



2021 Annual Report Summary

Ararteko, Ombudsman for the Basque Country

European and International Affairs Department



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Manuel Lezertua Rodríguez
Ararteko, Ombudsman for the Basque Country

I. FOREWORD FROM THE ARARTEKO

2021 was a special year for the institution and for myself as the Ararteko. I was re-elected for my second and final term of office by the Basque Parliament, with no votes against; an accolade to the work done and a great responsibility. In that vein, my main goal at the head of the institution is to strive to consolidate it as a benchmark in the defence of human rights and citizens' liberties. My aim is for the law to be applied humanely, interpreted according to people's circumstances, particularly in the case of the most vulnerable, in the sphere of Basque public administrations.

I must also mention the appointment of the new Deputy Ararteko, Inés Ibáñez de Maeztu, who provides efficient and faithful support in moving forward and steering this institution.

Unfortunately, COVID-19 impacted our lives and our activity to a great extent last year. Public services, particularly health ones, had, yet again, to be strongly engaged in caring for people and were further subject to great stress and effort. My appreciation goes to all of them.

The overall activity of the Ararteko's office increased notably, up to nearly 12,500 procedures, which was a 27% increase on 2020. Our external cooperation was also noteworthy and included 229 encounters, working meetings and a long list of events in which people from the institution took part.

The 5 studies and reports published in 2021 were a record in the running of this institution: Young Migrants with no Family Members in the Basque Country. Analysis and Proposed Actions; Protection Services for Foreign Unaccompanied Minors in Europe; Digital Administration and Relations with Users. Their Practice in the Basque Public Administrations; The Impact of the Covid-19 Pandemic on Elderly Care Homes in the Basque Country; and The Compilation and Summary of the Recommendations and Suggestions of the Ararteko regarding the Basque Income Guarantee and Housing Supplementary Benefit in 2021.

A long and arduous work process culminated with the [General Recommendation of the Ararteko 2/2021, of 18 May 2021](#): Guidelines for Dealing with Cases of Child and Teen Sexual Abuse and Exploitation in the Basque Country.

In the international arena, special mention should be made of the prominence acquired by the Ararteko in the [International Ombudsman Institute](#) (IOI), in the [European Network of Ombudsmen](#) (ENO) and in the [European Network of Ombudspersons for Children](#) (ENOC). The participation of the Ararteko in international events, in parallel investigations and in the institutional development of the network, respectively, are examples of the active and constructive role that the institution is playing internationally.

I would like to take the opportunity provided by this annual taking stock of our performance to emphatically stress the need the culture of human rights to be strengthened, in order for public authorities and all citizens to work together to promote and consolidate those rights, and to ensure that our actions always respect them.

I would like to end with a heartfelt and well-deserved recognition of our society and of each its members, who have yet again wielded energy and resilience to overcome the obstacles

that arose during the last year, because to quote Bob Marley, "you never know how strong you are until being strong is your only choice".

II. THE ARARTEKO IN A SNAPSHOT

The Ararteko is the Ombudsman for the Basque Country.

The institution of the Ararteko has been envisaged in the Statute of Autonomy of the Basque Country since 1979 and was created by an Act of the Basque Parliament in 1985. That legislation defines the institution as the independent high commissioner of the Basque Parliament to defend the rights of the people in relation to the public policies and actions of the public administrations of the Autonomous Community of the Basque Country (local, provincial and autonomous administrations) and public agencies.

The main task of the institution of the Ararteko is to assist citizens in relation to the complaints, requests or queries that they raise regarding the incorrect or improper conduct of the Administration or a public agency. In the case of incorrect conduct, the Ararteko may make recommendations to the administration or agency in question so that they rectify as appropriate. All the decisions of the Ararteko are published.

The Ararteko also has own initiative powers, as well as a mandate for general recommendations and in-depth studies into particularly important matters for citizens' rights. These studies include recommendations are for the public bodies concerned, the practical application of which is subsequently overseen by means of monitoring mechanisms.

The Ararteko is constantly in contact with organisations of civil society to learn first-hand about social problems and also to implement initiatives aimed at increasing sensitivity and awareness regarding respecting human rights. The Ararteko takes part in different international networks of similar institutions and interacts with international agencies to ensure that the work of its Office complies with the highest international human rights standards.

The Ararteko reports to the Basque Parliament on its Office's performance and activities in the institution's annual report.

III. A RENEWED MANDATE FOR 2021-2026

Manuel Lezertua was re-elected for a second term

On 25 February 2021, Manuel Lezertua Rodríguez was sworn in as the Ararteko during the Plenary Session of the Basque Parliament. One week earlier, he had been re-elected by a vast majority, with no votes against, for a second five-year term.

Born in Bilbao, Lezertua graduated in Law and then was awarded a Master of Laws (LL.M) from the University of London. He started his career as a lawyer of the Basque Government and later moved to Strasbourg to work as a lawyer at the European Court of Human Rights and of the Constitutional Court. He was Head of the Economic Crime and Cooperation Division of the Council of Europe and legal counsel of that authority.

During his first term of office, the Ararteko was clearly and strategically committed to providing the institution with an international and European dimension and to consolidating the interaction of the Ararteko with other Ombuds institutions and with European and international multilateral organisations defending human rights.

As a result of that commitment, Lezertua has intensified the relations with the IOI (International Ombudsman Institute), the ENO (European Network of Ombudsmen), the FIO (Ibero-American Federation of Ombudsman), the ENOC (European Network of Ombudsmen for Children), along with the bilateral contacts with other international entities and with Ombuds from different European countries.

His main goal at the head of the institution is to consolidate it as a benchmark in the defence of human rights and citizens' liberties. He aims to ensure that the law is applied humanely, interpreted according to people's circumstances and particularly in the case of the most vulnerable, in the sphere of Basque public administrations.

Inés Ibáñez de Maeztu Izaguirre was sworn in as the new Deputy Ararteko

Inés Ibáñez de Maeztu was sworn in as the Deputy Ararteko, at the proposal of Ararteko Manuel Lezertua, during a ceremony held at the Basque Parliament on 16 March 2021.

She has taken up her position with responsibility, commitment and enthusiasm, as she strives to contribute her expertise and experience based on complementarity. Her focus is always on the institution of the Ararteko in the defence of the rights of the citizens of the Basque Country.

Ibáñez de Maeztu graduated in Geography and History, and is a qualified social educator. She spent part of her professional career working for the Basque Government, where she was the Justice Director and Human Rights Director. She was also an educator-mediator of the Bilbao legal psychosocial team, educator of the technical team of the Vitoria Gasteiz Juvenile Court and of the Pontevedra Youth Detention Centre.

