



**Act 3/1985  
of 27 february  
establishing and  
regulating the institution  
called the 'Ararteko'  
(Ombudsman)**

**ararteko**

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## **Act 3/1985 of 27 february establishing and regulating the institution called the 'Ararteko' (Ombudsman).\***

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 **ARARTEKO**

## Explanatory memorandum

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**1.** Article 15 of the Statute of Autonomy of the Basque Country provides that “It is for the Basque Country to establish and organise, by means of a Act passed by its Parliament, a body similar to the one established under Article 54 of the Constitution that, in coordination with said body, performs the functions referred to in that article and any others which the Basque Parliament may entrust to it.” Therefore, the institution called the ‘Ararteko’, established and regulated by this Act, is expressly envisaged by the Statute of Autonomy itself.

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**2.** The prestige and long-standing tradition of the Ombudsman have defined this institution and established its main lines of action. This originally Swedish institution goes by different names, the most popular of which is ‘Ombudsman’, and has spread throughout the world. However, some of its versions such as Great Britain’s Parliamentary Commissioner for Administration or the French Médiateur, have departed considerably from their Swedish predecessor to the point of introducing modifications that have transformed them into bodies somewhat different from the Ombuds-

man. It is only fair to acknowledge that these changes were the result of old legal traditions based on the principle of Parliamentary sovereignty in the case of the United Kingdom and, in the case of France, on the prestige of the Council of State which at one point was acclaimed as the best Ombudsman. In any case, it is no less true that the configuration of the French Médiateur is, to a large extent, modelled on the institutional design of relations between the President of the Republic, the Government and Parliament.

The origin of the Swedish Ombudsman, the Justitie-Ombudsmannen, is intimately linked to the history of the transition from absolute Monarchy to constitutionalism and the political need felt by the social forces in Parliament to control royal officials during the intervals of time between Parliament’s sessions. Burgeoning parliaments in the rest of Europe did not introduce this concept until the late 20th century. Actually, not until after the Second World War when the role of the State was undergoing a sweeping transformation regarding civil society and the system in place to protect public freedoms.

**3.** In any case, despite varying legal and political motivations the figure of the Ombudsman has conserved a number of traits (with the exceptions noted) that link it to its Scandinavian roots. Three stand out above the rest.

First of all it is a body designed to keep the Administration in check in defence of the right of citizens to be properly governed and to guarantee the principle of legality.

Secondly, the ombudsman is appointed by Parliament, although it acts autonomously.

Thirdly, as an oversight body of the Administration acting in defence of the rights and freedoms of citizens, it must guarantee direct access to the Ombudsman without the intervention of intermediaries. As a result of this latter characteristic, the Ombudsman acts through informal and summary means.

**4.** The Ombudsman is a late arrival to Southern Europe's constitutional systems. Focusing on the case of the Basque Country, it should be recalled that citizens have a number of ways at their disposal to control the functioning of public administrations. The amparo appeal for constitutional protection and the European constitutional justice system in general; the jurisdiction of the administrative courts; parliamentary oversight of the Government which, as such, is run by the administration; internal inspections of services conducted to prevent poor governance, etc., bear witness to a system designed to protect rights and control administrations which certainly did not exist at the time the institution was first established.

The ARARTEKO is, therefore, an additional oversight body that is clearly in synch with the evolution of social and democratic Rule of Act and the shortcomings it has shown in its objective to guarantee rights and freedoms that go beyond formal declarations concerning individual rights and establishes real social rights and freedoms (Article 9.2 of the Basque Statute of Autonomy, Spanish acronym EAPV) as actual obligations of public authorities.

**5.** Since World War II, public authorities have evolved by adopting a much more interventionist attitude towards citizens and in so doing have reinforced dependency on the Administration. As a result, traditional oversight systems have proven insufficient or inadequate in dealing with poor administration. One of the least negligible problems to be reckoned with is the fear citizens have of the Administration due to the complicated and rigid procedures on the part of the Public Administration to defend the general interest. However, this defence of the general interest sometimes ends up being detrimental to citizens. The fundamental purpose of the Ombudsman in a social and democratic state where Rule of Act prevails is in this field of overseeing the administration.

