



**AN INNOVATIVE EXPERIENCE IN  
RESTORATIVE JUSTICE BY THE  
ARARTEKO-OMBUDSMAN FOR THE  
BASQUE COUNTRY:  
ANALYSIS OF AN INITIAL  
RESTORATIVE CIRCLE**

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**ARARTEKO**

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## I. BACKGROUND

Starting back in 2018, the Office of the Ararteko-Ombudsman for the Basque Country had been involved in a complaint procedure relating to a housing facility for victims of gender based violence, as several users had reported a series of shortcomings. The complaint procedure was completed by January 2020, after intense work and close dialogue between the Ararteko and the public administration in charge of the facility, as well as with the injured parties. The institutional involvement of the Ararteko was expected to end with a Decision, concluding that the incorrect action of the administration in question had been adequately corrected during the Ararteko's intervention. The reasoning was that the public facility that was the subject of the complaint had been replaced by another. Furthermore, the facility had been seen to be evolving towards a new care model (still being set up at that time) in line with the legally required standards and fully guaranteeing the rights of the users and better adapted to their real needs, in the opinion of the institution of the Ararteko.

However, when the intervening parties – administration and claimants – were told of the conclusions of the Ararteko, neither of the sides were satisfied with the outcome of Ararteko's intervention. On the one hand, one of the claimants considered that her personal and professional life had been seriously injured as the result of the denounced facts and her experience in the facility in question. Given her knowledge of Restorative Justice (hereinafter RJ), the user asked the Ararteko for a space for dialogue and a response from the administration in question by means of a restorative practice arranged by the institution of the Ararteko itself. On the other hand, even though the care model had been remodelled, and, furthermore, endorsed by the Ararteko, the administration involved acknowledged the lack of satisfaction of the complainant. It likewise felt that the new model set up as the result of a far-reaching review process continued to be compromised, insofar as it could be questioned by its potential users as the result of the extent of the dispute.

Aware that the feeling of injustice had not been banished by the ordinary complaint procedure of the institution that had ended with the formal decision published, the Ararteko's Equality Department Coordinator in charge of the proceedings contacted the Ararteko's Justice Department Coordinator, a facilitator and expert in RJ, to explore the possibility of delivering on the demand of the person who continued to feel injured and who had not been satisfied with the formal closure of her grievance.

The restorative circle was held at the Ararteko Office in San Sebastian on 30 January 2020, after the completion of the ordinary complaint procedure of the Ararteko and outside its supervisory function of the performance of the administration.

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## II. SHORT INTRODUCTION TO RESTORATIVE JUSTICE

Restorative Justice (RJ) is a theory, as well as being an international social movement to reform criminal justice. It establishes that crime is first and foremost harm to a specific individual and the community, unlike conventional criminal justice, which is fundamentally retributive, argues that a crime violates a legal provision, and that the main victim is the State. It is therefore a new approach to criminal justice where the key role in the dispute is returned to the parties and the community, assisted by a professional or professionals (mediators or facilitators) and where the role of the State comes into play, as applicable, a posteriori to give legal validity to the process. Thanks to its proven international success with extensive research and studies over the last 25 years<sup>1</sup>, RJ has expanded from the criminal field to other disputes affecting all or part of society, such as family (separations and divorces), multicultural, neighbour and community disputes. This expansion from the criminal field to other social disputes implicates the Ombudsman institution as the defender of citizen rights vis-à-vis the action of the public authorities.

RJ has undergone substantial developments in Europe and internationally in the last 20 years. The latest milestones are respectively the [Venice Declaration of the Ministries of Justice of the Council of Europe on the role of restorative justice in criminal matters](#) of December 2021 and the [Recommendation CM/Rec\(2018\)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters](#) and the UN Handbook on Restorative Justice Programme<sup>2</sup>.

As regards Spanish legislation, the main reference is the [Victim of Crime Statute 4/2015 of 27 April](#)<sup>3</sup> which transposes Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, which regulates the conditions in which the victims may access RJ services and determines the necessary safeguards.

As regards its legal definition (even though it refers to the criminal field, it can be transferred to others with the appropriate terminological corrections), [Recommendation CM/Rec\(2010\)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules](#) says about RJ that it *“includes approaches and programmes based on several underlying assumptions: a.) that the response to crime should repair as much as possible the harm suffered by the victim; b.) that offenders should be brought to understand that their behaviour is not acceptable and that it has had some real consequences of the victim and the community; c.) that offenders can and should accept responsibility for their action; d.) that victims should have an opportunity to express their needs and participate in determining the best way*

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<sup>1</sup> A good compilation of research in this regard can be consulted at the website of the European Forum for Restorative Justice (EFRJ): <https://www.euforumj.org/en/research-reports>

<sup>2</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME *Handbook on Restorative Justice Programme*. 2nd ed. Vienna: United Nations, 2020. Criminal justice handbook series. Available at: <https://www.unodc.org/documents/justice-and-prison-reform/20-01146-Handbook-on-Restorative-Justice-Programmes.pdf>

<sup>3</sup> Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito

for the offender to make reparation, and e.) that the community has a responsibility to contribute to this process”.

