



2020 Annual Report Summary

Ararteko, Ombudsman for the Basque Country

European and International Affairs Department



www.ararteko.eus
international@ararteko.eus

Table of contents

| | |
|--|----|
| I. Foreword from the Ararteko | 4 |
| II. The Ararteko in a snapshot | 5 |
| III. A special year: The Ararteko in the COVID-19 pandemic | 5 |
| IV. 2020 figures and data | 6 |
| V. Prominent cases | 11 |
| VI. Activities to raise awareness, research and disseminate human rights | 17 |
| VII. Children and Young People's Rights Department | 18 |



Manuel Lezertua Rodríguez
Ararteko, Ombudsman for the Basque Country

I. FOREWORD FROM THE ARARTEKO

2020 was not a normal year. It was a real rollercoaster, particularly in terms of concern about our own health and that of the whole planet, but it was also a time of courage and solidarity. It was a year when many of the certainties underpinning the way of life of society today were sorely tested.

The COVID-19 pandemic has affected us all, citizens and institutions alike. The Ararteko, as the Ombudsman for the Basque Country, had likewise to adapt to the conditions imposed by the pandemic and by the health authorities in order to be able to continue complying with the mission laid down in the institution's foundational law: to protect the rights of the citizens vis-à-vis the Basque public administrations.

Over 10% of the more than 2,500 complaints processed were to do with COVID-19. The Ararteko thus saw first-hand the implications of the pandemic and of the measures taken to overcome it in different areas, including the health services, social services, education and transport, all of which come under the responsibility of Basque public administrations. The most notable issues were the particularly difficult situation of the nursing homes, which has led to the drafting of a special report to be published at the end of 2021, and the obstacles facing citizens in their relations with the public authorities given mobility restrictions.

The pandemic has taught us that, in extraordinary situations, citizens depend on the public services functioning properly to a great extent. They must remain accessible and maintain their response capacity. Ombuds institutions also need to extract the lessons learnt to help citizens to exercise their rights and the public administrations to guarantee them under exceptional circumstances as well. Critical self-reflection is likewise required from our institutions. Have we responded adequately? How can we be better prepared for future exceptional situations?

Learning about the work of other ombuds institutions in Europe and in the world is highly enlightening in the answering of those questions. The Ararteko's Office is publishing this magazine, where the key points of its [2020 Annual Report](#) are summarised, in English and French for the first time in order to contribute to the sharing of experiences and expertise with other similar institutions. The aim is to thus foster dialogue, solidarity and mutual support between organisations of different countries and regions, but linked by their common purpose.

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 SPECIAL YEAR: THE ARARTEKO IN THE COVID-19 PANDEMIC

COVID-19 forced the Arateko's Office to adapt its work methods. The offices offering in-person assistance had to close for several weeks, but the Ararteko staff were able to continue processing the public's requests thanks to the new digital and telephone channels set up. The Ararteko staff shifting to remote working was a challenge that was successfully met and which was fundamental in order for the activity to continue.

10% of the 2,500 complaints processed were to do with different aspects of the pandemic and of the measures taken for its containment. Furthermore, the Ararteko's Office resorted to other policy instruments to meet the challenges posed by the pandemic. Some of the Ararteko's salient actions were:

- Extraordinary report on the situation in care homes for the elderly and dependent people (to be published in 2021)
- General recommendation aimed at continuing to provide shelter for the homeless who were given accommodation during lockdown.
- General recommendation on the need to reinforce citizen services and to fight against digital exclusions in emergency situations such as the COVID-19 pandemic.
- Monitoring the situation of institutionalised children
- Examining the action taken by the law enforcement agencies of the Basque Country to enforce mobility restrictions in a vulnerable population neighbourhood of Bilbao.

The Ararteko has sought to specifically focus on the situation of the people that were most likely to be most greatly affected by the pandemic and by the measures applied to contain it. The Ararteko thus aligned the measures taken with the recommendations of different international bodies, including the European Union Agency for Fundamental Rights, which, right from the outset, warned on the uneven impact of the pandemic.

