought to show that it is possible and necessary to embrace criteria of responsible budgeting, while also maintaining and enhancing the discipline and quality of our actions.

Rafael Ribó
Catalan Ombudsman

OUTSTANDING FIGURES FOR 2011

The Catalan Ombudsman's activity underwent a sharp increase in 2011 over prior years. The number of people served by the Ombudsman's office reached 38,695, a 23.4% increase over the number of people who addressed the Catalan Ombudsman in 2010.

The complaints received (8,065) and the ex-officio actions taken (115) rose by 31.6% over prior year. If queries (14,579) are added to this number, the total number of interventions opened throughout this year was 22,759.

The method most widely used for making queries was the telephone. As for complaints, the on-line form (3,264) was the most frequently used channel.

Most complaints have been on social services (17.6%), public administration (16.1%) and public safety and justice (10%).

92% of decisions accepted

Throughout 2011, the Catalan Ombudsman completed 7,865 actions, 35.9% more than in prior year. In the decisions that featured suggestions, the administrations' degree of acceptance of the recommendations was very high, around 92% of the cases. It should be noted that this acceptance stands for an increase of more than 5% over last year.

More complaints from outside Barcelona

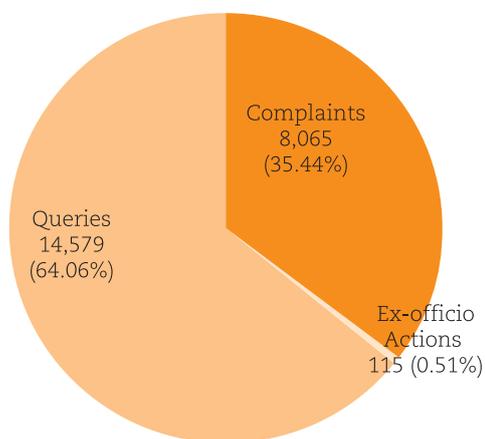
79% of the citizens who filed a complaint or query reside in Barcelona, mostly in the metropolitan area (72.2%). Nevertheless, there has been a rise in the number of complaints and queries from other parts of Catalan territory. This is due to the implementation of the traveling Citizen Services Unit (CSU).

Children's affairs and education stand for over half the ex-officio actions

Throughout 2011, a total of 115 ex-officio actions were opened, of which 35 were on matters related with children and adolescent affairs; 25, on matters related with education and research, and 12 on public safety and justice.



Number and type of actions in 2011

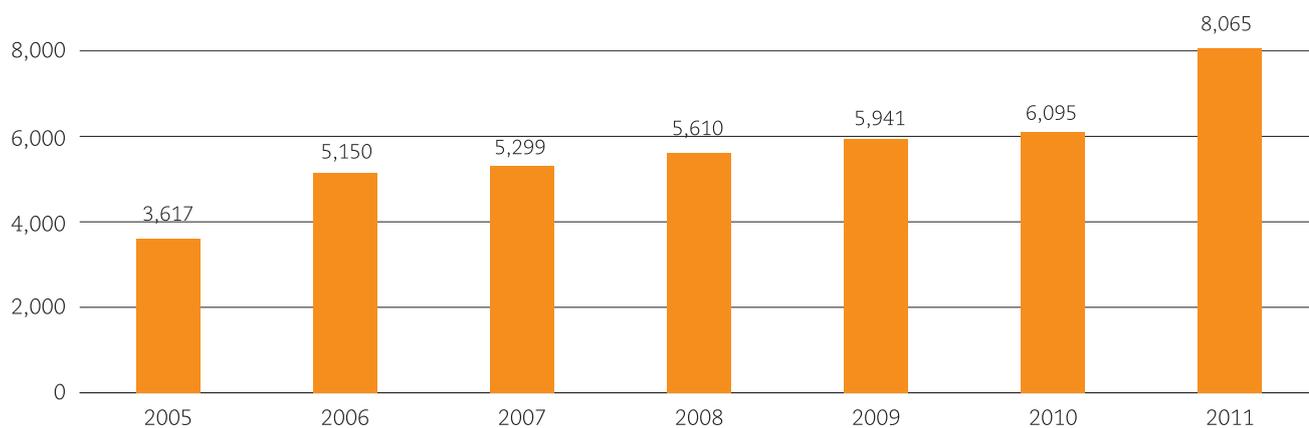


Complaints: actions promoted through disagreement, discontent or dissatisfaction with the action or lack of action by the public administration.

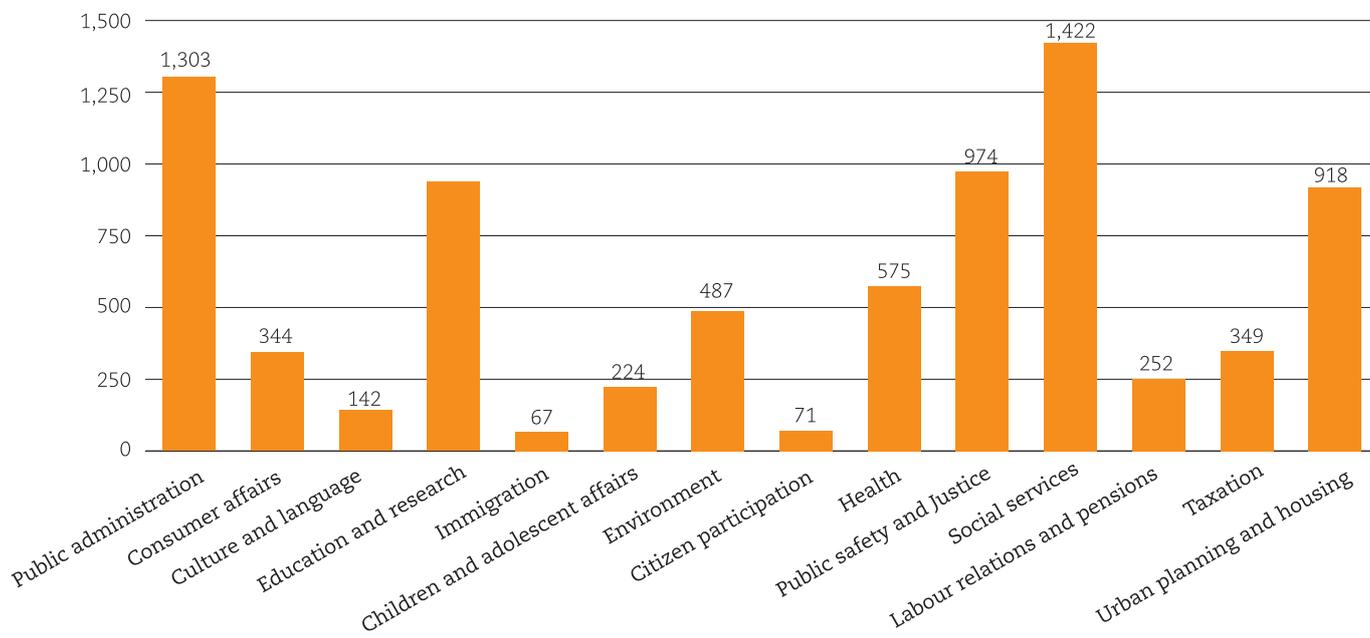
Queries: actions promoted to obtain information or guidance on a particular matter.