As regards the principles and values of RJ, the greatest contribution has been by the *European Forum for Restorative Justice (EFRJ)*<sup>4</sup> the leading European entity in the field:

## PRINCIPLES

- Voluntary participation based on informed consent
- Direct and authentic communication
- Processes designed to fit the participants’ needs, capabilities and culture
- The needs of each participant must be valued equally, with the focus on people making themselves actively accountable, and with support, for the harm caused
- Non-judgemental, multipartial facilitation<sup>5</sup>
- The importance of dialogue
- Flexible and assessed implementation of agreed actions

## VALUES

- Justice
- Solidarity and responsibility
- Respect for human dignity
- Truth

In RJ, the victim or injured party plays a central and fundamental role, so that they are entitled to benefit from a form of reparation by the perpetrator of the crime or harm, known as the “*offender*” or “*aggressor*”. The latter is required to take responsibility for the harm caused as part of the rehabilitation process, and so they can return and become an asset for the society or community to which they belong. The third fundamental aspect when talking about RJ is the participation, to some extent, of society or the community, so that society itself takes part in the process and

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<sup>4</sup> CHAPMAN, T. y TÖRZS, E. ed. *Connecting People to Restore Just Relations. Practice Guide on values and standards for restorative justice practices*. Leuven: European Forum for Restorative Justice, 2018. Available at <https://www.euforumrj.org/sites/default/files/2019-11/efrj-values-and-standards-manual-to-print-24pp.pdf>

<sup>5</sup> Possibility of shifting the process to the more unbalance or weakened party at any given moment, so that the necessary balance is achieved by making one party stronger so that all the parties are legitimate and important in the process and able to contribute and make decisions.

undertakes to re-integrate the victims and aggressors in it, thus fostering more democratic and cohesive societies.

There are different RJ practices, with the most usual being mediation, circles and conferences. All these practices have characteristics in common, such as being voluntary, confidential and having the impartial help of a third party or parties, but there are also important differences.

**Mediation** is the best-known technique, where the two parties in a dispute try to reach a settlement with the help of an impartial/multipartial third party (mediator). However, from the RJ perspective, one shortcoming is the usual lack of direct participation by society or the community, beyond the possible support of the relatives or people close to the intervening parties. Furthermore, it is a technique that can be used without there being an underlying dispute affecting all or a part of society, a supposition inherent to RJ. A distinction therefore needs to be made between mediation as a mere technique and mediation as a RJ practice<sup>6</sup>.

In the **circles**, unlike mediation, all the people affected by the dispute in one way or another take part, seated in a circle as the name indicates in a safe space. The participation of the people of the society/community is particularly important and they, helped by one or more facilitator, share the difference experiences of the dispute. Reaching an agreement is not essential, although different agreements may be reached regarding the future depending on the type of circle. It is the most versatile, flexible and multi-faceted restorative technique and has little in common with mediation with different parties or with the people supporting the parties.

Finally, the agreement between the victim-aggressor parties in the **conferences** is conditioned by the participation and decision of other people close to the victim, the aggressor and the community. The aim is to work to seek a reparation agreement accepted and signed by all the participants, usually with the help of two or more facilitators.

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<sup>6</sup> For example, an international mediation may exist between companies to avoid international legal surcharges in import-export cases. The amount of the debt may be mediated with an impartial third party – mediator – who does not make any proposals – unliked conciliation – but which has nothing to do with RJ.



### III. RESTORATIVE JUSTICE AND THE OMBUDSMAN INSTITUTION. LEGAL AND JUDICIAL FRAMEWORK AND COMPARATIVE ANALYSIS

The Ombudsman institution, Ombudsperson or Ombuds<sup>7</sup> from its inception in Scandinavia, which is the model that inspired both the Spanish *Defensor del Pueblo* and Basque Ararteko, has two main functions. On the one hand, promoting and defending the fundamental human rights and freedoms by an independent and neutral institution appointed by a qualified majority of the Parliament; on the other hand, overseeing the activity of the public administration, in its widest sense, with respect to the irregularities and illegalities that may occur in its actions, along with maladministration situations that harm the citizens.

