

## Spain

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### *Ombudsman of Spain*

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Spanish NHRI was re-accredited with A status in May 2018. The SCA encouraged the NHRI to advocate for amendments to the establishing law in order to ensure a limit to the Ombudsman's term of office, a pluralist staff composition and a broad and transparent selection process with the direct participation of civil society. The SCA acknowledged the NHRI's level of engagement with the international human rights system and encouraged the NHRI to continue advocating for the provision of adequate funding.

### Developments relevant for the independent and effective fulfilment of the NHRI's mandate

According to article 6.1 of the Organic Law, the Defensor del Pueblo (NHRI) is an independent institution. The Defensor is not subject to any imperative mandate, nor receive instructions from any authority and exercises its functions independently. As such, the Defensor, in the exercise of its functions, does not receive instructions from any authority. It is only accountable before the Parliament (art. 3 of the Reglamento). The Deputies to the Defensor are accountable to the Defensor and to the Joint Commission composed of the Chamber of Deputies and the Senate for the relations with the Defensor (art. 3.2 of the Reglamento).

### *Conflicts of interest*

According to article 7 of the Law, the Defensor's position is incompatible with: any other representative mandate; any political appointment or activity; maintaining an active service in any other public administration; being affiliated to a political party or having a managerial position in a political party or union, association or foundation or being employed by any of these; with any position in the judicial or fiscal careers; and with any other professional, liberal, trade or labour nature activity.

## *Immunity*

According to article 6 of the Law, the Defensor, similarly to the Deputies, enjoys legal immunity in the exercise of its functions. The Defensor cannot be detained, investigated, subjected to disciplinary measures, or legal proceedings due to his opinions or actions undertaken in the exercise of competences that are part of its functions. The Defensor will not be detained in the exercise of its functions, but only for a case of caught in the act. The decision of accusation, detention or trial is to be decided exclusively by the Penal Chamber of the Supreme Court.

The Ombudsman is also a Transparent Institution. The proclamation of the principle of publicity, which is characteristic of advanced democratic systems, seeks to abolish secrecy as a general rule of action for public powers, trying to make the exercise of power transparent.

In democracy, the legitimacy of power rests ultimately on the citizens themselves, as befits the popular sovereignty that our Constitution enshrines in its Article 1. For this reason, it makes sense to make the actions of the public powers known, seen and known by all.

On December 10, 2014, the Preliminary Titles, I and III of Law 19/2013, of December 9, on transparency, access to public information and good governance, came into force for the General State Administration. The Autonomous Communities and Local Entities had one more year, until December 10, 2015, to adapt to their obligations. These titles regulate the subjective scope of application, active advertising, the right of access to information and the Transparency Council. For its part, the provisions of Title II, relating to Good Governance, entered into force the day after the publication of the Law in the Official State Gazette, on December 10, 2013.

The most important aspects of Law 19/2013 are, first, the requirement for active publicity in institutional, organisational, legal, economic, budgetary and statistical matters, and, second, the recognition of the right of access to public information and creating a procedure for exercising it.

With the intention of advancing in this direction, the Institution of the Ombudsman published this transparency section on January 14, 2013, and since then it has been completed with all the contents that have been considered significant for general knowledge, more beyond those required by the aforementioned Law 19/2013, of December 9, on transparency, access to public information and good governance.

The Ombudsman also makes public in its site all the relevant investigations and complaints in real time.

### Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

RDL 10/2020 recognizes the autonomy of the Ombudsman to issue the necessary instructions and resolutions in relation to its internal organisation and operation, as an essential service during the state of alarm. (second additional provision)

#### *References*

- <https://www.boe.es/eli/es/rdl/2020/03/29/10/con>

## Corruption

Progress was made on the state of corruption in Spain since the last decade, as many cases of corruption were brought before the courts which ensured independent review and impactful decisions.

#### *References*

- Data repository on corruption proceedings (General Council of the Judiciary)  
<http://www.poderjudicial.es/cgpj/en/Subjects/Transparency/Data-repository-on-corruption-proceedings/General-Information/>

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The epidemic caused by COVID-19 represents a threat of such magnitude that the Government has been forced to decree the state of alarm throughout the country, for an initial period of fifteen days, through Royal Decree 463/2020, of 14 March, which has been extended by several Royal Decrees , until May 11th.

The Ombudsman, as high commissioner of the Cortes Generales for the protection of the rights and freedoms included in the First Title of the Constitution, must supervise the activity of public administrations, even before the declaration of states of alarm, exception or site.

This is because in these exceptional circumstances, the fundamental rights of citizens continue to be equally guaranteed, because democracy is not suspended however difficult the challenge may be.

While all the personnel of the health and emergency services are fighting to the maximum of their strength and capabilities to protect the right to life and to health, any restrictions to other fundamental rights and freedoms shall only be temporary and subject to the principles of necessity and proportionality.

### Most important challenges due to COVID-19 for the NHRI's functioning

Given the declaration of the state of alarm, and the confinement that this entailed, the institution adopted several internal measures that have allowed the institution to ensure continuity of its work and services.

- The teleworking system was adopted in three phases, which has enabled 150 laptop computers to be made available to staff, allowing workers to carry out their activities from home through a secure VPN connection.
- The telephone service has been strengthened to make it easier for people who before the state of emergency (around 30%) to contact us by mail to do so by telephone, as well as by email and the web.
- The minimum services imposed by mail has forced us to make important decisions regarding the admission and processing of complaints. In addition, a broad interpretation of our regulatory Organic Law regarding the admission of complaints is being applied, so that:
  - Complaints in which only name + surname + email are accepted (until now DNI / NIE / PASSPORT and postal address were requested)
  - In the case of people who cannot send complaints by email or via the web, the telephone service staff will transcribe the complaint (this is exceptional and has not yet occurred but is contemplated)
- Processing: During the first week of confinement, everything related to the state of emergency has been processed as a priority.

As of the second week, in addition to processing complaints related to the state of emergency, other complaints are also being processed on important issues, such as scholarships, grants, subsidies, and all the other normal complaints of the institution later and gradually.

### *References*

- Royal Decree 463/2020, declaring the state of alert as a result of the health crisis caused by COVID-19 (full text in Spanish <https://www.boe.es/eli/es/rd/2020/03/14/463/con>)
- English version web page of the Presidency of the Government publishes the performances carried out by the government <https://www.lamoncloa.gob.es/lang/en/Paginas/index.aspx>
- The English version of several press releases of the Ombudsman can be found at: <https://www.defensordelpueblo.es/en/news/ombudsman-calls-autonomous-communities-improving-health-care-retirement-homes-information-family-members-protection-rights/> April, 24 2020
- <https://www.defensordelpueblo.es/en/news/ombudsman-contemplates-possibility-letting-children-outdoors-limited-way-necessary-precautions/> April. 17 2020
- <https://www.defensordelpueblo.es/en/news/ombudsman-passes-concerns-citizens-coronavirus-crisis-authorities/> April, 3 2020

