

**Contribution from the Ararteko, Ombudsman for the Basque Country, to the
European Ombudsman's strategic inquiry OI/2021/MMO**

I. The realisation of the right to independent living in the Basque Country

A. Background information and data

Some background information on the legal framework and some data will be provided in this first section, in order to facilitate a better comprehension of the terms and the information provided on the realisation of the right to independent living in the Basque Country.

1. Legal framework

a) State-level legal framework

This information may be contrasted and completed with the information provided by other Ombudsman offices operating within the Spanish State.

The basic structure of the System for the Promotion of Personal Autonomy and Assistance to Persons in a Situation of Dependence is laid down by Spanish Parliament [Act 39/2006](#), and it applies to all Autonomous Regions throughout the country.

The Act defines autonomy as:

The ability to control, face and take, of one's own accord, personal decisions about how to live in accordance with one's own norms and preferences, and to carry out basic activities of daily life. (Article 2.1)

“Dependence” (*dependencia*) is the term used to refer to the need for care and support. The Act defines it as follows

A permanent state of persons who, for reasons related to age, illness or disability, as well as to the absence or loss of physical, mental, intellectual or sensory autonomy, need the support of other persons or significant assistance to carry out basic activities of daily life, or, in the case of persons with intellectual disability or mental health issues, need other support for their personal autonomy (Article 2.2)

Under “basic activities of daily life” the Act understands

the most basic activities that allow a person to act with a minimum of autonomy and self-reliance, such as: personal care, basic domestic activities, essential mobility, recognition of persons and objects, orientation, or understanding and carrying out basic commands or tasks (Article 2.3).

Finally, Article 2.4 defines the needs for support to personal autonomy in the case of persons with intellectual disabilities as those needs *required to attain a satisfactory degree of personal autonomy within the community*.

It becomes apparent that the definitions of the Act overlap partially with the disability definition enshrined in Article 1 of the UN Convention on the Rights of Persons with Disabilities, where persons with disabilities are defined as those

who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

This definition has been incorporated into Spanish law by [Royal Legislative Decree 1/2013](#) incorporating the Umbrella Act on the rights of persons with disabilities and their social inclusion (Article 2 a)).

Thus, persons with disabilities may qualify for the support provided by the system established by (the above mentioned) Act 39/2006 if they find themselves in a situation of need for support for basic activities of daily life, just like persons of old age.

Some of the basic principles and rights of Act 39/2006 (System for the Promotion of Personal Autonomy and Assistance to Persons in a Situation of Dependence) include: personalised assistance in accordance with needs, promotion of the highest degree of autonomy possible, the permanence of persons in need for care and support in their communities, their participation, their right to obtain accessible, understandable, complete and continuous information, and their right to decide freely whether they wish admittance to institutional care (see Articles 3 and 4).

The Act establishes a system whereby each person applying for the different forms of assistance established by the Act undergoes an individual needs assessment, at the end of which the competent authority (in the case of the Basque Country, these are the three Provincial Councils) determines the dependence degree and elaborates an Individual Assistance Plan which details the concrete forms of support that the applicant is entitled to.

Article 26 of the Act defines three dependence degrees, which determine entitlement to services and benefits under the Act:

- Degree I: Moderate dependence. This applies to persons who need assistance in carrying out several of the basic activities of daily life, at least once a day, as well as to persons who need limited or intermittent support for their personal autonomy.
- Degree II: Severe dependence: This applies to persons who need assistance to carry out several of the basic activities of daily life twice or thrice a day, but do not need permanent support by a carer, as well as to persons who need extensive support for their personal autonomy.

- Degree III: Great dependence: This applies to persons who need assistance to carry out several of the basic activities of daily life several times everyday and, due to their complete loss of physical, mental, intellectual or sensory autonomy, require the indispensable and continuous support of another person, as well as to persons in need of generalised support for their personal autonomy.

Classification into one given degree determines the forms of support, and the intensity thereof, that the person is entitled to, according to personal needs. The common assessment framework was approved by the Spanish Government and is laid down by implementing regulation [Royal Decree 174/2011](#).