According to the definition of the **International Ombudsman Institute (IOI)** of which the Ararteko is a full member: *The role of the Ombudsman is to protect the people against violation of rights, abuse of powers, unfair decisions and maladministration. The Ombudsman institutions play an increasingly important role in improving the public administration, while making the government's actions more open and its administration more accountable to the public.*

The Ombudsman institution exists in over 140 States and at national, regional and municipal level, and enjoys many different powers. However, all of their functions are legally regulated in terms of their scope of action, respecting and promoting human rights, fundamental freedoms and good governance. The different models share a series of fundamental values such as independence, objectivity, transparency, anti-formalism, neutrality and justice. These arise from certain common rules, such as those contained in the [Paris Principles](#), adopted by the United Nations General Assembly in 1993 as international standards for national human rights institutions, and in the Principles of the Council of Europe on the protection and promotion of the Ombudsman institution ([Venice Principles](#)), adopted by the Venice Commission in 2019 and endorsed by the [Committee of Ministers of the Council of Europe](#)<sup>8</sup>. Those common rules have enabled the Ombuds institutions of many countries to draw on Alternative Dispute Resolutions (ADRs), a method widely used in English-speaking countries, and also on conciliation, where, unlike in mediation, the conciliator does propose solutions to the parties and may play a decisive role. In places such as Andalusia, as we will see, conciliation has been eclipsed by administrative mediation. While the theoretical construction and the practice of the ADRs mainly come from civil and commercial law, RJ has its roots in criminal law.

As we know, the search for the general interest inherent to administrative activity may occur and in fact harm the users or recipients of public services, who deem those situations to be unfair, in other words, beyond whether or not it is in line with the

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<sup>7</sup> The word "Ombudsman" originally did not express gender. The term comes from the Swedish word "ombudsman". Literally, "ombuds" means "representative" and "man" means "the people" or representative of the people; Ombudsman, Ombudsperson and Ombuds are used interchangeably.

<sup>8</sup> Recommendation CM/Rec(2019)6 of the Committee of Ministers to Member States on the development of the Ombudsman institution

current legal system. The increasing role of technology and excessive bureaucracy of the activity of the public administrations and public services means that citizens increasingly experience more harmful and unfair situations, that they consider to be incomprehensible beyond merely complying with current regulation. The work of the Ombudsman in this regard is seen by the general public as an alternative to the legal system, as is RJ. This concept of searching for **fairness** beyond legality, compliance and public interest is widely accepted internationally, as can be seen in the IOI documents<sup>9</sup>.

The Ombudsman institution in general and the Ararteko in particular is a privileged player in those situations that are a fundamental of the institution's daily work. That is particularly the case of the front public service offices, to which the citizens often turn when they have experienced unfairness or poor treatment from the public administrations beyond ensuring that their action is legal. These front public service offices are part of the reach out strategy of the institution of the Ararteko to the three capitals of the Basque Country, due to the demand of the citizens and the success of the professional and approachable care for the most vulnerable groups. In this regard, citizens often turn to our institution to be heard. They are therefore seeking empathy and a response in the same vein to a situation experienced as unfair or harmful.

The Ararteko is a promoter of human rights and good administration. When examining the complaints, the Ararteko needs to question whether the outcome of the action of the public administration was fair and the consequences balanced and proportional beyond the strict requirements of current legislation.

**In this respect, RJ can be a valuable tool in that search for equity and fairness, generating spaces for dialogue and listening between the public administrations and the citizens. It thus helps to humanise the action of the public authorities and fulfils the mission to help to improve public services and the administrations.**

On the other hand, the principle of **anti-formalism** is inherent to the Ombudsman institution and must underpin all its acts. That means that the procedures and actions should be made more flexible in order to facilitate citizen participation and support and with the focus on their needs. Therefore, the introduction of RJ techniques is not only

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<sup>9</sup> INTERNATIONAL OMBUDSMAN INSTITUTE (IOI). Developing and reforming Ombudsman institutions: an IOI guide for those undertaking these tasks. *IOI Best Practice Papers*, issue 1 June 2017. Available at: <https://www.theioi.org/publications/ioi-best-practice-papers>

**ACCESS**

*Ombudsman services are often seen as an alternative to the courts, and will often not take on a case where court action is being pursued.*

**MALADMINISTRATION**

*Ombudsman offices typically consider complaints from **users of services who believe they have suffered an injustice** as a consequence of an error by service providers. In determining such complaints, the Ombudsman needs to be able to examine the decision from the perspectives of legality and compliance. In short, was the decision legal and did the body follow its own policies and procedures.*

*However, the role of an Ombudsman goes beyond legality and compliance. The Ombudsman is a promoter of human rights and good administration. **In considering complaints the Ombudsman needs to be able to ask, was the outcome fair and was the outcome just?** Often, the Ombudsman will look to ensure that decision makers used any discretion available to them appropriately.*

timely, but, in the very near future, it may be an important contribution of the institution of the Ararteko to the participatory processes of the citizens with the public administrations for better handling and processing of the disputes. This function of the Ombudsman institution of generating restorative spaces for dialogue must be established, it goes without saying, by means of procedures with independent channels for its work to supervise the performance of the public administrations. It must guarantee, from a human rights approach, the independent defence of citizens in the case of possible illegalities, abuse and maladministration situations to which they are fundamentally on the one hand, and the absolute confidentiality of the restorative processes on the other.