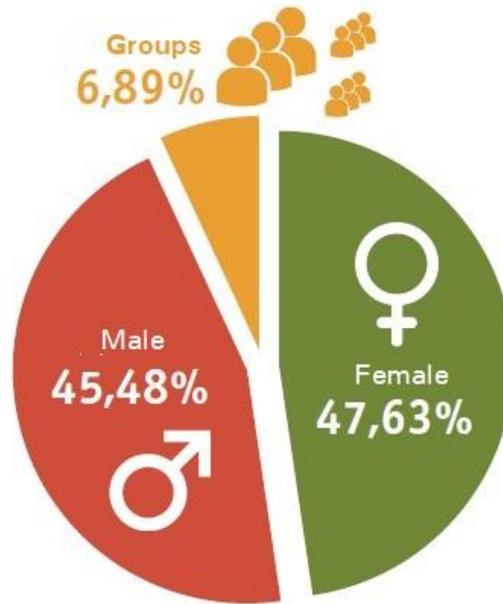
IV. 2020 FIGURES AND DATA

➤ Complaints

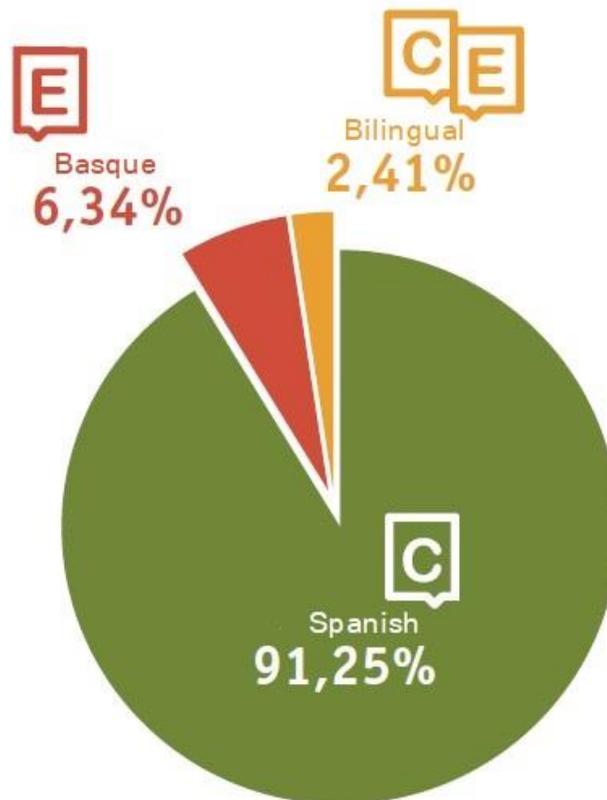
Complaints and queries submitted to the Ararteko in 2020



Distribution of complaints received by gender



Distribution of complaints received by language



Distribution of the open complaint cases differentiated by areas

| Area | Number | % |
|--|---------------|------------|
| Social inclusion | 497 | 22.85 |
| Education | 171 | 7.86 |
| Regulation, procedure, public assets and services | 163 | 7.50 |
| Groups deserving special attention: people with disabilities, older people, gender equality, immigrants, prisoners | 161 | 7.40 |
| Public security | 149 | 6.85 |
| Environment | 146 | 6.71 |
| Public administration staff | 142 | 6.53 |
| Health | 141 | 6.48 |
| Housing | 133 | 6.12 |
| Tax issues | 121 | 5.56 |
| Urban and spatial planning | 82 | 3.77 |
| Organisation of economic activity | 61 | 2.81 |
| Public works, transport and infrastructure | 57 | 2.62 |
| Justice | 36 | 1.66 |
| Labour and Social Security | 35 | 1.61 |
| Linguistic rights, culture and sport | 31 | 1.43 |
| Children and young people | 26 | 1.19 |
| Transparency, participation, good government and data protection | 14 | 0.64 |
| Families | 9 | 0.41 |
| Total | 2,175 | 100 |