Act 39/2006 establishes three levels of protection:

- A basic level decided unilaterally by the Spanish Government after hearing the Social Services Conference (an organ created by the Act as a co-operation instrument between the Spanish and the regional Governments). This level shall be ensured to every beneficiary of the system, funded entirely by the Spanish Government.
- A second level of protection agreed bilaterally by the Spanish Government with each one of the Autonomous Regions, funded by the State and the Autonomous Regions. Autonomous Regions shall contribute at least 50% of the funding yearly.
- An additional level of protection established unilaterally by each Autonomous Region

Act 39/2006 and its implementing regulation [Royal Decree 1051/2013](#) establish the different forms of support that the beneficiaries of the system are entitled to access according to their assessed needs and their individual assistance plan. The different services and benefits are classified according to their nature and their mission in the system (Articles 15 to 24 of Act 39/2006 and Article 2 of Royal Decree 1051/2013). One person may benefit from more than one of the following, as their compatibility is also laid down by the Act and the Royal Decree. Finally, certain services are not foreseen for persons classified in degree I, as follows:

Services for the promotion of personal autonomy; assistance and care services

- Prevention of situations of dependence and promotion of personal autonomy (degrees I, II and III)
- Remote home assistance (degrees I, II and III)
- Home assistance (for personal care or for domestic activities) (degrees I, II and III)
- Day or night care centres (for older persons or for persons in situation of dependence according to the different types of disabilities) (degrees I, II and III)
- Residential care centres (for older persons or for persons in situation of dependence according to the different types of disabilities) (degrees II and III)

These services shall be provided preferentially to benefits in cash. Access to them is granted preferentially to persons with a higher dependence degree and according to the beneficiaries' wealth.

Benefits in cash

- Allowance tied to the acquisition of a service (acronym in Spanish: PEVS) (degrees I, II and III): This allowance is a substitute to the services listed above. It shall be granted whenever access to one of those services is not possible, be it provided directly by public authorities or by a private provider under a contract or agreement with the competent public authorities. This allowance is conditional upon its use for the acquisition of one of the services listed above.
- Allowance for personal assistance (acronym in Spanish: PEAP) (degrees I, II and III): This allowance shall be used for engaging and paying a personal assistant to help beneficiaries carry out their everyday activities, or in their access to education or employment. The implementing regulation of this allowance is devolved to Autonomous Regions and, in the case of the Basque Country, Provincial Councils, which may require that personal assistants meet certain qualifications or are professionals.
- Allowance for care within the family (acronym in Spanish: PECEF) (degrees I, II and III): This allowance is supposed to be granted exceptionally for beneficiaries to be cared for and assisted by family members who live together with them.

The State-level framework grants Autonomous Regions a margin in the implementation of the different forms of support listed above. They may regulate the concrete requirements to access benefits in cash as well as the palette of programmes and services offered by each service modality. Royal Decree 1051/2013 does establish, though, the minimum and maximum intensity for the different services, measured in weekly or monthly hours of provision of the service. The services are provided and the benefits managed and disbursed by the social services of the Autonomous Regions. In the case of the Basque Country, most of these services and benefits are devolved to the Provincial Councils and municipalities.

The care system designed by Act 39/2006 is funded by public authorities (Spanish Government and Autonomous Communities) from tax revenue. However, depending on the cost of the services provided and on their individual wealth, beneficiaries may be requested to pay a part of the services they receive. In the case of benefits in cash, the beneficiaries' wealth shall be taken into account when determining the amount they are entitled to. No-one shall be left out of the system due to lack of financial means (see Articles 32 and 33 of the Act).

b) Basque Country legislation

The assistance system created by Act 39/2006 has been incorporated into the [Social Services Act 12/2008](#) of the Basque Parliament. The Social Services Act enumerates the promotion of personal autonomy among its objectives (Article 6.1.a), and seeks to promote the provision of assistance within the beneficiaries' communities and preferably at home (Article 8 b)). This Act, however, is not limited to those aspects, but contains comprehensive regulation of the social services provided by the Basque Government, the Provincial Councils and municipalities across the Autonomous Region of the Basque Country. Many of these services are not aimed at older persons or

persons with disabilities, while others expand on the services and benefits provided by Act 39/2006 for those two groups of persons and go beyond the services and benefits of Act 39/2006. The different services are laid down and detailed in the Basque Government's [Decree 185/2015 on the Social Services Portfolio](#). These include:

- Service of social and psycho-social intervention, which aim at helping beneficiaries acquire skills, attitudes, abilities and knowledge that promote their autonomy, social inclusion and better life habits. This service includes relational services such information, mediation, training and support. It is aimed at persons at risk of dependence.
- Support to carers: This service offers care and self-care skills to persons with care responsibilities. It encompasses information, counselling and training.
- Supported housing services: These consist of individual apartments or collective flats aimed at persons with a moderate degree of dependence. Persons living in this kind of supported housing receive assistance and follow-up, as well as support in domestic activities.
- Occupational centres for persons with disabilities: These centres offer personal development programmes that promote the autonomy of persons with disabilities, their social and professional skills and their integration into the labour market, when this is possible.
- Rest for carers: This service offers sporadic stays in residential, day or night-care centres to persons usually cared for by their family environment. It aims at alleviating family carers' burden.
- Support to independent life for persons with disabilities: It is aimed at persons with intellectual disabilities or mental health conditions who cannot manage an Independent Life Programme on their own. It comprises different mentoring and support activities to accompany them as they transition to independent living, such as information, follow-up, mediation or training.
- Early intervention service: It is aimed at children between 0 and 6 years of age as well as at their families and their environment. Its objective is to provide holistic support to the needs of children with developmental problems or risk thereof, in order to mitigate or prevent the effects of their handicaps, promote their development and eliminate barriers.
- Technical aid and adaptation service: It facilitates access to products and devices that beneficiaries may need to carry out their daily life activities, and it makes proposals to render beneficiaries' homes adapted to their needs and accessible. Technical aid products and devices, which can be used more than once, are put at the beneficiaries' disposal on a loan basis.
- Adapted transportation: This service helps persons with limitations in their mobility access places and activities they would not be able to reach with the public transportation network.
- Allowance for the acquisition of aid material: This is a one-off allowance tied to the acquisition of technical aid products and devices that cannot be used more than once.
- Allowance for adapting home and vehicles: This is a one-off allowance disbursed to carry out adaptation works at the beneficiaries' homes to improve their accessibility and promote autonomous living, as well as adaptation of the beneficiaries' vehicles.

The implementing regulation as well as the organisation, funding and provision of most of these services is devolved to the Provincial Councils and Municipalities.

2. Relevant data

The Basque Country is sub-divided into three Provincial Councils, which count the following population:¹

- Araba: 330,442, of which 70,476 are 65 and older.
- Bizkaia: 1,142,323, of which 265,738 are 65 and older.
- Gipuzkoa: 716,925, of which 163,218 are 65 and older.

According to the [Strategy on Active Ageing for the Basque Country 2015-2020](#), the Basque Country had, in 2014, an Active Ageing Index of 36.6 points, above the EU average back then (34.05).²

According to the [monthly statistics of the Institute for Older Persons and Social Services within the Spanish Ministry of Social Rights](#), as of 28 February 2021,³ the Basque Country had registered a total of 105,775 applications for services and benefits under Act 39/2006. Of those, 99.55% had been processed. 19,534 persons were classified in dependence degree III (great dependence); 25,404 in degree II (severe dependence) and 34,114 in degree I (moderate dependence). Thus, the entitlement to receive services and benefits was recognised to a total of 79,052 persons.

According to the same statistics, of those 79,052 persons, 65,641 were actually receiving one or more of the different services and benefits provided for by Act 39/2006. Because one person may receive more than one service, the total number of services and allowances granted was 88,821, distributed as follows:

Services

- Prevention of situations of dependence and promotion of personal autonomy: 540
- Remote home assistance: 20,048
- Home assistance (for personal care or for domestic activities): 6,160⁴
- Day or night care centres: 6,743
- Residential care centres (for older persons or for persons in need for care and support according to the different types of disabilities): 12,020

Benefits in cash

- Allowance tied to the acquisition of a service (PEVS): 1,279
- Allowance for personal assistance (PEAP): 6,275. In this regard, it is notable that, in total, in the Spanish State this allowance has been granted to 8,025

¹ Source: National Statistics Institute, data as of 1 July 2020.

² Gobierno Vasco, Departamento de Empleo y Políticas Sociales: *Estrategia Vasca de Envejecimiento Activo 2015-2020* (Vitoria-Gasteiz, 2015), Anexo I.

³ Instituto de Mayores y Servicios Sociales: Estadística mensual del Sistema para la Autonomía y Atención a la Dependencia, Datos de gestión a 28 de febrero de 2021.