Internationally, the perspective of RJ as a work tool of the Ombudsman institution to enable participatory meeting spaces among the public administrations and the citizens, is yet to be developed, even though it has been suggested by authors in both in New Zealand<sup>10</sup> and in Canada. RJ and the Ombudsman institution have sometimes been referred to at organisational level, in other words, for a restorative approach to be used in the disputes between the workers and the employer institution "*ad intra*"<sup>11</sup>.

The local and international evolution and prestige of the figure of the Ombudsman, vested with independence and impartiality, have meant that requests by groups and individuals aware of the possibility of being helped by the ombudsman in the dispute process are increasingly more usual in order to achieve a negotiated way out of their problem and seek the ombudsman's intervention in its role of "*intermediary*". This intermediation work fundamentally consists of promoting dialogue, building bridges between the parties and the community in case of social conflicts. This role is attributed in many countries to the Ombudsman institution, but it is not strictly speaking the figure of the mediator as in RJ as an impartial third party in a process where the parties are the ones who freely and without interference decide. This is because the Ombudsman institution itself is bound to defend the rights of citizens and there is therefore no impartiality in the sense of RJ (also defined as multipartiality), while the intermediation expected of the Ombudsman brings us to RJ as a possible methodology to generate spaces of dialogue between the public administrations and citizens.

As regards the comparative analysis of the RJ and mediation experience in the context closest to the Ombudsman institution, some Ombuds institutions of the Spanish State recognise mediation and conciliation functions to the Ombudsman. One such example is the *Sindic de Greuges* in Catalonia and in the Autonomous Community of Valencia. Specifically, to the conciliation figure (not mediation, even though the terms are equated in the wording) is inherent to the regulation in Catalonia, as it notes that the *Sindic* in those processes may encourage the parties to come together, propose

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<sup>10</sup> LAHATTE, Chris. Restorative justice in the Ombuds Office. In: *Chris Lahatte Blog*, nov 12 2018. Available at: <https://www.lahatte.lawyer/blog/restorative-justice-in-the-ombuds-office>

<sup>11</sup> Interestingly enough, there is such a service at the UN to "intermediate" in labour disputes between the institution and the workers, and is known as UN *Ombudsman and mediation services* (<https://www.un.org/en/ombudsman/>) which is not at all related conceptually with the concept of Ombudsman as discussed here or the mediation related to RJ.

solution and finally adopt a decisive solution (Articles 49 and 50 [Sindic de Greuges of Catalonia Act 24/2009, of 23 December](#)<sup>12</sup> ).

The new 2021 *Sindic de Greuges* of the Autonomous Community of Valencia Act, [Act 2/2021, of 26 March](#)<sup>13</sup>, contains the same *Conciliation, mediation and structure of disputes* function as in Catalan legislation, but without developing or regulating the conciliation procedure. That leaves the possibility of mediation in the sense of RJ by the *Sindic* open to interpretation<sup>14</sup>.

On the other hand, the *Diputado del Común* of the Canary Islands has formally requested the Canary Island Parliament to amend the ombudsman legislation in order to include mediation functions. The Ararteko of Navarra has also included mediation as one of the its areas of intervention and, even though that new function has only just started, matters where mediation is possible are referred to be conducted by a Non-governmental organisation (NGO). Both schemes are still at too earlier a stage to be able to analysed methodologically.

Finally, the ombudsman of Andalusia has established a referral system to a mediation service with professional mediators within the structure of the institution, a procedure that tends to be part of the complaint processing procedure (once a complaint has been made, instead of information being requested from the public administration, the parties are summoned to the ombudsman's offices for an initial briefing when the case is appropriate or the parties may directly request the mediation). This procedure is still a referral to a specific mediation service of certain cases, fundamentally administrative mediation matters. This can only happen when the administration does not hold regulated powers and has a certain scope of discretion when establishing the general interest, as the aim is to reach a mediation agreement between the parties with the endorsement of the Ombudsman institution, which is consequently the guarantor of its monitoring and overseeing its compliance. Should an agreement not be reached, that

<sup>12</sup> CHAPTER III. Reconciliation, mediation and resolution of disputes

Article 49. Coordination formulas

Within the framework of the legislation in force, the Catalan Ombudsman may propose to the administrations, organizations, companies and persons who are the object of investigation proceedings and the affected persons formulas for coordination, mediation or dispute resolution that facilitate the conclusion of the proceedings

Article 50. Requisites and applicable legal code

1. The Catalan Ombudsman's intervention in a conflict to carry out reconciliation, mediation or dispute resolution requires the prior consent of the parties involved in the investigation proceedings.

