

## **ACTION TAKEN BY THE ARARTEKO DURING THE COVID-19 CRISIS**

The Ararteko (Basque Ombudsperson), Manuel Lezertua, has received numerous complaints and consultations regarding the COVID-19 crisis. Both by **email ([arartekoa@ararteko.eus](mailto:arartekoa@ararteko.eus))** and **over the telephone (945 135 118)**, the public has raised various issues involving, the situations they are suffering from in the present situation, the action the Basque public administration has taken vis-à-vis the coronavirus pandemic, and the reach of the measures adopted in the application of the State of Alarm.

The following provides an account of some of the Ararteko's interventions.

### **Health**

From the very time the State of Alarm was declared to manage the health crisis triggered by COVID-19, the Ararteko has shared the public's concern about the way in which the Basque health system has tackled it.

The problem of health professionals' lack of equipment and the lack of diagnostic tests were the issues most often raised by those turning to this institution since the State of Alarm was declared. While the Ararteko is aware of statements made by persons in positions of public responsibility insisting on the roll-out of all sorts of initiatives to solve both of these problems, it deemed it necessary to take an interest in the Basque health administration's expectations regarding both of these issues.

Another issue raised by some health professionals and their family members was concern about the risk involved in sharing living quarters. This problem appears to have been properly tackled by offering accommodation so that the health professionals who so desire can refrain from going to their homes.

The Ararteko also has made the situation that those suffering from grave pathologies other than COVID-19 known to the Osakidetza (Basque Regional health body). Due to the measures adopted to confront the pandemic, the continuation of treatment for these patients is at risk.

### **The Elderly and Dependent Persons**

The elderly and dependent persons have always been priority groups for the Ararteko. This holds even more true with the advent of the health crisis we are currently immersed in as a result of the COVID-19 pandemic which is hitting these groups so hard.

Of all of them, those residing in nursing homes, the vast majority of whom fall under recognised degrees of dependency II and III, are, in all likelihood, the most vulnerable. In line with this level of risk, those responsible for managing these residential services have been put in a position of having to establish severe levels of confinement for their residents isolating them in their rooms and restricting visits other than from persons professionally related to the centres. Despite the extraordinary measures adopted, it proved impossible to prevent COVID-19 from considerably affecting these nursing homes and assistance centres analogously to how this segment of the population has been affected in general.

In light of this, the Ararteko has attempted to provide **ongoing monitoring of the situation in these resources** in order to ascertain the measures taken to facilitate the residents' communication with their family members and also the protocols followed to inform family members of the specific situation of those affected by the coronavirus. It also had taken an interest in coronavirus testing among both residents and personnel in these residences and the isolation measures implemented for those infected.

Certain persons have expressed indignation to the Ararteko because of the imposition of forcibly transferring their mothers and the rest of the residents to another nursing home in a different town, a decision taken in a matter of a few hours. Furthermore, they manifested their angst over not receiving any news about their mothers after the transfer.

Aware of the fact that coronavirus-triggered deaths of elderly persons in residences for this age group have generated concern about the considerable increase in the risk faced by this cohort and have led certain drastic measures to be adopted, this institution has acted to ascertain the circumstances in which the Osakidetza performed this transfer.

The elderly living in their own homes also has been a cause for concern for the Ararteko, and we can particularly highlight several interventions to ascertain the protocols in place and guidelines for action that town and city councils were implementing regarding the companies providing home assistance services and protection equipment both to service providers and users.

### **Social inclusion and the homeless**

A significant number of cases that the Ararteko currently is working on are related to denial, suspension or expiration of the income guarantee payments (RGI) and complementary housing allowances (PCV), or the refusal to provide emergency social assistance. These cases affect those who were in socially vulnerable positions and faced serious difficulties in meeting their most basic needs before the COVID-19 health crisis.

Often, these persons are lacking in the personal sphere and have no electronic devices or electronic communication skills. In many instances, the presentation of the documents required to have payments granted or renewed remained pending. **The suspension of in-person office hours for municipal public services by the Lanbide (Basque Employment Service) is affecting the most vulnerable segments of the population** who went to these offices in person and have no electronic devices or computer skills. The measures swiftly taken by the Basque authorities should take account of this grave difficulty, which spotlights the **digital divide affecting the underprivileged** and also migrants facing the added difficulty of language accessibility.