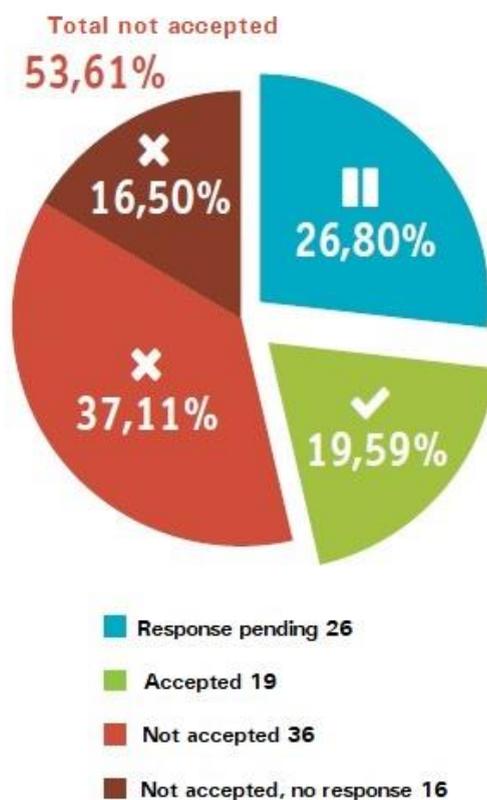
Processing status of the complaint files and outcome



Degree of effectiveness of the intervention of the Ararteko.

| | % | % |
|---------------------------------------|-------|-----------|
| Maladministration found corrected | | 82 |
| Without recommendation | 97.10 | |
| Recommendation accepted | 2.49 | |
| Suggestion accepted | 0.41 | |
| Maladministration found not corrected | | 18 |

Analysis of compliance of the formal recommendations and suggestions pending from 2019 and issued in 2020



TOTAL

97

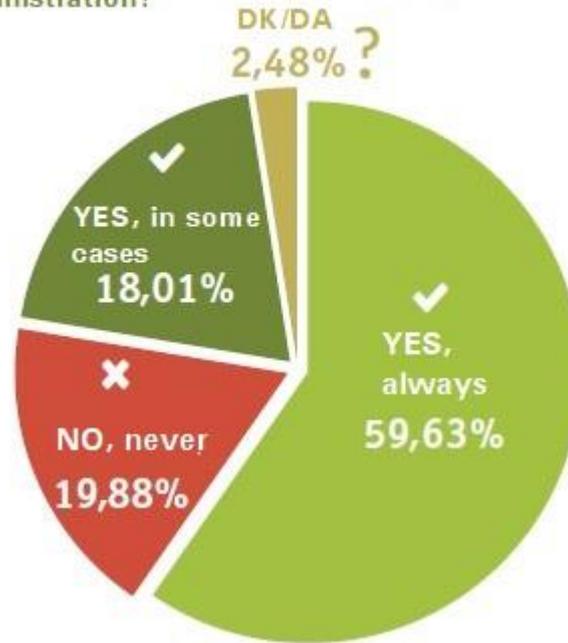
➤ Own initiative investigations

Own initiative investigations by area

| Area | Nr. | % |
|---------------------------|-----------|------------|
| Social inclusion | 17 | 56.67 |
| Children and young people | 6 | 20 |
| Environment | 2 | 6.67 |
| Safety/Security | 2 | 6.67 |
| Prisoners | 1 | 3.33 |
| People with disabilities | 1 | 3.33 |
| Housing | 1 | 3.33 |
| Total | 30 | 100 |

➤ User satisfaction

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



V. PROMINENT CASES

➤ Helping women in situations of vulnerability

Individual complaint: Public housing

Facts

The Housing Department refused to register a woman on the list of public housing applicants. The Department considered that the woman did not lack housing as she owned a flat with her ex-husband. However, the flat was occupied by the ex-husband, who had failed to comply with an order prohibiting him from residing in the communal home. The order had been issued as part of gender-based violence proceedings. She had rented a flat by herself and the Social Policies Department recognised her right to housing benefit. However, when she was not allowed to be registered on the list, she was also asked to pay back the amount of the housing benefits received, coming to around €3,800.

