1. MISSION: WHAT SHE IS AND WHAT SHE'S FOR

The Sindicatura de Greuges de Barcelona (Barcelona Ombudsman's office), personalised in the figure of the Síndica (Ombudswoman), is a unipersonal institution responsible for overseeing municipal administration and guaranteeing fundamental rights and public freedom.

Its purpose is defined by a law of the Catalan Parliament and is the equivalent in our municipal sphere to that of the Síndic de Greuges de Catalunya (Catalan Ombudsman), the Defensor del Pueblo (Spanish Ombudsman) and other local Ombudsmans promoted by the European Charter for the Safeguarding of Human Rights in the City (SDC), also known as the St. Denis Charter, ratified by Barcelona City Council on 21 July 2000.

Our nature as an institution, therefore, has been conferred on us by the legislative power, but the institution would not have got off the ground in Barcelona if our City Council had not wanted to extend the scope of democracy and participation by providing citizens with this resource. And on 24 March 2003 the plenary meeting of the Municipal Council, by approving the rules for regulating this body, demonstrated even more clearly its open and progressive-minded approach, tying the Ombudsman's office to the aims not only of municipal law but also to the SDC, which looks on this institution as a means of preventive safeguard, something of vital importance which we shall be looking at later.

Even so, the mission calling for a direct effort is the one established by the Llei Municipal i de Règim Local de Catalunya (Catalan Municipal and Local Government Law), as stated literally in Article 48 of the current revised text:

'The role of the municipal ombudsman or ombudswoman is to defend the fundamental rights and public freedom of those living in the municipal district, to which end (s)he can oversee the activities of the municipal administration. The municipal ombudsman or ombudswoman exercises his/her duties independently and objectively.'

The Ombudswoman's mission is therefore set in a twofold frame:
the duty to defend the citizen before a grievance to his/her rights from municipal spheres, and

- a duty to watch over these rights all people have through a general preventive role before plans or omissions by the City Council.

The duty to defend the citizen who feels wronged is established by law and is therefore the priority mandate. But I think this mandate was especially strengthened by the Reglament del Síndic/a de Greuges de Barcelona (Barcelona Ombudsman/woman Regulation) when it described it as a 'mission', a word that conjures up a more intense and personalised job in the pursuit of an objective, and it is with this intensity that we are taking it on. Because, rather than a routine administrative auditing function, what the Ombudswoman is entrusted with is a transcendental final object: to ensure that the citizens of Barcelona enjoy their rights and freedom before their City Council, rights and freedom won at great cost and which must be preserved.

The Sindicatura is a body, as I say, which must oversee the administration independently and objectively. It therefore has no hierarchical dependency; its sole duty is to the citizen and to the spirit of the law, and it is accountable to the municipal plenary. It is a form of democratic guarantee alongside administrative appeals or legal proceedings, which can not interfere with them but can search for solutions through voluntary agreements when the law allows this. In certain situations we can also suggest alternatives. It is not allowed to annul sentences but it can point to possible procedural defects that have prejudiced the citizen and that would justify a review of the resolution by the City Council.

It is almost unthinkable that in a democratic administrative setting like ours human rights could be contravened and it is quite certain that if this did happen the normal juridical guarantees would operate to neutralise it. The role of the Sindicatura, therefore, does not lie in emulating mechanisms for juridical and administrative guarantees but in reviewing the way juridical regulations must be applied and in comparing them with the citizen's wishes on grounds of equity, so that the law is applied taking into account the circumstances involved in each specific case.

It is therefore the aim of the Sindicatura to ensure that whenever possible the rules are
applied in keeping with people’s circumstances, rather than forcing people to adjust to rigid, abstract rules. I am not saying that the Síndica has more power than other bodies for bringing justice to citizens; it’s simply that the Síndica can pursue it beyond the those bodies in search of solutions of equity and not just of formal law.