The Ararteko is drawing attention to this problem both in the cases of complaints that it is processing and in the new cases it is receiving. Some town and city councils have made the presentation of documents for accessing certain social services more flexible. This is considered very positive.

In response to this problem, the Ararteko has begun **to act ex officio and proposed that Lanbide make its requirement more flexible for the documents** that must be presented to access or renew RGI/PCV, particularly because it is currently impossible to communicate or obtain these documents and priority must be given to responding to social needs.

Likewise, as it is doing with other municipal social services, the Ararteko is conveying the difficulties that those presenting complaints to this institution are having in communicating with the Lanbide to the Department of Employment and Social Policies with a view to solving this problem.

These complaint files highlight the concern regarding those most vulnerable and the lack of income to face their most basic needs. The town and city social services are making a considerable effort. However, a great number of people are raising their concern about the length of time it takes for them to get a response and the fear that they will not be able to receive the payment on time. They have also drawn attention to emerging problems such as the required documents and the compatibility between the various payments and subsidies managed by different public administrations (town and city councils, the Department of Employment and Social Policies, the Department of Housing and the General State Administration).

The **homeless** are being attended to by the emergency social services in the units that the town and city councils have swiftly implemented with salient dedication. In some areas, they have worked together considerably with social organizations and volunteers. We have received complaints from those who are not allowed to enter the established centres because they have been expelled for misconduct or are awaiting a vacancy.

In order to meet the health requirements to confront the health crisis triggered by the onslaught of COVID-19, the social services are required to perform measures that are not easy to implement. However, they are fundamental for those who are most vulnerable not to be left without the attention they need, including, in many cases, access to the most basic food and hygiene. It is important to be mindful of the fact that the homeless have also had to adapt to the current situation.

The Government's measures require the public's attention and predisposition to be responsible. Their impact on the daily lives of those most vulnerable becomes even more serious when these restrictions are added to the rest of the problems they face. Both the public and public administrations therefore must show a certain understanding towards certain conduct that can be explained by the accumulation of years of problems, suffering and anxiety.

### **Children and Teenagers**

The issue that has raised the largest number of requests for intervention in the area of children's rights is the **strict confinement** decreed for minors during the State of Alarm. Over the weeks, there has been an increase in voices calling on the Ararteko to intercede with the authorities in order to facilitate, with the appropriate protection measures, children being outdoors.

Without having received any requests and on its own initiative, the Ararteko has paid close attention to the situation of unprotected children and teenagers in residences. It also has taken an interest in the measures adopted to facilitate consultation and potential requests for help for children who might be suffering from ill-treatment or abuse in their homes. Lastly, the Ararteko has conveyed the suggestion that those in charge politically should address children directly, provide information in a language they can understand, listen to their opinions, and recognise their efforts and commitment to the well-being of the population on the whole.

### **Education**

In the sphere of education, various associations have raised their concerns about the effects that the **suspension of the school canteens** may have on particularly underprivileged families.

It should be noted that the educational authorities have been highly sensitive and responsive to this issue and have swiftly implemented a call for grants. Thus, having provided the necessary instructions to the schools (which in certain cases have been the direct recipients of these grants due to the established practice of not requiring families to pay school canteen dues), they were able to make financial aid available to families entitled to canteen grants during the suspension period. This ensured these children's access to food.

Citizens have also conveyed to the Ararteko their concern about **inequalities** that may be generated among the students by the **closing of schools**, given that not all students have guaranteed access to the educational content which is being attempted to be provided on-line, together with the corresponding support.

The Ararteko is aware that the Department is adopting measures to foster the availability of all necessary means and devices for the entire student body.

In this regard, the Basque Parliament urged the Basque Government to immediately cover the needs of families that do not have equipment and internet connections for their children to continue to study from home during confinement. The Parliament's document urges the Department of Education to coordinate with schools and the various municipal services to identify "any family situation that may be exacerbated" by the health crisis.

The digital divide is an issue that must give rise to comprehensive consideration once the initial phase of the alarm has passed.

The Ararteko also has received complaints from citizens interested in the **Public Employment Offering for Secondary Education and Vocational Training** called for this year, 2020. As has been made public, the Department of Education has agreed to postpone the tests initially scheduled for the month of June, with the new date still pending. While this institution understands the Department's interest in attempting to reach a consensus among all of the trade union representatives in education, it is advisable that the decision to determine the new date be taken as soon as possible.