⁴ This figure may not be accurate because due to the fact that the Bizkaia Provincial Council delegates this service to the Municipalities by transferring to them a lump-sum and does not have data on the number of beneficiaries within its territory.

persons, of which 6,275 live in the Basque Country. This shows that the social services of the Provincial Councils, who have the competence for the implementing regulation and management of this allowance, make a much more intensive use of it than the rest of the Autonomous Communities. Within the Basque Country, the Provincial Council of Gipuzkoa has granted, by and large, the highest number of PEAP benefits.

- Allowance for care within the family (PECEF): 35,756

Additional services provided by Basque Authorities (data for 2018 from the draft evaluation of the I Strategic Social Services Plan of the Basque Government, unpublished)

- Service of social and psycho-social intervention: 12,383 users
- Supported housing (individual apartments or collective flats) for older persons: 1,447 places
- Support for carers: 1,647,340 euros spent
- Rest for carers of older persons: 1,191 places
- Technical aid and adaptation service: 2,058,963 euros spent
- Adapted transportation: 3,714,370 euros spent (Araba+ Bizkaia, no data for Gipuzkoa)
- Allowance for the acquisition of aid material: 3,558 beneficiaries

Specific services for persons with disabilities (data for 2018 from the draft evaluation of the I Strategic Social Services Plan of the Basque Government, unpublished)

- Day-care centre for persons with disabilities: 1,580 places (a part of which is included in the system under Act 39/2006)
- Day-care centre for persons with mental-health conditions: 621 places (a part of which is included in the system under Act 39/2006)
- Occupational services and centres: 2,835 places
- Residential centres for persons with disabilities: 2,357 places (a part of which is included in the system under Act 39/2006)
- Residential centres for persons with mental-health conditions: 622 places (a part of which is included in the system under Act 39/2006)
- Rest for carers of persons with disabilities: 1,028 places
- Early intervention service: 4,147 users
- Support to independent life for persons with disabilities: 1,399,128 euros spent

The draft evaluation shows the following evolution in some, especially relevant services and benefits:

Between 2011 and 2018, the increase in the number of residential places has been significantly higher than the increase in day-care centers or supported housing units, which only increased by 33 units. The latter remain below the Basque authorities' forecast from 2016. It can be observed, too, that the hours provided in domiciliary assistance in 2018 remained below the forecast made in 2016, and so did the places in supported housing units and day-care centers. In contrast, recipients of both PEAP and PECEF benefits were more than forecast in 2016.

Funds for residential care for older persons represented 30% of the total running expenditure of the social services system in 2018, and they increased by nearly 59% as compared to 2011 and exceeded the 2016 forecast by over 25%. Expenditure in residential care for persons with disabilities also increased significantly.

Expenditure in domiciliary assistance decreased as compared to 2011, as well as the number of service hours provided. It remained below the 2016 forecast. Expenditure in psychosocial intervention sank below 2011 levels and remained behind the 2016 forecast as well. In turn, remote assistance has increased significantly as far as the number of beneficiaries is concerned, and its expenditure has grown. A growth in expenditure was also the case for the service of technical aid and adaptation.

B. The Ararteko's experience

As part of its mandate, the Office of the Ararteko regularly receives complaints related to social and care services. In addition to this, the Office of the Ararteko obtains additional information about the functioning of the services through its engagement with authorities and civil society organisations, and through its reports and own-initiative investigations. For this contribution to strategic inquiry OI/2021/MMO, the Office of the Ararteko will provide information from its five most recent annual reports (2016-2020)⁵ and from two of its special reports: one from 2016 on local-level social services in the Basque Country, and another one from 2017 on accessibility of hospital premises. The issues reported here are those directly or indirectly related to policies and practices that help promote independent living and aim at preventing institutionalisation.

1. Older persons

a) Problems related directly or indirectly to the promotion of independent living

) Services

In relation to home assistance services, the Ararteko has been made aware, in the past years, of certain issues such as delays in the actual delivery of the service once the entitlement to receive it had been acknowledged. Other issues raised in the past years in relation to this service relate to its somewhat rigid structure. The Ararteko has reiterated in its annual reports that deep reflection is required in relation to this service, as it does not give an adequate response to the persons in need of it anymore. The Basque Government's Social Services Strategic Plan 2016-2020 stated that a strategy was needed to attain the forecast expenditure and hours of provision of the service. It pointed to feeble flexibility and innovation, rising costs, competence by informal economy and benefits in cash, as well as to the co-funding levels required from beneficiaries, as problems plaguing the service. The Ararteko has expressed its coincidence with this diagnosis. In fact, in its [Special Report on local-level social](#)

⁵ All Annual Reports are publicly available at: https://www.ararteko.eus/contenedor.jsp?seccion=s_idoc_d4_v3.jsp&codbusqueda=6&language=es&codResi=1&codMenuPN=1&codMenuSN=376&codMenu=398.

services,⁶ the Ararteko expressed concerns related to the “deterioration” of this service due to causes such as those pointed out by the Government’s Strategic Plan.