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

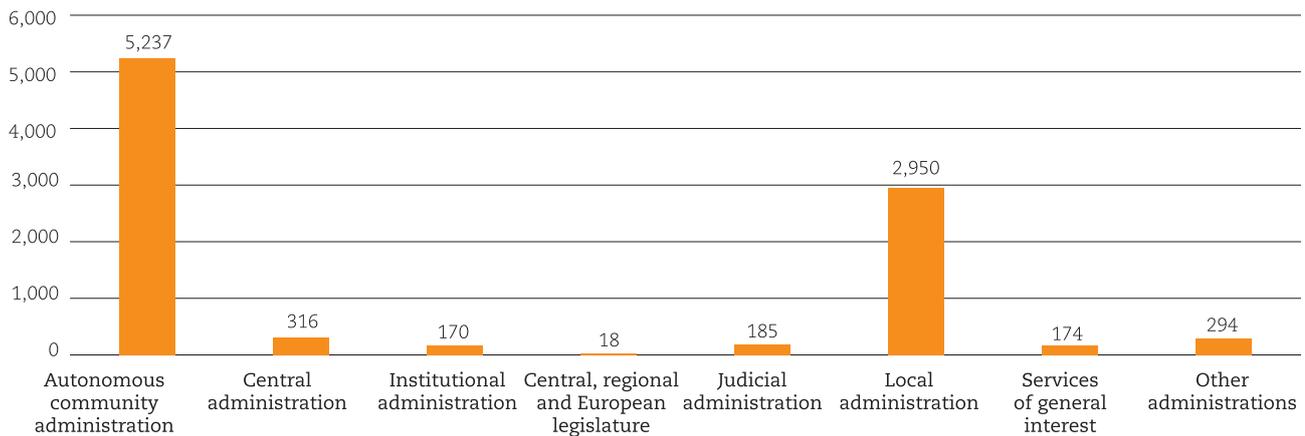
Evolution of complaints over recent years



Actions by subject



Complaints and ex-officio actions by affected Administration

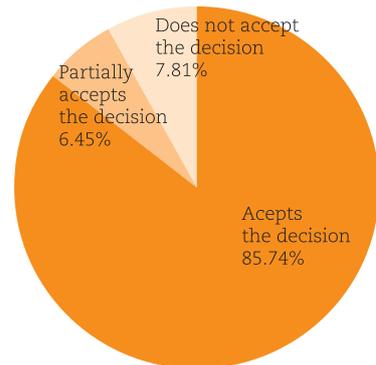


Result of the complaints and ex-officio actions conducted

Sum of the actions (complaints and ex-officio actions) handled throughout 2011; those initiated in 2011 (8,180) and those originating in previous years (4,769). A total of 12,969 have been handled.

Results	Total	
1 Being processed	5,148	39.69%
a Actions prior to Síndic's decision	3,923	30.25%
b Actions subsequent to Síndic's decision	1,225	9.45%
2 Actions concluded	7,565	58.33%
a Correct action of the Administration	4,147	31.98%
a ₁ Prior to the Síndic's intervention	2,465	19.01%
a ₂ After the Síndic's intervention	1,682	12.97%
b Accepts the decision	2,219	17.11%
c Partially accepts the decision	167	1.29%
e Does not accept the decision	202	1.56%
d Does not collaborate	0	0%
e No colabora	18	0.14%
f Abandonment of claimant	481	3.71%
g Procedures with other institutions	331	2.55%
3 Rejected	256	1.97%

Degree of acceptance by Administration

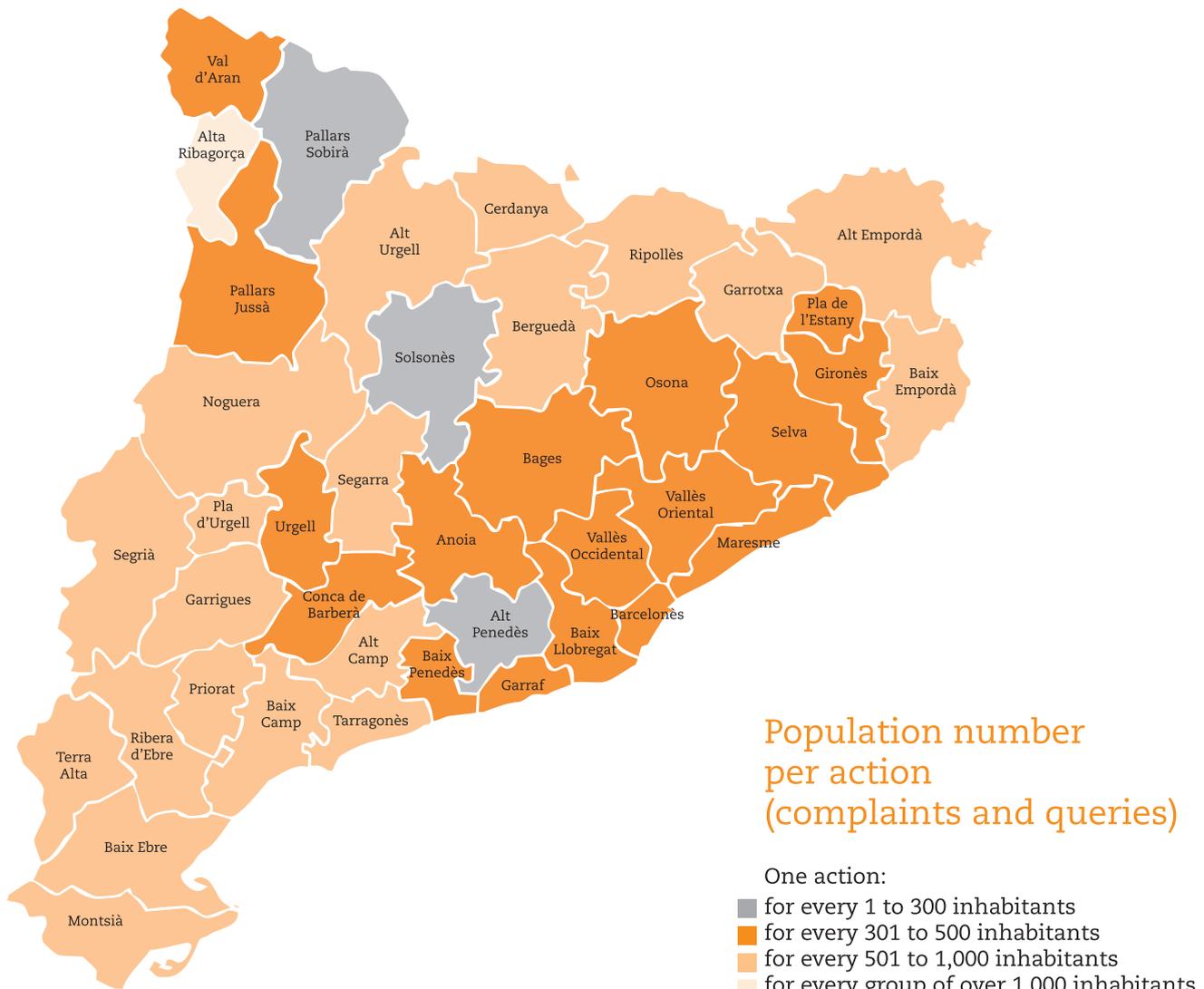


Geographic distribution of the actions

As for the ratio of actions (complaints and queries) per number of inhabitants, the majority of counties had one action per 301 to 1,000 inhabitants. The traveling Citizen Services Unit (CSU), which travels to two different destinations around Catalunya every week, has contributed to this territorial balance.

The Alt Penedès region, with 395 actions and a ratio of 268 inhabitants per action, has led the ranking, proportionately.

At the other extreme, with only three actions and a ratio of 1,428 inhabitants per complaint or query, is the Alta Ribagorça area.