It has been rightly pointed out that the Ombudsman is a persuasive judiciary body that encourages or compels the Administration, draws attention to cases that merit review, suggests modifications in the functioning of the administration and even, when the malfunction of the Administration is due to the Act, urges Actmakers to amend the latter. The Ombudsman does not limit its activity to cases where illegalities have been detected but also promotes changes in legality to achieve a better quality of life. Hence, the Ombudsman is a critical collaborator of the Administration charged with filling the gaps that inevitably exist in the system guaranteeing the rights of those governed.

**6.** The above reasons bear witness to the wisdom of the statutory provision.

This Act shapes the ARARTEKO in accordance with its best tradition in order to guarantee the rights of citizens in their dealings with the Public Administrations.

It is an institution conceived by Parliament and answers exclusively to the latter. Its actions are subject only to the Act, its criteria and, as a Parliamentary Commissioner, to the instructions issued by Parliament.

The honourability of the institution demands the utmost impartiality and independence of its leader. To this end, the Act provides for a strict incompatibility system and a ban on taking part in any political propaganda.

The Act envisages a broad concept of Public Administration in order to keep pace with the latter's development, irrespective of the fact that its activity may be totally or partially subject to private Act. In this connection, public enterprise and the activities conducted by private companies through a concession arrangement are included in the sphere of the ARARTEKO's powers and competences. Regarding oversight of such activities, the ARARTEKO has access to all premises and all documentation with the exception of that declared secret in accordance with the Act. It basically engages in making recommendations and suggestions and to disseminating the results of its investigations in the form of reports. Such reports may identify specific officials who have obstructed their work or whose conduct is reprehensible. Thus, without prejudice to the political responsibility of the Government, the aim is to limit the risk of possible abuses of authority by officials who might want to shield themselves using the political responsibility of the Government.

The work done by the ARARTEKO is not subject to deadlines and its intervention does not mean the suspension of administrative activity nor does it suspend deadlines for this activity.

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**7.** Regarding the specific framework of its activity, it should be noted that its actions are first of all linked to all Public Administrations operating within the Autonomous Community, i.e. the powers and competences vouchsafed to the Ordinary Administration, the Historical Territories and Local governments.

The ARARTEKO exercises its own powers by virtue of statutory imperative since the institution emanates directly from the Statute. It therefore does not have a hierarchical relationship of dependency on the Ombudsman. This in no way prevents it from addressing

the Ombudsman in those cases where it determines that the protection of rights requires action before the Constitutional Court or collaboration is required in order to lobby national bodies. In any case, coordination and cooperation is achieved through agreements and conventions.

Arbitral Commissions, Parliament and the Government are the only institutions not subject to the ARARTEKO's inspection authority, but this applies to their political duties and not to the strictly administrative activity they engage in when enacting administrative decisions within their purview.

The concept of Public Administration set out in the Act is adapted to the current reality of public services provision regardless of whether all or part of such services are carried out in accordance with Private Act as mentioned above. In this sense we would point out that in relation to Article 10(1)(d) of the Act, according to the best doctrine of Administrative Act collected at the time by the French Médiateur, a public service activity is deemed to exist when the body in question "engages in meeting a need of general interest or as from the moment that there is an element, albeit distant, of oversight by the Administration over such body". Thus, even those entities whose legal or regulatory nature is not public but which exercise administrative powers or delegated functions, such as the case of concession holders, are subject to investigations by the ARARTEKO. Public Corporations are likewise subject to the extent that they are subject to Public Act and at least part of their structure or activity is governed by rules of public Act. What is subject to oversight, therefore, is exclusively the activity that is focused on public function or activity or the activity that is subject to Administrative Act. Thus, the ARARTEKO's mandate does not allow it to enter into areas of internal administration.

In these cases, its investigative powers focus on ensuring the effectiveness of public activity, correcting shortcomings detected and, if necessary, urging the Public Administrations

to exercise their powers of guardianship, inspection and sanction.

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**8.** Lastly, the name of the institution reflects the need to find a new name for an institution that is also new in the Basque Public Act system. In this respect, it seems appropriate to use a Basque name.