Provision of domiciliary care services appears to be especially challenging in rural areas of the Araba Provincial Council. Persons who would like to apply for PEAP benefits are prevented from doing so because, in the rural context, they cannot find any persons meeting the qualifications required by PEAP⁷ regulations to act as carers. If their family members cannot act as carers, they are not eligible to receive PECEF⁸ benefits either. Municipalities in rural areas have confirmed the scarcity of qualified persons. In this connection, the Ararteko has emphasised, in its Annual Report for 2020, the need to reinforce training and qualification measures for carers.

The Ararteko has highlighted many times the need to reinforce models that promote domiciliary assistance to beneficiaries within their communities. However, the Ararteko does not lose sight of the fact that certain persons find themselves in situations in which residential care is the only realistic alternative for them and their families. According to the data above, more than 59.000 persons across the Basque Country have been classified in degrees II and III (severe and great dependence). To these two groups, as opposed to degree I, Act 39/2006 offers residential care as one of the services in its portfolio. Recognising the existence of needs and demand for this service, the Ararteko has been made aware of an insufficient number of residential services in the Basque Country, which, according to the complaints received, appears to be more acute in Bizkaia and especially in Araba. Care homes may be directly managed by the Provincial authorities, or may be privately managed and (at least partially) publicly funded under contracts or agreements. The Ararteko has noted an insufficiency of both types of homes, which means that persons entitled to residential care have to wait for months before they actually receive the service, and sometimes even consume their own savings paying for residential services privately. The Ararteko has criticised excessive recourse to PEVS⁹ benefits in Araba as a temporary solution to this problem, as said provisional solution appears to be consolidating into a structural one. This was noted in the Special Report on local-level social services. A side effect of this scarcity is that persons with a lower dependence degree living in care homes managed by municipalities cannot move to provincial care homes as their situation aggravates, which means that they do not receive adequate support in accordance with their needs. In turn, new persons requiring the assistance provided in municipal care homes do not find a place there either. Thus, the Ararteko has insisted on the need to expand residential services, in order to meet actual demand on the rise.

⁶ Ararteko: *La situación de los servicios sociales municipales en la Comunidad Autónoma de Euskadi. Situación y propuestas de mejora* (Vitoria-Gasteiz, 2016).

⁷ PEAP benefits are those granted for engaging and paying a personal assistant to help beneficiaries carry out their everyday activities, or in their access to education or employment.

⁸ PECEF benefits are those granted for beneficiaries to be cared for and assisted by family members who live together with them.

⁹ PEVS benefits act as a substitute to the services encompassed by Act 39/2006. It shall be granted whenever access to one of those services is not possible. The allowance is conditional upon its use for the acquisition of one of the services listed by the Act.

J Benefits in cash

The public has brought certain problems in relation to benefits in cash to the Ararteko's attention, which were sometimes of a structural nature, and sometimes not. The former have been detailed above, as they were linked to the provision of certain services. One of them was the excessive recourse to PEVS benefits to remediate shortages in the provision of residential care. The other rather structural issue relates to the scarcity of sufficiently qualified carers in rural areas, which prevents persons from being eligible for PEAP benefits, as eligibility for PEAP requires engaging professional carers.

Some persons have complained of red tape and delays in the granting and reception of their benefits. There have been complaints related to the incompatibility of these benefits with other social security transfers, or to the rejection of applications for benefits. In several of these cases, the Ararteko found that the public authorities involved had acted correctly, though.

Finally, the regulation of PEAP benefits in Bizkaia has caused some problems due to the fact that the person in need of care, who benefits from PEAP money to pay for a carer, needs to be younger than 65.

b) Positive aspects

The Ararteko has noted in its reports some positive developments at policy level in the Basque Country in respect to the promotion of autonomous and independent living of older persons.