2. In the exercise of reconciliation duties, the Catalan Ombudsman convenes a meeting with the parties involved and attempts to bring their positions closer together.

3. In the exercise of mediation, the Catalan Ombudsman organizes the exchange of viewpoints between the parties involved, facilitates their reaching an agreement and makes conflict resolution proposals, which are not binding, for the involved parties to freely decide from among them.

4. In the exercise of dispute resolution, the Catalan Ombudsman resolves the proceedings through a decisive ruling, pursuant to the applicable legislation.

<sup>13</sup> Ley 2/2021, de 26 de marzo, del Sindic de Greuges de la Comunitat Valenciana

<sup>14</sup> Article 46. Conciliation, mediation and structure of disputes

Pursuant to the applicable current legislation, the Síndic de Greuges can suggest that the to the subjects under investigation and the people affected by the activity or inactivity consider conciliation, mediation or structure of disputes that facilitate the settlement of the proceedings. [Translation by the Ararteko's office]

does not prevent the grievance being ended with a subsequent recommendation or suggestion<sup>15</sup>.

The Andalusian Ombudsman model does not therefore involve the introduction of the restorative paradigm in its usual activity, but rather the establishment of a mediation service to refer matters in certain complaints or to intervene when requested by citizens or public administrations. In fact, the advisor of the department in question will only take part as an expert where necessary. The objection should be here voiced that the participation of the advisor of the department in a mediation case could compromise the supervisory function of the ombudsman in its defence of the rights of citizens and the very confidentiality of the mediation process.

Finally, it should be pointed out that the RJ and the Ombudsman institution share a common space consisting of the **open government** policies seeking to modernise the public administrative, while also generating transparency, spaces for citizen direct participation and public governance. The [Decision of the Ararteko of 18 May 2017, establishing the transparency policy and the procedure to exercise the right of access to public information](#)<sup>16</sup>, sets out in its recitals that *“The Ararteko believes transparency and citizen participation to be an essential part of quality governance, based on advanced democracy and open government principles and aimed at constructing the public space”*. The Ombudsman institution plays an essential role in driving the open government and public governance policies according to the institution of the European Ombudsman<sup>17</sup>.

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<sup>15</sup> DEFENSOR DEL PUEBLO ANDALUZ. *Servicio de mediación del Defensor del Pueblo Andaluz. Resumen ejecutivo*. Sevilla: Defensor del Pueblo Andaluz, 2018. Available at: <https://www.defensordelpuebloandaluz.es/sites/default/files/mediacion/resumen-final-interactivo.pdf>

<sup>16</sup> Resolución del Ararteko de 18 de mayo de 2017, por la que se establece la política de transparencia y el procedimiento para ejercer el derecho de acceso a la información pública

<sup>17</sup> EUROPEAN OMBUDSMAN. *The Role of Ombudsman Institutions in Open Government*. Paris: OECD, 2018. OECD Working Paper on Public Governance, 29. Available at: <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>

*“An open government culture refers to the application of the principles of transparency, integrity, accountability and stakeholder participation in an institution’s own functioning.*

*Due to their unique position, as an institution that is traditionally close to citizens as well as given their regular and direct contact with them, open government is an intrinsic part of the OIs’ DNA. In this sense, OIs can serve as role models in applying an open government culture to their own functioning, contributing to their efficiency and effectiveness in implementing their mandates and increasing trust in their institutions while making themselves more open, transparent, accountable and responsive. Furthermore, more strategic and wider participation of stakeholders – including civil society, academia, citizens beyond those who submit complaints – could support OIs in strengthening the accuracy and relevance of their recommendations and provide ideas for alternative solutions”.*

## IV. THE RESTORATIVE CIRCLE AT THE ARARTEKO- OMBUDSMAN FOR THE BASQUE COUNTRY

**Circle Date:** 30 January 2020. Office of the Ararteko in Donostia-San Sebastián.

**No. of participants:** 9: the injured party<sup>18</sup> and three supporters (two friends and her lawyer), the coordinator of the department in question from the office of the Ararteko and three representatives of the public administration in charge of the service in question, along with the facilitator.

**Facilitator:** Roberto Moreno. Coordinator of Justice Department at the Ararteko-Ombudsman for the Basque Country. Member of the [European Forum for Restorative Justice](#) (EFRJ).