IV. 2021 FIGURES AND DATA

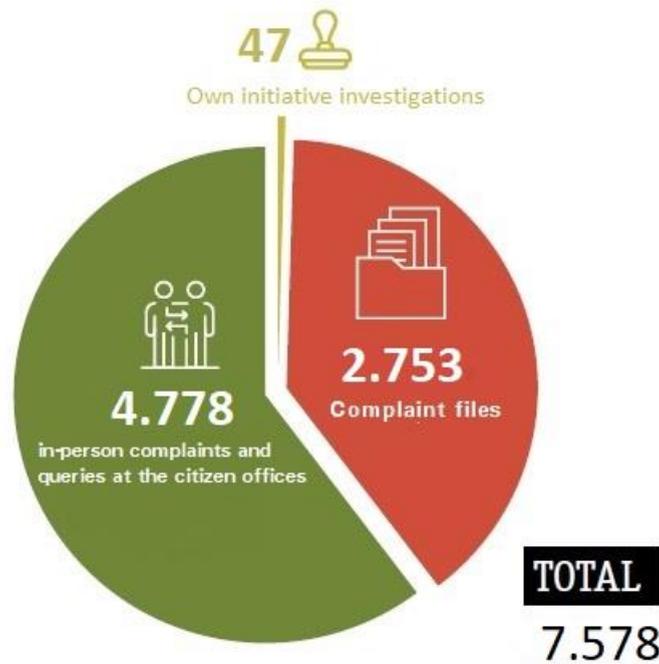
During 2021, a total of **12,491 procedures** (27% up on the previous year) were carried out, **7,578** of which were to do with **complaints and queries** and 47 own initiative cases (the main areas were the Office of Child and Young People's Rights, and Security).

A total of 9,445 services were provided by the **front offices**. When broken down, 4,788 of the complaints and queries were submitted in person at one of the three front offices, and 4,667 were requests for advice and information using the hotline.

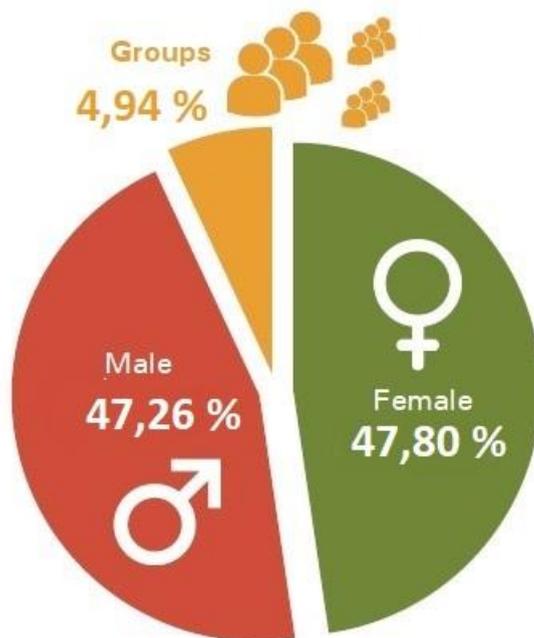
In 2021, we held 50 **meetings** with social organisations and 39 with different administrations: ministries and directorates of the Basque Government, provincial councils, local councils and other authorities. We also took part in 126 events and seminars held by administrations, social organisations and Ombuds institutions in Spain and in the Autonomous Communities, along with a further 14 internationally.

➤ **Complaints**

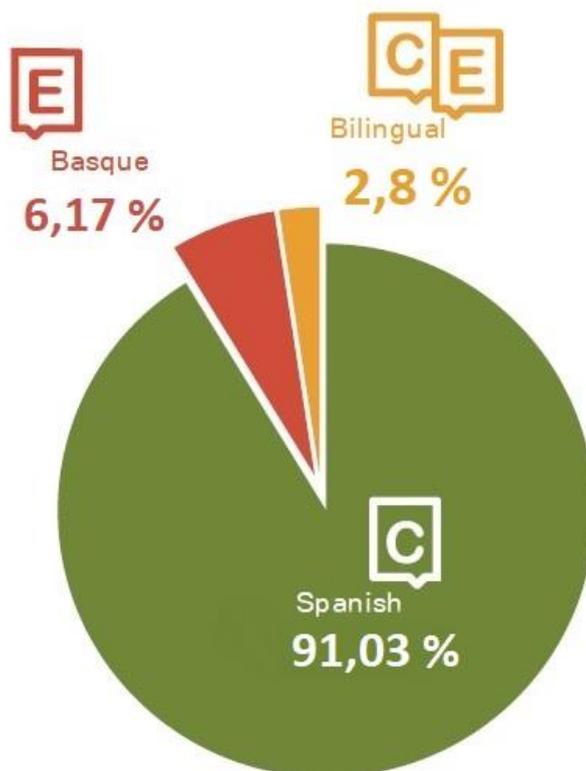
Complaints and queries submitted to the Ararteko in 2021



Distribution of complaints received by gender



Distribution of complaints received by language



Distribution of the complaint files opened in 2021, distributed by areas

When it comes to the **thematic area** to which the complaints refer, we note that there was a slight increase in the claims relating to the mechanisms to combat social exclusion: 508

(compared to 497 in 2020). Over 90% of these complaint proceedings were to do with different problems related to the running of the Basque employment service and to its actions regarding the management of the Basque Income Guarantee Scheme and Housing Supplementary Benefit.

The number of complaints related to health increased notably as the result of the measures adopted to contain the COVID-19 pandemic. Nearly **47%** of the all complaints processed were to do with **social rights (health, social inclusion, housing, education, etc.)**

There were also a large number of complaints regarding **groups deserving special attention**. Many of those proceedings (including the ones to do with social inclusion) were related to the public policies aimed at guaranteeing everybody's **real and effective equality**, by removing the obstacles that prevented or hindered women, older people, children and young people, people with disabilities, LGTB, immigrants, Roma people, etc. from exercising that right.

Area	Number	%
Social inclusion	508	20.57
Health	348	14.09
Housing	181	7.33
Groups deserving special attention: people with disabilities, older people, gender equality, immigrants, prisoners	176	7.13
Regulation, procedure, public assets and services	175	7.09
Tax issues	150	6.07
Public security	144	5.83
Education	135	5.47
Public administration employment	128	5.18
Environment	127	5.14
Urban and spatial planning	101	4.09
Organisation of economic activity	93	3.77
Public works, transport and infrastructure	69	2.79
Linguistic rights, culture and sport	36	1.46
Children and young people	30	1.21
Justice	26	1.05
Transparency, participation, good government and data protection	18	0.73
Families	13	0.52
Labour and Social Security	12	0.48
Total	2,470	100

Processing status of the complaint files and outcome

In 2021, **2,131 complaints** were settled and **1,422 decisions** issued. The other cases were deemed inadmissible (overlapping with other ombuds, matters pending before the courts or

with a final judgement, initiation of court proceedings in the same matter, etc.). The average length of the complaint proceedings was 50 days.