The CSU makes 59 trips

The trips that the Catalan Ombudsman's office makes around Catalonia have significantly increased in 2011. Thus, the 30 trips made in 2010 have increased to the 59 made in 2011. This increase is attributable to the implementation of a traveling Citizen Services Unit (CSU), which visits a town or district twice a week to receive complaints and queries. 16 of these trips were made in accordance with the terms of collaboration agreements signed with local councils and with the Conselh Generau d'Aran.

The Catalan Ombudsman, Rafael Ribó, personally formed part of the team that traveled to 10 of the towns visited in 2011 (Tarragona, l'Hospitalet, Igualada, Solsona, Lleida, Montblanc, Granollers, Vic, Manresa and Girona).

Overall, on these trips, 683 complaints and 558 queries have been filed. This makes for an average of 12 complaints and nine queries per trip.

Despite the convenient ways that have been provided for people to file complaints or queries with the Catalan Ombudsman (toll-free phone number, e-mail, web site, video conference, post, etc.), it cannot be denied that when the Ombudsman's office reaches out to citizens on these trips, it is easier for them to use its services.

On most trips, the number of complaints and queries filed is much higher than those usually received from these municipalities through conventional channels. In some municipalities, more people can be served on one day than are usually attended in six months or a whole year.

Municipality	Date of visit	Complaints	Queries	Visits
Tarragona	19/01/2011	37	60	97
L'Hospitalet de Llobregat	16/02/2011	21	22	43
Igualada	15/03/2011	19	30	59
Barberà del Vallès	06/04/2011	4	6	10
Esparreguera	12/04/2011	15	10	25
Solsona	13/04/2011	6	12	18
Canet de Mar	19/04/2011	4	7	11
Sant Adrià de Besòs	20/04/2011	0	5	5
Castellar del Vallès	28/04/2011	2	2	4
Roses	03/05/2011	4	3	7
Sant Sadurní d'Anoia	10/05/2011	2	8	10
Tàrraga	11/05/2011	7	6	13
Matadepera	24/05/2011	3	4	7
Sant Carles de la Ràpita	25/05/2011	5	6	11
Santa Perpètua de Mogoda	31/05/2011	18	6	24
Lleida	01/06/2011	31	12	43
Viladecans	07/06/2011	10	5	15
Caldes de Montbui	08/06/2011	9	12	21
Sant Celoni	14/06/2011	17	7	24
Sant Just Desvern	15/06/2011	11	11	22

Municipality	Date of visit	Complaints	Queries	Visits
Sant Boi de Llobregat	21/06/2011	16	14	30
El Masnou	22/06/2011	18	9	27
Montblanc	28/06/2011	2	8	10
Castelldefels	29/06/2011	30	10	40
Sant Feliu de Llobregat	05/07/2011	11	3	14
Montcada i Reixac	06/07/2011	6	5	11
El Prat de Llobregat	12/07/2011	22	7	29
La Garriga	14/07/2011	7	4	11
Vielha	18/07/2011	4	5	9
Tremp	19/07/2011	6	5	11
Sort	19/07/2011	6	9	15
Martorell	20/07/2011	6	4	10
Cerdanyola del Vallès	13/09/2011	43	12	55
Sant Quirze del Vallès	14/09/2011	5	5	10
Balaguer	20/09/2011	4	4	8
Badia del Vallès	21/09/2011	11	9	20
Berga	27/09/2011	1	9	10
Granollers	28/09/2011	26	22	48
Olesa de Montserrat	04/10/2011	3	2	5
Sant Feliu de Guíxols	06/10/2011	4	4	8
Molins de Rei	11/10/2011	17	12	29
Torelló	13/10/2011	6	6	12
Badalona (la Salut)	18/10/2011	9	8	17
Sant Andreu de Llaveneres	20/10/2011	10	7	17
Vic	26/10/2011	17	20	37
Sitges	28/10/2011	12	10	22
Cubelles	02/11/2011	2	5	7
Banyoles	03/11/2011	14	13	27
Cardedeu	08/11/2011	12	10	22
Manresa	09/11/2011	28	8	36
Sant Andreu de la Barca	15/11/2011	4	6	10
Caldes de Malavella	22/11/2011	8	2	10
Sant Pere de Ribes	24/11/2011	15	5	20
La Seu d'Urgell	29/11/2011	4	7	11
Puigcerdà	29/11/2011	3	3	6
Barcelona (Sant Andreu)	01/12/2011	13	21	34
Girona	14/12/2011	64	20	84
Barcelona (Gràcia)	15/12/2011	22	8	30
Montgat	21/12/2011	4	3	7
Total		683	558	1,241

Nearly 60% of all Catalans know the Ombudsman

In early 2011, the Catalan Ombudsman carried out a survey to determine familiarity with the institution throughout Catalunya in an attempt to assess the projection efforts of recent years. Based on a total of 1,600 interviews, in the context of an omnibus survey, the sample showed that 58.9% of people living in Catalonia knew the Catalan Ombudsman. Nevertheless, only 15.2% of these people mentioned the Ombudsman spontaneously when asked who they would address to complain about a problem with the administration, or if they knew the name of any institution for the defense of rights. The remaining 43.7% of interviewees said that they had heard of the Ombudsman when the name was suggested to them.

As regards the usefulness of the Catalan Ombudsman, the opinion of the interviewees who responded that they knew the Ombudsman was very high; the average score was 6.3 on a scale of 0 to 10.

Users give the Catalan Ombudsman's service a 6.6

Up to 1,315 people answered the satisfaction surveys on the service received from the Catalan Ombudsman, 24% of the total sent.

As for the service and information provided, 87% of those surveyed described them as good or very good, and only 2.66% were unhappy. The area most oft-mentioned as needing improvement was the speed of the process. 38% claimed that the time it took to get a decision was long. These results are significantly better than those of 2010, when 64% deemed the time that had transpired to be too long. Still, the target set has not been met.

In overall satisfaction with the service, nearly 73.5% are very satisfied or satisfied and 21% claim to be dissatisfied. On a scale from 0 to 10, the average score obtained was 6.6.





Recommendations of the CAPT

The Catalan Ombudsman presented the report on the second year of activities as the Catalan Authority for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAPT) to the Parliament of Catalonia.

The document contains 22 recommendations, including the installation of more cameras and recording systems at all penitentiary hospital centers and wards, printing the professional identity number on the penitentiary officers' uniforms and creating a corps of officers with special training in the realm of juvenile justice. A total of 17 visits were made in 2011, distributed over penitentiary centers (6), police stations (8), juvenile justice centers (1), minor protection centers (1) and centers for disabled persons.

In order for the Catalan Ombudsman to fulfill the duties assigned to him as CAPT in the facilities that, although located in Catalonia, belong to the Spanish state, and coordinate activities with his Spanish peer, the Parliament of Catalonia has urged the Autonomous Government of Catalonia to take the steps necessary to formalize a collaboration agreement with the Spanish administration as soon as possible.

First report on the status of the rights of children

In October 2011, the Catalan Ombudsman presented the Report on Children's Rights to Parliament, in accordance with the United Nations Convention on the Rights of Children. This is the first report to outline the overall state of compliance with the rights derived from the Convention in Catalonia, and that makes a number of recommendations to the institutions of Catalonia to achieve the full guarantee of children's rights.

The Catalan Ombudsman highlighted the advancements made in Catalonia in recognizing and guaranteeing children's rights, in the realm of public policy as well as legislative areas. Nonetheless, the Report also pointed out that some of these rights are being undermined by the financial downturn and diminished coverage of public services and benefits.