## **Security**

Several complaints have been received about **disproportionate and unjustified use of force by both the Ertzaintza (Basque police force) and local police** on the streets. In one of these cases, force was used against a person in a situation of grave social exclusion and extreme social vulnerability, and in another against a person suffering from mental illness. In both instances, the police action occurred while enforcing measures restricting mobility established as a result of the State of Alarm. The Ararteko made the responsible administrations aware of the complaints so that they are investigated and information is provided on action taken.

An association denounced what it considered a case of police harassment in the **San Francisco** quarter and also the increasing tension that the situation is generating there, further increasing tensions spawned by the social vulnerability of many people living there.

Several people have expressed to the Ararteko their dissatisfaction with some of the **criteria** used by the Ertzaintza and local police forces in **enforcing limitations on individual mobility** established as a result of the State of Alarm.

In addition, the Ararteko was made aware of the concern that this enforcement was insufficient in certain municipalities.

The Ararteko has made the administrations affected aware of these complaints so that they can address these issues and provide the institution with information on the action taken.

This institution has also received complaints regarding the **reports** formulated by the Ertzaintza and local **police of persons allegedly breaching limitations on personal mobility**. In these cases, the Ararteko has informed the persons in question that as a preliminary step before it intervenes, those presenting it these complaints must first raise their disagreement with the police's reports in sanctioning procedures, given that in order for this action to be scrutinised by the Ararteko, the Basque Government's Department of Security and the respective town and city councils must process these sanctioning procedures first.

Various consultations have also been put to the Ararteko by persons who circumstantially found themselves outside the Basque Country when the State of Alarm was declared, some of them involving minors separated from their parents, and had serious difficulties in returning home.

Some individuals complained that the agents failed to adopt the necessary **protection measures** to prevent the propagation of COVID-19 in the interventions that affected them.

## Prisoners

While jurisdiction over prisons has yet to be devolved to the Basque Government, the Ararteko has been closely following the situation of prisoners as a group requiring special attention given their vulnerability, clearly manifested in this pandemic. The host of health issues affecting those in prison and in confinement would exponentially exacerbate infection and impact treatment in prison.

For this reason, and along the same lines as those put forward by the Defensor del Pueblo (Spain's Ombudsperson) in his 3 April press release, the Ararteko is in touch with the Secretariat General for Correctional Facilities to promote, within the scope of our possibilities, the measures encouraged by the WHO ([Preventing COVID-19 outbreak in prisons, 23 March](#)), the Council of Europe's Committee for the Prevention of Torture ([Statement of Principles on this same issue, 20 March](#)) and the [6 April 2020 Statement made by the Council of Europe Commissioner for Human Rights](#). Fundamentally, these measures encourage the fostering of release provided for in the Prison Regulations (articles 100.2 and 86.4), reinforcement of staff and health personnel, and facilitating communication between inmates and their families by means of electronic devices. These are measures that had already been requested by more than 20 human rights organizations in a letter addressed to the Ministry of the Interior on 16 March. They have yet to be implemented to the degree recommended by the previously mentioned international indications.

Furthermore, since 2011, the Basque Government has had jurisdiction over penitentiary health, and the Ararteko has therefore addressed the Department of Health to gain information about the actions it has taken and its plans to provide health care to inmates during the health crisis, and specifically its plans to prevent and contain infection and to provide protection measures for health professionals, reinforcements of staff where applicable, and coordination with the General Secretariat for Correctional Facilities.

## Justice

Despite the stoppage decreed for all judicial proceedings with the exception of those court cases or trials involving persons in prison and precautionary measures that are urgent or that could cause irreparable harm to the parties involved, the Ararteko is being **consulted by separated mothers and fathers regarding the exercising of shared custody and the visiting regime** for their children. Royal Decree 463/2020, of 14 March declaring the State of Alarm in order to manage the health crisis caused by COVID-19 does not expressly regulate this and merely states, in article 7, that for the period in which the State of Alarm is in force, persons may only circulate on public streets to perform activities including *“assistance and care of the elderly, minors, dependent persons, the disabled, and particularly vulnerable persons”*

The interpretation that the Ararteko has maintained in principle for shared custody or visiting regimes, provided that neither of the parents work in situations involving a risk of coronavirus infection (including working with the elderly or nursing), is that there should be no problem exercising the shared custody or visiting regime as long as the safety measures established for movement are abided by.