If we analyse those complaint proceedings, the administration had acted **incorrectly** in around **45%**, a percentage that was slightly higher than in the previous year (43%). The administration in question has corrected and amended the measure leading to the complaint in 87% of the cases. A formal decision did not need to be issued by the Ararteko in the majority of cases.



Effectiveness of the intervention of the Ararteko.

	%	%
Maladministration found corrected		87.38
Without recommendation	98.31	

Recommendation accepted	1.31	
Suggestion accepted	0.38	
Maladministration found not corrected		12,62

➤ Own initiative investigations

Own initiative investigations by area

Area	Nr.	%
Children and young people	27	57.45
Public security	8	17.02
Social inclusion	3	6.38
Victims of terrorist groups	3	6.38
Migration	2	4.25
Linguistic rights	1	2.13
Public administration employment	1	2.13
Imprisoned persons	1	2.13
Urban and spatial planning	1	2.13
Total	47	100

➤ User satisfaction

Some years ago, we started to work on citizen outreach to find out about the opinion of the people who had required our intervention and with the aim of improving the service we offer. Therefore, we send a questionnaire to every complainant at the end of the processing of a complaint. They are asked, on a totally voluntary and anonymous basis, to answer a series of questions and rate the service provided.

When assessing the results, it should be noted that incorrect action by the administration in question was found in 53% of the cases of the total complaints processed in 2021.

When asked about how they would assess the assistance dispensed by the Ararteko staff, **74%** of citizens considered that **“service has been good or very good”**.

Regarding the intervention by the Ararteko (availability, interest shown, measures taken), over 66% said that it was very positive or positive.

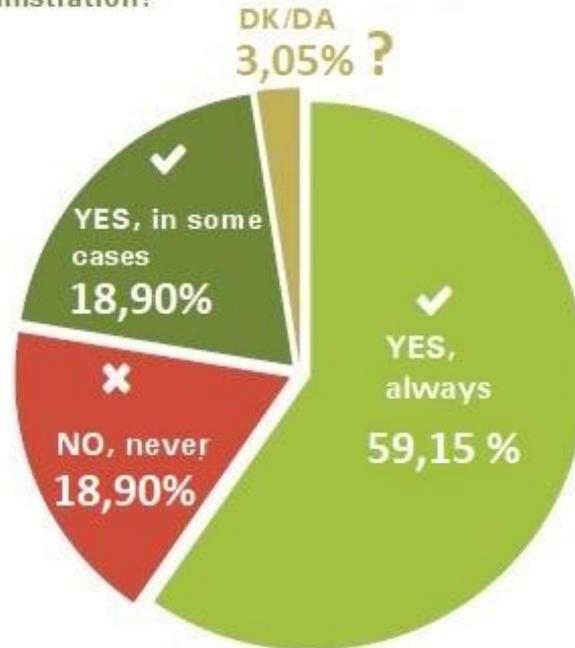
Nearly **78%** would recommend to other people resorting to the **Ararteko** for any problem with the Administration.

Furthermore, the questions in recent years have asked about awareness of two key instruments of the Ararteko's office: the **website** as a basic tool to provide information on our services and interact with citizens (known by 70% of users); and the **Services Charter** of the Ararteko, which sets out all the quality commitments and the rights of users with respect to the institution, along with the way of exercising them (known by 48% of the people who completed the survey). The results of the survey rated the ease of formalities with the Ararteko very positively.

Those results allow us to conclude that the assessment of the work carried out is positive, when the opinions related to direct intervention areas of the Ararteko office - those which depend on its own activity and personal resources - are analysed.

For some time now, citizens have been encouraged to submit suggestions or opinions regarding the services provided by the Ararteko. The reform of the [Services Charter](#) has included the right of access to the public information of the Ararteko and the exercising of the rights related to personal data protection. In 2021, 27 requests and complaints were submitted.

Would you recommend a person contact the Ararteko if they had a problem with the administration?



V. PROMINENT CASES

➤ Helping vulnerable persons

Individual complaint: The Ararteko seeks review of a decision stripping a woman whose husband works seasonally outside of the Basque Country of the right to receive the Basque Guaranteed Income

Facts

Since 2013, the year in which her right to receive the guaranteed income was granted, the complainant has lived together with her husband and their minor daughter. Her husband is a seasonal worker. He therefore leaves the Basque Autonomous Community (BAC) to harvest fruit in summer, and sometimes also for the olive harvest in winter. However, the Basque employment authority considered that the complainant and her husband no longer met the cohabitation requirement due to the temporary relocation of her husband. The employment authority issued a decision overturning her right to the Basque Income Guarantee scheme and seeking repayment of nearly €4,000 in allegedly wrongly paid benefits.

Examination of the case by the Ararteko

The Ararteko requested information from the Basque Government's Ministry Work and Employment. In response, the employment service issued a letter where it argued that the “spouse of the recipient of the guaranteed income had linked up work periods outside the BAC for over 12 months. Therefore, pursuant to Number 4 of the 2017 Guidance on the Basque Income Guarantee Scheme, the income had been discontinued because the couple could not be separated for more than a year for work reasons and continue to receive the income.”

In the opinion of the Ararteko, doubts emerged around how the employment service was putting the different work periods outside the BAC together, amounting to a separation for over 12 months on an equal footing with a single permanent relocation outside the BAC for work purposes.

The Decree regulating the Income Guarantee Scheme does not contain a specific reference to the possibility of adding up the periods of separation for work reasons. In this regard, the Ararteko found that the interpretation made by the employment service resulted in penalising cohabitating partners with the loss of the guaranteed income where one of the partners was striving to earn their own income.

Furthermore, it was not possible to overlook the fact that there was a child in the family, something that the Ministry of Employment and Social Policies should have duly taken into consideration prior to adopting its decision.

Outcome

The Ararteko requested that the discontinuance decision be reviewed and that the employment service refrains from claiming back the benefits paid in the past.