While the institution is indeed new, it is also true that there were precedents both in the Basque territories where there was Castilian influence and in those that follow the legal traditions of the Pyrenean kingdoms. However, no true parallel can be drawn. Precedents such as the Síndico Procurador General (Trustee General) of Alava, arose from and were

linked to the public institutions of the absolute Monarchy and a stratified society. They are institutions conceived to defend the privileges amongst different social classes or between these classes and feudal lords or the King. The ARARTEKO has a radically different to the extent that the stratified society gives way to the principle of equality and privilege to rights and freedoms for all.

Moreover, it is not possible to transfer denominations that existed under Feudal Act especially considering that such institutions, unlike the Justicia Mayor (high justice) in the case of Aragon for example, are not part of the historical memory of the Basque people who have no collective recollection of any institution of the type governed by this Act.

# Title one

## ■ Statute

### ■ Article 1

1. The ARARTEKO is the Parliament's high commissioner for the defence of the rights included under Title I of the Constitution, guaranteeing them in accordance with the Act and ensuring that the general principles of democratic order laid down in Article 9 of the Statute of Autonomy are fulfilled.
2. Its primary function is to protect citizens from abuse of authority and power and from negligence on the part the Basque Public Administration.
3. It is a public institution provided for directly by the Statute of Autonomy, is independent of the Public Administrations and only receives instructions from Parliament as the latter determines. It performs its functions according to its own criteria, in accordance with the Act and in coordination with the Ombudsman.
4. The ARARTEKO relates to Parliament in the way determined by the latter.

### ■ Article 2. Appointment

1. The ARARTEKO is to be appointed by Parliament in the way determined by its Regulation.
2. Appointment requires a majority of three-fifths of the members of Parliament. If this majority is not reached, successive proposals shall be formulated within a maximum period of one month until the required majority is obtained.

### ■ Article 3. Appointment and assumption of office

1. The President of Parliament signs the appointment of the ARARTEKO and orders the publication of the appointment in the 'Official Gazette of the Basque Country'.
2. The ARARTEKO takes office before a plenary session of Parliament by taking an oath or promise of faithful performance of duties.

## ■ Article 4. Conditions of eligibility

Requirements for designation as Ararteko:

- a) must have Basque political status;
- b) must be in full possession of civil and political rights.

## ■ Article 5. Duration of term of office

1. The ARARTEKO is appointed for five years and may be re-elected only once for an equal period of time.
2. Once the period for which he was elected has terminated, he shall continue as the acting Ararteko until his successor is sworn in.
3. In any case, an acting Ararteko shall be in office for no longer than six months. Should Parliament be dissolved during this period, the term acting Ararteko may be extended for the same period of time that elapsed between the dissolution and constitution of Parliament.
4. In all other cases of vacancy, the appointment procedure shall begin within a period not exceeding one month from the date the vacancy was declared in accordance with article 7(5) hereof.

## ■ Article 6. Conflicts of interest

1. The ARARTEKO may not:
  - a) hold elected office;
  - b) hold any freely appointed political post;
  - c) be a member of a political party, trade union or employer's association;
  - d) hold an administrative position in any association or foundation;
  - e) remain in active service in any public administration or work in the judicial profession or as a prosecutor;
  - f) engage in any professional, liberal, economic or labour activity.

2. The ARARTEKO may not take part in any political propaganda.
3. The ARARTEKO must recuse himself from any situation causing a conflict of interest within ten days after his appointment and before taking his oath. Such recusal must be in writing addressed to the Bureau of Parliament through its President. Otherwise it shall be assumed that he rejects the appointment.

## ■ Article 7. Termination of office

1. The ARARTEKO's term of office shall terminate for any of the following reasons:
  - a) resignation;
  - b) expiration of the term for which he was appointed without prejudice to the provisions of Article 5 hereof;
  - c) death or unforeseeable disability;
  - d) dismissal by Parliament for acting with gross negligence in the performance his or her office;
  - e) conviction for a criminal offence by means of a final judgement;
  - f) unforeseeable conflict of interest;
  - g) loss of Basque political status or of full possession of civil and political rights.
2. Resignation shall take effect from the moment of its communication to the Bureau of the Parliament with no need for acceptance or prior proclamation.
3. In the case described in paragraph 1(d) of this Article, dismissal shall be agreed, subject to debate, by a majority of three fifths of the members of the Chamber. The ARARTEKO subject to dismissal may intervene in the debate and in all previous actions in defence of his performance in the post.
4. The declaration of vacancy as a result of unforeseeable disability must be agreed by a majority of three fifths of the members of the House.
5. The vacancy is announced, in all cases, by the President of Parliament who shall



order its publication in the 'Official Gazette of the Basque Country'.