### Preparation with the administration concerned

In October, an initial preparatory meeting was held at the offices of the Ararteko. That briefing session was held with the institutional representatives of the administration involved in the legal intervention of the Ararteko. The RJ principles were explained, along with the dynamics of a restorative circle, which was deemed to be the best technique for the case in question.

During the meeting, the Administration representatives acknowledged the suffering and pain experienced by the injured party and likewise expressed their intention to help calm down the dispute. It was hoped that that would help to get the dispute out of the eye of the media and that would likewise strengthen the public protection system for users of the public resource in question, which had been implemented after the intervention of the Ararteko.

Apart from the two institutional representatives of the administration and the coordinator of the Ararteko's Quality Department involved in this case, a worker of the specific resource in the dispute, who had a good relationship with the injured party, was also at the meeting, along with a social worker from the public administration whose involvement had been as part of the institution overseeing the resource, with no contact with the injured party or the resource itself. They both said they were willing to take part in the circle voluntarily and in an individual capacity.

### Preparation with the injured party and her support team

The briefing took part in October 2019 and after listening to the detailed account of her experience by the injured party, the terms of the meeting were established. Subsequently, there were regular telephone calls with the injured party and a briefing

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<sup>18</sup> In RJ, victim (in case of crimes) or **injured party** (in case of other damages or disputes) is used to refer to the individual who feels injured or has experienced the damages or victimisation. These terms are used regardless of whether there has been a formal justice process that has legally or administratively recognised the individual as a victim or injured party.

with the three members of her support team immediately before the holding of the circle.

The agreed terms of the circle were based on the participants from the administration in question and of the Ararteko would take part on an individual basis. In other words, even though they were authorised to take part in the circle by the institutions to which they belonged, including the Aarteko department coordinator, their intervention in the circle would be based on their individual emotions and their most personal experience of the facts, not from a strictly professional perspective or representing the official position of the institution for which they worked. The circle would be a safe and secure place for the injured party, where she could freely express everything that she had suffered and experienced. It would therefore be a healing circle, with no restorative content, as the individuals from the institutions were there in a personal capacity.

### **Methodology used**

Different international experts in RJ from the fields of social work, victimology and law provided professional input in the preparation, running and documenting of the circle. Furthermore, professional input was gleaned from the Basque Government's Victim Support Service in order to ensure that all the guarantees were in place in the restorative process for the injured party in order to avoid re-victimisation and that it was aimed at her needs.

The fundamental aim of the circle was to create a safe space of empathy, active listening and trust for the injured party, who had felt mistreated by the institutions and was demanding to be heard.

A structured circle was therefore organised where the injured party and the others were allowed to talk freely. The participants were seated in a circle with no table or item in the middle. They spoke one after another in the order set by the facilitator while the others listened with respect and empathy.

The decision regarding the placement of the participants were part of the preparation of the circle. It took into account the key role of the injured party and sought to foster dialogue in such a way that all the participants felt respected, secure and safe.

First, the injured party and her support team, from more to less close (two friends and her lawyer), were seated on the right of the facilitator. Subsequently, the equality coordinator of the Ararteko, as the neutral institution, was placed opposite the facilitator, and then the individuals from the administration: first, the worker from the resource, who the injured party trusted; then, the social worker from the administration in question, whom she did not know; and, finally, the general manager of the resources of the service in question, who knew the party more superficially, was to the left of the facilitator.

## The running of the circle

The circle was scheduled for 12.00 noon and was expected to end between 2.00 p.m. and 2.30 p.m. to give the time limit. One of the rooms at the San Sebastian offices of the Ararteko was prepared. The chairs were arranged in circle with no obstacle in the middle, which created a comfortable space in anticipation of the emotional intensity.

First, the agreed terms of the circle were explained and then the injured party presented her own talking piece to the other participants, as she had been asked to do, and explained its meaning. This was a fundamental part of the significance and respect ritual, as only the person holding the talking piece could speak while the others listened carefully. The participants were told that there would be a maximum of three rounds due to time constraints. The idea was for the first round to be used for each person to tell their personal experience of **what had happened**. This would then be followed by another round of **how they had felt** throughout the process and the last round would be dedicated **to how they saw the future unfolding**. Experiences and feelings were mixed in the first round. Therefore, it was followed by two long rounds with the second being focused on feelings and the future.

After two intense and very respectful rounds, with the emphasis on the personal and emotional account as had been requested, the persons recognised each other as such. The different accounts helped the injured party to release a great emotional burden and the other participants to understand her suffering. The whole process had been painful for the participants and they felt comfortable enough to share their pain. This jigsaw of emotions first helped the injured party and her support team, but also provided release for the other participants.