Individual complaint: The Bilbao City Council acknowledges that a third-country national had been registered with the municipal authorities for the time required to apply for social benefits

Facts

The complainant had been registered as a resident of the municipality of Bilbao since 2018 as an applicant for international protection. His application was turned down and he then applied for a passport from his country of origin, which was not delivered due to COVID restrictions. When the complainant sought to change his address in the Bilbao inhabitants register in June 2020, he was asked to produce his passport as an identity document. As he could only submit his passport application, the municipal services removed him from the register. He was registered again once he obtained a passport in 2021. However, due to the one-year gap in his register record, he could not fulfil the minimum registration period required to access certain services and benefits.

Examination of the case by the Ararteko & Outcome

The Ararteko considered that there were no grounds for refusing his municipal registration and recommended that the Bilbao City Council reviewed it. The Council informed the Ararteko that it would register the change of address and acknowledge

registration since October 2018. That would allow the complainant to have the necessary time on the municipal register and to prove the effective residency required to apply for benefits.

Collective complaint: The Ararteko requests that housing managed by charities is considered apt for the reception of the Guaranteed Income and Housing Supplementary Benefits

Background & Facts

Several charities from across the Basque Country brought a gap in regulation affecting very vulnerable persons to the attention of the Ararteko. These charities manage social inclusion programmes that encompass housing, support and follow-up of their users and seek to help them to find jobs and attain social inclusion. The charities reported to the Ararteko that its users could not access the guaranteed income due to the rule that no two receiving persons or beneficiary groups (such as families or cohabiting partners) may live at the same address. As a result, beneficiaries ended up living in hostels or other unsupervised arrangements. One exception to this rule exists for guaranteed income beneficiaries who live in collective housing schemes managed by charities accredited by the provincial welfare authorities. However, none of the three provincial councils had regulated a procedure to bestow such accreditation.

Examination of the case by the Ararteko & Outcome

According to the Ararteko, the guaranteed income should not be refused to or discontinued for a user of a social inclusion programme until the missing accreditation regulations have been issued.

Therefore, the Ararteko recommended to the Basque Government's Ministry of Work and Employment that the housing including in a social intervention programme managed by a duly registered social entity should have the status of collective housing, and that all the cohabitation units living there should be able to access the income guarantee scheme and the housing supplementary benefit.

Furthermore, the Ararteko asked that the current constraint on the concurrence in a single cohabitation framework of, no more than, two beneficiary units of the income guarantee scheme be lifted, given that the Ararteko considered that, in these times of social, economic and health crisis, all social measures aimed at guaranteeing adequate accommodation need to be deployed.

Own-initiative inquiry: Helping families with children access the guaranteed income

Facts

Beneficiaries of the Basque Guaranteed income may not, as a rule, live together with other adult members of their families who are not beneficiaries of the guaranteed income. There is an exception to this if the beneficiary has a child of less than 18 years

of age. In that case, the income may be received for up to 24 months. The Basque employment service issued guidance indicating that those 24 months should be counted from birth or adoption of the child. This meant that, for example, young parents falling in situations of precariousness with children older than 2 years could not move in with their own parents and apply for the guaranteed income.

Examination of the case by the Ararteko

In a special report in 2017, the Ararteko had already pointed out that the Decree on the guaranteed income limited the length of the abovementioned exception. Therefore, the Ararteko argued that there was a need to reflect on the possibility that, at least, in some exceptional cases, the time period could be extended, in coordination with the social services, to facilitate the change of address prior to the end of the agreed period. However, the new guidance seems to further constrain the length of that exception. According to the new guidance, the exception may be taken to only be applicable to individuals with dependent minors that already lived at the premises of a relative prior to the children being born and who had 24 months from the birth or adoption to be considered eligible for the guaranteed income.

Special report: The impact of the COVID-19 pandemic at elderly care homes in the Basque Country

In this study, the Ararteko considers the key factors leading to the spread of the virus in the centres, highlights the lessons learnt and recognises the considerable effort by residents, managers and workers to ensure the health and rights of everybody.

Main figures of the study:

- From early March 2020 to 10 January 2021, 66.7% of the elderly care homes in the Basque Country - i.e., 199 out of a total of 299 homes - had at least one case of COVID-19. During that period, 938 users died after testing positive for COVID-19.
- Two out of every three care homes registered at least one case of COVID-19, with around 25% of residents infected.
- People living in elderly care homes accounted for 5% of all the people with COVID-19.
- Up until 10 January 2021, 47.5% of those homes and 70.9% of those which had had a case up until then, registered a death related to the pandemic.
- Controlling the pandemic has required a global response at all levels to structure the cooperation of the health and social services systems with care homes, which were ultimately responsible for applying the measures and establishing the necessary means to curb the spread of the virus and safeguard the safety of the residents and workers.

- The cooperation of the homes' workers and of the users themselves and those closest to them was also essential for the adequate implementation of the prevention measures adopted.

Some of the lessons learnt set out in the Study:

- The pandemic's impact on the health district in which the home is located explains part of the risk of contracting the virus.
- Restricting access to the care homes was another important factor to control the pandemic.
- The risk of dying was associated fundamentally with the personal characteristics of the residents and the relevance of the factors related to the care home was very limited.
- Influence of the characteristics of the care homes on the risk of contracting the virus. The care homes, their characteristics and the preventive measures adopted were highly relevant to explain the risk of the users catching COVID-19.

Care homes need infection risk and prevention plans in line with the characteristics of each home to guarantee greater protection.

- Systems are urgently needed to assess the quality and logging of the individual situation of the residents overall, as well as of the care processes of each home in order to not only identify the changes in their personal situation, but also the impact of the care received on the quality of life.
- The architectural and functional model of the homes needs to be rethought given its influence in the risk of the virus spreading.
- The impact on the level of infections of the procedure followed for recruiting staff substitutes has to be studied.

➤ **Promoting good administration and fairness**

Own-initiative investigation: Proposals to guide the investigation and sanctioning cases of wildfires in the Basque Country

Facts

The Ararteko started an own initiative investigation after learning, from the mainstream and social media, of the social concern about serious wildfires in the Basque Country, which had presumably been deliberately caused, and the difficulties to find out who was responsible in order to hold the perpetrator accountable in each case.

The Ararteko's recommendations

The Ararteko recommended a series of measures **to improve the inspection and control** of forest fires. The proposals include recommendations to improve access to environmental information on forest fires, encouraging citizen involvement and protecting environmental whistle-blowers in the case of forest fires.

Recommendations have also been made to improve compliance of fire safety regulations, by means of exercising the powers to inspect and investigate the causes of the forest fires.

