

## Enhancing fundamental rights in the public sphere: the *Defensor del Pueblo* in the Spanish constitutional experience\*

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TABLE OF CONTENTS: 1. Introduction – 2. The constitutional position of the *Defensor del Pueblo*: a human rights ombudsman? – 3. Enhancing fundamental rights' protection in the public sphere: the protective and promotive nature of the *Defensor del Pueblo* – 4. *Defensor del Pueblo*, Constitutional Tribunal and political process – 5. Conclusions.

### 1. Introduction

The establishment and evolution of the *Defensor del Pueblo* in the Spanish constitutional experience provide an insightful vantage point from which to examine evolving trends concerning National Human Rights Institutions (NHRIs) in contemporary constitutional democracies, also in relation with the persistent lack of such an institution in Italy<sup>1</sup>. This holds true, first, with respect to the relationship between NHRIs and ombudsman institutions. Secondly, and equally significantly, it brings into focus the constitutional relevance of NHRIs.

The Spanish *Defensor del Pueblo* is historically and legally linked to the traditional ombudsman institutions; nevertheless, its core constitutional function – protecting fundamental rights – qualifies it as one of the main actors in the promotion and protection of constitutional rule of law and it has naturally led to its identification as an NHRI.

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<sup>1</sup> G. Repetto, *National Human Rights Institutions e l'urgenza italiana*, in Id. (ed.), *Una National Human Rights Institution per l'Italia: problemi e prospettive*, Torino, 2025, p. 1 ff., p.11 ff. On the Paris Principles, see S. López Escarcena, *Fostering the Rule of Law. The Paris Principles on NHRIs*, in J. Wouters - M. Nuñez Poblete - S. López Escarcena (eds.), *National Human Rights Institutions in Europe and Latin America International and Comparative Perspectives*, Cambridge, 2024, p. 11 ff.; C. Sidoti, *National Human Rights Institutions and the International Human Rights System*, in R. Goodman - T. Pegram (a cura di), *Human Rights, State Compliance, and Social Change. Assessing National Human Rights Institutions*, Cambridge, 2012, p. 93 ff.; E. Santiemma, *Il fondamento giuridico internazionale delle Istituzioni Nazionali per la promozione e la protezione dei diritti umani*, in E. Santiemma - B. Terenzi - M. Gressi, *L'istituzione nazionale indipendente per la promozione e protezione dei diritti umani italiana: cos'è e perché serve*, Roma, 2020, p. 251 ff. and Ead., *Lo sviluppo delle Istituzioni nazionali indipendenti sui diritti umani a livello internazionale*, *ibid.*, p. 297 ff.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

In other words, the *Defensor del Pueblo*'s role as an NHRI is structurally linked to its functions as a human rights ombudsman within the domestic legal system. For the same reason, analysing the origins, functions and position of the *Defensor del Pueblo* in the Spanish constitutional experience is particularly useful in shedding light on the potential of NHRIs that also perform ombudsman functions.

In this vein, alongside with the Portuguese *Provedor de Justiça* the Spanish *Defensor del Pueblo* – having been entitled by Article 54 of the Constitution as the parliamentary commissioner to defend the rights protected by the Constitution – has established an archetype of the *human rights ombudsman*.

Scholarly discourse has traditionally emphasized the ombudsman's function in safeguarding legality in administrative action, conceptualizing it primarily as a parliamentary mechanism for overseeing executive power. In this context, the proliferation of ombudsman institutions has become “inextricably linked to the principles of democracy and the rule of law”<sup>2</sup>.

This is undoubtedly true of the ombudsman institution in general, but also – more specifically – of those ombudsmen who, beginning with the democratic transitions in Southern Europe in the 1970s, decisively developed and elevated a concurrent function of protecting and promoting fundamental rights, thereby giving rise to the model of the *human rights ombudsman*. In other words, “by combining the basic concepts of both the rule of law and human rights the figure of the ombudsman was lifted up to a new level”<sup>3</sup>. As the Spanish case exemplifies particularly well, the evolution of the ombudsman institution – traditionally aimed at guaranteeing the rule of law – shows an increasingly close connection to enforcing the constitutional rule of law, above all because of the incorporation of the mandate to protect and promote rights.

The circulation and reception of the ombudsman institution<sup>4</sup> have thus grown richer: from a circulation confined within national experiences and focused on the enforcement of the rule of law, it has gradually included the international dimension and the need to give substance and effect to international and regional standards for the protection of human rights. It is within this process that the traditional ombudsman institutions and the establishment of NHRIs appear to have intertwined.

Thus, locating the human rights ombudsman within the dynamics of the constitutional state requires taking account of the openness of the constitutional state itself, in at least two senses: openness to comparative influences and openness to

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<sup>2</sup> G. Kucsko-Stadlmayer, *The Legal Structures of Ombudsman-Institutions in Europe – Legal Comparative Analysis*, in Id. (ed), *European Ombudsman-Institutions. A comparative legal analysis regarding the multifaceted realisation of an idea*, Vienna, 2008, p. 1 ff.

<sup>3</sup> G. Kucsko-Stadlmayer, *The Legal Structures of Ombudsman-Institutions in Europe*, cit., p. 2.

<sup>4</sup> Recently, see E. Campelli, *L'ombudsman nel diritto comparato. Origine, esperienze, prospettive*, Milano, 2024.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

international and supranational legal experience, “across the multiple layers of the human rights system”<sup>5</sup>.

On this point, it should be noted that international standards are already integrated into the Spanish constitutional standard by virtue of Article 10.2 CE<sup>6</sup>; and the *Defensor del Pueblo* may enrich the benchmark for its assessments by extending the scope of the catalogue of fundamental rights to include “*el principio de dignidad de la persona y el Derecho internacional*”<sup>7</sup>.

In this vein, the *Defensor del Pueblo* has incorporated the growing imperative to enforce international and regional standards of human rights protection. Moreover, it has eventually been identified with the NHRI<sup>8</sup>.

Against this backdrop, the following sections focus on the constitutional position of the *Defensor del Pueblo*, its rights-protective and rights-promotive functions, and the specific implications of its access to constitutional justice.

## 2. *The constitutional position of the Defensor del Pueblo: a human rights ombudsman?*

As said, alongside the Portuguese *Provedor de Justiça*, the *Defensor del Pueblo* represents one of the earliest historical examples of the *human rights ombudsman* model. Notably, this institutional transformation was influenced by the specific historical and political circumstances that characterized the democratic transitions in both countries.