The other component of the Sindicatura's mission, that of general prevention, allows the Síndica to warn of the risks that citizens could be exposed to as a result of programmatic or normative municipal action, or the risk of exclusion that hangs over certain silent groups (poor people, unprotected children, drug addicts, etc.)

2. JURISDICTION: MATTERS SUBJECT TO SUPERVISION

As I have said, it is obligatory that the Síndica's mission should extend to removing any obstacle that might get in the way of the fundamental rights of citizens when they come under the jurisdiction of the municipal administration.

These rights are contained in a body of rules which are the keystone and purpose of the public authorities and consist, first of all, of the Spanish Constitution, which refers to the Universal declaration of Human Rights (UDHR). But there is more: the municipal regulation of the institution of the Síndic/a de Greuges de Barcelona extends the initial functions established in the Llei Municipal i de Règim Local (LMRLC) and extends the jurisdiction of the Síndica to the programmatic rights laid down in the SDC.

So the subject range, the range of rights liable to protection by this institution, can be laid out in three broad groups:

1st. FORMAL RIGHTS

The strict subject of 'fundamental rights and public freedom' directly identifiable with the first part of Chapter 2 of Title 1 of the Spanish Constitution (SC), to which must be added the right to dignity (art. 10) and to equality before the law (art. 14). This is the group of what could be called formal fundamental rights, which must be listed here as they are what justifies the existence of any public authority as well as the mission of the Sindicatura, which must take care to prevent any instance of the following:
- Inequality: because citizens are equal before the law and no discrimination may prevail (art. 14 SC)

- Danger or injury to physical or moral integrity (art. 15 SC), because no-one can ever be subjected to inhuman or degrading treatment or have their dignity wounded.

- Hindrance or prejudice affecting ideological or religious freedom or freedom of worship (art. 16 SC).

- Assaults on freedom and physical safety through illicit obligations (art. 17 SC).

- Offence to dignity, as the Constitution (art. 18 SC) guarantees the right to dignity, to individual and family privacy and to one's own image, to inviolability of the home and to secrecy of communications.

- Obstacles to the freedom of abode and of movement in the territory (art, 19 SC).

- Obstructions to freedom of expression and information (art. 20 SC), of literary, artistic, scientific and technical production and creation, or unjustified difficulties for freely communicating and receiving reliable information through any medium.

- Hindrance in the exercise of the right of assembly (art. 21 SC).

- Obstacles to participation in public affairs and access to public office (art. 23 SC)

- Failure to observe guarantees in the application of administrative sanctions (art. 25 SC).

- Failure to satisfy rights regarding education (art. 27 SC).

- Unjustified obstacles to trade union rights, the right to strike and to collective bargaining (arts. 28 and 37 SC).

- Inattention to the right to petition (art. 29 SC).
- Neglect of rights regarding budget and tax equity (art. 31 SC).

- Illegitimate interference in the right of ownership, social use of property, or unjustified expropriation (art. 33 SC).

- Neglect of employment rights (art. 35 SC).

- Unjustified obstacles to the right to free enterprise (art. 38 SC).

This first set of obstacles to the fundamental rights referred to earlier are totally unacceptable in a democratic society. Public rights and freedom must be fully guaranteed and exercised without any excuse or exception as regards their acknowledgement and exercise.

2nd. SOCIAL RIGHTS

There is a second group of constitutional rights requiring legislation, planning and development by the public authorities. The degree to which they are realised and enjoyed depends on acknowledgement of budgeting priorities and on the sense of social justice of the public authorities themselves. But they are equally demandable as they are part and parcel of the human condition. In this set of rights the aim of the Síndica is to ensure they are thoughtfully and responsibly developed according to a criterion of application of the constitutional values of justice and equality.