Thus, for yet another year, the Catalan Ombudsman has drawn attention to the fact that diminished coverage of certain public benefits can add to inequality and fuel situations of vulnerability, also in the area of children's affairs.

OUTSTANDING ACTIONS BY SUBJECT

Many complaints have been received on the delays in settlement of debts by the administration and their effect on small companies and freelance professionals. As concerns education, budgetary restrictions have led to staffing and funding cutbacks for schools. The Catalan Ombudsman has also pointed out shortcomings in mental health care for children and adolescents.

One of the situations that has given rise to the most complaints has to do with law enforcement agents' breach of the requirement to wear their identification number in a visible place, and the actions of these agents at certain demonstrations and rallies.

Furthermore, the Catalan Ombudsman has called attention to the lack of legal security derived from the fact that the right to free pharmacy benefits is not regulated. In social services, management of the minimum income benefits has been the source of numerous complaints. Especially noteworthy among the actions encouraged is one to analyze and propose measures to facilitate redress of mortgage-derived debts.



	<i>Complaints</i>	<i>Queries</i>	<i>Ex-officio</i>	<i>Total</i>
Right to good administratióon	863	1,662	5	2,530
Consumer's rights	344	3,302	3	3,649
Rights of penitentiary centre inmates	271	51	5	327
Linguistic and cultural rights	142	108	2	252
Education	937	740	25	1,702
Civil service	440	361	4	805
Elderly people	249	180	1	430
Immigration	67	127	3	197
Children and adolescent affairs	224	338	35	597
Freedom, safety and Justice Administration	703	933	5	1,641
Environment	467	536	1	1,024
Rights to participate	71	136	3	210
Persons with disabilities	277	488	2	767
Labour relations and pensions	252	472	3	727
Health care	575	829	5	1,409
Marginalization situations	791	724	3	1,518
Taxation	349	613	6	968
Urban planning and housing	918	1,145	2	2,065
Private or unspecific matters	105	1,834	2	1,941
Total	8,065	14,579	115	22,759

Right to good administration

Several companies face difficulties due to administrations' non-payment

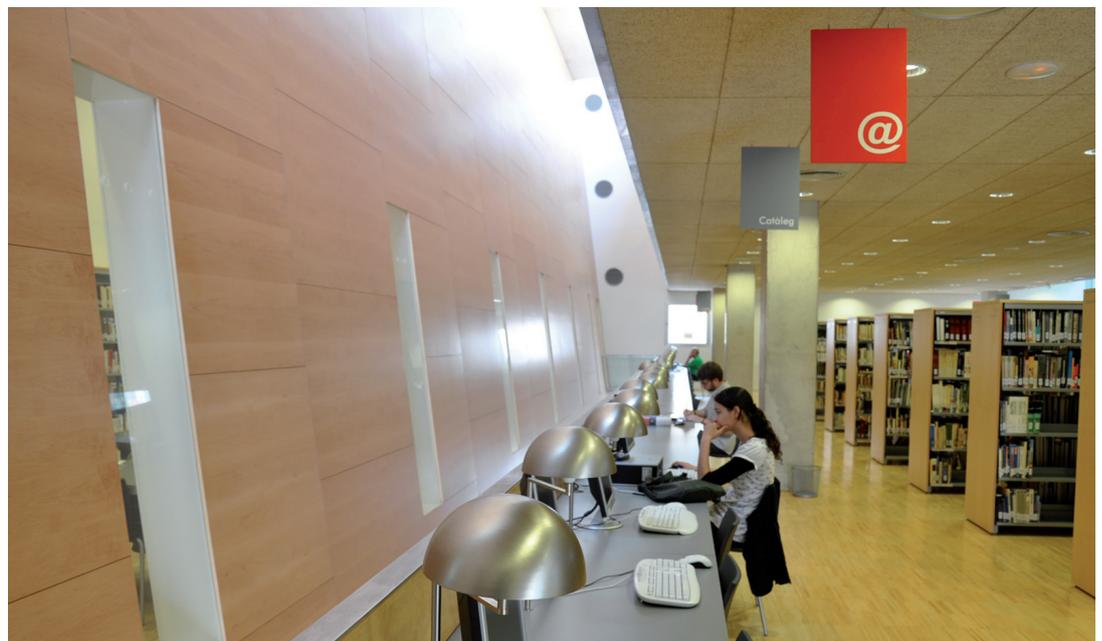
The Catalan Ombudsman has received many complaints due to administrations' non-payment of debts that are past due, some for considerable periods of time. In these situations, the Ombudsman reminded the administrations that, though he understood the circumstances that had led to this situation, there was a need to establish a payment plan that would set specific dates for payment of the pending obligations, and for creditors to be informed of this plan.

The plan should take into account the date on which the payment should have been made in each case, and other factors, such as the amount of the debt, the type of activity affected and the volume of the company or freelancer claiming payment, as elements indicative of the impact of the debt on the creditor's activity, and the damage caused to them by the delayed payment.

Citizens must be able to choose the channel through which they communicate with the Administration

The progressive rise in the use of new technologies in relations between administrations and citizens must be viewed in a positive light, as they expand the channels available to citizens to address representatives of the government. This notwithstanding, one of the principles that must be observed in electronic bureaucratic procedure is accessibility; the use of electronic means can not generate discrimination on the grounds of the communication channel used.

The Catalan Ombudsman has found it necessary to remind administrations that the general principle must be that of the citizen choosing the channel through which they communicate with administrations. Further, processing exclusively by electronic means can only be applied when this limitation does not infringe the principle of accessibility, because the citizens affected form part of groups with guaranteed access to appropriate telematic resources. Last, this obligation must be previously regulated.





Consumers' rights

Recommendation to facilitate the right of access to Renfe's (Spanish rail service) Xpress Ticket Return system

A frequent user of the Renfe commuter train service expressed her disagreement at having been denied an Xpress Ticket Return. When she requested it at a station, over ten hours had passed since the time of arrival at her destination.

The Catalan Ombudsman suggested they modify the conditions required to process the Xpress Ticket Return, with a view to facilitate users' exercise of this right. The Directorate General for Transport and Mobility informed the Catalan Ombudsman that it had addressed Renfe for it to modify the procedure of the Xpress Ticket Return, so that the request can be filed after the incident, either by post or from the Catalonia Commuter Train Web site.

The Code of Consumer Rights obliges companies to furnish toll-free customer service phone lines

On August 23, 2010, Catalonia's Code of Consumer Rights came into force. According to it, all service providers must first give information on the service rendered, the complete price of the service, furnish a quote prior to the service provision and inform on the procedures in place to handle complaints or claims. All of these obligations are specific expressions of the consumer's right to information.

Nonetheless, complaints have been received on the difficulties entailed in addressing companies that provide basic services on an ongoing basis, because they do not yet have free customer service telephone lines. In consideration of this information, the Catalan Ombudsman reminded companies that, pursuant to the Code, the provider of a service must offer a toll-free telephone number to report incidents and claims.



Rights of penitentiary center inmates

The Supervision Court must be informed immediately of the use of coercive measures

The Catalan Ombudsman has received complaints on the existence of mistreatment inside penitentiary centers. Although legally, there is a total prohibition of any mistreatment of inmates, there are situations in which the use of direct coercion is authorized, either by physical force or auxiliary measures, or restraint devices (shields, truncheons, etc.).

Despite the obligation to inform the prison supervision court of the application of coercive measures, the Catalan Ombudsman has found that the penitentiary Administration does not immediately notify the prison supervision court when such measures are implemented or discontinued, as penitentiary regulations stipulate. For this reason, the Catalan Ombudsman has sent the Catalan Department of Justice a reminder of its legal obligations.