Examination of the case by the Ararteko

The decision of the Ararteko argued that the claimant could not be deemed to have a dwelling, as her flat was occupied by her abuser. She had accredited those circumstances to the Housing Department, as well as in her petition asking that she be awarded the exclusive use of the communal home, a matter that was still

pending before the courts. Therefore, the Ararteko deemed that the need for housing had been sufficiently accredited. Finding otherwise was, in the opinion of the Ararteko, equivalent to disregarding the protection order issued for the woman.

The Ararteko furthermore recalled the need to take into account the circumstances of women who are victims of gender-based violence in their dealings with the public administrations, circumstances that are characterised by fear. In this regard, the Ararteko invoked Article 18.4 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, according to which "the provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator". The Ararteko also indicated the need to adapt the existing legislation in order to guarantee the physical integrity and recovery of the victims of gender-based violence according to the aforementioned Convention.

Outcome

The Ararteko recommended that the Housing Department revoke the rulings denying registration on the list of housing applicants and that, if the claimant met all the legal requirements, to proceed to put her on that list. The Housing Department accepted the recommendation and registered the claimant on the list effective from the time that she moved out of the marital home into other accommodation. Consequently, the obligation to return the benefits received was derogated.

Individual complaint: Women leaving prison

Facts

In a change of criterion, Alava Provincial Council began to require that people serving a custodial sentence, on probation or on parole, would have to be on the municipal census or prove their roots in the province prior to entering prison in order to be able to access social services such as sheltered accommodation. According to the claimant association, which had been managing a sheltered flat for women released from the provincial prison, that meant that the women inmates who could not meet those requirements could not benefit from their services or, consequentially, from the parole regimes, as they could not access any kind of support outside the prison.

Examination of the case by the Ararteko

The Ararteko contacted the Provincial Council's Social Policies Department to remind it of the different causes of social exclusion that people suffer in prison, including the difficulty to return to life on the outside for people who have served long sentences. Prisoner resettlement, and even more so in the case of women, faces many obstacles, such as the breakdown of family ties. The Ararteko also pointed out that the same objections to providing prisoners with assistance had not been raised in other provinces of the Basque Country.

Outcome

The Provincial Council changed its mind after the intervention of the Ararteko and no longer required people to be registered on the municipal census in the province prior to entering prison.

➤ **Individual complaint: Defending the right of foreigners to pursue their professions**

Facts

Bizkaia Provincial Council objected to the contracting of a foreign citizen qualified to work as a speech therapist at one of its authorised centres because he had acquired the required work experience in his country of origin, before his foreign qualifications were recognised in Spain. According to the Provincial Council, the professional experience had to be acquired after the recognition of the qualification. Furthermore, it required the experience in the country of origin to be accredited by the Social Security Institute and the relevant documentary proof legalised.

Examination of the case by the Ararteko

The Ararteko's decision stated that the criterion of the Provincial Council would mean that no foreigners whose professional experience had been acquired prior to the recognition of their qualifications in Spain could avail of that experience. Furthermore, the Ararteko argued that the applicable legislation does not require the professional experience to be subsequent to the recognition of the qualification. Nor is any act of recognition or accreditation needed by the Social Security Institute, which lacks the necessary competence to do so. Neither does the applicable legislation refer to the legalisation of the documents accrediting the professional experience, nor had the Provincial Council expressed any objection about the authenticity of the submitted documents.

Outcome

The Ararteko recommended that the Provincial Council took into account the professional experience accredited by the claimant and acquired in his country of origin prior to the accreditation of their qualification. The Provincial Council had not responded at the time of writing.