The Minister of Justice and the Standing Committee of the General Council of the Judiciary (*Consejo General del Poder Judicial* - CGPJ) have made pronouncements along these same lines given the varying criteria issued by courts in different legal districts. The CGPJ also has called upon the parties to reach agreements and, where agreements are not reached, to resort to the justice system. It also urged the boards of Family Courts in the different legal districts to standardise their criteria.

Despite this, it must be mentioned that each judge has the power to decide, independently of the recommendations made by the Ministry of Justice, the CGPJ, or the agreements reached by the panels of judges in the legal district in question. Therefore, should there be a discrepancy between the parents, the judge with jurisdiction must consider the proceeding as an urgent precautionary measure in order for a decision to be made before the end of the crisis. The Ararteko is therefore advising parents to reach agreements under these terms and act in the best interest of the children.

The Ararteko has received a complaint from a couple of women, one of whom is pregnant with twins and due in June. By virtue of article 7.3 of Act 14/2006 of 26 May on assisted human reproduction techniques, "*when the woman is married to another woman and not separated legally or de facto, her spouse can manifest, as provided for in the Family Registration Act, that she consents to have parentage of the child born of her spouse*". Thus, the only way that both can be recognized as mothers of the child without filing an adoption procedure is being legally married before its birth. However, given the decreed stoppage of all legal proceedings except those whose court cases or trials involve persons in prison and precautionary measures that are urgent or that may lead to irreparable damage to the parties, their dossier had been paralysed.

The Ararteko has considered that the paralysing of this case could cause grave harm to the parties and thus contacted the Barakaldo Chief Justice and took an interest in it being considered an essential proceeding given the special circumstances involved. The Barakaldo Chief Justice considered the circumstances with this same criterion and has contacted the magistrate in charge of the Family Register to take action on this case.

### **Employment, SMEs and self-employed persons**

There have been consultations regarding the various extraordinary measures adopted by the government of Spain to face the impact of the virus. While, these measures do not fall within the Ararteko's scope of action, a response was provided in this regard. Some of these consultations referred to the difficulty in contacting Spain's administrative bodies in charge of processing the labour force reduction plans, of the interpretation of confinement, of the requirement to work from home, and of the work-life balance measures established.

Some persons have expressed their **dissatisfaction with the Lanbide's recent call for non-repayable grants for self-employed workers** whose activity has ceased and who meet certain requirements. This is fundamentally about workers who, although obliged to cease their activity as a result of the State of Alarm, have been excluded from the possibility of receiving these subsidies either because, for a variety of reasons, they were not enrolled in the special regime for self-employed workers (*Régimen Especial de Trabajadores Autónomos* - RETA) when the State of Alarm was declared, or because they had a different legal relationship with their companies than what the requirements stipulated.

While this institution is in touch by telephone with those affected and is gathering information in this regard, given that the Lanbide has publicly announced it is soon to modify the requirements, the Ararteko has decided that, in order to steer its intervention as appropriately as possible, it is advisable to await these revised requirements.

### **Environment and urbanism**

The Ararteko has received several complaints about **sound pollution** that some persons are suffering from in their homes due to confinement for health reasons during the State of Alarm. The complaints concern excessive noise caused during the refurbishing work on buildings, excessive use of music sound systems and the inappropriate confinement of pets in homes.

In these cases, the Ararteko has issued reminders that the right to adequate rest of persons confined in their homes must be safeguarded. This is understood as the right to enjoy one's abode without the invasion of noise exceeding the maximum limits set forth in applicable legislation in force.

In any event, the Ararteko indicates that the main channel for solving a problem of excessive noise between neighbours is to apply the basic rules set forth in the Condominium Act 49/1960 of 21 July.

At the same time, municipal administrations have a scope for intervention when a neighbour's noise exceeds the tolerable limits set for premises. Town and city councils, through their municipal police, can check the degree of compliance with these standards inside homes in order to determine the origin of the noise and their scope for potential action.