The Basque Government released in 2015 its Strategy on Active Ageing for the period 2015-2020.¹⁰ This Strategy included autonomy among its principles. The self-determination of older persons was to be respected, as well as their right to receive the support required for them to take their decisions freely and voluntarily. The Strategy put emphasis on the promotion of older persons' capacity to determine their own life project. Another of its principles was that of participation of older persons: the Strategy intended to "give the floor" to ageing persons and, as a preliminary step, it set out to provide them with adequate, clear and accessible information.

The Strategy gave priority to the mainstreaming of policies aimed at preventing situations of dependence and promoting autonomous decision-making on one's life project. Among those policies, the Strategy names adapting homes to make them fit to house older persons throughout their lives, and meet their special needs. It also mentions the identification and study of new supported housing modalities that can ensure that ageing persons will be able to remain there as they become older. Urban planning legislation in the Basque Country facilitates the construction of this type of housing.

One of the outcomes of this Strategy, which the Ararteko has also noted in its reports, was the [Governance Strategy with Older Persons \(2019-2022\) of the Basque](#)

¹⁰ See note 2 above.

[Government](#).¹¹ This Strategy aims at integrating older persons, their knowledge and life-experience into public decision-making processes. Ageing persons should participate in the definition of the problems affecting them and collaborate with public authorities in finding solutions. This objective presupposes the promotion of personal autonomy and catering for ageing persons' different needs in accordance with their degree of autonomy or dependence. The Strategy emphasises the rights of older persons as citizens and underlines that they have to take control over their own lives by exercising their right, and accepting an obligation, to participate in society.

Finally, and just as one example among others, the Ararteko has highlighted in its Annual Report for the year 2020 the programme "[Etxean Zurekin](#)" ("At home with you") put in place by the Provincial Council of Araba in the context of the pandemic. It reinforces and extends professional domiciliary assistance for persons in a situation of dependence, and it includes meal delivery and shopping services. Thus, in the context of the pandemic, it aims at providing additional support to persons in need of assistance who remain able to live on their own.

2. Persons with disabilities

a) Problems related directly or indirectly to the promotion of independent living

The Ararteko has received complaints revealing different issues in the services related to the promotion of independent living among persons with disabilities.

One of these problems was related to the guaranteed income, a labour-oriented policy aimed at providing minimum revenue to persons lacking financial means, while promoting their integration into the labour market. The Basque employment authority has refused this guaranteed income to persons with disabilities living in community housing units managed by NGOs, due to the fact that those housing units did not correspond to the concept of "collective housing" contemplated as a requisite for eligibility by the Decree regulating the guaranteed income. The problem lies in the fact that these housing units were not homologated or authorised as "collective housing", nor had the managing NGOs gone into any agreement or contract with public authorities. They received public funding, though. As a result, a limitation on the number of recipients of the guaranteed income applies. Thus, Basque authorities may grant such income to a maximum of two recipients (individuals or family units) for each housing unit, while it lies in the nature of these housing units that more than two individuals or family units may inhabit them. When the Ararteko raised this problem with the Basque employment authority, this responded that the NGOs should request authorisation to the Provincial Councils. However, for the time being, a regulation laying down the conditions to be met by authorised housing units (which falls under the competence of the Basque Government) has not been issued, so that it is not actually possible for them to request such authorisation.

¹¹ Gobierno Vasco, Departamento de Empleo y Políticas Sociales: *Estrategia Vasca de Gobernanza con las Personas Mayores 2019-2022* (Vitoria-Gasteiz, 2019).

Another problem that the Ararteko has repeatedly addressed in its annual reports concerns the scant number of public, protected flats adapted for persons with disabilities. The number of public, protected flats being extremely limited as such, adapted flats either remain well below demand, or are territorially distributed in a way that does not match all needs. The Ararteko frequently receives complaints in relation to this. In some cases, the families concerned request the exceptional assignment of an adapted flat outside the regular assignment procedure, but the competent Department of the Basque Government has refused to do this.