In other cases, the application of coercive measures has been performed in places where surveillance cameras have previously been installed, such as mechanical restraint cells of special closed system wards (DERT). Nonetheless, the footage is only stored for a limited time (approximately one month).

For this reason, the Ombudsman has suggested to the Department of Justice that, in cases of incidents that could give rise to a later administrative and/or judicial investigation, the footage must be kept for at least one year, in order to be able to use it as evidence and attribute any possible liabilities to those involved.

Education

The need to guarantee rights of students with specific educational needs

In early 2011, 165 primary, secondary and other levels of schools filed a complaint with the Catalan Ombudsman through their school councils, to express their disagreement with the reduced economic, material and human resources allocated by the Department of Education, due to the budgetary difficulties derived from the current context of economic crisis.

The Ombudsman has found that one of the groups most affected by austerity measures is that of students with specific educational needs, especially due to the reduction and insufficiency of hours devoted by professionals who provide educational support in schools.

Thus, the Catalan Ombudsman reminded the Department that despite the restrictions, the management of personnel assigned to schools can not violate students' right to quality education in conditions of equality.

Admission priority criteria must promote social cohesion

The inclusion of priority criteria into admissions regulation, as they are based on affirmative action, must be fully justified from the perspective of equality, and cannot generate inequalities in access or compromise the system's social cohesion.

The Catalan Ombudsman believes that the new tie-breaking criteria —parents, guardians or siblings who have attended the school— introduces discrimination on the grounds of birth. The supplementary criterion of the student having a chronic illness that affects their digestive system is no longer fully justified, as most schools have adapted lunchroom services.

In the realm of fraud control, although the Catalan Ombudsman has seen proof of significant advancements in the regulations, there are still weak points in the fraud control procedures that could be improved.

Education refuses to do away with alumni criterion

Following the decision to introduce a new tie-breaking criterion in the school pre-registration and enrollment process for students for the 2011-2012 school year that is based on being an alumnus of the school, the Catalan Ombudsman received numerous complaints on the matter. Consequently, it was decided to open an ex-officio action.

After investigating the case, the Ombudsman asked the Catalan government to remove the criterion. The Department of Education informed the Ombudsman that said criterion would be maintained. Along these lines, the Ombudsman has suggested to the Department that a detailed study on the consequences that this new criterion could have on the equality of the system be conducted, and has requested information on several municipalities regarding the application of the criterion in the process of pre-registration and enrollment, to study the effects that it could have on the admission of students for the 2011-2012 academic year.



Civil service

Irregularities in selection processes

The coverage of job posts paid for with public funds is subject to a minimal code of publication. This year, a breach of this requirement led the Catalan Ombudsman to study the actions of two administrations that formed part of the mixed group responsible for selection of personnel, and carried out the hiring process without any prior published call for applications.

The Catalan Ombudsman also reminded them that the terms of a call for applications are binding not only for the people who participate in it, but the administration as well. The grounds for this reminder was the breach of the terms of a call for applications to create a pool of staffers to cover substitutions and other openings in a municipal facility.

In the area of selection testing for public employees, the Ombudsman also issued a reminder that there must be connection between the types of tests to be passed and candidates' suitability to the job post to be filled.

Elderly people

Waiving the PIA should not be linked to the impossibility of proposing aid

The Ombudsman received a complaint from a woman unhappy with the management of dependency procedures undertaken for her grandfather, who resides in a private nursing home. The claimant stated that the social services responsible for conducting the Individual Services Program (PIA) informed her that she was not entitled to the residential portion of the aid because the nursing home was not a subsidized private facility, and for that reason she had to waive the PIA.

The Department of Social Welfare and Family Affairs informed the Ombudsman that the interested party later entered an eligible center and was granted the financial aid associated with the service.

The Catalan Ombudsman considers it inappropriate for the person to be advised to waive the PIA or discontinue their application when the basic social services are unable to propose any benefit.





Therefore, he reminded the Department of the terms of the regulatory details of the common administrative procedure regarding discontinuation and waiving, and that this decision must respond only to the will of the person involved, not the impossibility of proposing any aid due to their circumstances.

Immigration

Civic behavior must be left out of integration reports

The Catalan Ombudsman has given his view on the requisites to be taken into account when writing the integration reports, following an initiative taken by some local councils of Catalonia to study proposals and debate motions for the Catalan Govern-

ment to incorporate civic behavior of the citizen as a requisite to issue a favorable municipal report for processing authorizations for residency based on social roots or family regrouping.

The Ombudsman believes there to be no legal basis for local councils to convey to the Department of Social Welfare and Family Affairs any information on the infringements of municipal civic behavior ordinances, with the risk that it be omitted and considered irrelevant when evaluating the report. This is because social integration and civic behavior are two completely different concepts, and the Foreign Citizens Law has not deemed it necessary for civic behavior to form part of the reports on availability of housing and social integration.

Children and adolescent affairs

Lack of residential capacity for children and adolescents with mental illnesses

The mother of a 17-year-old girl diagnosed with borderline intelligence and a behavior disorder, and a recognized disability level of 54%, filed a complaint with the Catalan Ombudsman. The young lady had been admitted into an adolescent crisis unit (UCA) on six different occasions.

The mother stated that the professional reports made it clear that a professional response could not be provided for the girl on an outpatient basis. She required a center suited to her needs, given her high-risk behavior. At the same time, there were professional discrepancies over the resource that would best meet her needs.

As a result, she had not been assigned a residential place in any center, and was on the waiting list for one.

The Ombudsman initially addressed the Catalan Institute for Social Services and Assistance (ICASS) to investigate the status of her situation. Though the reports concurred in the need to offer a residential resource to the young woman, she had not yet been assigned a bed.

Therefore, the Catalan Ombudsman addressed the Department of Social Welfare and Family Affairs and the Department of Health to suggest that they implement the measures necessary to facilitate the young lady's access to a residential resource suited to her needs.

Lack of benefits means some children are referred to protection services

The shortcomings in benefits for parents in the rearing of their children may mean that children of economically vulnerable families could be taken into child protection services due to alleged neglect, when the family's economic vulnerability could be ameliorated from the local administration through the primary social services in a context of higher public spending.

Although material deprivation should not be considered as grounds to implement protection measures that involve caring for children in resources other than their families of origin, certain complaints received show that this circumstance does come about.

The Catalan Ombudsman has requested that the requisites to qualify for individual financial aid for families with socio-economic difficulties be adjusted to the aims sought by this aid, so that they are directly related with the interests of the



affected child. He also proposed that different channels be used for the granting or refusal of financial aid for children's access to services or activities, so that children are not negatively affected by a refusal based on their parents' incorrect exercise of custody.

Freedom, safety and Justice Administration

Rights violated in the incidents of May 27 and June 15

Following the incidents that occurred in Plaça de Catalunya and the Parliament of Catalonia on May 27 and June 15, 2011, respectively, the Ombudsman opened two ex-officio actions.

Once the cases were analyzed and information was compiled, the Ombudsman found that the rights of assembly and demonstration, the rights of access and exercise of democratic representation and

the rights of third parties had been violated. The decision, handed down in July, included several suggestions for administrations:

1. Administrations must act with proportionality so as to not limit the right of demonstration.
2. Local councils must take a more proactive role in the management of public spaces during protest activities.
3. The Police must reinforce training of agents to form part of the Mobile Brigade or Operational Resources.
5. Using all the information at hand, the Department of the Interior must determine whether there have been incorrect actions or a disproportionate use of physical force.
6. The legal provision requiring all members of the Mossos d'Esquadra law enforcement agency to be visibly identifiable must be made effective.