6. Announcement of the vacancy marks the commencement of the procedure for the appointment of a new ARARTEKO which shall not exceed one month.

### ■ Article 8. Deputy Ararteko

1. The ARARTEKO is assisted by a Deputy in whom he or she may delegate duties as the work is established. The Deputy shall replace the ARARTEKO, in cases of vacancy, physical incapacity or temporary absence.
2. In no event may the Ararteko delegate to the Deputy any duties or action with regard to strictly administrative activities of the Parliament, the Government or Directors.
3. The Deputy shall be freely appointed and dismissed by the ARARTEKO, subject to the consent of Parliament. Appointments and dismissals shall be published in the 'Official Gazette of the Basque Country'.
4. The Deputy is subject to the same rules as the ARARTEKO as laid down in this Title or in any other provision that refers to the Personal Statute of the Ararteko.

### ■ Article 9. Scope

1. Investigative powers apply to:
  - a) the Ordinary Administration of the Autonomous Community, including its peripheral administration, its autonomous bodies, public companies and other public entities under its sphere of influence;
  - b) the Administration of the Historic Territories, including their autonomous bodies, public companies and other public entities under its sphere of influence;
  - c) the Local Administration, including its autonomous bodies, public companies and other public entities under its

sphere of influence in the area of responsibility established under Article 10(4) of the Statute of Autonomy;

- d) services managed by natural or legal persons under administrative concession schemes and, in general, any body or entity, legal or natural person engaging in public service and subject to some type of oversight or administrative control regarding anything that affects the areas in which the Statute of Autonomy grants powers to the Autonomous Community.
2. When the ARARTEKO receives complaints regarding the functioning of the Justice Administration, he or she must forward them to the appropriate body for investigation or resolution.
3. Powers of investigation must be exercised in coordination with the Ombudsman in accordance with the provisions of Article 15 of the Statute of Autonomy and Article 12 of Organic Act 3/1981 of 6 April 1981, with the signing, where appropriate, of the pertinent agreements.

### ■ Article 10. Actions subject to oversight

The ARARTEKO 's authority covers both acts and resolutions and their omission.

### ■ Article 11

The Ararteko may:

- a) open and conduct an investigation to clarify acts or conduct undertaken by the entities referred to in Article nine that affect a citizen or a group of citizens;
- b) make recommendations or issue reminders of legal duties to competent bodies, government officials or their superiors with a view to rectifying illegal or unfair acts or improving services rendered by the Administration;
- c) highlight shortcomings in legislation by making recommendations in order to give

administrative action and public services the necessary objectivity and effectiveness in guaranteeing the rights of citizens. These recommendations may be addressed to the Parliament, Government, General Assemblies, Provincial Councils, Town Halls or to the Entities or Organisations referred to in Article 9(1)(d);

- d) issue reports within its purview at the request of Parliament or of any of the entities listed in article 9(1);
- e) disseminate through all the means at its disposal and, in particular, through public media, the nature of its work, its investigations and the annual report. To that end, the media run by the Autonomous Community must provide air time to the ARARTEKO as deemed appropriate by the latter in order to more efficiently perform his or her duties and to inform the public regarding his or her activity.

### ■ Article 12. Powers of enquiry

To correctly exercise its authority and competences, the ARARTEKO shall act using informal and expeditious means. For this purpose he or she may:

- a) carry out inspection visits to any service or agency of the bodies and entities referred to in Article 9(1) to examine documents, speak to bodies, officials or workers and request information deemed appropriate;
- b) conduct as many investigations as deemed necessary provided they do not conflict with the rights or legitimate interests of citizens and entities subject to oversight;
- c) seek, in collaboration with the competent bodies and services, the most appropriate solutions for defending citizens' legitimate interests and adapting administrative bodies to the principles of objectivity, effectiveness, hierarchy, decentralisation, devolution, coordination and full compliance with the Act;
- d) issue summons calling for the appearance of any official or worker at the service of

the administrations subject to supervision by the ARARTEKO who can reasonably be expected to provide information related to the matter under investigation.