This is applicable to noise resulting from building or refurbishing work in apartment buildings. Town and city councils can determine that the developer has the corresponding license and complies with order SND/340/2020, of 12 April, which has suspended building work in buildings where there is a risk that persons not related to the building activity may be infected with COVID-19.

## Gender violence

Over the period of confinement, women victims of gender violence who still live with their ill-treaters constitute a particularly vulnerable group whose physical and moral integrity may be particularly jeopardized to the extent that isolation may thwart the chances of lodging a complaint against the aggressor. The Ararteko has already expressed that these women and their children deserve special attention because their rights are more fragile under the extraordinary circumstances we are experiencing.

The Ararteko as an institution, together with other institutions offering attention to women victims of gender violence, participated in a meeting under the aegis of Emakunde (Basque Women's Institute) in the framework of the 2nd Interinstitutional Agreement against Gender Violence, held on Thursday, 16 April via videoconference, with representatives of the judiciary, various Departments of the Basque Government, officials in the Provincial Assemblies, Eudel (Association of Basque Municipalities), the Basque Medical Council and the Basque Council of the Bar.

This meeting brought to light that the **data indicate a considerable decrease in complaints of ill-treatment**. According to officials in the Department of Security and the area of Justice, there are fewer than half of those lodged in analogous periods before confinement. Attention also was drawn to the fact that urgent court cases had not increased either. The Ararteko has not received any significant complaint in this regard during the confinement.

However, the Ararteko fears that psychological violence against women and their children confined at home (much more difficult to denounce and prove) may have worsened in the unique situation in which we find ourselves. This is why it is particularly important to send a clear message to the public that a watchful, proactive attitude on the part of the neighbours may be an essential means of help in these instances. Women suffering such circumstances during confinement must feel they are not alone and can count on the support of those close to them, including their neighbours.

The Ararteko is aware that the competent authorities for attending to women suffering from gender violence and their children have been particularly alert during this situation. In fact, the Ararteko has ascertained that there has been an increase in the dissemination of available resources, including emergency resources, in order to reach all women suffering from this type of violence in isolation and confinement and to make it known that, in this unique situation, there are means to lodge complaints and receive immediate protection. Particularly of note is the work of the Ertzaintza, which is performing case-by-case monitoring of women for whom there was prior knowledge of risk, and has updated its mapping of active resources managed by the Basque Government and Provincial authorities.

## Housing

The United Nations Special Rapporteur for Adequate Housing, Leilani Farha, declared at the outset of the pandemic that “Housing has become the first line of defence against the coronavirus”. Indeed, now more than ever, the Ararteko considers housing to be part and parcel of the safeguarding of the fundamental right to life recognised in article 15 of the Spanish Constitution.

Public authorities in the Basque Region, in all of their institutional dimensions, have attempted to take the necessary normative steps to safeguard against the virus. In fact, the Ararteko has maintained contact with the Basque Government’s Department of the Environment, Land Use Planning and Housing and the publicly owned company Alokabide. **Worthy of note here is the suspension of evictions**, the possibility of exonerating tenants of payment of rent for public housing and a Regional regulation for financial aid for tenants renting on the private market.

Nevertheless, the **lack of welfare to attend to the needs of many families** has not gone unnoticed by the Ararteko. It is impossible for these families to rent given high prices, and they are therefore forced to share their dwellings or live in **sub-standard or precarious** conditions. It is precisely in these specific cases that confinement imposed by the State of Alarm is even more complicated.

Lastly, the Ararteko is concerned about the financial consequences that the pandemic may leave behind and the potential drift that fundamental rights may take. Particularly alarming in this regard is the great difficulties that many families will have in making their monthly mortgage or rent payments. This is why, now more than ever, it **advocates public policy that duly safeguards the right to dignified housing**.

## Service to the public

The Ararteko suspended its in-person services in Vitoria-Gasteiz, Bilbao and Donostia/San Sebastián, but has ensured full functioning of the services it provides by having nearly its entire staff work from home.

The Ararteko continues to attend to the public, which can present its complaints and queries via email at [arartekoa@ararteko.eus](mailto:arartekoa@ararteko.eus) and through the post, addressed to calle Prado 9 / 01005 Vitoria-Gasteiz. The Ararteko can also be contacted by telephone at 945-135118, 944-234409 and 943-420888.