The political context of the democratic and constitutional transition has determined – and indeed oriented – the Spanish and Portuguese reception of the

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<sup>5</sup> K. Meuwissen, *European National Human Rights Institutions as multi-layered actors. Characteristics, challenges and opportunities*, in J. Wouters - M. Nuñez Poblete - S. López Escarcena (eds.), *National Human Rights Institutions*, cit., p. 28 ff., 29.

<sup>6</sup> On this provision and its interpretation see A. Schillaci, *Diritti fondamentali e parametro di giudizio. Per una storia concettuale delle relazioni tra ordinamenti*, Napoli, 2012, p. 375 ff.; A. Saiz Arnaiz, *La apertura constitucional al derecho internacional y europeo de los derechos humanos. El art. 10.2 de la Constitución española*, Madrid, 1999.

<sup>7</sup> G. Escobar Roca, *Interpretación y garantía de los derechos fundamentales por el Defensor del Pueblo (Análisis empírico, reconstrucción dogmática y propuesta del futuro)*, in *Teoría y realidad constitucional*, 26, 2010, p. 229 ff., p. 237.

<sup>8</sup> According to S. Cardenas, *National Human Rights Institutions and State Compliance*, in R. Goodman - T. Pegram (eds.), *op. cit.*, p. 29 ff., 29, NHRIs can be described as a “bridge between international norms and local implementation”; J. Mertus, *Evaluating NHRIs. Considering Structure, Mandate, and Impact*, *ibid.*, p. 74, also observes that “it is the job of national human rights institutions (NHRIs) to connect the local with the international, making immediate and concrete what appeared previously to be far away and abstract”.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

ombudsman institution: in the two experiences, “the creation of the ombudsman was part of a broader democratic transition and new constitutions”<sup>9</sup>.

As La Pergola put it in one of the earliest analyses of the *Defensor del Pueblo*, its establishment confirms and somehow completes the framework of constitutional guarantees of fundamental rights in Spain<sup>10</sup>. And indeed, strengthening the guarantees of the Constitution and its legal force has been at the heart of the efforts of the *Cortes constituyentes* and has represented a key concern of the scholarship all through the Eighties and part of the Nineties<sup>11</sup>. This provides another powerful insight for understanding the *Defensor*, its differences with the traditional institution of the ombudsman and – above all – its constitutional position. By strengthening the legal guarantee of the Constitution (that is, by implementing constitutional rule of law), the *Defensor del Pueblo* enforces democracy and has therefore contributed to supporting the legitimacy of the democratic transition.

In Spain, this explains both the choice to introduce the institution through a constitutional provision and its explicit functionalization to the protection of fundamental rights. Thus, the historical, constitutional and political context sheds light on specific functions of the *Defensor* – above all, the power to lodge an appeal of unconstitutionality.

Indeed, Article 54 of the Spanish Constitution<sup>12</sup> clearly indicates that the rationale of the *Defensor del Pueblo* is the protection of fundamental rights, within the broader framework of strengthening the constitutional rule of law. Thus, the *Defensor del Pueblo* is explicitly conceived as a rights-oriented ombudsman institution, rather than merely as a body addressing individual cases of maladministration. Accordingly, Spanish legal scholarship recognizes the institution as an additional mechanism for safeguarding fundamental rights, designed not only to remedy specific rights violations but also to enhance the broader accountability of institutional actors. The overall relationship between the *Defensor*, the other branches of the state, and the political process itself must be read in this broader perspective.

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<sup>9</sup> S. Cardenas, *Chains of Justice. The Global Rise of State Institutions for Human Rights*, Philadelphia, 2014, p. 82; C. Alza Barco, *The transposition of the ombudsman model to the human rights model domain: its role as a policy entrepreneur*, in M. Hertog - R. Kirkham (eds.), *The Ombudsman*, Cheltenham, 2018, p. 188 ff., 188 and L. C. Reif, *The Shifting Boundaries of NHRI Definition in the International System*, in R. Goodman - T. Pegram (eds.), *op. cit.*, p. 52 ff., 67.

<sup>10</sup> See A. La Pergola, *Ombudsman y defensor del pueblo: Apuntes para una investigación comparada*, in *Revista de Estudios Políticos*, 7, 1979, p. 69 ff., p. 70.

<sup>11</sup> On this, see A. Schillaci, *Forza normativa della Costituzione, consenso e democrazia nella riflessione di Francisco Balaguer Callejón sulle fonti del diritto*, in A. D’Atena (a cura di), *Las Fuentes del Derecho, treinta años después*, Madrid, 2022.

<sup>12</sup> “An organic act shall regulate the institution of the Defender of the People (Defensor del Pueblo) as high commissioner of the Cortes Generales, appointed by them to defend the rights contained in this Part; for this purpose he or she may supervise the activity of the Administration and report thereon to the Cortes Generales” (Article 54 of the Spanish Constitution, official English translation).

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

This, first, explains the intense link between the *Defensor* and the *Cortes*. Consistent with the tradition of the ombudsman institutions, the *Defensor* is put in a close relation with the Parliament. On the other hand – and innovatively – the traditional supervisory function is oriented not towards the generic examination of cases of maladministration but rather towards the defence of rights recognised by the Constitution. The organic act April 6<sup>th</sup>, 1981, no. 3 (*Ley orgánica del Defensor del Pueblo*, LODP) sets strong guarantees of independence of the *Defensor*, as the majority required for its appointment (three/fifths) is higher than the political majority<sup>13</sup>. Secondly, Article 6.1 LODP clearly reiterates that the *Defensor* acts without explicit mandates, thus establishing an “*independencia de criterio prácticamente ilimitada en el marco de sus facultades*”<sup>14</sup>. In line with what happens with ombudsmen<sup>15</sup>, even for the *Defensor del Pueblo*, the need for a close relationship with Parliament does not undermine the equally necessary independence of the body (not only from the executive but also) from the legislature. The *Defensor* therefore engages in a complex and dynamic relation with the political process. On the one hand, it has a strong power to supervise the activity of the executive power; on the other hand, it acts in cooperation with the *Cortes* but neither the *Cortes* – nor any other authority – shall provide the *Defensor* with an imperative mandate.

For this reason, following the approval of the Constitution, La Pergola observed – albeit critically questioning some of the potential developments of the rules implementing Article 54 EC – that the *Defensor* constituted almost a sort of “*interpoder*”<sup>16</sup> and that for this reason, it should have been avoided to attribute decision-making powers to it, instead emphasizing its persuasive function, in line with the tradition of the ombudsman<sup>17</sup>.

Along these lines, subsequent doctrine has therefore reconstructed the relationship between the *Defensor del Pueblo* and other constitutional bodies in terms of persuasion<sup>18</sup> and mediation, highlighting the absence of decisive<sup>19</sup> or coercive<sup>20</sup> powers.