### ■ Article 13. Limitations

1. The ARARTEKO shall not engage in the individual examination of complaints subject to a final judgment or pending a judicial decision. It shall suspend its action if the complainant has lodged a complaint or appeal before the ordinary courts or the Constitutional Court.
2. The Parliament and the Government are excluded from his powers of inspection with the exception, in both cases, of strictly administrative activity.
3. Likewise, the functioning of the Arbitral Commissions is excluded from its inspection powers.

### ■ Article 14. Extent of powers

The ARARTEKO has no authority to annul, revoke or modify the acts of the bodies referred to in Article 9(1). Its intervention shall not suspend deadlines.

### ■ Article 15. Secrecy

1. In accordance with applicable Act, classification of documents as officially secret shall not prevent their access to the ARARTEKO.
2. Notwithstanding the preceding paragraph, the Government may deny the ARARTEKO access to such documents by express resolution in this regard. Should the ARARTEKO consider knowledge of such document to be vital to the successful completion of the investigation, it may inform the relevant Parliamentary Commission of the government's decision.
3. In any case, the investigations conducted by the ARARTEKO or his or her staff must be verified with the strictest confidentiality without prejudice to the considerations the

ARARTEKO deems appropriate to include in the reports to Parliament.

### ■ Article 16

1. The ARARTEKO 's activity shall not be interrupted in cases in which the Parliament is not in session, has been dissolved or its term has expired.
2. Declarations of a state of emergency or siege shall not interrupt the activity of the ARARTEKO nor the right of citizens to approach it, without prejudice to the provisions of Article 55 of the Constitution.

## Title two

### ■ Functioning

#### CHAPTER ONE

#### On opening and conducting investigations

##### ■ Article 17. Opening investigations

1. The ARARTEKO may initiate an investigation ex officio or at the request of a party. The ARARTEKO may initiate an ex officio investigation where he or she himself or herself has become aware of an irregular situation.
2. Investigations may also be requested by the Commission which is in contact with the ARARTEKO on a regular basis, by investigative parliamentary commissions or by individual members of parliament.
3. Administrative authorities may not lodge complaints with the ARARTEKO regarding matters within their purview.

##### ■ Article 18. Opening investigations at the request of a petitioner

1. A legitimate interest must be invoked in order to lodge a complaint with the ARARTEKO.
2. Nationality, residence, minority of age, legal incapacity of the affected person, internment or imprisonment, or any other special relationship of subjection to or dependence on an Administration or public authority may not be considered an impediment to address the ARARTEKO.
3. The ARARTEKO may proceed with an investigation even if the interested party expresses its desire to withdraw the complaint.

##### ■ Article 19. Lodging a complaint

1. Complaints must be made in writing or orally. In any case, they must be based

on clear grounds and append all documents that may help to clarify the case. Complaints must include the name and address of the complainant.

2. Oral complaints may only be lodged in the office where the ARARTEKO's services are based. These complaints must be transcribed and later read and signed by the complainant.
3. Complaints must be lodged within one year of the time that the complainant became aware of the conduct or facts motivating the complaint.

### ■ Article 20. Recording of complaints

The ARARTEKO's services must register and acknowledge receipt of the complaints lodged that they shall then proceed to process or reject.

### ■ Article 21. Rejection of complaints

1. Complaints shall undergo a preliminary assessment for the purposes of ruling on their admissibility.
2. Complaints shall be rejected under any of the following circumstances:
  - a) lack of legitimate interest;
  - b) the complainant fails to identify him or herself;
  - c) the complainant exhibits bad faith or misuses the procedure by intending to interfere with or paralyse the administration;
  - d) the complaint is not justified or the information requested is not provided;
  - e) the complaint does not fall within its purview. Complaints are forwarded to the Ombudsman when they fall within its purview.
3. Where it is shown that the complaint was lodged in bad faith and there are indications of criminality, the ARARTEKO shall inform the competent Judicial Authority.

