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**No.**                      **Prot.**                      **Tiranë 04/04/2020**

**Doc. No.**

**Subject:** Recommendation on the immediate measures which need to be undertaken in order to prevent the disproportional violation of the right to enter in their own territory of the Albanian citizens blocked in the land border with Greek and Montenegro state, due to specific administrative measures taken during the period of infection caused by COVID-19.

**To:**

**INTERMINISTERIAL COMMITTEE OF CIVIL EMERGENCIES**

Tirana

**MINISTRY OF HEALTH AND SOCIAL PROTECTION**

Tirana

**GENERAL DIRECTORY OF STATE POLICE**

Tirana

**To the attention of:**

**PARLIAMENT OF ALBANIA**

Tirana

**THE PRESIDENT OF THE REPUBLIC OF ALBANIA**

Tirana

Honorable,

The Ombudsman's Office is closely monitoring measures taken by the Albanian authorities to enable repatriation of a number of Albanian citizens who as a result of closed borders have remained abroad, or even the condition of their movement after entering Albanian borders, mainly by land.

Aware of the difficult situation in which the country is, similar to many other countries in the world, also understanding the difficulties faced by the Albanian authorities in implementing the plan of measures to enable identification and repatriation of the Albanian citizens, we would like to reiterate our call but also that of the highest authorities of human rights internationally, for this situation not turn into a systematic violation or systematic restriction of some fundamental rights or freedoms of the Albanian citizens. Reference is made here to the rights that are not derogable or limited in the sense of Article 175 of the Constitution of the Republic of Albania.

During the monitoring of the measures taken for the case of Albanian citizens who have expressed the request to return to their own country, Albania, we have noticed with concern that the position of the Albanian authorities in some cases is in excess of the basic norms and principles of the Constitution and other acts of the Albanian legislation and international instruments that regulate and protect the fundamental rights and freedoms of individuals.

Before analyzing the obligations and restrictions provided by international acts and that of the Constitution of the Republic of Albania, regarding the right of citizens to enter the territory of their state, we will briefly dwell on the notion of citizenship and the obligations of the state as a "guardian" of its citizens.

In international legal acts, citizenship is defined as a permanent legal connection of an individual towards the state, regardless of whether it is within or outside its borders, the content of which is expressed in the entirety of mutual rights and obligations in the relationship between them. The citizen of a certain state is under his protection even outside the borders of that state. On the other hand, wherever he is, he is obliged to fulfill all his obligations to his state.

Article 2 of the European Convention on Citizenship<sup>1</sup> provides that: *"Citizenship" means the legal relationship between a person and a state and which does not indicate the ethnic origin of the person.*

In law no. 8389, dated 5.8.1998 "On Albanian citizenship" – as amended, it is defined as *"a stable legal connection, which is expressed in the rights and mutual duties of the individual and the Albanian state"* (paragraph 1 of Article 1).

The right of citizens to not be deprived from entering the territory of their state (and the obligation of the state not to deprive citizens) is one of the rights recognized to them by the Universal Declaration of Human Rights (Article 13, point 2)<sup>2</sup>, International Covenant on Civil

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<sup>1</sup> Ratified by the Republic of Albania with law no. 8942, dated 19.09.2002.

<sup>2</sup> Everyone has the right to leave any country, including his own, and to return to his country.

and Political Rights (Article 12, paragraph 4)<sup>3</sup>, as well as the European Convention on Human Rights (Article 3/1 of Protocol No. 4)<sup>4</sup>.

The above-mentioned acts, both those of the Albanian legislation and those of legal-international character, do not exclude the possibility of restricting the fundamental rights and freedoms of the citizens in extraordinary conditions and circumstances. But the restriction of fundamental human rights and freedoms is generally legitimized only in cases of an extremely necessary condition that dictates the need for restraint, for the protection of a higher interest than that of the restricted rights. But, as we will present below, the right to restraint is not unlimited.