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<sup>13</sup> It is confirmed, for example, by the fixed term of office of the body, which is not dependent on the activities of the parliamentary body: see G. Kucsko Stadlmayer, *The Legal Structures of Ombudsman-Institutions in Europe*, cit., p. 14-15.

<sup>14</sup> F. Fernández Segado, *El estatuto jurídico-constitucional del Defensor del Pueblo en España*, in *Anuario de derechos humanos*, 2, 2001, p. 223 ff., p. 233.

<sup>15</sup> G. Kucsko Stadlmayer, *The Legal Structures of Ombudsman-Institutions in Europe*, cit., p. 10-11.

<sup>16</sup> A. La Pergola, *Ombudsman y defensor del pueblo*, cit., p. 91.

<sup>17</sup> *Ibidem*, p. 79.

<sup>18</sup> Among those who describe the Ombudsman in terms of a *persuasive* institution, see – in addition to C. Alza Barco, *The transposition of the ombudsman model*, cit., p. 99 – also J. L. Pérez Francesch, *El Defensor del Pueblo en España: balance de veinticinco años de experiencia constitucional*, in *Revista de Estudios Políticos*, 128, 2005, p. 59 ff., 60.

<sup>19</sup> Oscar Alzaga Villaamil defines it as a “*magistratura de opinión*”, not “*resolutiva*” (*Derecho político español según la Constitución de 1978*, with I. Álvarez Rodríguez, Madrid, 2021, vol. II, p. 263).

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

Far from limiting the relevance of the *Defensor's* role, these reconstructions help to frame the complexity of its relationship with the political process: through persuasion and mediation, in fact, the *Defensor* can foster the connection between different institutional bodies, as empowering institutional actors by raising awareness of the need to protect rights. Finally, it can promote the development of a widespread culture of rights, thereby strengthening the very foundations of democratic coexistence.

This has led to classify the *Defensor* as a constitutional body, auxiliary to the *Cortes*<sup>21</sup> and with supervisory functions<sup>22</sup>. However, the auxiliary status must be reconciled with the *Defensor's* autonomy with respect to political dynamics (majority/minority)<sup>23</sup>; as it has been correctly observed, the institution is entitled with “*función estatal sostenida por el Parlamento, pero no instrumentalizada por el mismo*” (a state function supported by Parliament, but not instrumentalised by it) as demonstrated, ultimately, by the explicit exclusion of any binding directive by the *Cortes*<sup>24</sup>.

However, the definitional difficulties can be overcome by smoothing the relevance of the relationship with the traditional model of the ombudsman and, instead, emphasizing the function of promoting and protecting fundamental rights. From this perspective, the *Defensor del Pueblo* emerges as an institution for the guarantee of fundamental rights, supplementing ordinary legal and constitutional guarantees. It grants specific oversight in relation to potential rights violations and fosters, through that, the accountability of institutional actors<sup>25</sup>. In other words, it results in an “*órgano de relevancia constitucional*”<sup>26</sup> and “*a purely democratic institution*”<sup>27</sup>; an actor that – while remaining focused on rights protection – connects different institutional spheres as it grants control and promotes rights, thereby enhancing the quality of democracy.

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<sup>20</sup> L. Rebollo Delgado, *La institución del Ombudsman en España*, Madrid, 2013, p. 122, defines the *Defensor* as a “*poder mediador, no coactivo*”.

<sup>21</sup> According to J. Varela Suanzes Carpegna, *La naturaleza jurídica del Defensor del Pueblo*, in *Revista española de Derecho constitucional*, 8, 1983, p. 63 ff., p. 67, the one between the *Defensor* and the *Cortes* is a non-equal fiduciary relationship.

<sup>22</sup> On the supervisory functions see P. Carballo Armas, *El Defensor del Pueblo. El Ombudsman en España y en el derecho comparado*, Madrid, 2003, p. 139 ff., p. 142-143 and p. 164.

<sup>23</sup> On the discussion regarding this issue, see L. Rebollo Delgado, *op. cit.*, p. 62 ff.

<sup>24</sup> P. Carballo Armas, *op. cit.*, pp. 143-144.

<sup>25</sup> F. L. De Andrés Alonso, *op. cit.*, p. 75 ff.

<sup>26</sup> F. Fernández Segado, *El estatuto jurídico-constitucional*, cit., p. 232.

<sup>27</sup> C. Alza Barco, *The transposition of the ombudsman model to the human rights model domain*, cit., p. 188 ff., p. 194.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience**3. Enhancing fundamental rights' protection in the public sphere: the protective and promotive nature of the Defensor del Pueblo*

In the case of the *Defensor del Pueblo*, as said, the function of control on the administration – typical of the ombudsman – is aimed at the protection of fundamental rights (and not just at the guarantee of the rule of law). Thus, differently from the traditional ombudsman institution, the core mission of the *Defensor* is that of promoting and protecting fundamental rights.

The issue traces back to the *travaux préparatoires*, as the first draft of Article 54 clearly separated the two fields of action while in the final text they merge<sup>28</sup>. This has sparked lively debate in legal theory, particularly regarding the autonomy of the function of oversight of the administration, as opposed to the function of defending rights<sup>29</sup>.

Part of the scholarship has stressed – also considering the practice followed by the institution and giving weight to Article 9.1 LODP<sup>30</sup> – that the *Defensor* has progressively dealt with maladministration beyond the borders of rights protection<sup>31</sup>. Also, the text of Article 9.1 has been taken as evidence that oversight (*fiscalización*) of the administration constitutes an autonomous and specific function conferred by the LODP in addition to the Constitution-conferred function of protecting fundamental rights<sup>32</sup>. The issue is not minor, since it may affect the very classification of the *Defensor* within comparative ombudsman typologies, including or excluding it from the human rights ombudsman model.

Anyway, comparative observation shows that in many cases the legality and maladministration control traditionally attributed to ombudsmen already includes the standard of respect for fundamental rights, to the extent that it concerns the normative framework of administrative action<sup>33</sup>. It is somehow confirmed by the

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<sup>28</sup> F. Fernández Segado, *El estatuto jurídico-constitucional*, cit., p. 227 ff., F. L. De Andrés Alonso, *op. cit.*, p. 63 ff.; M. Díaz Crego, *Defensor del Pueblo y justicia constitucional: entre la declaración de intenciones y el exceso competencial*, in *Teoría y realidad constitucional*, 26, 2010, p. 307 ff., p. 317 ff.