## V. FEEDBACK FROM THE CIRCLE PARTICIPANTS

Immediately after the end of the circle, the participants were invited to freely, should they so wish, to send in feedback on how they had felt in the circle and their opinion on the experience. Of course, their anonymity and the confidentiality of everything that had been said in the circle were to be maintained.

All the participants sent in their personal accounts of their impressions and their experiences in the following days.

**We have quoted here some of the most important reflections of the participants' experience with their consent and would like to thank them for their essential contribution:**

*"I took with me the experience of having being able to look each other in the eye, put our emotions in the circle, tell our experiences, sincerity, respect, affection and empathy, aspects that the institutions cannot often deal with.*

*I find it encouraging that this circle may be a seed to start carrying out restorative experiences at institutional level, which will foster the idea of a more approachable, human and fair institution that is mindful of the people it serves"*

*"If found the circle beautiful, intense, tremendously human, enlightening, very, very respectful and healing for Ane (not her real name). I was happy to see that she had the opportunity to release everything that had built up inside her for so long. People sometimes only want to express what they had felt and for it not to happen again, to be listened to, not to be treated as if they didn't exist, or were pathetic or overwrought.*

*I think the restorative circle has a huge possibility to empower the person who is suffering by giving them the opportunity to express themselves; it also turns the workers of the institutions into people who are closer, more real, with feelings, and things they get right and wrong. And above all, approachable. I believe that this experience can mark a before and after in the institutions, provided that the circles are held with the tremendous sincerity and humanity with which Ane's was".*

*"What was beautiful about the experience is to be able to see how everybody had a different perception of the same issue, depending on their role, and helped to empathise with each of the parties. The circle ended with a moment of closeness and union, because of everything experienced in the room".*

*“It was a way for me to express clearly, concisely and unimpeded everything I was thinking, to be heard and not judged, it was a way to be able to listen to the ideas, reasons of the others, and see that once we had each expressed our feelings, we felt more liberated, and more liberated to see that Ane felt good and that she had been heard, and that her wound had closed to a certain extent”.*

*“Speaking from my emotions is not something easy for me, or common, as my job requires me to look for objectivity and dispense with subjective aspects blurring that. However, in the circle, I could and wanted to talk from my emotions and express my own insecurities in the intervention in that case, as the person in charge of a case that was highly complex for me. I could set out the difficulties I had faced during that whole process and could better explain my own weaknesses. So I also felt that I was closer to the person around which the circle turned, and that the armour had been stripped away that had surrounded my professional relationship with her up to then”.*

*“There was a warm, healthy and friendly circle towards the party involved at that time (Ane) where she could let go and be caught. I also feel that it would be wonderful if all the parties could have such a space and their wounds begin to heal”.*

*“The feelings about the restorative practice itself were clearly positive and constructive and I believe that it helped to overcome the pain that the user felt regarding her involvement with the public services. I felt that I could talk about what I thought, my feelings and do so in a safe space. It was possible to open up emotionally despite being with many strangers. When we can express ourselves in that way, dialogue is much easier and the meeting aimed at restoration is then much more likely. I did not feel that we were in general entrenched in our positions”.*

*“I would like to end by saying that not enough work has been done on listening to the concerns of the users of social services. This experience has yet again shown that people need to feel heard”*

## **VI. IMMEDIATE OUTCOME OF THE CIRCLE**

Better emotional wellbeing and feeling of release, particularly for the injured party and her support team, but also for the other participants.

Greater credibility of the institutions after an active listening process, greater professional appreciation of each person's role. It also strengthened the image of the institution of the Ararteko as being closer to the citizens.

## VII. CONCLUSIONS

The restorative circle organised was the first experience of that type at the Ararteko and was a trailblazer at an Ombudsman institution internationally, as we were able to establish after consulting experts from around the world<sup>19</sup> and except for the administrative mediation experiences described. As regards the objective of the circle, it was essential to focus on creating a safe space for the injured party, which would help her in her process and not cause further damage. That was the fundamental goal agreed with the intervening parties and the institutional representatives. Accordingly, the circle was a complete success and, later on, we have likewise been able to establish that it has strengthened the protection system for the public service that was the subject of the complaint. Therefore, we have to also assess whether the experience had helped to calm down the dispute in public and social terms.

RJ and restorative circles particularly have a **shockwave effect**. That allows other disputes in turn to flourish like the waves that are formed when a stone is dropped into a pond. Disputes that can be addressed from other circles with new participants or among the intervening parties themselves to reach settlements or consider new issues, and with a multiplier effect in terms of participation and social cohesion. In this specific circle, other harm caused by the dispute also came to light, such as the greater mistrust of the workers of the resources towards the users, or their feeling of lack of institutional and social backing of their work, along with a general feeling of a weaker protection system. That further harm that also caused feelings of unfairness could be the subject of other circles in the future that will help to consolidate the social services in question and strengthen the role of the Ararteko to spur on the improvement of the services provided by the public authorities.