The Ararteko reminded the competent provincial authorities of the obligation to activate ex officio the measures and procedures to inspect and investigate forest fires, and that the forest wardens tasked with the inspection of the fires must have specific training and sufficient material resources.

The Ararteko likewise pointed out the obligation of the provincial authorities to exercise their sanctioning powers, to provide compensation for the environmental damage caused by wildfires and the obligation to send the forest fire files to the Department of the Public Prosecutor.

Furthermore, the Ararteko stressed the importance of prioritising coordination mechanisms in the environmental monitoring of forest fires. In that regard, the Ararteko acknowledges the work by the Environmental Prosecutor in the prevention and control of forest fires so far. It should be noted that the investigation and categorisation of criminal offences falls under the strict jurisdiction of the Public Prosecutor and the Courts, and any interference in that regard by the Ararteko must be ruled out.

Individual complaint: Housing mediation and information service to restart in-person assistance following a recommendation by the Ararteko

Facts

The “Bizilagun” service helps to settle neighbour disputes or disputes between landlords and tenants. At the end of July, a citizen sought the intervention of the Ararteko as the Bizilagun service was solely providing a telephone service and an appointment had to be made online or by calling 012. Once the appointment was made, the service would contact the individual by telephone on the day and at the time arranged.

The claimant complained that she had tried to explain her problem by phone on three occasions, but it had not been possible, because they kept referring her to the online appointment system.

Furthermore, the system as it was set up did not take into account those people who did not have a telephone and the complainant was calling for a service that was more in keeping with her rights as a citizen.

Examination of the case by the Ararteko

After the health emergency had been declared, most of the authorities closed their offices and non-essential services, meaning that the relationship with the general public was limited to the telephone or online.

At the end of lockdown, many authorities gradually reintroduced in-person assistance. They introduced plans to protect against COVID-19 and, at the same time, people were allowed to work onsite and remotely.

Apart from achieving greater internal efficiency, the transformation of the administration as the result of the digitalisation process underway must lead to better public services for citizens, even though the facts show a tendency to establish *de facto* online relations or by telephone. In-person assistance has thus become secondary or non-existent in some cases.

As the recent study by the Ararteko on the digital administration explained, *“even though the advance in the implementation of the electronic administration tools must be consolidated and increased, it is essential that the in-person channel with citizens is still kept open, along with the possibility to interact and relate physically and not only virtually”*.

Individual complaint: The Ararteko recommends that the Bilbao City Council accedes to a request for refund of money paid as a parking fine

Facts

A citizen requested the intervention of the Ararteko for Bilbao City Council to return the sum of €30 that, as she explained, had been paid by mistake to cancel the infringement report that a traffic warden had issued for her vehicle, as allegedly it did not have the ticket allowing her to park in the regulated area.

The claimant argued that the vehicle did have a ticket, which she had paid for using the "BilbaoPark" app at the same time that the warden had issued the infringement report.

According to the claimant, the person she spoke to on the city council helpline told her to inform the City Council so the incident could be shelved, after checking that the issuing of the report and the parking authorisation had taken place at the same time.

When the claimant later checked the App log, she saw that she had clicked the Pay to Cancel the Infringement Report option inadvertently and had automatically activated that option by mistake.

According to the information provided, the claimant requested that the amount be returned that she had paid inadvertently. However, the Citizen Support Service of the Mobility and

Sustainability Department informed her that the legal department considered that it was not possible to cancel the payment, but did not go into further detail.

Examination of the case by the Ararteko

Following the Ararteko's request, the Mobility and Sustainability Department claimed that there was no reason for returning the amount, as, according to the parking system database, the infringement report had been issued prior to the purchase of the ticket on the "BilbaoPark" app.

However, the City Council did not provide any details of the respective times at which, according to the parking system database, the infringement report was issued and permission was given to park. Neither was any clarification given regarding how it was possible that there was information in the database that the documentation provided by the claimant refuted. It did not give any explanations as to why it considered the infringement report had been issued before the parking authorisation.

Outcome

Therefore, the Ararteko recommended that the Bilbao City Council accede to the request to return the amount paid as a parking fine plus late interest.

➤ **Promoting gender equality**

Individual complaint: Basque Government to take the necessary measures to ensure a female presence of at least 40% on the Scientific-Technical Committee of the Civil Protection Plan

Facts

The complainant had contacted the Basque Government expressing her concern about the fact that there was no balanced representation of both sexes on the Scientific-Technical Committee of the Civil Protection Plan, which was advising the Government during the pandemic. The response was merely to thank her for her comments and suggestions, and that they would be taken into account, without going into further detail.

Examination of the case by the Ararteko

Following the Ararteko's request, the Presidency of the Basque Government explained the constraints determining the composition of the Committee in its response. These included the fact that it was made up of the holders of other posts, within the professional sphere of the epidemiology, which had "its own composition and characteristics and is not determined by gender balance". Furthermore, it detailed the recent measures taken to progress towards balanced gender representation.

The Ararteko acknowledged the effort carried out and measures taken by the Basque Government to work towards a balanced gender representation in the Committee during the health emergency, despite the objective difficulties arising from the composition of the body, consisting of people from other entities, with specialised skills in the field.

However, the Ararteko noted that there was a margin for manoeuvre in the appointment of those individuals. The Basque Government was therefore encouraged to continue to strive until the balanced representation principle was also a reality in the composition of the Scientific-Technical Committee or other similar bodies that may be established in the future.

Outcome

The Ararteko recommended to the Presidency of the Basque Government to ensure that the composition of the Scientific-Technical Committee or other similar bodies that may be established, would include at least 40% of members of both sexes in the future, as required by the Basque Equality Act. The Presidency accepted the Ararteko's recommendation.

➤ **Protecting the environment**

General recommendation: Proposals to improve the environmental control of electrocution and collision of birds with electricity facilities in the Basque Country

This recommendation is based on a complaint submitted by the Spanish Society of Ornithology (SEO/BirdLife) and assesses the current environmental protection situation of birds due to the risks arising from the electricity cables in the Basque Country. The Ararteko recommends a series of measures to improve the inspection and control of the electrocution and collision of birds with electricity cables.

The recommendation notes that the number of cases of electrocution and collision of birds detected in the Basque Country is limited compared to other territories. But the importance of the species affected should also be noted, as some of them are specially protected and, even, endangered.

In any event, progress is gradually being made in the Basque Country regarding the measures implemented to adapt the electricity cables in protected areas. Furthermore, public authorities have legal obligations arising from international treaties to protect migratory species.

