



LEGEEN GEROA CONFERENCE CONCLUSIONS

1- On the need to reform the Ararteko Act

- This conference has reminded us that the Ararteko Act was drafted in a politically complex context, where the search for consensus among the parliamentary groups gave it the necessary impetus for its adoption. It would be desirable for any **reform of the law to revalidate that same spirit of consensus**, which has given the institution great legitimacy over the last 38 years.
- By means of the proposed reform, the Ararteko Act should **adapt to the new framework developed at European level, to evolve in its mandate and functions**, with a legal configuration of the institution more in line with the current challenges which have a significant impact on citizens and their expectations in terms of rights.
- The Ararteko can play a **relevant role in the proposed reform of its own law**, as is clear from the First Transitory Provision of Act 3/1985.
- The proposed reform should, in any case, **be inspired by the institution's accumulated experience**, drawing from a conscientious evaluation of the work carried out over these years. In this sense, contributions made by the institution itself to the Basque legislature are decisive.

2- On the need to adapt the institutional set-up and mandate to the new European standards applicable to Ombuds institutions

- **International organizations are great allies for our institutions**, supporting and reinforcing our independence, legitimacy and the need for our very existence.
- Within the Council of Europe, **Ombuds institutions are also a crucial part of the human rights protection system**, insofar as they complement its work, ensuring the transparency of democratic processes and acting as guardians of human rights at national, regional or local level and of the good governance of States.
- In particular, it has been highlighted the core importance of **the Venice Principles** - the "golden standards" -, as they constitute the first and most comprehensive set of international standards to strengthen the proper functioning and independence of Ombuds institutions, guaranteeing

indispensable parameters regarding their election, mandate, investigative powers and budgetary guarantees, among others.

- Furthermore, following their endorsement by the United Nations, these standards are **applicable to all the Ombuds institutions across the globe, and they are also addressed to the States themselves**, calling for their support to these institutions by promoting effective compliance with the aforementioned standards, which also compels the Basque public authorities, with a view to the reform of the legal framework of the Ararteko.

3- On specific *de lege ferenda* challenges arising from this new framework

➤ Independence

- International standards demand **full independence of Ombuds institutions**, to protect them from undue interference. The Venice Principles are precisely the legal firewalls to ensure such independence. During the conference, some voices have been adamant about the need for Ombuds institutions not to be subject to any mandate. Consequently, it has been recalled the importance of maintaining independence also vis-à-vis the Basque Parliament, from which no instructions should be received, without prejudice to the desirability of intensifying interinstitutional collaboration by means of consensual exchange.
- With regards the **relationship between the Ararteko and the Basque Parliament**, it has been presented the possibility of formalising a procedure for members of Parliament. Different formulas have also been proposed to review some aspects of the appointment of the Ararteko and his/her Deputy, as well as the possibility of extending his or her term as Interim in the absence of an appointment after the expiry of his or her mandate. Similarly, the need to strengthen communication with the Basque Parliament has been alluded, especially regarding the annual report.

➤ Relations with other counterpart institutions

- Regarding relations with other institutions, it has been stressed that the Council of Europe recommends for **effective collaboration and coordination between different Ombuds institutions within the same State**, as well as for dialogue with **regional and international human rights organisations**, to share knowledge and thus enrich their functioning by incorporating the most advanced experiences and practices of counterpart institutions. To the same end, the European Ombudsman has reminded us

of the importance of maintaining relations with other **European Ombuds institutions** within the ENO network.

- Special emphasis has been placed on the **need to legally update the relationship between the regional Ombuds institutions and the Spanish Ombudsman**, as the current *Law 36/1985, to regulate the relationship between the Spanish Ombudsman and the regional Ombuds institutions*, is not adequately adapted to the system of constitutional distribution of powers and calls into question the full autonomy of the Autonomous Communities in their own institutional development.