<sup>29</sup> Among the earliest commentators, A. Pérez Calvo, *Rasgos esenciales del Defensor del Pueblo según la Constitución y la ley orgánica 3/1981 de 6 de abril*, in *Revista de Derecho Político*, 11, 1981, p. 67 ff., p. 71 explicitly recognized that the Spanish *Defensor* departs from the traditional profile of the ombudsman precisely because of the centrality of the rights-protection function, which informs the remaining traditional functions.

<sup>30</sup> See Art. 9.1 LODP: “El Defensor del Pueblo podrá iniciar y proseguir de oficio o a petición de parte, cualquier investigación conducente al esclarecimiento de los actos y resoluciones de la Administración pública y sus agentes, en relación con los ciudadanos, a la luz de lo dispuesto en el artículo ciento tres, uno, de la Constitución, y el respeto debido a los Derechos proclamados en su Título primero”.

<sup>31</sup> A. Jiménez Rodríguez, *Algunas consideraciones sobre el Defensor del Pueblo*, in E. Pajares Montolío - M. Salvador Crespo - L. Herrera Díaz-Aguado (eds.), *Una nueva gobernanza para el siglo XXI*, Madrid, 2024, p. 115 ff., p. 117.

<sup>32</sup> See P. Carballo Armas, *op. cit.*, p. 148-149.

<sup>33</sup> See G. Kucsko Stadlmayer, *The Legal Structures of Ombudsman-Institutions in Europe*, cit., p. 36 ff.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

very drafting of article 9.1 LODP, that reiterates the parametric relevance – also in the oversight of the administration – of the “due respect” owed to the rights in Title I of the Constitution; and, ultimately, by Article 54 CE, in which the oversight of the administration is functionally subordinated to the protection of rights, as is particularly evident from the phrase “*a cuyo efecto*”.

Thus, Article 9.1 LODP must be interpreted harmoniously with Article 54. This does not mean that the oversight of the administration lacks an autonomous (and prominent, as practice shows) role in the *Defensor’s* activity, but that it must be framed teleologically within the protection of fundamental rights. This, after all, is consistent with Article 103.1 CE<sup>34</sup> and, more generally, with the need to situate the traditional forms of the administrative state – including legality and good-administration controls – within the broader contours of the constitutional state, allowing the Constitution (and fundamental rights) to ‘breathe’ even in the administrative activity<sup>35</sup>.

La Pergola also noted this, emphasising that the transformation of the ombudsman institutions is strongly connected to the shift from a traditional concept of the rule of law – formally understood as the mere subordination of administrative acts to the law – to a broader concept that includes the political demands of freedom and justice “*que encuentran satisfacción adecuada en una fase más moderna y progresista de la experiencia liberal, en la que [...] el Estado de Derecho se transforma claramente en el Welfare State, dirigido a garantizar, además del imperio del derecho, la igualdad social de los particulares*”<sup>36</sup>.

Consistent with its nature as a human rights ombudsman, the *Defensor del Pueblo* has thus progressively moved beyond the traditional function of handling and mediating individual complaints, evolving instead toward a role focused on identifying systemic vulnerabilities and proposing policy recommendations.

This is made clear by the different competences of the *Defensor*, that gather protection – through the exam of the *quejas* (complaints) and the lodging of appeals of unconstitutionality – and promotion of fundamental rights – through the *informes*, *recomendaciones*, *sugerencias*, *recordatorios de deberes legales*.

The *Defensor del Pueblo* – as a human rights ombudsman and, therefore, an NHRI – is thus not only the recipient of complaints, responsible for managing and mediating individual cases, but also has the task of identifying, based on these cases,

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<sup>34</sup> Article 103.1 of the Spanish Constitution states that “The Public Administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law” (English official translation).

<sup>35</sup> According to F. Fernández Segado, *El estatuto jurídico-constitucional*, cit., p. 253 ff., p. 254, the practice of the institution follows a “*visión funcional monista de acuerdo con la cual, la única función que el Defensor está llamado a cumplir es la defensa de los derechos, siendo su actividad supervisora de la Administración un instrumento al servicio de su función primigenia*”. Accordingly, J. Varela Suanzes Carpegna, *La naturaleza jurídica del Defensor del Pueblo*, cit., p. 79 and L. Rebollo Delgado, *op. cit.*, p. 99.

<sup>36</sup> A. La Pergola, *Ombudsman y defensor del pueblo*, cit., p. 76.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

the weaknesses in the system and proposing *policy-making* guidelines, gradually shifting from a complaint-based to a policy-oriented approach<sup>37</sup>. Consistent with that, it acts for the promotion of a culture of fundamental rights nudging on the administration and raising awareness.

Particularly, in the final acts of *queja* proceedings, the *Defensor* suggests to the subject under investigation the opportunity for a regulatory change aimed at overcoming the detected violation of the fundamental right invoked. Through this approach, moreover, it achieves “*la garantía objetiva o colectiva de los derechos, yendo así más allá de la función típica de los tribunales, normalmente circunscrita (más por tradición que por naturaleza de la función judicial) a la tutela de posiciones jurídicas individuales*”<sup>38</sup>.

The protective and promotive nature of the *Defensor* is consistent with its nature of NHRI. As highlighted by the literature, indeed, the NHRIs “combine a reactive and a proactive approach”<sup>39</sup> through the interaction of “regulative” and “constitutive” functions<sup>40</sup>. The latter are particularly “intended to transform the identity of state or societal actors”<sup>41</sup>. Despite the absence of binding powers, therefore, the actions of NHRIs can have an impact on the accountability of institutional actors.<sup>42</sup> Their role is also affected by the state of guarantees in each context, as pointed out by those who highlight the importance of NHRIs – in the context of the rise of authoritarian populism in Europe (and beyond) – in countering the intolerance of authoritarian populist forces towards constitutional guarantees<sup>43</sup>. In this vein, NHRIs – especially when considering their networked operations – can act as watchdogs in relation to the degeneration of democracy: in the European context, this appears as a particularly urgent and sensitive issue<sup>44</sup>.

Accordingly, as the most recent scholarship observes<sup>45</sup>, the nexus between the *Defensor’s* role and the safeguarding of processes of integration in the constitutional state concerns not only traditional instruments for the protection of rights but also wider dynamics within the public sphere<sup>46</sup>.

<sup>37</sup> C. Alza Barco, *The transposition of the ombudsman model*, cit., p. 189, p. 204 ff.

<sup>38</sup> G. Escobar Roca, *Interpretación y garantía de los derechos fundamentales*, cit., p. 248.

<sup>39</sup> K. Meuwissen, *European National Human Rights Institutions as multi-layered actors*, cit., p. 33.

<sup>40</sup> S. Cardenas, *Chains of Justice*, cit., p. 10.

