

**Act 3/2009
of 23 of december
amending the Care and
Protection of Childhood
and Youth Act**

ararteko

Herriaren Defendatzailea
Defensoría del Pueblo

Act 3/2009 of 23 of december amending the Care and Protection of Childhood and Youth Act*

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All citizens of Euskadi (the Basque Country) are hereby informed that the Basque Parliament has enacted Act 3/2009 of 23 of december amending the Care and Protection of Children and Youth Act.

Explanatory memorandum

The purpose of Act 3/2005 of 18 February on the care and protection of Children and Youth is to provide care and protection for children and youth to safeguard the exercising of their rights and responsibilities. Its specific purpose is:

- a) To safeguard children and youth that reside or find themselves in the territory of the Autonomous Community of the Basque Country in exercising their rights as recognized in the Constitution, the United Nations Convention of the Rights of the Child, the European Charter of the Rights of the Child, and in the overall legal system.
- b) To establish a framework for action in which activities to foster the rights and welfare of children and youth are to be performed as well as intervention aimed at care and protection with a view to safeguarding them within the family and social spheres.
- c) To define principles for action, jurisdictions and an institutional framework for the protection of children and youth at risk of or in the state of defencelessness, and action vis-à-vis minor offenders.

In title V of the aforementioned Act, devoted to establishing the institution's organization, Chapter I establishes the figure of the Ombudsperson for Children and Youth (Defensoría para la Infancia y Adolescencia) as the body to defend children and youth against threats or violations of their rights and also to raise awareness and promote these rights in the Autonomous Community of the Basque Country. To this end, article 97 regulates its functions, article 98 establishes its organization, and article 99 provides for its means of funding through an annual allocation of the General Budget of the Autonomous Community of the Basque Country.

Notwithstanding this, in accordance with current law, Act 3/1985 of 27 of February establishing and regulating the institution of the Ararteko (Basque Ombudsperson) the said institution is attributed with the function of safeguarding the rights of citizens vis-à-vis the public administration.

Furthermore, Title VI of Act 3/2005 of 18 February attributes certain competences of awareness-raising on the rights of children and youth to the Provincial Councils and City and Town councils. This is reiterated in the Social Services Act 12/2008 of 5 December.

That is, the functions that the aforementioned Act recognize for the Ombudsperson for Children and Youth are already satisfactorily performed either by City or Town Councils, Provincial Councils and the Basque Government, or by the institution of the Ararteko. As a result, the fact that this Ombudsperson exists may give rise to conflicts in jurisdiction and functions overlapping with these institutions that point towards the advisability of eliminating the Ombudsperson for Children and Youth.

To this end, this legislative amendment aims to repeal articles 96, 97, 98 and 99 of Act 3/2005 of 18 February.

Organic Law 3/1979 of 18 December regarding the Statute of Autonomy for the Basque

Country, under Title I “Regarding the Competences of the Basque Country” in article 10, sections 12 and 39, reserves the Autonomous Community of the Basque Country exclusive jurisdiction in social care and community development, the condition of women and girls, and policies on childhood, youth and the elderly.

Sole Article - Articles 96, 97, 98 and 99 of Chapter I under Title V are hereby repealed together with the first transitory provision, the fourth additional provision, and the fifth additional provision of Act 3/2005 of 18 February on Care and Protection of Children and Youth, and mention of the Ombudsperson for Children and Youth is hereby eliminated in articles 17.2.c) and 80.2.k) in the said Act.

Provision

■ ADDITIONAL PROVISION

At the time that the present Act enters into force, the financial and material means allocated to the Ombudsperson for Children and Youth shall be reallocated to the Department of Employment and Social Affairs. Insofar as staff is concerned, the procedure set forth in the legislation on the public service for situations where civil servants' positions must be re-seconded shall be followed.

■ TRANSITORY PROVISION

The cases being handled by the Ombudsperson for Children and Youth referring to complaints and allegations of threats and violations of the rights of children and youth shall be transferred to the Ararteko to be examined and resolved. The remaining cases shall be transferred to the Department of Employment and Social Services.

■ DEROGATORY PROVISION

Any and all equal or subordinate legislation that contradicts or runs counter to the provisions in the present Act, and particularly Decree 56/2008 of 1 April establishing the Regulation that lays down the organization and functioning of the Ombudsperson for Children and Youth, as well as the express mention of the references to this body contained in articles 5.4 and 50 of Decree 80/2009 of 21 of April on Educational Centres for Sentences Involving Deprivation of Liberty in the Autonomous Community of the Basque Country.

■ FINAL DISPOSITION Entry into Force

The present Act shall enter into force on the day following its publication in the Official Basque Country Gazette.

I therefore order all citizens of the Basque Country, individuals and authorities, abide by this Act.



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