7. The Mossos and Guàrdia Urbana (Barcelona Police Department) must carry out police mediation as an alternative to the use of force.

8. A protocol for coordination between Mossos d'Esquadra and Guàrdia Urbana must be approved within six months.

9. The Catalan Ombudsman agrees with the Prosecutor's Office and Department of the Interior in the need to take legal action against those who participated in the aggressions against MP's.

The Ombudsman highlighted that the actions took place in a climate of disapproval toward the political system and its workings. He encouraged administrations to promote citizen participation as a way to combat this feeling of discontent.

Environment

Water rates must be reduced for the most underprivileged groups

The Water Framework Directive (DMA) takes up the principle of recovering water cycle costs, and introduces the concept of economic and financial sustainability. As it is a service of municipal competency, there obviously exists a certain disparity of criteria when establishing the price of services, which leads to difficulty for some citizens when they compare the price of water among different municipalities.

Since October 1, 2011, the "social fee" has been applied; it covers the basic water needs for certain members of society: people over 60 who are on minimum pensions, and households in which all members are unemployed.





At the same time, the Ombudsman has underscored the necessity for local councils to also consider the most underprivileged or vulnerable groups when setting their rates for water, be it directly or indirectly managed. The Ombudsman believes that certain people must benefit from a kind of affirmative action, owing to water's condition as an essential product for people's daily lives.

Citizen participation

Lack of a secret, accessible voting system for the blind

The Ombudsman has reminded the administration of the need for a proactive attitude on the part of authorities to eliminate any sort of discrimination due to disability in the exercise of their rights of political participation.

He has also stated the need to apply the necessary adjustments and establish a secret voting system for persons with disabilities in all electoral processes, including those of the municipal level, and that universal design criteria must be studied to guarantee viable voting systems that make it possible to exercise the right to vote in conditions of equality for all.

In the realm of persons with visual impairment, the Ombudsman reminded the administration that there has yet to be any regulation of an accessible voting system applicable to municipal elections that would allow all persons with visual impairment or blindness to vote in secret and independently. Further, he underscored that this makes for a grievance for such individuals who, though they are able to vote in local elections, have to do so in the presence of a trusted person who could help them in the process by marking the ballot.

The Ombudsman also made it known that the complexity of the local electoral process and high costs that could be involved in the production of ballots and templates in Braille in the municipal realm cannot be put forth as grounds not to guarantee these fundamental rights of persons with disabilities.

Persons with disabilities

Two-year wait for final revision of the disability degree

The Catalan Ombudsman received the complaints of a woman who disagreed with the Autonomous Government of Catalonia administration due to the non-resolution of the disability degree assessment application that her mother had made two years prior. Though she had since filed two claims with the administration, at the time of her complaint with the Ombudsman there had been no developments in the case. In response to the Ombudsman's request for information, the

Department of Social Welfare and Family Affairs informed that the woman to be reassessed had died, and that the procedure had been terminated for that reason.

With regard to the delays that occur in the resolution of these procedures, and specifically in this case, the Ombudsman has identified, and drawn attention to, the time transpiring until the interested party was given an appointment (nearly two years).

It is essential that there be an expedient resolution of these procedures, as this determines whether the affected person can access benefits and compensation measures to improve their quality of life and favor their social integration.

Delays in these procedures may lead to the person being deprived of these benefits. Therefore, the Ombudsman has reiterated the need to adopt effective measures to reduce the duration of these processes and bring them within the legally-established terms.





Health care

Lack of knowledge on rights to operations with maximum guaranteed times

Several years ago, the Department of Health established by decree certain maximum access terms for a number of surgical procedures. Nonetheless, there have been numerous complaints received because the maximum guaranteed terms established for one of the listed surgical procedures have been surpassed, without the patient being operated on.

In response to some of the complaints, the Department of Health claimed that, although these are guaranteed operations, management of the waiting list is based on medical criteria of urgency and the date of inclusion, to maintain equality in similar cases, and take the limited health care resources into consideration. Though the Ombudsman agrees with the Department that the criteria of urgency and inclusion date must be borne in mind, he also holds that this cannot be used to justify a delay greater than that guaranteed, as regulations offer the possibility to refer the patient to another center.

The Ombudsman has reminded the Department of the existence of a legal commitment and suggested that organizational measures be put in place to ensure these terms are respected.

Furthermore, after analyzing the complaints, it became clear that many patients were unaware of what they can do to claim their rights, once the guaranteed term has elapsed.

The information document provided to patients on whom surgery is to be performed includes information enough on the time as of which users must count the term, but they are not informed of the option they have, if this term transpires and they have not been operated on, of remaining on the waiting list in the same health care facility until it is possible to perform the operation, or choose another facility.

In light of this, the Catalan Ombudsman has recommended that patients be informed that the surgery they must have is an operation with a guaranteed maximum waiting time, and of all the possibilities and procedures they are entitled to, such as referral to another center.

Measures to guarantee the right to purchase medications with CatSalut prescriptions

Following several news items published in different media outlets, the Catalan Ombudsman discovered that the CatSalut health administration had postponed payment of the Social Security expenditure incurred by Catalan pharmacies.

Further, one complaint was filed by a citizen because their pharmacy informed them that they would not dispense any medication prescribed through the Social Security system, due to the delayed payment to Catalan pharmacies, as announced by the health care authorities.

The viability challenges encountered by some pharmacies make it difficult for them to face the economic consequences of this delay and individually access credit from a bank. This situation has led some pharmacies to consider not dispensing medications prescribed by the Social Security administration and provide only those paid for in cash.

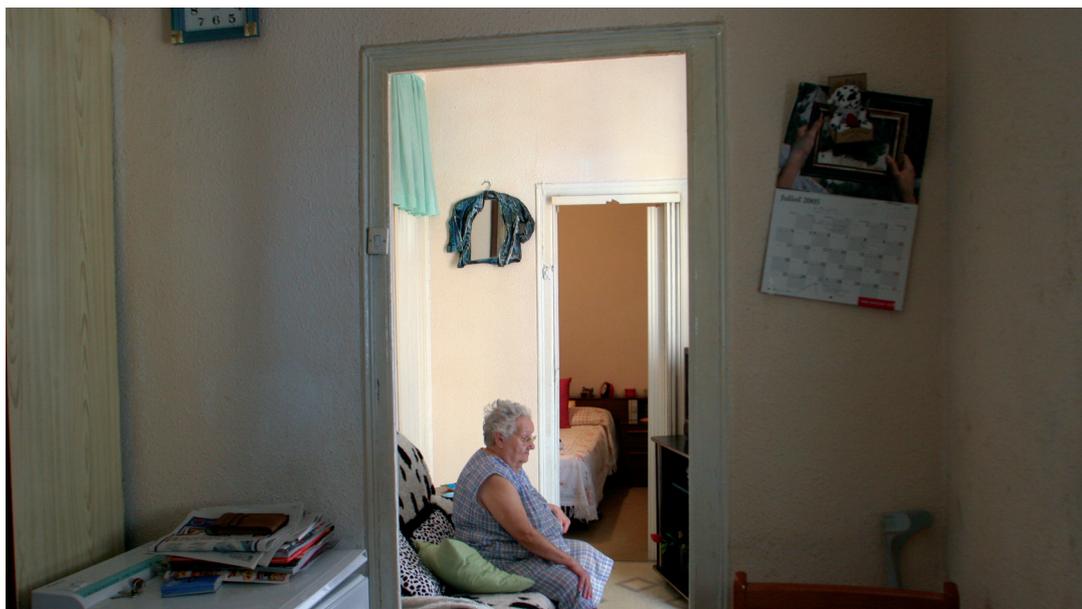
This could cut off the supply of medications at certain pharmacies and consequently affect the rights of users to obtain medication and products necessary for their health.