Article 12 of the International Covenant on Civil and Political Rights stipulates that:

*Article 12*

- 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- 2. Everyone shall be free to leave any country, including his own.*
- 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
- 4. No one shall be arbitrarily deprived of the right to enter his own country.*

Clearly, this provision authorizes party states to establish restrictions on the right to freedom of movement within or outside the territory (paragraph 3), but not the right of citizens to enter their country.

European Convention on Human Rights (ECHR), article 3/2 of Protocol 4 provides that no one may be deprived of the right to enter in the territory of the State of which he is a citizen. The rights provided by the ECHR may be restricted by states only in cases of extraordinary situations, provided that these measures are not incompatible with other obligations under international law, as well as by fully informing the Secretary General of the Council of Europe for these restrictions, or otherwise for the derogation from certain rights provided by the Convention, (Article 15 of the Convention).

This is also affirmed in Article 17 of the Constitution of the Republic of Albania, which explicitly states that:

- 1. Restrictions on the rights and freedoms provided in this Constitution may be imposed only by law for a public interest or for the protection of the rights of the others. The restriction must be proportionate to the situation that dictated it.*
- 2. These restrictions may not affect the essence of freedoms and rights and in no case may they exceed the limitations provided for in the European Convention on Human Rights.*

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<sup>3</sup>No one shall be arbitrarily deprived of the right to enter his own country.

<sup>4</sup>No one may be deprived of the right to enter in the territory of State of which he is a national.

The Constitution of the Republic of Albania (Article 175) provides the rights that can be restricted and those that cannot be restricted during the war, extraordinary situation and the situation of natural disaster. The Constitution clearly distinguishes between the types of rights that can be restricted in cases of war and that of emergency state and those that are limited due to the state of natural disaster. The right not to be expelled from the territory of the state (Article 39/1 of the Constitution), is one of those rights which **cannot be limited even in the conditions of the emergency state or war which are the most difficult situations regarding the restriction of human rights in a territory.**

On the other hand, although the Constitution of the Republic of Albania does not have a specific provision where it is provided that no citizen may be deprived from entering its homeland, in its preamble it is clearly stated that the Republic of Albania protects the national rights of the Albanian people living outside its borders and of Albanian citizens temporarily or permanently residing outside its borders, which is one of the fundamental principles of the citizenship relationship.

The right to liberty of movement within the territory of the state shall be subject to those rights which may be restricted, provided that the restrictions are in accordance with Article 17 of the Albanian Constitution, proportionally dictated by the circumstances and do not exceed the limitations provided by the ECHR.

With the normative act no. 243, dated 24.3.2020 "On the declaration of a state of natural disaster", the Albanian government has decided to declare the state of natural disaster throughout the Republic of Albania due to the epidemic caused by COVID-19 and the restriction of rights guaranteed by articles 37, 38, 41, point 4, 49 and 51 of the Constitution<sup>5</sup> to the extent that it is considered necessary to achieve the protection of national health security. Even in this case, the restriction must achieve the justified goal by using the least harmful means possible.

Such an approach is strongly recommended even by the main human rights bodies, and specifically mentioned in the relevant statements of the High Commissioner of the United Nations Human Rights Organization, Ms. Michelle Bachelet,<sup>6</sup> Commissioner for Human Rights in the Council of Europe Ms. Dunja Mijatovic<sup>7</sup> and a group of experts of the United Nations<sup>8</sup>, who recommend that the state authorities of the various countries, to have attention to respect human rights in the measures they will take to deal with pandemic.

With the verbal note of the Permanent Mission of the Republic of Albania to the Council of Europe, dated March 31, 2020, the Albanian state, in accordance with the article 15/3 of ECHR has informed the Secretary General of the Council of Europe derogation from certain rights provided by the Convention, due to epidemic situation<sup>9</sup>, specifically: *the right for respecting*

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<sup>5</sup> article 37 – freely dispose of the natural wealth and self control out of criminal proceeding, article 38- the right of residence and free movement, article 41/4 – expropriations against fair value, article 49 – the right to work, article - 51 the right to strike).