➤ **On the convenience to extend the mandate and redefining its functions**

- Several speakers have insisted on the **need to broaden the mandate of Ombuds institutions**, due to the fact that, in accordance with the Venice Principles, they should exercise both the prevention and correction of maladministration, as well as the protection and promotion of human rights.
- In this sense, **collaboration with social organisations** has been called for to proactively reach out to citizens, especially those in situations of vulnerabilities. It has also been noted the need for improving the **channels of approaching and communicating with citizens** (for example, through intermediaries – Dutch model), to serve as a loudspeaker for the voices that are least heard and to adequately channel their demands.
- Likewise, it has been identified **Ombuds institutions' position with respect to citizens** as a **channel for citizen participation**, especially from a **deliberative democracy** model, based on a three-pronged approach: Ombuds institutions, public administration and citizens.
- Regarding conflict resolution mechanisms as expressions of a culture of peace, the benefits of **mediation or other similar restorative justice formulas** has also been defended. The Ararteko could include these formulas within its functions and methodologies of work.
- In the current cost-of-living crisis, the need for supervision and control of **services of general interest regardless of their private or public ownership** has been called for, considering their growing privatisation, insofar as they have a strong impact on people's rights, especially those of the most vulnerable ones.
- It has been discussed the convenience of recognizing the Ararteko the possibility to **seize the Constitutional Court** regarding some Basque laws

or to **participate as *amicus curiae*** in cases related to human rights violations. In response, some speakers have called for caution due to a possible loss of *auctoritas* should the Ararteko be part of a court proceeding. In addition, it has been warned about the need for avoiding any interference with the courts' judicial functions.

- The task of **consulting and alerting the legislature on potential deficiencies in laws** has been invoked, due to unforeseen difficulties in their implementation or because of their absence of guarantees for individual rights.
- **Models of coercion to make the administration comply with its duty to collaborate** with Ombuds institutions have been discussed, with specific reference to coercive fines and other formulas, such as the publicity of non-compliant administrations (registers), or criminal proceedings.

4- Other new functions foreseen in our legal system or derived from emerging social demands

- There has been reflection on the **function of controlling discrimination**, highlighting the benefits of regrouping this function, along with other mandates, and placing them under a single figure to ensure its independence, such as the Ombuds Institution. This allows for a comprehensive work on broader issues, with a holistic approach. In the specific case of the control of discrimination, it has been advised in favour of extending competences to relations between individuals, as the most common source of discrimination. Likewise, the possibility of deferring the power to impose sanctions to the competent executive bodies has also been put forward, whereby Ombuds institutions' function will be limited to promoting those sanction by means of recommendations.
- The global movement driven by children to defend their rights and those of future generations should encourage their participation in our institutions and our duty to protect children's rights jointly with them. The institutional position of the Ombuds institutions in their **role of defending children's rights** has been reflected upon. It has been suggested that a hybrid model should be favoured, which includes both the task of carrying out child-friendly investigations, as well as of influencing public policies and legislation on minors.
- **Controlling transparency** has been proposed as a mission of Ombuds institutions, which should be adequately resourced to this end. The aspiration to strengthen transparency should also apply to the internal activity of the Ombuds institutions. In this sense, there have been calls for greater



transparency in relations with citizens to encourage their participation (for example, by publishing agendas or creating a consultative council elected by citizens).

- The role of Ombuds institutions in protecting citizens in their access and interaction with an **increasingly digitalised administration** has been discussed. Citizen's consent in the use of their private data – be it used by public or private services – and leaving no one behind (e.g., people with disabilities and elderly people, or any other affected by the digital gap) is of vital importance. Another issue of great importance is **Artificial Intelligence**, the challenge and risks involved in its constant evolution. The regulation being developed at European level will be decisive in this area. Nevertheless, it has also been highlighted the opportunities that IA may bring for Ombuds institutions to improve the efficiency of their functions.
- Another key function that has been noted is the promotion of an **administrative culture** that encourages the protection of human rights, and particularly, **Ombuds institutions' function in protecting whistleblowers**, in line of the implementation of the EU Directive on Whistleblower protection at the national level.