➤ **Protecting children & young people from sexual abuse and exploitation and advocating the rights of migrant children**

General recommendation: Guidelines for dealing with cases of child and teen sexual abuse and exploitation in the Basque Country

This general recommendation by the Ararteko seeks to contribute to improving the detection of the cases, as well as the intervention and treatment of the child and young victims of this serious form of abuse.

The **main objective proposed is to ensure effective intervention** in the cases of child sexual abuse and exploitation. The protection of the victim and reparation must always be guaranteed.

The two main tenets of the recommendation are:

1. All actions must be geared at mitigating secondary victimisation.
2. The access of all child and youth victims to treatment in order for the damage to be repaired as soon as possible.

After defining the technical aspects of the guidelines deemed to be most appropriate for the current time and circumstances, **the Ararteko has made the following recommendations** to the pertinent Basque public bodies:

- That they apply the measures set out in the "Guidelines in the Case of the Sexual Abuse and Exploitation of Children and Young People in the Basque Country", in those specific aspects that affect their system or institution.
- That they disseminate those guidelines in their sphere of competence and they implement all the actions and reforms needed for each procedural and action model to be in keeping with and integrate the envisaged measures.
- That they foster the training and specialisation of professionals in their relevant area, including those carried out in private practice. Furthermore, that training must be carried out with an emphasis on human rights, childhood and gender.
- That the measures implemented must be monitored and assessed. The improvements and corrections deemed necessary must be incorporated and the Ararteko duly informed so that the guidelines can be updated as applicable.

The Ararteko has likewise called on the social services system to, as the first step in its commitment to a comprehensive care model, set up the necessary services to guarantee access to public treatment for all the children and young people who are victims of sexual abuse, regardless of any considerations regarding their family's ability to protect them.

The institutions of the justice system are also invited to do what is necessary for the guidelines to be integrated in their procedural practice.

The purpose and approach of this proposal are in line with other topical initiatives, such as the Act for the Comprehensive Protection of Children and Young People against Violence passed in 2021 by the Spanish Parliament. The same must be said in relation to the Barnahus model, which the Basque Administration has embraced, according to the main policy lines unveiled by the Basque Government's Ministry of Equality, Justice and Social Policies at the start of the 12th Parliamentary Term.

The proposed guidelines have already established shared targets and approaches, achieved consensus and agreed ways of coordinated work. Therefore, these guidelines

could be thought to be an initial step in the right direction, a real and topical instrument for an increasingly more ambitious response on which to continue working.

Special report: Protection services for foreign unaccompanied minors in Europe

This study, which the Ararteko was tasked to prepare by the European section of the International Ombudsman Institute (IOI), selects and compiles a series of promising practices as regards the protection of foreign unaccompanied minors.

Its **main conclusions** include the finding that, in those states and regions, such as the Basque Country, where greater importance is given to being a child or young person than to the migration status, foreign unaccompanied minors are treated better than in those places where the focus is on their status as migrants. Furthermore, greater effort is needed to guarantee the right of unaccompanied minors **to be heard** in all regards.

The States must strive to **guarantee that all professionals** working directly and indirectly in the reception of unaccompanied minors **are properly trained**.

The **process to share and pass on information** among the key players, both national and international, continues to generate considerable practical difficulties and is, therefore, still a significant challenge. The need for the ombudsman institutions and the children ombudspersons to intervene corroborates that there is a shortcoming that has to be corrected, and stresses the need for States to find quick and effective ways of exchanging confidential information and working together.

Greater effort is needed to ensure **the rapid appointment of a guardian** and/or legal representation at the time of arriving at the host country, and to prioritise the procedures that affect unaccompanied minors.

The States must place greater emphasis on **guaranteeing access to mental health** and rehabilitation services for unaccompanied minors who suffer from psychological problems and/or have been victims of violence, abuse, etc.

Support structures for guardians need to be created in order to provide them with assistance, advice, expertise and skills as necessary.

The **regularisation of the administrative status** of unaccompanied children and young people while they are minors (and being cared for), as well as when they come of age, must become a fundamental target of the States' policy.

Finally, consideration should be given to unaccompanied minors' need to continue to have access to social policies (education, healthcare, social and economic services, etc.), along with individual support and monitoring services, after coming of age and until they achieve personal autonomy.

Special report: Young migrants with no family members in the Basque Country. Assessment and proposals

This study is based on the analysis of the complaints brought by individuals and social organisations in recent years reporting the social vulnerability of those young people and which highlight very different types of difficulties (municipal registration, obtaining and renewing residency and work permits, coverage of basic needs, participation in emancipation programmes, access to training itineraries) and, even, homelessness in the most serious cases.

The study ends with recommendations to Basque authorities that the Ararteko deems necessary to improve the assistance for those individuals.

These include proposals to:

- Make progress in the **discussions** with the General Administration of the Spanish State, in order to facilitate access to work and administrative regularisation.
- Prepare a **comprehensive strategy** aimed at young migrants aged 18 to 23 with no relatives, as part of the policies to support Basque youth in their emancipation processes and of the policies for the social integration and participation of immigrants.
- Start discussions on the response expected from the Basque **social services** system, clarifying both their role with respect to other public policies, and their internal structure.
- Consolidate the processes in place for **skills training** and assess the elements hindering their success.
- Further develop the **social and healthcare** space for the socially excluded and, specifically, the coverage of the convalescence and street psychiatry programmes.
- Start specific **awareness-raising** (anti-rumour, etc.) and training actions regarding discrimination, differences of treatment and social stigmatisation towards those young people.
- Improve the mechanisms to **detect** situations of human trafficking or exploitation of any type.

The Ararteko considers that a society such as the Basque one, which is defined as open, pluralistic and values based, cannot forgo sharing its future with young people who are enthusiastic and willing to offer the best of themselves to the community. All of us are building the future together and without exclusions.

VI. ACTIVITIES TO RAISE AWARENESS, RESEARCH AND DISSEMINATE HUMAN RIGHTS

During 2020, the Ararteko organised different activities to raise awareness, research and disseminate human rights, with the focus always on the most vulnerable.

Summer course: Tools to progress towards an Administration focused on reaching out to the public

As part of the 40th edition of the Basque Country University Summer Courses, the Ararteko organised a course entitled “Tools to Progress Towards an Administration Focused on Citizen Outreach” in Donostia-San Sebastián.

During the opening session, Ararteko Manuel Lezertua spoke about the complaints and requests received by the Office of the Ararteko from the start of the pandemic and relating to problems with citizen assistance from the administration: impossibility to physically access the administration to apply for welfare benefits, lack of electronic devices to complete the forms, processing of the ERTE (furlough/job retention schemes) benefits, different administrative formalities or court rulings.