<sup>6</sup> <https://www.unhcr.org/news/latest/2020/3/5e69eea54/coronavirus-outbreak-test-systems-values-humanity.html>

<sup>7</sup> <https://www.coe.int/en/web/commissioner/-/we-must-respect-human-rights-and-stand-united-against-the-coronavirus-pandemic>

<sup>8</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>

<sup>9</sup> [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p\\_auth=oC00wpDO](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=oC00wpDO)

*private and family life (article 8 of ECHR), freedom of assembly and association (article 11 of ECHR), the right of freely dispose of natural wealth (article 1 of ECHR), the right of education (article 2 of ECHR), freely movement (article 2 of Protocol No.4 of ECHR).*

As noticed, the right of citizens not to be deprived to enter the territory of the state (according to article 3, point 2 of Protocol 4 of the ECHR) is not in the rights from which the Albanian state has derogated due to the declaration of the state of natural disaster for COVID 19 Pandemia. In our view, this is a right that cannot be acquitted or restricted. Any restriction of this right constitutes exceeding limitations provided in the European Convention on Human Rights and other international acts referred to above.

With reference to the subject mentioned above and taking into account the news of the last few days published in the media, according to which some groups of Albanian citizens have been blocked for hours and days on the land border with the Greek state and the Montenegro state, we express that the actions of the Albanian authorities to prevent the entry of these citizens in the territory of the Republic of Albania violate human rights, as they are not in the conformity with the provisions of the ECHR, the Constitution, as well as the obligations of the state to ensure and protect to all citizens.

Albanian citizens left abroad might be left out without means of subsistence as a result of measures taken by states against COVID-19 (no work, no food, no home). In no case may they be deprived of their right to shelter in their country, which does not exclude at all the right of the Albanian state to request from them the rigorous implementation of the extraordinary measures taken for placement in the quarantine, or other rules and regulations pertinent to the Pandemia of Covid 19. Restriction upon any of the fundamental rights necessary due to natural disaster should be proportional and not prohibiting the citizens to repatriate in their homeland.

The news that around 2,000 citizens were repatriated about a week ago from different countries of the world (mainly students of travelers) is a very good one because it proves that there are concrete efforts from the authorities to come to the aid of Albanian citizens left abroad. However, we must keep in mind that the Constitution of the Republic of Albania declares that all are equal before the law. The decision of the Albanian authorities by allowing the entry into the Albanian territory of a part of the citizens, and by denying it to another part, formally seems to contradict its constitutional principle.

The case in question is not about the category of individuals who have settled, work and live in different countries of the world, but about those people who for any reasons have temporarily left and are currently outside of the territory of their country. This category of citizens may be on the extreme frontiers of their existence. The Albanian state, whose citizenship they hold, cannot abandon them to their fatal fate, closing the doors to their country. The doors of Albania must be open to them as well as any of us, including decision-makers.

The Albanian authorities have not made transparent or public the criteria on which the "selection" of the citizens for repatriation has been carried out. As they have announced, there has been lots of requests, however only a group of the citizens have been repatriated.

The obligation to repatriate our citizens, may be limited due to the effective abilities to return them, they must follow the rules set for quarantine or self-isolation, or if it is necessary isolation in special quarantine structures, but those who have been able to reach the borders of the

Republic of Albania with their own means and seek to enter the territory should not be deprived.

Point 4 of the normative act No. 3, dated 15.3.2020<sup>10</sup>, as amended, stipulates the sanctions in case the citizens who came from abroad do not apply the obligatory measures of self-isolation or the declaration that they came from abroad. However, this normative act does not restrict in any case the right of the Albanian citizens to enter the territory. Consequently, this act appears to be formally in accordance with the provisions analyzed above.