4. When complaints are rejected, the ARARTEKO shall notify the interested party by means of a reasoned communication informing of the most appropriate action that can be taken, if any.

### ■ Article 22. Appeals

No appeal may be lodged against the ARARTEKO's decisions.

## CHAPTER TWO On relationships with the bodies and entities subject to oversight

### ■ Article 23. Duty to collaborate

The bodies of the Entities referred to in Article 9(1) are under obligation to provide all information, documents, reports or clarifications requested on a preferential and urgent basis.

### ■ Article 24. Hindering action

1. Refusal to submit or negligence on the part of an official, authority, worker or person in charge of a concessionary company or one subject to some form of oversight or administrative supervision, or an attitude that prevents or hinders the ARARTEKO from accessing the files or Administrative documentation requested or from entering the premises where they are located, shall be considered obstruction. The ARARTEKO shall communicate such situations to his or her hierarchical superior.
2. Any body, official, manager or person in the service of the Public Administration that persists in a hostile attitude or continues to obstruct the investigative activity of the ARARTEKO may be written up in a special report in addition to appearing in the corresponding section of the annual report.

### ■ Article 25

The hierarchical superior or body that prohibits the official or worker from performing the duties imposed under article 23 must do so in a reasoned way in writing addressed to both the official or worker in question and the ARARTEKO. Henceforth, the Ararteko shall address that hierarchical superior with regard to all necessary investigative actions.

### ■ Article 26. Deadlines

The ARARTEKO shall set deadlines for requests for information, submission of files or any other information.

### ■ Article 27. Action in the event of abuse, arbitrariness, discrimination, error or negligence.

When the investigation reveals that the complaint was presumably caused by abuse, arbitrariness, discrimination, error or negligence on the part of a civil servant or worker, the ARARTEKO may address the affected party to express his or her opinion on the matter. On that same day he or she must forward said communication to the hierarchical superior, formulating the suggestions he or she deems appropriate.

Should the recommendations made by the ARARTEKO not be taken into account and no adequate measures be taken, the ARARTEKO shall bring this to the attention of the highest

hierarchical authority in the administrative body concerned and shall include the matter in its annual or extraordinary report.

### ■ Article 28. Liability action

The ARARTEKO may, ex officio, take action based on liability against all officials, workers or persons in charge of concessionary companies or those subject to any form of oversight or administrative guardianship, without the need for prior written notification.

### ■ Article 29

Should investigations reveal rational indications of criminality, the ARARTEKO must inform the Public Prosecutor.

## CHAPTER THREE Notifications and conclusions

### ■ Article 30. Results of investigations

The ARARTEKO shall communicate the result of the investigations to the party lodging the complaint.

### ■ Article 31. Conclusion of investigations

Authorities, bodies, officials or workers concerned shall likewise be notified of the conclusion of the investigations.

## Title three

### ■ On relations with Parliament

#### ■ Article 32. On the annual report

1. The ARARTEKO shall report to Parliament on its activities in the form of an annual report.
2. The report must include a general assessment of the situation concerning the protection of rights in the Autonomous Community. The report must likewise include at least information regarding the number and type of investigations conducted; complaints rejected and the grounds for rejection; the results of the investigations and the suggestions or recommendations made to the bodies subject to oversight and, where appropriate, the Acts or legal provisions that must be enacted, amended or repealed in order to ensure better functioning of public administrations, and any other information deemed useful.
3. The report shall be presented orally before Parliament at a plenary session.

#### ■ Article 33. On extraordinary reports

When deemed appropriate based on the gravity or urgency of the situation, the ARAR-

TEKO may submit an extraordinary report to Parliament at any time and on his or her own initiative.

#### ■ Article 34. On the publication of reports

Annual and extraordinary reports shall be published in the 'Official Gazette of the Basque Parliament'.

#### ■ Article 35. On the collaboration with Parliament

1. The ARARTEKO shall attend parliamentary committee meetings when invited. He or she may also request attending such meetings.
2. Where investigations have been initiated at the request of a Committee or a Member of Parliament, the latter shall be informed of the results obtained. Should the Arar-teko decide not to intervene, a reasoned explanation must be provided.