The aim of the course was to reflect on those actions to be undertaken or intensified by the public administrations to foster outreach to the people who need or wish to contact them.

The digitalisation of the Administration and of society itself is advancing exponentially, and will do even more in the coming months, as a consequence of the COVID-19 measures adopted.

In fact, the COVID-19 crisis has undoubtedly highlighted the key role of web-based technology and its importance in a lockdown, but it has also stressed the shortcomings that affected the public administrations during the pandemic.

Consequently, the Ararteko expressly called on all Basque public administrations to strengthen the necessary measures to ensure the in-person and telephone assistance, and not only online, works properly to provide citizens with adequate support.

Events

The Ararteko marks the anniversary of the Universal Declaration of Human Rights

On the anniversary of the Universal Declaration of Human Rights on 10 December, the Ararteko invited the former Executive Secretary of the European Committee of Social Rights, **Régis Brillat**, to give a lecture in Bilbao about the Revised European Social Charter. The event was

organised by the Ararteko in cooperation with the Bizkaia Bar Association and the High Court of Justice of the Basque Country.

The revised European Social Charter is the most comprehensive international treaty on social and labour human rights. It came into force in the Spanish State on July 2021, after being duly ratified.

The revised Charter includes new social rights such as the right not to be dismissed without justification, to appropriate compensation, to protection against social exclusion or the right to housing.

The Charter likewise establishes a general principle of non-discrimination, equal treatment of men and women, and the prevention sexual harassment in the workplace. It also better protects people with disabilities.

Symposium on the Basque person-centered prison model

The Network of Social Entities in the Prison Environment held a symposium on the Basque person-centred prison model. The network, which is a member of the Spanish Network of Organisations in the Prison Environment, encompasses all the social organisations that intervene in the prison and penal field in some way or another. It fosters an approach to the prison and penal treatment of offenders focused on the individual entitled to enjoy rights and on their reincorporation into society.

During the opening session of the event, Manuel Lezertua said that it has always been a duty for the Ararteko to stimulate debate on the current penitentiary system, in order to comply with the remit to disseminate the human rights culture that the law attributes to this institution.

Roberto Moreno, the Ararteko's Prisoners and Justice Department coordinator, also spoke at the symposium.

Publications

The Ararteko contributes to FRA's Report ["Directive \(EU\) 2017/541 on combatting terrorism – Impact on fundamental rights and freedoms"](#)

The European Union Agency for Fundamental Rights (FRA) published in November 2021 a new report examining the EU's main legislative act in the field of counter-terrorism, Directive (EU) 2017/541.

Drawn from expert insight, the report suggests how combatting terrorism can benefit from greater legal clarity, practical guidance and more robust safeguards.

Acts of terrorism represent a serious threat to the lives and safety of people, and a profound security challenge for states. At the same time, laws and policies to counter the threat of terrorism can entail, directly or indirectly, serious limitations on fundamental rights and freedoms, according to this FRA report.

The Agency asked the Ararteko to provide his insight to this report. The Ararteko was thus one of the 107 individuals and institutions interviewed by the Agency in seven EU Member States.

The Agency selected countries with experience in different types of terrorism and, within them, individuals and institutions with extensive experience in combatting terrorism, including judges, prosecutors, academics, NGO and oversight institutions such as the Ararteko.

The Ararteko calls for preliminary impact assessment in all decision-making processes affecting children's rights

The Ararteko, along with the Sindic de Greuges of Catalonia and the Children's Ombudsman in Andalusia, translated and disseminated a [position statement](#) issued by the European Network of Ombudspersons for Children (ENOC) on the "CRIA, *Child Rights Impact Assessment*", calling on the States, international, European, regional and national authorities and on all those competent authorities to carry out child right impact assessments and impact analysis of those rights.

In order to facilitate the implementation of those procedures, ENOC has also prepared a [Handbook](#) with guidelines to conduct a proper assessment that allows the potential impact of legislation, budgetary decisions, policies and any other measures adopted on children and young people. The document explains the CRIA concept and who is responsible for conducting the assessment.

The [European Network of Ombudspersons for Children](#) - ENOC was set up in 1997 and currently links 43 independent offices defending children and young people's rights from 32 countries in Europe. Its main aims are to:

- Encourage the application of the Convention on the Rights of the Child
- Support collective lobbying for children's rights in the public policies of European countries
- Share information, approaches and strategies
- Promote the development of effective independent offices for children

The Ararteko stresses the European and international dimension of combatting gender-based violence

In the wake of 25 November, the Ararteko stressed again his ongoing commitment to combat gender-based violence against women, a social scourge whose structural dimension requires the public authorities to treat it as an ongoing priority that affects public policies overall, and always from the cross-cutting perspective of gender equality.

This undertaking by the Ararteko is expressed in different areas such as assistance for women in their complaints and queries regarding the action of the Basque public administrations in the field of gender-based violence; the public declarations aimed at driving a firm discourse to defend the human rights of all women and girls; or the participation in different forums that seek to improve the prevention and protection of women from this criminal expression of sexism; and, in particular, with the active participation in the interinstitutional agreement supported by all Basque institutions to advance, jointly, in the public policies aimed at curbing it.

The Ararteko especially seeks to raise citizen awareness about the European and international dimension of combatting gender-based violence. The Istanbul Convention is currently the required standard that all the ratifying States and also the Basque public administrations must follow.

Relations with civil society

As part of its work to foster a culture of values and human rights, the Ararteko organises and participates in many different activities throughout the year. In 2021, the Deputy Ararteko, Inés Ibáñez de Maeztu, representing the institution, actively took part in many events organised by social organisations, spoke at different forums on themes related to human rights and attended institutional events closely linked to the goals of the institution of the Ararteko.

Collaboration with a media education programme

Disseminating their rights and spreading a culture of respecting human rights among the youngest members of society is one of the lines of action of the Ararteko as regards children and young people. In line with this objective, the Ararteko collaborates with the Vitoria-Gasteiz Municipal Department of Education on preparing the *Gasteiztxo News*. Students from different schools gather data and information related to the work of the institution of the Ararteko to then prepare a radio or television programme or a newspaper.

The environmental management agency of the Basque Government considers one of the Ararteko's calls for tenders as an example of environmentally sustainable procurement

The environmental management agency of the Basque Government, which drives environmental improvement in the Basque Country in conjunction with the public administrations, companies and the citizens, has highlighted the Ararteko's call for tenders for its courier service as an example of sustainable environmental procurement.

The specifications state that the provision of the courier services shall be carried out in such a way as to cause the least environmental impact.