<sup>41</sup> *Ibidem*.

<sup>42</sup> S. Cardenas, *Chains of Justice*, cit., p. 13.

<sup>43</sup> K. Meuwissen, *European National Human Rights Institutions as multi-layered actors*, cit., p. 34-35; J. Jařab, *Perspectives on the need for national human rights institution in Europe and the world*, in J. Wouters – K. Meuwissen (eds.), *National human rights institutions in Europe: comparative, European and international perspectives*, Cambridge, 2013, p. 287 ff., p. 291-292.

<sup>44</sup> K. Meuwissen, *European National Human Rights Institutions as multi-layered actors*, cit., p. 47-48, 50; G. Repetto, *National Human Rights Institutions*, cit.

<sup>45</sup> J.J. Fernández Rodríguez, *Defensor del Pueblo (Spain)*, in J. Wouters - M. Nuñez Poblete - S. López Escarcena (eds.), *National Human Rights Institutions*, cit., p. 225 ff., p. 226.

<sup>46</sup> About the role of civil society see B. Terenzi, *Il ruolo della società civile*, in C. Hein (ed.), *La protezione dei diritti umani. Le istituzioni nazionali indipendenti a confronto*, Roma, 2021, p. 43 ff.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

Indeed, it has been noted that the *Defensor* “has, at times, been highly influential in shaping public opinion”, which is consistent with the role – ascribed to ombudsmen and NHRIs – of promoting a culture of rights through awareness-raising. From this broader perspective, the *Defensor* (and, more generally, NHRIs and ombudsmen) may initiate “strategies that increase the democratic quality of the public system”<sup>47</sup>. In the crisis of constitutional democracy, in other words, ombudsmen and NHRIs enhance their role as counter-powers and critical voices<sup>48</sup> and thus their constitutive connection to the quality of democracy.

In this domain, the *Defensor*’s persuasive capacities are fundamental. The *Defensor*’s contribution to building a culture of rights and transforming public opinion cannot be separated from the communicative and dialogic dynamics typical of a democratic public sphere<sup>49</sup>; here too the *Defensor*’s *auctoritas* – more than *potestas* – manifests itself<sup>50</sup>.

At the same time, the orientations on the protection of specific rights formulated by the *Defensor* in the course of its investigative activity (*recomendaciones, sugerencias, recordatorios de deberes legales*), together with the methods and arguments used in articulating its positions, can enrich the traditional doctrinal approach to rights (mediated above all, including in scholarly elaboration, by the case-law of the Constitutional Tribunal). In other words, “*la doctrina del Defensor del Pueblo ofrece una perspectiva de la Constitución más amplia, por la extensión de sus ámbitos de su actuación, y menos legalista, por las formas de su argumentación*”<sup>51</sup>.

In this sense, in its dynamic relationship with citizens who address the institution and with the scholarly community, the *Defensor* appears to operate as an actor within the “open society of constitutional interpreters”<sup>52</sup>, demonstrating an ability to connect more effectively the civic and doctrinal definitions of rights<sup>53</sup>. From this perspective, the study of the *Defensor del Pueblo*, its functions, and its orientations in matters of fundamental rights assumes particular significance also at a strictly

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<sup>47</sup> *Ibidem*.

<sup>48</sup> Including in a “counter-democratic” sense, as in P. Rosanvallon, *Controdemocrazia. La politica nell’era della sfiducia*, Roma, 2017.

<sup>49</sup> See P. Ridola, *Costituzione stato e società nelle democrazie pluralistiche. Lo “spazio pubblico”*, in Id., *Stato e Costituzione in Germania*, Torino, 2021, p. 123 ff.

<sup>50</sup> See. L. Rebollo Delgado, *La institución del Ombudsman en España*, Madrid, 2013, p. 48; G. Escobar Roca, *Interpretación y garantía de los derechos fundamentales*, cit., 256.

<sup>51</sup> G. Escobar Roca, *Interpretación y garantía de los derechos fundamentales*, cit., p. 230.

<sup>52</sup> This concept was elaborated by Peter Häberle, starting in Id., *Verfassungsinterpretation als öffentlicher Prozeß*, in Id., *Verfassung als öffentlicher Prozess: Materialien zu einer Verfassungstheorie der offenen Gesellschaft*, Berlin, 1978, p. 121 ff.

<sup>53</sup> G. Escobar Roca, *Interpretación y garantía de los derechos fundamentales*, cit., p. 251.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

theoretical and methodological level, enriching the pathways for scientific understanding of fundamental-rights law<sup>54</sup>.

Promoting knowledge – by a body that, indeed, “has socially recognized knowledge or expertise in this area, rather than legal power in itself”<sup>55</sup> – is thus equally crucial, both with respect to dynamics in the public sphere and to improving the quality of the actions of other public authorities, beginning with the legislature. The policy-centred approach of NHRIs – in place of an exclusively complaint-centred approach – thus proves fundamental for enriching the stock of knowledge available not only in the public sphere (in terms of building a culture of rights) but also to the legislature: knowledge that is – in complex societies and in the face of increasingly intricate legislative challenges – a precious asset for deepening the legitimacy of legislatures and of the political process itself. An analogous utility could attach to the role of NHRIs in *ex ante* human-rights-centred impact assessment of legislation<sup>56</sup>.

In this vein, the *Defensor* acts in the public sphere as a bridge between society and institutions: and, as already mentioned, acting as a bridge – between the national and supranational levels, but also between society and institutions – is a function widely recognised for NHRIs.

#### 4. *Defensor del Pueblo, Constitutional Tribunal and political process*

This bridging function is visible also when one turns to the relationship between the *Defensor del Pueblo*, constitutional adjudication, and the legislative process.

Attention must be devoted, then, to the authority of the *Defensor del Pueblo* to lodge an appeal of unconstitutionality (*recurso de inconstitucionalidad*), alongside direct constitutional appeals for fundamental rights protection (*recurso de amparo*). These

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<sup>54</sup> As highlighted by G. Escobar Roca, p. 232: “*esta doctrina, la dogmática podría aprender a salir de sí misma, a construirse (la ciencia progresa día a día) de forma más democrática y socialmente útil, teniendo a la vista las aspiraciones de los ciudadanos (si la dogmática no sirviera para solucionar los problemas reales de las personas reales, renunciaría a su principal cometido), y para conocer cuáles son éstas el Defensor del Pueblo puede ofrecer una imagen bastante fiel*”.

<sup>55</sup> J.J. Fernández Rodríguez, *Defensor del Pueblo (Spain)*, cit., p. 227.