Finally, just like in the case of older persons, the Ararteko has underlined sometimes the insufficient number of places at residential care centres for persons with mental health conditions, which leads to persons with a lower dependence degree and with acceptable financial means having to wait for a place for prolonged periods of time. The draft evaluation of the I Social Services Strategy shows an increase in the number of residential places for persons with disabilities and for persons with mental health conditions, as well as in day-care centres. However, by 2018, residential places had increased less than forecast in 2016.

b) Accessibility to hospital premises

In 2017, the Ararteko published a [Special Report on the accessibility of hospital premises for persons with disabilities](#).¹² The Report found shortcomings in all stages of the accessibility chain: in access to the premises, in the itineraries within the premises, and in mobility in each of the different spaces within the premises (waiting rooms, offices, rooms, etc.). The Report acknowledges that new premises are built and designed fulfilling accessibility standards, however, significant shortcomings remain. Adaptation works carried out in older premises do not ensure yet a satisfactory degree of accessibility allowing unhindered access to persons with disabilities. The Ararteko's report revealed that none of the hospitals within the Basque Country had ever drafted accessibility assessments and plans as required by the Basque Parliament's [Act 20/1997 on the promotion of accessibility](#).

The Ararteko's Report recommended that the Basque Health Service should approve and put in place an accessibility strategy on the basis of a previous needs assessment and with a view to complying with their legal obligation to draft quadrennial accessibility programmes. Each hospital should have its own accessibility plan, including a timeline. It also recommended the adaptation of the urban environment and itineraries leading to hospital premises, including nearby streets, bus, train and underground stops, and parking lots. Other recommendations include training and awareness-raising, the engagement of relevant civil society organisations, or the incorporation of universal accessibility principles to public procurement procedures.

The Ararteko has been following up on the implementation of its recommendations, and could ascertain progress in its Annual Report for 2019.

¹² Ararteko: *Diagnóstico de accesibilidad en los hospitales de la Comunidad Autónoma del País Vasco para las personas con discapacidad* (Vitoria-Gasteiz, 2017).

3. The Ararteko's overall assessment

In its Annual Reports through the last five years, the Ararteko has noted a remarkable commitment of Basque authorities with the promotion of personal autonomy and the assistance of persons in situations of dependence. This commitment has become apparent in the funding of the services and benefits that Basque authorities have provided, additionally to the funding allocated by the Spanish Government. The Ararteko has consistently considered assistance to dependent persons reasonable.

Having said this, there are certain aspects that require the Ararteko's attention. The Ararteko reckons that some 80% of persons over 65 can lead an autonomous life, while 20% would need care and support. The Ararteko senses a clear preference in society, and among ageing persons, for domiciliary care. The COVID-19 pandemic has evidenced the deficits of residential care as well as the need to reinforce the diverse modalities of domiciliary care. Thus, the Ararteko has reiterated, in several of its annual reports as well as in its Special Report on local-level social services, the need to promote community care models based on the beneficiaries' preferences. Nevertheless, the Special Report highlighted that services aimed at the prevention of situations of dependence, as well as those aimed at enabling persons in need for care and support to remain in their homes while receiving care, were among the least-developed services in the Basque portfolio. The Ararteko warned back then (2016) that social support and domiciliary assistance needed reinforcement, in order to prevent further deterioration of the autonomy in persons at risk of becoming dependent. In fact, in its Annual Report for 2020, the Ararteko has expressed some concern at the provision of domiciliary services and more specifically, in relation to the oversight exercised by public authorities over private providers carrying out the services. The Ararteko has also indicated, in the past years, a need for upgraded public support to carers, and for better inter-institutional coordination to improve early detection and assistance to persons at risk of dependence. The (unpublished) draft evaluation of the Basque Government's I Social Services Strategic Plan lists domiciliary assistance and psychosocial support among those services in need of improvement, together with supported housing services for older persons and the rest-for-carers service.

At the same time, the Ararteko cannot ignore the situation of those persons in need for residential care due to their severe or great degree of dependence. The complaints received and the information available point to a scarcity of residential resources, which remain below demand. Actual need for that type of care needs to be met, so that beneficiaries are adequately assisted. For this reason, the Ararteko has called insistently for an increase in residential capacities. The draft evaluation of the I Strategic Social Services Plan of the Basque Government shows an increase of 2.319 residential places between 2011 and 2018, and enhanced budgetary efforts in this regard, as pointed out above. Having said this, the Ararteko does share the view that the pandemic has revealed the weaknesses and risks associated to residential care, and that alternative models are needed. For this reason, a new Special Report on the impact of COVID-19 in care homes is being prepared presently (see section 4 below).