Furthermore, it specifies that, as the documents and items to be sent will already have been packed, the courier company shall undertake not to repack them, unless there is hazardous material to be transported, as that would increase the waste generated at the destination.

The Ararteko is also taking into account whether the use of bicycles for the courier services is offered within the urban services in Vitoria-Gasteiz (the only one of the offices of the institution using this service) in order to raise greater environmental awareness.

VII. CHILDREN AND YOUNG PEOPLE'S RIGHTS DEPARTMENT

Number of complaints: In 2021, the number of complaints that expressly referred to the presence of, or involved, children and young people, reached 454, which accounted for 16.4% of the total submitted to the institution of the Ararteko. Only one of the complaints was submitted by a child. A further one expressed the concerns and thoughts of a child participation body of a municipality in Bizkaia, which decided to pass on its points of view to the Ararteko.

Material areas: Matters related to the material conditions of the life of children accounted for nearly half of the claims (47.4%). These rise to three quarters of the total if we include

those to do with the educational system (28.0%). The remaining 25% were divided between issues related to the family support policies (7.4%), social services for vulnerable children (6.3%), the health system (5.8%) and other very minority areas (justice, security, noise pollution, immigration).

Right to an adequate standard of living: in May, the results of the 2020 Poverty and Social Inequality Survey were unveiled. Special mention should be made of the upturn in the rate of child poverty, up to 10.7% in a context, however, when the global rates of real poverty dropped in the Basque Country (6.1% in 2018, 5.6% in 2020). As numerous studies have already shown, these precarious situations have a short-, medium- and long-term impact on children's standard of living, on their life expectations and on their development and integration opportunities. In a society where opportunities continue to be highly determined by social legacy, if it is left unattended, poverty will be passed on as a disadvantageous legacy from parents to children, from generation to generation, and serious harm the rights of the children and young people in question.

Right to education: 2021 was noted as a year of continuity where the health crisis caused by the COVID-19 pandemic yet again, and significantly, hindered the exercising of the right to education. There were different initiatives which have sought to foster greater participation in debates aimed at establishing the foundations for the future Basque Education Act. Some of the themes have particularly concerned the institution of the Ararteko in the past years, as they were a repeated source of complaints and calls for action. This is the case, for example, of school segregation. Another theme is the treatment of the co-official languages in the educational system and the need to review the linguistic model system.

Right to be protected from any type of violence or abuse: Both the number of complaints and their themes did not vary notably from those of previous years: disagreements with decisions declaring children to be neglected, the implementation of the neglect assessment process, the removal of family support; uncertainty regarding the initiation of a neglect assessment procedure; challenges to the mandatory nature of post-adoptive monitoring. Regarding the assistance provided in the intensive programmes for young people with serious behavioural problems, the Ararteko conducted in 2021 an own initiative investigation. It was thus concluded that reflection was needed on the role of those centres as a whole in the system set up to meet their users' needs. The recurrent theme in the measures related to the support for foreigners without family members was emancipation or, more specifically, the difficulties facing those young people when they moved on from being a minor to an independent life as an adult. Special mention should also be made of the presentation of the guidelines for dealing with cases of child and teen sexual abuse and exploitation from the perspective of their rights.

Right to a family: The issues relating to the family support policies have remained constant over time and, in fact, that was also the case in 2021: difficulties, sometimes due to the lack of comprehensive information, in the processing of child benefits that, having the consideration of subjective rights, should have been granted automatically; calls for better and more ambitious measures for work-life balance, with particular focus on the specific difficulties of vulnerable families; lack of definition of the situations regarding the families considered to be vulnerable by regional legislation and, consequently, the impossibility to draw on their status in order to benefit from specific support in other areas

or from other public policies; obsolete legislation not matching the new realities of diverse families.

Right to health: The largest number of complaints and queries in this area were related to the healthcare situation and the obligations and restrictions imposed on citizens as the result of the COVID-19 pandemic. Special mention should be made of those relating to the mandatory mask wearing for children at school, to the introduction of the COVID pass in the Basque Country, and the obstacles faced by the young people who had decided not to be vaccinated when it came to taking part in sports, cultural and leisure activities in public amenities. Complaints were also received regarding the cancellation of scheduled appointments, both with specialists and for diagnostic tests, as the result of the organisational measures adopted by the healthcare authorities to deal with the pandemic.

Children's rights in the area of justice: Two complaints that led to recommendations by the Ararteko have in common the difficulties faced by two girls, victims in both cases of a sexual offence, in the way they were treated when reporting the crime. In the first of the cases, the duty lawyer acted negligently; and in the second, the treatment received at the police station was considered to be improper given the special vulnerability of the minor.

Rights to play, rest and to sport and artistic activities: In addition to the usual claims regarding school sports, there were others in 2021 challenging the suspension or great constraints imposed on the organisation and running of sports activities in the context of COVID-19. The need to incorporate the childhood perspective, along with the provisions of the recent legislation regarding the comprehensive protection of children from violence, and the necessary assessment of the impact on the rights of children and young people, were also highlighted by this institution in the passage of the Basque Physical Activity and Sports Bill through Parliament.

The activity of the Children's and Young People's Council

"During those months, we experienced fear, anxiety and were worried like everybody else. We have been involved in solidarity actions, we have tried to carry on studying as we were told and, however, we do not feel that young people have been taken into account. We do not exist, except for being accused of our irresponsible attitudes driving up Covid numbers."

The members of the Ararteko Youth Council thus made their feelings clear when they met in June 2021 to reflect on the impact of COVID-19 and of the lockdown measures adopted on the rights of children and young people.

During an intense, rewarding and very fruitful session, the 20 boys and girls taking part in the Council meeting chose the right to education, the right to health and the right to socialise as the 3 rights that they believed had been most badly hit by the pandemic. They added the right to comprehensive development from a cross-cutting stance.

They analysed what others had reported, what they had felt and what they thought, to, then, propose measures and actions for public officials to be considered in decision-making.

ENOC Annual Conference

The Ombudspersons for Children of the *European Network of Ombudspersons for Children* - ENOC, of which the Ararteko's Children and Young People's Rights Department is a member, held its 2021 Annual Conference. Over two days, both the people attending the hybrid conference in-person in Athens and those following the event online shared their experiences and reflections on "COVID-19 and the Rights of Children and Young People: Learning for the Future".

The Conference reserved a key role for children to be heard, dedicated to the recommendations prepared as part of the ENYA (European Network of Young Advisors) project. Elisabeth, our representative, presented the work conducted on the right to health.