<sup>56</sup> On this point, with reference to Italy and, in general, to the importance of providing parliamentary bodies with adequate knowledge in order to improve the substantive quality of legislation, see most recently Senate of the Republic, *Critical aspects of legislative production and proposals for improving the quality of legislation* (document approved by the Legislation Committee on 11 June 2025, at the conclusion of the fact-finding investigation on the same subject), especially on pp. 28 ff. and 80 ff. With specific reference to NHRIs, it has been observed that they can play an important role in assessing the impact of legislation, based on a human rights-centred approach (on this point, see, for example, J. Wouters - K. Meuwissen - A.S. Barros, *The European Union and National Human Rights Institutions*, in J. Wouters - K. Meuwissen (eds.), *National human rights institutions in Europe*, cit., p. 187 ff., especially p. 194 ff.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

competences likewise point back to the centrality of the rights-protection function and help to frame the *Defensor del Pueblo* as an institution aimed at guaranteeing the Constitution rather than merely mediating the relationship between legality and fundamental rights.

The *Defensor* shares this competence – among Western European states – with the Portuguese *Provedor de Justiça* and the Austrian *Volksanwaltschaft* (which, however, may challenge only regulatory acts). Standing to bring the two types of actions falls within a broader understanding of the oversight functions, related to the soundness of the constitutional architecture of rights.

Of the two types of competences, that relating to *recursos de amparo* has had little practical application: throughout its history, only ten have been filed, concentrated in the first decade<sup>57</sup>. This is due to the very nature of *amparo*, which is characterized by broad direct standing for the individuals concerned and strict admissibility requirements under the LOTC, such as the exhaustion of ordinary remedies and the necessary special constitutional relevance of the appeal.

For this reason, the *Defensor* has interpreted this competence in a subsidiary sense<sup>58</sup>, reserving the right to resort to *amparo* only when the individual is unable to do so<sup>59</sup> or in exceptional cases of constitutional significance: violations of fundamental rights with a collective impact<sup>60</sup> or new situations aimed at guiding constitutional interpretation<sup>61</sup>. Although rarely used<sup>62</sup>, the way in which the *Defensor* has construed the possibility to lodge an *amparo* helps framing its role in the systemic protection of rights, enhancing wider interpretative processes in cooperation with the Constitutional Tribunal.

The practice developed with regard to appeals of unconstitutionality is more complex: during the first forty years of its history, the *Defensor del Pueblo* lodged 34 appeals, of which 26 resulted in a ruling (in particular, in 14 cases the appeal was

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<sup>57</sup> This is reconstructed by M. Díaz Crego, *Defensor del Pueblo y justicia constitucional*, cit., p. 335 ff. See the appeals decided by judgment no. 178/1987, which rules on seven joined appeals brought by the *Defensor* against seven decisions of the labour court of Huelva concerning trade union elections; judgment no. 209/1987, concerning unemployment benefits; and judgment no. 132/1992, concerning the right of defence.

<sup>58</sup> See, for example, the statement in the *Informe* (Report) to Parliament on activities carried out in 1983, p. 21 (all the documents issued by the *Defensor* are published on [www.defensordelpueblo.es](http://www.defensordelpueblo.es)).

<sup>59</sup> These are the so-called cases of *indefensión*. On this point, the case of the appeal for *amparo* that gave rise to *Auto* no. 94/1984 of the Constitutional Tribunal is interesting. As reported by I. Torres Muro, *Los recursos del Defensor del Pueblo ante el tribunal constitucional. Una revisión*, in *Teoría y realidad constitucional*, 26, 2010, p. 95 ff., p. 112, in that case, the *Defensor* withdrew the appeal as soon as the appeal lodged by the persons concerned was declared admissible.

<sup>60</sup> Again, from *Informe* 1983, p. 21.

<sup>61</sup> As reported, for example, in the *Report* to Parliament on activities carried out in 2021, Annex D.5, p. 246.

<sup>62</sup> This has led some authors – such as I. Torres Muro, *Los recursos del Defensor del Pueblo*, cit. – to highlight the uselessness of this power (p. 124).

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

upheld in whole or in part; in 11 cases it was rejected and in one case it was declared extinct due to the repeal of the contested provisions); in five cases, the judgment was declared extinct by order (*Auto*) due to withdrawal of the appeal or mootness, and the remaining three appeals are, at the time of writing, still pending.

As for the scope of review – that is, the applicable parameter – until 2000 the literature was divided between those who considered that the *Defensor* could only invoke violations of fundamental rights, privileging the functional nexus set in Article 54<sup>63</sup>; and those who considered that the *Defensor* could challenge violations of any constitutional provision (also noting that Article 162 CE sets no limits of content), while nonetheless suggesting a measure of self-restraint mindful of Article 54<sup>64</sup>. The issue was settled by the Constitutional Tribunal in STC 274/2000 in favor of a general standing. This strengthens the image of the *Defensor del Pueblo* as *Defensor de la Constitución*<sup>65</sup>, seemingly confirmed by the change in practice from 1997 onward, when the *Defensor* began bringing challenges whose subject matter did not directly coincide with the protection of fundamental rights<sup>66</sup>.

Setting aside the concrete effectiveness of the device in practice<sup>67</sup>, the possibility of vindicating the principle of constitutional legality in general – that is, of protecting the principle of the supremacy of the Constitution under Article 9.1 CE<sup>68</sup> – aims at strengthening rights protection in its institutional and systemic dimension. The effectiveness of rights protection also depends on the more general guarantee of constitutional legality and, therefore, on a review in the interest of the objective constitutional order and not only filtered through the protection of the individual position<sup>69</sup>.

<sup>63</sup> As in J. Varela Suanzes Carpegna, *La naturaleza jurídica del Defensor del Pueblo*, cit., p. 78.

<sup>64</sup> See A. Pérez Calvo, *Rasgos esenciales del Defensor del Pueblo*, cit., p. 72; F. Fernández Segado, *El estatuto jurídico-constitucional*, cit., p. 271-272 and M. Díaz Crego, *Defensor del Pueblo y justicia constitucional*, cit., p. 323.

<sup>65</sup> See I. Torres Muro, *Los recursos del Defensor del Pueblo*, cit., p. 115, evoking, albeit sceptically (“*le viene un poco grande*”, p. 117), Kelsen’s doctrine.

<sup>66</sup> On this point, see M. Díaz Crego, *Defensor del Pueblo y justicia constitucional*, cit., p. 334-335. It should be noted that, since 1997, the *Defensor del Pueblo* has indeed begun to bring appeals that do not directly concern the protection of fundamental rights (*ibidem*, p. 330 ff.), although without compromising its general tendency towards moderation. It should be remembered, however, that in 2006 the *Defensor del Pueblo* lodged an appeal against the Catalan Statute (one of the appeals that would later be decided by STC no. 31/2010), raising concerns in legal doctrine (e.g. in I. Torres Muro, *Los recursos del Defensor del Pueblo*, cit., p. 117).