Obviously, this second set is made up of those social rights which, under the heading of guiding principles of social and economic policy, are included in Chapter 3 of Title 1 of the Constitution, called 'On Fundamental Rights and Duties'. These are rights of legal and budgetary configuration, which require definition through laws and regulations, and budgetary funding for their realisation. The Síndica must ensure that their acknowledgement and protection presides any municipal action. This group includes:

- Social, economic and legal protection of the family and of children (art. 39 SC).

- Promotion of the right conditions for social and economic progress and for a more egalitarian distribution of personal income; in particular, policies directed at full
employment (art. 40 SC).

- Social Security assistance and benefits (art. 41 SC).

- Care of public health through preventive measures and provision of the necessary services. Also, promotion of appropriate use of leisure time (art. 43 SC).

- Promotion and tutelage of access to culture and science (art. 44 SC).

- The right of all to a suitable environment for the development of the individual (art. 45).

- Conservation and enrichment of the historical, cultural and artistic heritage (art. 46).

- Fulfilment of the right to decent and suitable accommodation and regulation of land use in keeping with the general interest and the prevention of speculation (art. 47 SC).

- Implementation of a policy of prevention, treatment, rehabilitation and integration of the physically, sensorially or mentally handicapped, who must be given the specialised attention they require and who need special assistance in obtaining their constitutional rights (art. 49 SC).

- Promotion and welfare of old people through a social services system attending to specific problems of health, housing, culture and leisure (art. 50).

- Effective protection for all as consumers and users as regards safety, health and their legitimate financial interests (art. 51).

And even more could be listed in the light of the positive demands the City Council has subscribed with the CSD to make the city a collective scenario belonging to all its inhabitants, who have the right to find in it the necessary conditions for their political, social and ecological realisation.

3rd. GOOD ADMINISTRATION

A third group that should be the object of attention of the Sindicatura de Greuges is that of
rights and principles to do with good administration, which is important as it makes the other two viable. The right to a good administration calls for good and efficient exercise of the municipal powers included in local authority legislation.

The good administration referred to in this report is none other than what is foreseen and demanded by the Constitution, especially in articles 9 (proactive administration) and 103 (effective administration subject to law), which must be applied to each and every one of the broad fields covered by municipal administration, such as:

Citizen participation, environmental sustainability; regional management; social cohesion; mobility; safety in public places; traffic regulation; civil protection; planning control; housing; parks and gardens; urban streets and thoroughfares; historic and artistic heritage; environmental protection; markets; public hygiene; health; funeral services; social services; cleaning; public transport; cultural activities, sport and leisure; tourism; education; equal access to public services, and, in short, public activities and services of all sorts that help satisfy the needs and aspirations of the local community.

The field of municipal action is therefore inexhaustible, because Barcelona's Municipal Charter also states that the City Council can promote all sorts of activities and provide all those public services that affect the general interest of citizens and are not expressly attributed to other public administrations. In this case, the City Council can undertake complementary activities to those pertaining to these administrations.

3. FUNCTIONS, ORGANISATION AND PROCEDURE

The concept of supervised municipal administration and the parties involved

The party able to request the defence of the Síndica is clearly defined in the organisational regulations mentioned above and leaves no room for doubt. Anyone who is resident in Barcelona, is native to Barcelona by birth or adoption, works in Barcelona or wants to be there, wants to live there or is a traveller in transit can do so; everyone has the right to make a complaint to the Síndica if they consider the municipal administration is not acting in conformity with the law.

But even if the person affected does not personally invoke his/her right, the Síndica can
intervene on a preventive basis ex-officio, when it is in the general interest. In many cases, an ex-officio investigation is justified because it is impossible for the affected party to act for themselves or because the prejudice to one citizen is an offence to all citizens. In this way, the ex-officio investigations undertaken by the Sindicatura can reveal whether certain citizens or groups are not benefiting from the rights the City Council has to guarantee.