➤ **General recommendation: Helping migrants to access welfare benefits**

Over the years, the Ararteko has pointed out that many foreigners are facing particular difficulties when requesting welfare benefits aimed at offsetting situations of need. This difficulty is due to the requirement to submit declarations of the assets held in the country of origin. During the year of the pandemic, when it was harder than ever to obtain documents from abroad, and where many people were driven into social emergency situations, the Ararteko issued a general

recommendation encouraging the public administrations to reflect on that requirement.

The legislation regarding welfare benefits envisages that the assets and financial resources of the applicants be calculated to establish where their being in need justifies the payment of the benefits. However, it does not establish the specific documents that foreigners have to present in order to accredit the lack of assets or financial resources in their countries of origin. Therefore, the Ararteko told the competent public administrations that there was a need to reflect on the specific types of documents required and the difficulties that the people in question would be facing to obtain them in time and in due form, in order to facilitate the meeting of the requirements to obtain the welfare benefits for which they are applying.

➤ **Own initiative investigation: Overseeing the assistance for migrants**

In 2018, the Ararteko started an own initiative investigation related to the arrival of migrants in transit, given the complaints from different social organisations regarding the vulnerability of the immigrants, who were arriving in the Basque Country in larger numbers than usual. In 2020, after gathering information and holding meetings with different social institutions and stakeholders, the Ararteko published the conclusions of the ex officio measure. The Ararteko concluded a lack of coordination by the Spanish Government, which raised the need to clarify the framework of powers and migration to be incorporated in the Basque political agenda. The phenomenon of migration is not circumstantial but rather structural and cross-cutting responses must be implemented to address it.

➤ **Individual complaint: Helping people with disabilities to access suitable accommodation**

Facts

The claimant family in this case have two small children with disabilities preventing them from being able to walk. The family lives in free market housing that is not adapted for people with disabilities. Since 2017, they have been on the waiting list for social housing. Given the worsening of the situation of the children and the problems to provide them with basic personal care, such as bathing and washing, the social services, at the request of the family, asked the Housing Department to directly allocate suitable social housing to them. The Department refused to do so.

Examination of the case by the Ararteko

The Ararteko noted that housing legislation allowed public authorities to allocate housing outside the ordinary procedures to solve situations of dependency or disability. However, he also pointed out the lack of own legislation specifically defining the situations of vulnerability and the direct allocation procedures, which left that type of allocation, on a discretionary basis, in the hands of the Deputy

Minister for Housing. The Ararteko considered that the Deputy Minister's refusal failed to take into account the best interest of the children, established in the Convention on the Rights of the Child, or to assess the housing needs of the family correctly. He also stressed that the discretion held by the Deputy Minister must be aimed at fulfilling the goals of housing legislation: to guarantee the right to affordable, adequate and decent housing. Finally, he highlighted the need to regulate the procedures for which there are, for the time being, no regulations.

Outcome

The Ararteko recommended that the Deputy Minister for Housing review the refusal of the direct allocation application and recalled the need for general regulations for such an allocation. Those recommendations were not accepted.

➤ **General recommendation: Protecting the environment**

The Ararteko decided to issue a general recommendation based on a series of complaints that the Office had received about polluting discharges in different rivers of the Autonomous Community. The Ararteko opened an own initiative investigation, involving key stakeholders such as the public administration and environmental associations.

The proposals resulting from the Ararteko's research were aimed at boosting the role of the environmental whistleblower and to set the obligations of good administration in the compliance of environmental legislation:

- Improving the information provided by the public administrations on their water control measures in place, including information on unauthorised polluting discharges, the relevant inspection reports and the disciplinary action taken.
- Guaranteeing compliance of the legislation regarding access to environmental information and seeking alternative formulas to provide that information to stakeholders.
- Guaranteeing that people reporting environmental incidences through the emergency hotline can know the status of their communication and the measures taken by the emergency service, along with providing them with information on the possibility to lodge an environmental complaint.
- Guaranteeing the rights of the people who file an environmental complaint to take part in the procedure: the right to be informed of the actions and solutions adopted, the right to submit allegations, to provide evidence and to appeal the decisions adopted.
- Preparing an action plan to protect environmental whistleblowers that improves the channels to file complaints, streamlines the information and facilitates assistance regarding the administrative procedure.