<sup>67</sup> According to M. Díaz Crego, *Defensor del Pueblo y justicia constitucional*, cit., p. 325-326, the *Defensor del Pueblo* has followed a path of “*evidente moderación*”; L. Rebollo Delgado refers to a prudent use of this power, *op. cit.*, p. 104. Significantly, J. L. Pérez Francesch, *El Defensor del Pueblo en España*, cit., p. 82 observes that such moderation also serves to “*no mostrar ante la opinión pública una actuación parcial y partidista sino realmente defensora de los derechos de los ciudadanos*”.

<sup>68</sup> See J.J. Fernández Rodríguez, *Defensor del Pueblo (Spain)*, cit., p. 231.

<sup>69</sup> See L. Rebollo Delgado, *op. cit.*, p. 106.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

Besides that, the impact of the appeal on the relation with the political process – and therefore with the quality of democracy – is also quite relevant and must be considered. A direct action of unconstitutionality entails taking a position on the outcome of a political process recently concluded<sup>70</sup> (according to art. 33 LOTC the appeals must be lodged *within three months* from the approval of the statute). Like constitutional challenges initiated by parliamentary minorities or other constitutional organs, such procedures inherently involve a prompt evaluation of politically sensitive legislative outcomes and therefore inevitably implicate the *Defensor del Pueblo* in political processes. For the *Defensor del Pueblo* – which is constitutionally and legally designed as a politically neutral body – this is a sensitive issue.

Indeed, this places the *Defensor* in the very delicate position of *taking sides* on potentially conflictive issues and shows well how involved is this institution in the dynamics of the constitutional state, as it is well exemplified – in the first decade – by the appeals regarding trade union freedom<sup>71</sup> and conscientious objection<sup>72</sup>.

On the one hand, this may affect the *Defensor's* systemic position, potentially turning it into a destabilizing factor<sup>73</sup>. On the other hand, this unusual proximity to the political process may help to deepen and enhance the *Defensor's* role as an actor in the construction of rights policies and – more widely – in dealing with social conflict on rights, thus carving deeper processes of integration.

Furthermore, an action of unconstitutionality by the *Defensor* can give voice – as has in fact occurred – to ultra-minoritarian claims that find no room in the action of other subjects legitimated under Article 162<sup>74</sup>, thus representing – even in the face

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<sup>70</sup> As highlighted by F. Fernández Segado, *El estatuto jurídico-constitucional*, cit., p. 272, reporting the position of Caamaño Domínguez; similarly, M. Díaz Crego, *Defensor del Pueblo y justicia constitucional*, cit., p. 326.

<sup>71</sup> Decisions no. 20, 26 and 72 of 1985, which upheld three appeals by the *Defensor* aimed at ensuring greater protection for less representative trade unions; Constitutional Tribunal, decision no. 101/1991, which rejected an appeal aimed at guaranteeing greater protection for the trade union freedom of civilian employees of the military administration; and Constitutional Tribunal dec. no. 75/1992, which rejected an appeal aimed at eliminating the differential treatment of trade unions (depending on their representativeness) in terms of access to public assets forming part of the so-called *Patrimonio Sindical Acumulado*.

<sup>72</sup> STC no. 160/1987. Although the appeal was rejected, it is interesting to note that the *Defensor* took action on a highly debated and conflictive issue, questioning the compromise that been reached in Parliament. In doing so, the *Defensor* gave a further voice to those who did not agree with the compromise reached, considering it too restrictive with regard to the issue of individual freedom of conscience. Furthermore, by putting forward arguments that were also relevant on a theoretical level and prompting a substantial decision by the Constitutional Tribunal, the institution has at least contributed to further deepening and enriching the public debate on a highly sensitive and contentious issue. Rather than focusing solely on the potential conflict with the legislature and the political process, this case highlights the role of the *Defensor del Pueblo* in stimulating and enriching public debate, even when appeals are unsuccessful.

<sup>73</sup> I. Torres Muro, *Los recursos del Defensor del Pueblo*, cit., p. 117.

<sup>74</sup> L. Rebollo Delgado, *op. cit.*, p. 106.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

of legislative provisions resulting from broad parliamentary consensus – an “alternative” or “safety valve”<sup>75</sup> or, in other words, “*la voz de los sin voz*”<sup>76</sup>. In addition, it has been noted that the *Defensor’s* standing to bring an *acción de inconstitucionalidad* may indirectly allow citizens to gain access to constitutional review<sup>77</sup>: as the annual reports show, the *Defensor’s* decision to appeal to the Constitutional Tribunal always follows an evaluation of requests received from the citizenry to that effect (and in its reports the *Defensor* gives an account of the decision to bring or not to bring an action, thus tracing the citizen requests<sup>78</sup>).

From this angle, the *Defensor* can strengthen processes of political integration as enhancing pluralism<sup>79</sup>, thus safeguarding the constitutional order. Moreover, its relationship with the other powers of the state (and with the political process itself) is not one of opposition or substitution, but rather one of cooperation<sup>80</sup>.

In this vein, consider the two recent appeals lodged by the *Defensor del Pueblo* against laws passed by the Regions (*Comunidades autónomas*) of Madrid and Valencia on gender identity and the protection of LGBTQIA+ persons. These regional laws have been approved by local governments led by the *Partido Popular* (opposition party at the national level), in the context of an intense political conflict following the passage of law no. 4/2023 (*ley trans*)<sup>81</sup>. They introduce restrictive requirements for access to pharmacological treatment for transgender minors, imposing the mandatory involvement of mental health professionals and, in cases of comorbidity, other specialists<sup>82</sup>.

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<sup>75</sup> I. Torres Muro, *Los recursos del Defensor del Pueblo*, cit., p. 118.

<sup>76</sup> *Ibidem*, p. 115. A similar virtuality in relation to “under-represented, vulnerable groups” is emphasized – in general for NHRIs – by K. Meuwissen, *European National Human Rights Institutions as multi-layered actors*, cit., p. 33, who also points out that, compared to specialized bodies, NHRIs can promote a broad and intersectional approach to issues relating to the protection of rights thanks to their general expertise in the field of law.

<sup>77</sup> P. Carballo Armas, *op. cit.*, p. 159.

<sup>78</sup> Regarding the specific value of making public the positions taken by the *Defensor del Pueblo*, see J. L. Pérez Francesch, *El Defensor del Pueblo en España*, cit., p. 60.