In addition, the party under supervision is the municipal administration. Here the complexity of the administration, which is made up of multiple bodies and organisms with different degrees of autonomy, could raise doubts as to what interlocutors can be questioned, but in view of the broad concept stated in Rule 3 of the Sindicatura regulations, it appears that apart from central and decentralised bodies mediation can reach all those bodies on which the City Council plays a majority part and it can obtain the collaboration of all the others in which municipal participation is in the minority.

Nevertheless, there are clear jurisdictional limits in certain fields: one is private law relations and tax issues. As regards the former --civil or mercantile affairs--, the Síndica can obviously not intervene in civil or mercantile relations between civilians or firms; for this there is the Oficina Municipal d'Informació al Consumidor (OMIC, Municipal Consumer Information Office) and the role of the Síndica is limited to overseeing this body’s operation in its dealings with citizens. The other order of jurisdiction is taxation; it would make no sense here either for the Sindicatura to duplicate the activity of the Consell Tributari (Tax Council), which also has the nature of a ministry, and therefore, as stated in the regulations of the Sindicatura, this advisory body also is only subject to supervision by the Síndica in its dealings with interested parties. A different matter would be the valuation the Síndica might occasionally make in terms of equity of fundamental rights and public freedom in matters of public expenditure and tax collecting or the operation of the local tax administration.

This institution's jurisdiction therefore reaches to all municipal bodies and to everyone who lives, works or passes through Barcelona. This aspect of the personal jurisdiction does not seem to raise problems of interpretation and in fact there have been no cases of attempted restriction of powers. Neither does it seem that questions of jurisdiction could arise in this field as in that case placing obstacles to our intervention would lead the citizen to seek the protection of the Síndic de Greuges de Catalunya or the Defensor del Pueblo to solve his/her problem.
Jurisdictional concurrence with other Ombudsmans or convergence with the judicial power

Obviously the Síndica does not have exclusive jurisprudence with regard to the supervision of municipal activity. The Síndic de Greuges de Catalunya or the Defensor del Pueblo can concur in the investigation of the same matter. The involvement of any one of the three institutions does not necessarily exclude that of the other two.

So far, no jurisdictional conflicts have arisen because, when there has been concurrence, the decision as to who should intervene has been taken by the citizen after taking advice on the matter. Nevertheless, it is foreseen that conventions will be established for coordination with the Síndic de Greuges de Catalunya and the Defensor del Pueblo. The object of this would be administrative efficiency and economy.

As regards investigation by the Síndica when there is judicial action, the regulations say that she can not investigate a complaint if the object of that complaint is awaiting a court sentence. They also say that once judicial proceedings have begun, she can suspend her investigation, but this suspension is imperative when the proceedings are awaiting sentence. The rule, therefore, is that the investigation by the Sindicatura can run parallel to judicial proceedings but without intervening. I might also say that the Sindicatura has occasionally contacted the courts for merely informative purposes and has always been well received.

Procedure

As we have just seen, the matters within jurisdiction of the Síndica are almost all those affecting life in society, a consequence of the fact that municipal activity affects all aspects of citizens' lives.

Although the institution is independent, the Sindicatura realises that it is part of the political and administrative organisation of the city and that therefore its supervisory interventions must follow a formal procedure and its decisions must adapt to constitutional principles and guarantees for everyone. Nevertheless, the procedure to be followed is not and can not be the general administrative procedure but the specific right of petition (art. 29 SC)
and the relevant local regulations. This is the process followed by citizens applying for mediation by the Síndica and the decisions are therefore not subject to administrative appeal.

The temporal jurisdiction is limited by the regulations (art. 3.4 of the Normes Complementàries of 19 Jan 2005): Complaints may not be made when a period of one year has passed since the person affected knew of the conduct or the events that are the object of the complaint took place. This exclusion must be given a restrictive interpretation by the Síndica, as we must in all logic consider the expiry suspended when a sentence or administrative reply is pending, and in no case can the possibility of ex-officio intervention be ruled out if the damage caused by the events denounced persists or if the administrative reply has not been given.