However, the law enforcement bodies responsible for the implementation of the legislation to enter into the Republic of Albania are not implementing such Act properly, as de facto several days some of the Albanian citizens have been deprived from the right to enter into their own country. So it comes out that either it is a consequence of the wrong implementation of the above-mentioned normative act, or due to the changes that the act might have, but they have not been made public (regarding the second one, we inform that from the verifications carried out in the official notebook until the moment of drafting this letter, it does not appear any changes). Further, the prohibition of the citizens to enter their own country through other administrative acts, whether written or verbally of the authorities responsible for security of public order or health, contradicts the definition of the above act, or in the case of lack of act, it would constitute an illegal exercise of discretion within the meaning of the Code of Administrative Procedures.

The deprivation of the right of the citizens to enter their own country, even though they have arrived in the border land on their own and with their personal funds and expenses, from the information we have so far, presents another problem which is of administrative nature. This is not only violation of the constitutional right of these citizens to enter their country but also denial of the right to a fair legal process. Specifically, during the implementation of the measures, the local authorities must provide these citizens with the relevant administrative acts, both for actions and inactions. This means that the local authorities must provide a reasonable administrative act to these deprived citizens. This administrative action is closely related to the right of these citizens to request for their right, or even compensation for the consequences deriving from the deprived right, to the administrative or judicial bodies, local or foreign ones.

The Ombudsman Institution recommends that the Albanian state must immediately take the necessary measures to ensure that no one shall be deprived of the right to enter their own country no matter what the reason they had to be abroad at this situation. After entering the Albanian territory the local authorities should take all the necessary legal measures to ensure public health, including testing the incoming citizens, or placing them in a quarantine environment for the required period of time but also guaranteeing their transportation from the border to an urban center due to the restriction of movement. The action plans of the Committee "On the Disseminated Infection by the New Coronavirus" or of the Inter-Ministerial Committee of Civil Emergencies, should have provided clear measures concerning this issue. In any case, in the judgment of the Ombudsman, the measures taken in this case cannot and should not

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<sup>10</sup> "Administrative measures taken during the infection caused by COVID-19" and approved by the Decision of the Inter Ministerial Committee of Civil Emergencies no.1, dated 25.3.2020 "For confirmation and continuation of implementation of the administrative measures taken under pandemic covid-19"

deprive their entrance, as it is disproportional, and contrary to the Human Rights, sanctioned in the acts of above-cited.

Finally, we recommend that in any case for the purpose of transparency and appropriate information of citizens, governmental authorities should address clearly and properly the legal state/situation in which the country is declared to be, which is that of the state of natural disaster. The need to address the situation with other public legal means (ie a different state), or with possible further restrictions, may and should always be done in accordance with the international normative framework ratified by our country and the Albanian Constitution that responds to the factual situation, the latter is a responsibility of the state authorities and a right.

As mentioned above, the Ombudsman in line with the powers entrusted to her by law and aiming to promote the highest standards of human rights and freedoms in the country, based on Article 63/3 of the Constitution which provides that: *"Ombudsman has the right to make recommendations and propose measures when notices violations of human rights and freedoms by the public administration."*; as well as the article 21/b of the law no. 8454 dated 04.02.1999 *"On the Ombudsman"*, as amended, which provides that: *"The Ombudsman submits recommendations for the implementation of the rights violated by the administrative body, which, according to the institution, has caused violations of rights and freedoms"*.

### **RECOMMENDS:**

Immediate measures should be taken to prohibit the disproportional violation of the right to enter in their own territory of the Albanian citizens blocked in the land border with Greek and Montenegro state, due to specific administrative measures taken during the period of infection caused by COVID-19.

For the position you will take towards this recommendation and the measures that will be taken for its implementation, please let us know within the best deadlines.

While hoping on your understanding and cooperation,

**OMBUDSMAN**



**ERINDA BALLANCA**