In light of this situation, the Ombudsman has begun an ex-officio action and requested information from the Department of Health and the Executive Council of the Pharmacists' Association of Catalonia on the measures taken to guarantee acquisition of medications prescribed through the CatSalut (public health) system.

Lack of coordination with Aragon in pharmaceutical benefits for displaced man

The Catalan Ombudsman received a complaint from a pensioner who is a resident of Zaragoza (Aragón) and usually spends five to six months in Salou (Catalonia) where he owns an apartment. In his letter, he described the difficulties he faced in the summer of 2010 for the CAP (primary care clinic) of Salou to provide him with the





prescriptions for the medication he required. He added that in the 22 years that he had been going to the Salou CAP, he had never had any trouble.

The Catalan Ombudsman urged the Department of Health to quicken the procedure to facilitate coordination of pharmaceutical services for displaced persons and the standardized state model to fully implement telematic interconnection for pharmacy services among Spain's autonomous communities that the Catalan Health service is now working on.

Situations of social exclusion

The effects of restricting access to minimum income benefits must be compensated

This year has witnessed a significant modification in the conditions and characteristics of minimum income benefits. These modifications involve restriction of the conditions laid out to access and maintain the right to these benefits.

It cannot be ignored that these changes have a relevant scope, substantially affect the nature of the benefit and imply a backward step in the coverage and guarantee of social rights. Therefore, it is essential for administrations to adopt specific policies and measures to compensate situations of exclusion that could come about.

As for the numerous complaints received, special note can be taken of the incidents arising following the change in the payment system over the month of August. Beneficiaries found themselves without the monthly bank draft, with no prior notification and, in many cases, they did not receive a personal check in the amount of the monthly benefit either. They also ran into great difficulties in obtaining information on their situations.

The Catalan Ombudsman asked the Departments of Social Welfare and Family Affairs and the Department of Employment to take expedient action to ensure that everyone with recognized rights to the benefit received the payment as soon as possible.

It was also requested that they return to the bank draft system and guarantee timely payment for the month of September. Although the Administration did return to the bank draft payment method, in cases in which the person had not cashed the personal check, the payment was not automatically resumed.

The Ombudsman understands that the decision to block benefit's payment is not legally grounded, and has insisted on the need to maintain the benefits as long as the situations of need that made them necessary exist, and the requisites established by law are met.

The Autonomous Government of Catalonia has made it known that it is carrying out a review process on minimum income case files to determine whether the beneficiaries comply with the established requisites, and a significant number of cases will be affected. Aware of this casuistry, the Ombudsman has opened an ex-officio action.

Work and pensions

Granting benefits for freelance professionals based on the date that the application is received is discriminatory

A freelance professional complained to the Ombudsman because he disagreed with the decision of the Department of Business and Employment to refuse a benefit he had applied for for promotion of freelance employment. The grounds for the refusal were that the entire budget had been allocated. The interested party filed an appeal against the decision, which was also refused.

From a legal standpoint, the Administration's action was not illegal, as the calls for financial aid applications are predicated on the existence of the budgetary allotment approved to cover the applications.





Regardless of this fact, after analyzing the events in an ex-officio action, the Ombudsman made a number of suggestions to the Department of Business and Employment regarding these cases.

Thus, although the benefit process is conducted on a direct-grant basis, the Ombudsman reminded the Department that the evaluation of applications based on the date the application was received cannot be considered equitable, as this could mean that only the applications presented the first months of the year would have guarantees as to the existence of funding necessary to receive the benefit.

For this reason, the Catalan Ombudsman believes that measures must be taken to alleviate any possible discriminatory effect that the date of application presentation could have on the attainment of subsidies.

Taxation

The usual residence status cannot be lost in cases of relocation due to illness

Tax regulations stipulate a rebate over the tax to be paid for Municipal Capital Gains Tax on Urban Real Estate, as long as certain requisites are proven to be met, such as the home being conveyed being the usual residence of the taxpayer and the transferees.

In some of the complaints processed this year, it was observed that the local administration, at least in principle, had not considered as usual residence of the taxpayer that in which they were not registered at the time of their death, without taking any other circumstances into account. The Ombudsman believes that a home that has been a person's usual residence their entire lives cannot lose this status simply because a social or health care reason has caused them to effectively reside elsewhere.



The Ombudsman also believes that the relocation of a person to a residential center cannot be interpreted as cessation of residency in a given place for tax rebate purposes, as it is not a voluntary decision of the taxpayer or transferee, but simply a necessity arising from one's health circumstances.

Urban planning and housing

Proposed measures for mortgage debt redress system

The Catalan Ombudsman has sent a set of proposed measures for a mortgage debt redress system.

The proposal is the result of the consensus reached by a task force led by the Ombudsman himself and made up of representatives from the High Court of Justice of Catalonia, the Bar Association, the Notaries' Association, Càritas Diocesana de Barcelona and Ofideute (Autonomous Government of Catalonia).

The task force, which benefited from collaboration by representatives of financial institutions, emerged following the impact of the economic crisis and foreclosures, especially in cases in which interested parties had their homes taken away and still remained in debt.

To find solutions that would help overcome the obstacles analyzed, the Ombudsman made three recommendations to Parliament.

A) To find the way to disseminate the services of Ofideute and Càritas among those who need them. Promote agreements by which debtors do not lose their homes, such as the transfer of ownership to the financial institution and the conversion of the loan or mortgage into a rental agreement affordable for the debtor.

B) Establish a number of tax modifications on operations that could be agreed on between mortgage creditor and debtor, in order for financial institutions to not be discouraged from carrying out certain operations due to their tax ramifications and, on another note, promote a solution for persons in a situation of over-indebtedness, whose family unit only has one residence, for which the mortgage was formalized.

C) Introduce into the legal code a free, voluntary debt redress system for cases of over-indebtedness, through an administrative commission that could develop a redress plan covering the obligatory debt, for the debtor as well as the creditors. As this area is beyond the realm of mediation and affects the regulation of the terms of contractual obligations, the competency clearly resides at a state level, without prejudice to the competencies of autonomous communities for the defense of consumer and users' rights and mediation.

INSTITUTIONAL AND INTERNATIONAL ACTIVITIES



52 members of 23 ombudsman institutions participated in a seminar on the OPCAT held by IOI-Europe in Warsaw.

IOI-Europe holds a seminar on the OPCAT in Warsaw

This year the European division of the International Ombudsman Institute (IOI), whose director is Catalan Ombudsman Rafael Ribó, organized two training seminars for its members.

The first, on the OPCAT (Optional Protocol of the Convention Against Torture) and the role of ombudsmen, took place in Warsaw on September 13-14. The second, on consumers' rights, will be discussed in a later section of this report.

The Warsaw seminar was participated in by 52 members of 23 ombudsman institutions. The keynote speakers were Zbigniew Lasocik, of the SPT (Subcommittee on Prevention of Torture); Mauro Palma, of the CPT (Council of Europe Anti-torture Committee), and Barbara Bernath, of the APT (Association for Prevention of Torture). Rafael Ribó and other members of his staff took part in the seminar and discussed the experience of the Catalan Ombudsman as Catalan Authority for the Prevention of Torture (CAPT).