Citizens, in general, and the users of public services, in particular, are demanding greater emphatical and active listening spaces from the institutions. RJ, even though it cannot be used for all cases, provides the methodology, principles and quality standards to facilitate them.

The **goal** of incorporating RJ into the institution of the Ararteko must therefore be to generate safe, confidential and participatory spaces for dialogue between the administrations or the public services and the citizens to drive their improvement and thus contribute to good administration and public governance.

As regards the **methodology**, the institution of the Ararteko, when it uses RJ tools in its intermediation role and fostering an open government policy driving citizen participation, must avail itself of an ad hoc and eclectic methodology to circumvent the legal difficulties of representation and unavailability in order to be able to adopt material restorative agreements of the public administrations. In this specific case, the circle has functioned properly because, beyond the legal claim, the practice has focused above all on generating a secure and safe space for the community to hear the injured party, including the representatives of the public recourse acting in a personal

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<sup>19</sup> The leading experts of the European Forum for Restorative Justice (EFRJ) and the “*Community of Restorative Researchers*” group were consulted.

capacity (healing circle). That does not preclude future momentum being given to the direct participation of the institutional representatives involved and the search for restorative agreements beyond the financial or benefit ones that are determined by the state liability proceedings of the public administrations.

However, mention should be made of the difficulty to reach restorative agreements with material and not only moral or emotional reparations with the public administrations, which is a constraint on situations of institutional damages. However, well defined and informed restorative circles may be an effective tool despite working with institutions, where material compensation is legally difficult. In the future, as already indicated, the Ararteko institution should assess exploring symbolic and not merely compensatory forms of reparation agreements in other cases.

The restorative practice must be conducted, as in the case considered, **outside the supervisory procedures of the performance of the public administrations that is the main function of the institution of the Ararteko**. This meant that they must be conducted once that procedure has ended and/or outside it, when specific cases of unfairness and dispute are established in the different departments of the institution that have not been satisfied by means of the complaint procedure and other ordinary actions. Furthermore, that the restorative process must have been proven to be viable in the specific matter and desirable within the general objectives of the institution.

The **restorative circle** is the technique that seems to be the most appropriate for those matters. As we have seen, it is never a broader mediation or with more participants, but rather consists of a much more powerful and versatile tool. Thanks to the circle described, the institution of the Ararteko has been able to spur on the search for fairness and equity beyond formal justice. That has helped the injured party to repair the damage suffered to a certain extent and the administration to understand and address that feeling of injustice beyond strict legal standards and the search for the general interest, while strengthening and improving the public service.

Regarding this experience, it should therefore be concluded that having searched not so much for the legal truth, but rather a safe space for the truth of the injured person has been fundamental in the circle in question. That was based on the recognition of her suffering, accompanied by other truths that converged towards the respect and recognition of the other and their experience from another place (friendship, institutional, professional). Furthermore, providing space for all the truths and points of view of the matter has to be assessed in the future. There will need to be a good prior mapping of the disputes and their characteristics that are nearly always multi-faceted. Consequently, as has already been said, an **ad hoc methodology** will need to be established that allows us to define the methodology case by case in the circles of the institution of the Ararteko progressively and cross-check it according to the international standards in the field.

Based on this experience, the magnificent challenge facing us is to implement the RJ culture in the institution of the Ararteko as a trailblazing experience internationally. Not by establishing a mediation service, but rather by developing an own methodology in

the role of intermediation role and public governance that endorses the Ombudsman institution and based on the anti-formalism and search for fairness as described. That process could advance case by case using own resources in certain areas when the opportunity of this intervention emerges. Subsequently, the possibility of training the Ararteko staff in RJ could be assessed in the future to be able to thus advance towards an *ad intra* and *ad extra* restorative organisation in keeping with what was established in [Recommendation CM/Rec\(2018\)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters](#).<sup>20</sup>

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<sup>20</sup> Article 61

*"Restorative principles and approaches may be used proactively by judicial authorities and criminal justice agencies. For example, they could be utilised to build and maintain relationships: among staff within the criminal justice system; between police officers and members of the community; among prisoners; between prisoners and their families; or between prisoners and prison officers. This can help to build trust, respect and social capital between or within these groups. Restorative principles and approaches may also be applied proactively by judicial authorities and criminal justice agencies when making managerial decisions and consulting staff, and in other areas of staff management and organisational decision-making. This can help to build a restorative culture within these organisations".*

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