Specifically in relation to benefits in cash, the Ararteko has repeatedly expressed concerns at the excessive use of PEVS benefits and called for reflection on its use and regulation, in order to prevent it from becoming a structural solution. The draft

evaluation of the I Strategic Plan also concludes that PEVS benefits need some re-thinking. In regard to PECEF benefits, there are some question marks in the Ararteko's view. This is due to the fact that PECEF benefits are granted to enable care by family members who are not care professionals. Act 39/2006 conceives of PECEF benefits as exceptional, however, they surpass by far PEAP benefits and other domiciliary services. Supervision of care provided by family members is difficult and sensible to carry out by public authorities, while situations of overburdening and lack of training of family carers, of mistreatment or fraud (because the caring family member does not actually live at the cared person's home as required by law), are probably occurring. In this sense, moving from PECEF to PEAP benefits, as the Provincial Council of Gipuzkoa is doing, permits closer control.

The draft evaluation of the I Strategic Plan acknowledges that the Basque Social Services System will face sustainability problems unless the relative weight of residential care diminishes within the whole of the system as a result of an increase of community-based care, although de-institutionalisation strategies shall target institutionalised groups other than the elderly. Increases in life-expectancy and in disabilities (especially dementia) will require more places in care homes for persons in situation of severe and great dependence, as well as adapting and diversifying the care services provided in these homes. For persons with a lesser degree of dependence, alternative forms of supported housing and tailored assistance and support will need to be designed and put in place.

The draft evaluation concludes that the "care pyramid" needs to be inverted by reinforcing a community care model enabling older persons to remain and to be cared for at home, and by transforming residential care and supported housing units for elderly persons, which should become smaller and be conceived of as homes. It calls for further reflection on benefits in cash and for reinforcement of services supporting and promoting autonomous living, as well as of services for prevention of situations of dependence, and of PEAP benefits.

4. Special Report on the impact of COVID-19 in care homes (under preparation)

The COVID-19 pandemic has taken a very high death toll in care homes, especially in those for elderly persons. In response to that situation, the Ararteko decided to carry out a study and to issue a Special Report, which is currently under preparation.

The study's objective is to describe accurately the impact of COVID-19 in care homes across the Basque Country between March and November 2020. The study will gather information from each care home. It will take into account personal factors related to the residents that may increase their risks, as well as the assessments made by the directors of the homes in regard to the preventive measures taken and the challenges faced. The study will also analyse the measures taken in other countries as well as those best practices, which succeeded in containing the spread of the pandemic in care homes for elderly persons.

The data and information gathered will be analysed by a group of experts who will discuss about the most effective measures to prevent and tackle COVID-19 in care-

home settings. This group will also make proposals that will constitute the basis for the Ararteko's recommendations to Basque public authorities.

The study is due to be finalised by the end of the first half of 2021. Nevertheless, data should be available by mid-May. Should these data be of any interest for the European Ombudsman's parallel inquiry, we would be happy to provide them as soon as they are at our disposal.

II. Participation of Ombuds institutions in national monitoring committees

The European Ombudsman's letter asks ENO members whether they consider feasible and desirable that Ombuds institutions participate in the national monitoring committees that will examine the performance of EU-funded programmes. The letter notes that such committees are to be established at national level.

Leaving aside the question that regional Ombuds institutions, such as the Ararteko, would probably not be invited to a monitoring committee established at national level, as the invited Ombuds institution would be most likely the Spanish Ombudsman, the Ararteko does hold the view that participation of Ombuds institutions in the aforementioned committees would be desirable. As the provision of assistance to dependent persons lies, to a large extent, with the Autonomous Communities, some form of decentralisation or delegation system of the monitoring committees would be, in the Ararteko's view, highly desirable. Fundamental rights need to be mainstreamed into all policies and also into the distribution of EU funds, and Regional Ombuds institutions can provide useful insights in this respect. Regarding the issue of feasibility, the EU's Fundamental Rights Agency opinions in its [Report on Strong and Effective National Human Rights Institutions](#)¹³ have to be recalled: "Special attention should be paid to ensuring that each explicit mandate and additional task of an NHRI is endowed with sufficient resources to be carried out effectively and without undermining existing work. The EU and its Member States must also ensure that additional mandates and additional tasks do not impinge on the effectiveness of the NHRI by disproportionately locking up capacity or indicating strategic choices. EU Member States should consult NHRIs on any legislative or policy initiatives that impact NHRIs, including mandates and budgets." (FRA Opinion 15).

¹³ European Union Agency for Fundamental Rights: Strong and Effective National Human Rights Institutions. Challenges, Promising Practices and Opportunities (Luxembourg, 2020).