-Appropriately processing the complaints regarding water offences, by conducting the relevant investigations and processing the disciplinary measures taken and seeking environmental liability as applicable.

-Fostering coordination of the environmental monitoring of the water among the competent public authorities by means of entering into an agreement between them. The main objective of the agreement must be the rapid response to complaints reporting discharges.

-Investigation steps such as the taking of samples of the discharge or identifying who is responsible must be driven ex officio. The conclusions and resulting reports must be sent in a timely manner to the competent authorities with the power to impose penalties and seek environmental liability.

-Ensuring the decision on the initiating of the disciplinary proceedings is made within a reasonable period and the interested parties, including the whistleblowers, are notified.

-Guaranteeing that the power to start disciplinary proceedings, whose exercising is not optional, is effectively driven by the competent authorities.

-Guaranteeing the application of the measures to prevent, avoid and repair significant environmental damage as envisaged in the legislation.

-Respecting the principle of preference of criminal action when the importance of the infringements of the law could constitute an environmental crime.

➤ **Report: Guaranteeing access to public services in emergency situations**

During the lockdown phase of the health emergency, the Ararteko constantly received complaints from citizens who were unable to contact the Basque or Spanish state public authorities. In some cases, they were authorities providing essential services for their wellbeing. Offices were closed, telephone lines were congested and appointments were not being given. This situation made it impossible for many people to submit housing or welfare benefit applications or even obtain information on the new grants and programmes implemented to offset the social consequences of the pandemic.

The Ararteko then noted that those problems were not isolated incidents, but were occurring in a significant number of offices and services. Therefore, the Ararteko decided to take a closer look at the situation and published a report with recommendations, which were as follows:

-Which basic services were needed to continue providing in-person assistance to the general public should be quickly established, given the rising infection rate and the restrictions in force and those that could be imposed in the future.

-The number of staff providing the call line and in-person assistance should be increased. The provision of administrative assistance at home for particularly vulnerable people should be considered.

-The information and advice not only being available through electronic channels should be guaranteed, as certain groups lack the necessary digital skills or devices to access the online information channels or to carry out formalities with the public administrations.

-Assisting citizens in the use of the electronic means to relate with the public administrations should be guaranteed:

- Permanent call line or in-person services should be set up to help people with their electronic procedures with the public administrations.
- The possibility of assistance at home should be considered for dependent people, with reduced mobility or in care homes.
- The physical spaces where the services are provided should be fitted with open-access technological resources and internet connection, preferably located in administrative units. When provided by other entities by means of an agreement, they should remain under the control of the public administration in question.
- Call line services should be set up for the people, entities or companies required to carry out formalities with public administrations electronically.

-Filing documents without needing an appointment should be facilitated. If physical access is not possible, additional support for electronic filing should be provided.

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 courses

The 2020 Ararteko summer course was dedicated to people living alone, a group that is increasing in number and within which special mention should be made of older people, particularly women, who have not sought that situation. Loneliness can cause emotional, mental and physical health problems and can lead to a risk of social exclusion. It is therefore a problem that requires the attention of the public administrations and human rights institutions.

The people on the course learnt about some of programmes and strategies already up and running in the Basque Country, in Spain and internationally. Furthermore, the set of tools, best practices and community and social initiatives that help to create a support, care and participation network of those people in situations of loneliness was analysed in order to improve the interconnectedness of the people in our society.

Publications

The Ararteko research grant programme led to two publications in 2020 on the situation of the particularly vulnerable:

-Human trafficking for the purpose of sexual exploitation in the Autonomous Community of the Basque Country (available in [Basque](#) and [Spanish](#))

-The situation of refugees in the Autonomous Community of the Basque Country (available in [Basque](#) and [Spanish](#))

VII. CHILDREN AND YOUNG PEOPLE'S RIGHTS DEPARTMENT

Number of complaints: In 2020, there were 502 complaints involving children and young people, 19.8% of the total filed with the Ararteko. None of them was directly filed by a child.