## Title four

### ■ On relations with Spain's Ombudsman

#### ■ Article 36

1. In terms of its operation, the ARARTEKO is independent and autonomous of Spain's Ombudsman. It has the authority to conduct investigations in relation to the institutions and bodies listed in Article 9(1) without prejudice to the powers that, pursuant to Article 12 of Organic Act 3/1981 of 6 April 1981, may correspond to the Ombudsman.
2. The ARARTEKO may establish agreements with the Ombudsman to set criteria for joint action in order to materialise coordination and collaboration between the two institutions.
3. For the purpose of information and approval, Parliament must be notified of all ge-

neral agreements reached. Agreements shall be published in the 'Official Gazette of the Basque Parliament'.

#### ■ Article 37

The ARARTEKO may, ex officio or at the request of a party, address Spain's Ombudsman when the case so merits enabling the latter, in defence of the interests of citizens and whenever it deems it appropriate, to:

- a) lodge an appeal of unconstitutionality or amparo;
- b) make recommendations to national bodies when shortcomings in the functioning of the bodies and entities referred to in article 9 are caused by the poor functioning of the national government or by national legislation.



## Title five

### ■ On services

#### ■ Article 38. Staff

1. The ARARTEKO freely appoints the advisers and trusted staff members needed to perform its duties in accordance with its Regulation and within budgetary limits. Such staff shall be employed under the same regime as trusted staff of the Basque Parliament.
2. The rest of the ARARTEKO's staff shall be permanent staff members of the Basque Parliament which shall be responsible for assigning duties to such staff members, discipline (except for separation from service and other matters regarding their status as civil servants).

#### ■ Article 39. Special Situations

1. When the ARARTEKO's staff members come from the General Administration of the Autonomous Community, from the regional bodies of the Historical Territories or from the Local Basque Authorities, their original post and location, i.e. the one held

before being seconded to the Ararteko's office, shall be held for them and the time they spend at their new post shall count for all purposes.

2. When staff members come from other public administrations other than those previously mentioned, they shall be subject to applicable legislation.

#### ■ Article 40. Dismissal of staff

The Deputy, advisers and staff that is not permanent staff of the Parliament shall automatically be dismissed when the new ARARTEKO is sworn in.

#### ■ Article 41. Budget

1. The ARARTEKO shall prepare its own draft budget, which shall be processed in accordance with the rules regulating draft budgets of Parliament.
2. The ARARTEKO's financial allocation shall come from Parliament's budget.

### ■ Article 42. Autonomy in Expenditure

The ARARTEKO shall be subject to the same rules as Parliament for the purpose of authorising expenditure.

### ■ Article 43. Gratuity of the procedure

1. Complaints lodged before the ARARTEKO shall be free of charge.
2. The ARARTEKO's budget shall contain an item to cover expenditure incurred or material damage suffered by individuals pursuant to Article 12(d).

## Provision

### ■ FIRST ADDITIONAL PROVISION

Complaints stemming from an administrative act shall be disregarded when issued more than one year before the ARARTEKO takes office or, in cases of a lack of reaction from the administration, when the deadline has passed more than one year before the Ararteko was sworn in, without prejudice to an ex officio investigation based on the suspicion that the complaint was caused by general malfunctioning of the Administration.

### ■ SECOND ADDITIONAL PROVISION

The ARARTEKO shall approve the institution's internal regulation and shall then order its publication in the 'Official Gazette of the Basque Country'.

### ■ FIRST TRANSITORY PROVISION

1. Two years after the entry into force of this Act, the ARARTEKO may propose to Parliament, in a reasoned report, any amendments it deems appropriate.
2. The ARARTEKO may make recommendations to the Public Administrations urging them to organise in such a way as to ensure the most appropriate with it.

### ■ SECOND TRANSITORY PROVISION

Within two months of the entry into force of this Act, Parliament shall initiate the procedure to appoint the ARARTEKO.

### ■ FINAL PROVISION

This Act shall enter into force one month after its publication in the 'Official Gazette of the Basque Country'.



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