Recommendation to the Council of Europe in favor of ombudsmen

The Congress of Local and Regional Authorities of the Council of Europe unanimously approved a report in favor of ombudsmen and regional and local authorities. The 21st plenary session of the Congress was held in Strasbourg from October 18-20, 2011 with the participation of all member states.

The approved report defines regional ombudsmen as key instruments of democratic supervision, necessary to guarantee citizens' rights before administrations. It makes strong recommendations to create such institutions wherever they do not exist and consolidate the existent offices' independence, resources and investigative power.

The presentation of the report was made by two members of the Congress of Local Authorities –Helena Pihlajasaari and Halvdan Skard- and Rafael Ribó, who gave the opening address of the debate in his role as president of the European chapter of the International Ombudsman Institute.

The Catalan Ombudsman takes part in the annual conference of Mediterranean Ombudsmen in Malta

The Catalan Ombudsman was invited by the Spanish Ombudsman to form part of the Spanish delegation that participated in the 5th meeting of the Association of Mediterranean Ombudsmen (AOM), which took place in Malta, on May 30-31.

This meeting of ombudsmen from both shores of the Mediterranean discussed how to promote best practices in the various cultures and systems of the Mediterranean, and the challenges ombudsmen face.

Likewise, it delved into the role of ombudsmen in the context of economic and social change, and discussed the importance of the charters of service and codes of best administrative practice. Last, it also took stock of the work done by the AOM and engaged in future planning.

The Catalan Ombudsman’s Youth Advisors Council takes part in an international meeting

On July 25-26, 2011 Belfast hosted the second meeting of the ENYA Project, an initiative of the European Network of Children’s Rights Advocates (ENOC), the goal of which is to link children and youth to the work of ENOC and give them an opportunity to be heard.

At this conference, the young people of the Advisors Councils from all of Europe, along with children’s rights advocates, discussed the actions that needed to be carried out in coming months, and prepared the next annual meeting of the ENOC with respect to matters of health, education, violence and the Internet. As for the Catalan Ombudsman Youth Advisors Council, two students from the 3rd year of mandatory secondary education (ESO), one from the Secció d’Institut Salvador Sunyer i Aymerich in Salt (previously SES de Salt) and another from the Sant Andreu Secondary School of Barcelona participated.



The Congress of Local and Regional Authorities of the Council of Europe unanimously approved a report in favor of regional ombudsman.



The Catalan Ombudsman, Rafael Ribó, and the mayoress of Sant Quirze del Vallès, Montserrat Mundi, formalizing the agreement.

After the second meeting, the ENOC annual assembly was held on September 14-16, 2011 in Warsaw. It was attended by the Deputy Ombudswoman for the defense of children and adolescent rights, M. Jesús Larios, and the advisor for Children's Affairs, Anna Piferrer.

The title of the conference was "Respect for the rights of children and adolescents under institutional protection", and work was carried out on the report presented by Ankie Vandekerckhove, an independent advisor to the ENOC, on the topic of the conference.

A joint session was also conducted among members of the ENOC and young advisors participating in the ENYA project for the advocates to state their positions on the proposals developed at the Belfast meeting. Last, a new president of the ENOC Board was elected; Leda Koursoumba, advocate for children's rights from Cyprus.

Support for the Castille-La Mancha Ombudsman

In his role as Catalan Ombudsman, and especially as president of the European chapter of the International Ombudsman Institute, Rafael Ribó traveled to Toledo to speak in favor of the Castile-La Mancha Ombudsman's continuity. Rafael Ribó presented to the government of this autonomous community all of the European and international statements in favor of regional ombudsmen as guarantors of democracy.

Agreements with Sant Quirze and Manresa

Throughout 2011, the Catalan Ombudsman formalized two new individualized supervision agreements: Sant Quirze del Vallès (September 2011) and Manresa (November 2011). With these two, the Catalan Ombudsman now has agreements with 17 municipalities.

The agreement establishes a commitment by the Catalan Ombudsman to publish an annual report in the municipality with all of the information on the handling of complaints and queries, those from people residing in the municipality as well as those addressed to the local council.

The Catalan Ombudsman must also offer citizens face-to-face services in those municipalities at least once a year. The local administrations commit to being more diligent in processing all of the information required by the Ombudsman and to disseminating content on the Catalan Ombudsman institution in municipal spaces.

Conference on the Catalan Ombudsman and Local Government

On November 14, 2011, a working session was held in the Parliament of Catalonia on the relationship of the Catalan Ombudsman with entities of local government, shortly after the most recent municipal elections.

The aim of this meeting was to explain the Catalan Ombudsman’s competencies and mission, to open a space for debate among all those in attendance on the Ombudsman’s supervision over local councils and county councils, and achieve a more fluid relationship among local government bodies and the Ombudsman.

Over 150 representatives of local bodies took part in the conference on the Catalan Ombudsman and Local Government.



The Catalan Ombudsman asked for local government entities’ collaboration in supervising the Administration.



The third meeting on consumer's rights was officially opened by the President of Catalonia, the Catalan Ombudsman and the President of Cercle d'Economia.

Conference on the role of ombudsmen before public service companies

The Catalan Statute of Autonomy gave the Catalan Ombudsman the competency to supervise services of general interest rendered by private companies. To determine how this supervision had been carried out, and to compare and analyze how other institutions performed it, this year the Catalan Ombudsman organized a three-day conference with a different scope.

The first working day (May 19), organized with the collaboration of Foment del Treball (Labor Development Organization), meant to discuss the scope of consumers' rights and the best way to guarantee them.

Along with Catalan Ombudsman Rafael Ribó, and the President of Foment del Treball, Joaquim Gay de Montellà, who gave the introduction to the presentations, the conference also benefited from the participation of the professor of Economic Theory of the University of Barcelona, Joaquín Trigo; the then-director of the Center of Contemporary Culture of Barcelona, Josep Ramoneda; the professor of Economic Policy of the University of Barcelona, Josep Ramon Borrell, and the Deputy Director General for

Corporate and Brand Responsibility from "la Caixa" savings bank, Àngel Pes, among others.

The second working day, held at the Parliament of Catalonia, was participated in by experts, university professors and representatives of various companies that render services of general interest, such as Telefónica, Endesa, Gas Natural, and other companies such as "la Caixa", Spanair or Novartis. The meeting was attended by Ombudsmen of Castilla-La Mancha, Navarra and Aragon, as well as representatives from other autonomous ombudsmen institutions. The third round of working days was organized by the Catalan Ombudsman, the IOI-Europe and the Cercle d'Economia, on November 21-22.

The meeting was officially opened by the President of Catalonia, Artur Mas; the Catalan Ombudsman, Rafael Ribó, and the President of the Cercle d'Economia, Josep Piqué; and was attended by the European Commissioner for Health and Consumer Policy, John Dalli, who gave the keynote address. Also noteworthy was the participation of speakers such as Peter Tyndall (Welsh Ombudsman) and Eric Houtman (Belgian Energy Ombudsman) and professors Brian Thompson (University of Liverpool) and Philip Langbroek (University of Utrecht).

SÍNDIC

EL DEFENSOR
DE LES
PERSONES

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

IOI (International Ombudsman Institute)

FIO (Ibero-American Federation of Ombudsman)

AOMF (Association of Francophonie Ombudsman and Mediators)

ENOC (European Network of Ombudspersons for children)

European Network of Ombudsmen

The Síndic also participates in:

Round Table of Ombudsmen of the Council of Europe

Association of Mediterranean Ombudsmen

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