Issues: Issues related to the material conditions in which the children live and to the educational system accounted for 72.1% of the claims. The rest mainly referred to issues relating to family support policies, social services for children at risk, the health system and school sports.

Right to be heard. Right to information: The pandemic has clearly highlighted the adult centrist perspective of our societies. The most appropriate measures for children (and to guarantee their rights - right to education, to health, to protection...-) have been sought, but, yet again, without consulting the children. In order to exercise the right to be heard, having sufficient information is essential to have an opinion about the matter in question. However, children, despite being one of the groups that suffered most, were not mentioned in any of the press conferences reporting on the situation and the measures adopted during the first weeks of the health crisis. The children were forbidden from leaving their homes, attending school, doing any type of activity in public spaces or in any other shared facility or space, meeting and playing with friends in person. The message was also spread, but subsequently not confirmed, that they were super-spreaders. There were no messages aimed at children, in age-appropriate language and from their perspective.

Right to an adequate standard of living: In the Basque Country and according to the information provided by the Basque Government's Ministry for Labour and Employment, 30.26% of the households on the Minimum Income Scheme (main

benefit of the income support system) had children in their care as of 31 December 2020. The number of children and adolescents in those households stood at 28,180, which accounted for 7% of the slightly over 400,000 under 19-year-olds on the municipal censuses in the Basque Country. If we accept that around a third of the families that are in situations of real poverty do not have access, for different reasons, to the Basque income support system, we can estimate that 9.33% of the children and adolescents of the Basque Country (nearly 38,000) live in a situation of poverty and material insecurity. Their right to an adequate standard of living for their development has been seriously compromised.

Right to education: Education was the area most affected by the measures adopted to deal with Covid-19 with the suspension of in-class activity and, subsequently, the return to the classrooms. Despite the difficulties, we have managed to solve issues relating to school meal grants or the very service offered by the school canteen or meeting the special needs of some students. The undeniable burden and pressure to which education workers have been subjected may explain why due attention could not be paid to other issues highlighted by Ararteko in recent years, such as addressing the problems of school segregation.

Right to be protected from any form of violence or abuse: The possibility that the measures to tackle the pandemic may have put some children at greater risk of suffering violence, where they went unnoticed in the context of lockdown, closure of schools and restrictions on the freedom of movement, is part, along with the increase of child poverty and the worsening of educational inequalities, of the most important issues highlighted by the agencies and entities defending children's rights. However, the reality of the complaints submitted to the Ararteko in 2020 did not reflect an increase in child violence.

Right to a family: The pandemic has highlighted the important role of families in providing material and emotional support for people, along with the difficulties that those families face to balance the personal, family and work life of their members. However, the emergency situation has highlighted family diversity and the multiple and varied circumstances of their lives. Large families found it harder to achieve that balance and it more expensive to adopt some of the mandatory measures (use of masks, for example). Single-parent families were asking for solutions for the huge problems they faced to look after small children, particularly when they were professionals working for essential services. Separated families asked questions regarding the possibilities of alternating the households in the cases of shared custody or longer stays with the parent who does not have custody.

Right to health: The largest number of complaints and consultations in this area were also related to Covid-19. Those that most affected children were the risk of healthcare professionals living with their families, a problem that was addressed, at least partly, with alternative accommodation being offered. Care was also provided for children in the cases that their parents or main carers were infected or, even, in hospital. The difficulty was also stressed for some people and families with children and with

economic difficulties to have a supply of masks (mandatory measures), which lead to the Ararteko issuing a decision.

Right to play, leisure and sport: During the first weeks of the lockdown, we received several complaints requesting that the measures in force be relaxed, given the importance of physical activity and playing in children's development. Regarding school sport, which practically disappeared in 2020, work on two already recurring issues was completed: on the one hand, the difficulties for children born abroad to obtain their football federation licences and, on the other hand, the disputes regarding the timeslot allocation in municipal schools for sport training outside the school day.