Once the procedure has begun, channelling the request for information through the Mayor’s office, the Síndica, as stated in art. 3.7 of the Normes of 19 January 2005, will take the investigative steps she feels are necessary until the situation is clarified and will conclude with a decision in the form of a memorandum, recommendation or warning, which will not be subject to appeal of any sort since the involvement of the Síndica must be understood not as a normal administrative procedure but as a procedure linked to the fundamental right of petition, which follows a specific procedure of its own.

In arriving at a conclusion, the procedure goes through the following stages:

- Attention to the individual at the moment when he lays out his feeling of grievance. In this first stage information and advice is given and, if necessary, there is a referral to the relevant management body, either municipal or in another administration, following contact with them if appropriate.

- Processing and investigation of complaints containing regulation elements making them liable to investigation because they contain signs that there has been a violation of fundamental rights or public freedom.

- Analysis of the problem and of the legal framework surrounding it. To this end, according to the case, there is a documentary study, a presential review, interviews with municipal officials, a request for technical or juridical reports, consultation with internal and external
specialists who can contribute to a better understanding of the problem, mediation, etc.

- The written decision and the reasoning behind it are sent to the mayor's office and the relevant body and the interested party is informed of its contents. The decision can be totally or partly taken into account and apart from this declaration can involve the formulation of suggestions, recommendations or warnings to the bodies under investigation.

4. THE DECISIONS OF THE SÍNDIC AND HER RECOMMENDATIONS AS A WAY OF PASSING ON CITIZENS' FEELINGS WITH THE BACKING OF THE LAW

The proceedings undertaken by the Sindicatura always end with a decision which, as was stated earlier, is given in writing with its reasoning to the Mayor's office and the affected body and the interested party is informed of its content. The decision is an appraisal of a situation comparing it with the rules governing that situation, but the mission of the Síndica is to go a little bit further and also compare it with a situation which as well as legal is ideal. In the hope of progressing towards an ideal order a suggestion or recommendation can be issued.

A recommendation, in its dictionary definition, is that which is advised or indicated in the belief that it is right, useful or appropriate.

The Síndica de Greuges is commissioned by the Municipal Council to oversee the municipal administration and attend to complaints from the public. Following on from this supervision, she must report once a year to the same Council with her results. But reporting doesn't mean just relating the results of the investigations carried out to clarify differences, since very little comes of just understanding problems without providing solutions. The best thing is to put forward solutions when the causes of the problems have been found and when the investigation itself allows a better scenario, a scenario of synthesis that can satisfy the objectives of public interest taking into account the aspirations of private individuals when these are compatible.

In the course of her line of duty, the Síndica listens, asks, consults, studies, analyses, takes advice and then, taking into account the technical, juridical and moral opinions she has gathered, sometimes recommends. She recommends when she has found a
sentiment in citizens which is defensible by law and when it might suit the general interest.

The Síndica's decisions can not alter administrative resolutions. It is logical and necessary that this should be so for the sake of juridical certainty and of the creditability of the Rechtsstaat. But the functions of the Síndica must be able to have proactive effects going beyond a mere annual report to the Municipal Council and also beyond the preventive role in which the SDC places the institution. For this reason it is foreseen in the regulations of the Sindicatura that it will issue recommendations.

The Sindicatura understands that the recommendations, suggestions and warnings it has to issue with its decisions are the institution's true purpose as they are an instrument by which to amend unsatisfactory situations turned up by its investigations.

The recommendation is, first of all, specific to the case under consideration in the decision issued. The interlocutor or target of the recommendation is primarily the body having made the action or omission under scrutiny and it can accept it or not. But sometimes, when the measure proposed is extensible to a series of cases with the same problem, the recommendation must also be extended to reach the different municipal bodies. It then becomes the right thing to do to convey these recommendations to the Municipal Council so that it can see them and, if appropriate, put them into effect.