<sup>79</sup> Even among critics, it is acknowledged that in this case the *Defensor del Pueblo* performs the function of “*consolidar un pluralismo siempre en peligro*” (I. Torres Muro, *Los recursos del Defensor del Pueblo*, cit., p. 120).

<sup>80</sup> According to L. Rebollo Delgado, *op. cit.*, p. 55, the *Defensor* constitutes “*un elemento colaborador más en un Estado de Derecho*”.

<sup>81</sup> Regarding the Bill, see A. Aguilar Calahorra, *Sobre la ley trans: no se priva de derechos a unos por reconocérselos a otros*, in F. Balaguer Callejón - J.F. López Aguilar - M.L. Balaguer Callejón (eds.), *Estudios sobre el estado social y democrático de derecho. “Liber amicorum” Gregorio Cámara Villar*, Madrid, 2024, vol. I, p. 375 ff. and E. Atienza Macías, *La protección jurídica de las personas trans a la luz del nuevo escenario normativo en España*, in *BioLaw Journal – Rivista di Biodiritto*, 4, 2024, p. 352 ff.

<sup>82</sup> This is a much-debated issue in numerous legal systems, as demonstrated, for example, by the recent ruling of the United States Supreme Court in the case of *United States v. Skrmetti*, 605 U.S. \_\_\_\_ (2025), on which see A. Schillaci, *Oblivio dei diritti e deferenza verso il legislatore: identità di genere e discrezionalità politica nella decisione United States v. Skrmetti*, in [www.diariodidirittopubblico.it](http://www.diariodidirittopubblico.it), July 21<sup>st</sup>,

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

The *Defensor*, explicitly acting *also* as an NHRI, considers these provisions to be detrimental to the dignity, privacy and self-determination of minors, referring to the Constitution, the case-law of the Constitutional Tribunal (STC 99/2019) and international standards. It also criticises the use of the concept of *comorbidity*, which it considers to be an expression of an outdated pathologizing view. It is important to highlight the caution with which the *Defensor* intervened on a highly contentious issue, severing the aspects of constitutional illegitimacy from those of political inappropriateness; and, with equal clarity, the way in which it takes a position in the debate – with particular reference to the tension between self-determination and legislative constraints on it – emphasising the point of view of the Constitution. What emerges, then, is the specific potential of the *Defensor's* persuasive function in stimulating and enriching public debate – and constitutional practice – on fundamental rights.

### 5. Conclusions

The analysis has shown that the role of the *Defensor del Pueblo* is not only that of safeguarding a traditional conception of the rule of law, but rather that of enhancing the constitutional rule of law.

It has resulted clearly from the focus on the following aspects: (i) the relationship between the *Defensor* and the political process, including the use of the power to bring cases before the Constitutional Tribunal; (ii) the *Defensor's* potential counter-democratic role and (iii) the *Defensor's* role as a potential actor in processes of integration within the constitutional public sphere, and hence as a guarantor of the constitutional rule of law, (v) also by enriching the pathways for scientific understanding of fundamental-rights law.

It is especially the authority to lodge an appeal of unconstitutionality – extending to the entire constitutional text rather than solely fundamental rights provisions – that situates the *Defensor del Pueblo's* role within the domain of constitutional guarantees.

Nevertheless, the constitutional appeal represents a way to engage with the political process, potentially strengthening the *Defensor del Pueblo's* role in shaping rights-based public policies. Additionally, the *Defensor del Pueblo's* constitutional appeals have historically facilitated expression for minority concerns otherwise lacking representation, as it is well exemplified by cases involving rights of foreigners, trade union issues, electoral matters, and the recent appeal against local legislation

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2025. In Italy, too, the Social Affairs Committee of the Chamber of Deputies is currently discussing Bill C. 2575, a government initiative containing provisions for appropriate prescribing and correct use of drugs for gender dysphoria (*Disposizioni per l'appropriatezza prescrittiva e il corretto utilizzo dei farmaci per la disforia di genere*, <https://www.camera.it/leg19/126?leg=19&idDocumento=2575>).

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

affecting transgender rights. Furthermore, given that appeals originate from citizen requests addressed to the *Defensor del Pueblo*, the institution can indirectly facilitate public access to constitutional adjudication. Practice indicates a moderate and prudent use of this power, suggesting that the institution's relationship with other state authorities is characterized by cooperation rather than competition.

Focusing on the constitutional appeals lodged by the *Defensor del Pueblo* helps highlight its potential counter-democratic role and its contribution to constitutional interpretation within the *open society of constitutional interpreters*, as well as its role in enhancing constitutional integration processes. Alongside other NHRIs and ombudsman institutions, the *Defensor del Pueblo* can thus enhance democratic quality and reinforce processes of political integration together with the safeguard of the constitutional rule of law.

In this vein, the *Defensor del Pueblo* represents – in line with the institutional mission of NHRIs – a bridge between society and institutions, thereby helping to structure and strengthen the integration processes typical of a pluralistic constitutional state, also giving voice to marginalised groups excluded from the representative circuit.

As it has been observed, the *Defensor del Pueblo*, free from the constraints of jurisdiction, “*es un buen mediador entre la sociedad y el Estado, un instrumento de participación ciudadana, y el análisis de su doctrina es una buena forma de conocer las inquietudes actuales, reales y concretas, de la sociedad española*”<sup>83</sup>.

This mediation takes place within the framework of balanced support for the political process, which relies on the resources of knowledge and empowerment through persuasion. This is demonstrated, at least in part, by the practice of appealing on grounds of unconstitutionality. Such a competence could help to temper the extreme polarization that characterizes – even in this area – the public sphere in contemporary democracies.

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**ABSTRACT:** The establishment and evolution of the *Defensor del Pueblo* within Spanish constitutional experience provide an insightful vantage point from which to examine evolving trends concerning National Human Rights Institutions (NHRIs) in contemporary constitutional democracies. In this vein, the essay analyses the relationship between Defensor del Pueblo, NHRIs and ombudsman institutions, focusing on the constitutional relevance of the Defensor del Pueblo, as specifically

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<sup>83</sup> See G. Escobar Roca, *Interpretación y garantía de los derechos fundamentales*, cit., p. 231-232.

Angelo Schillaci

*Enhancing fundamental rights in the public sphere:  
the Defensor del Pueblo in the Spanish constitutional experience*

resulting from its relationship with the political process, including the power to bring cases before the Constitutional Tribunal.

**KEYWORDS:** National Human Rights Institutions - Ombudsman – Defensor del Pueblo – Fundamental Rights – Constitutional Adjudication – Constitutional Rule of Law.

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