



## **People's Advocate work and activity in raising awareness on fundamental rights during state of emergency in Albania: ensuring transparency and accountability of the state in response to the health emergency.**

Such emergencies as those caused by the global COVID-19 pandemic are a major challenge for democratic societies. They are a real indicator of the ability of any society to respect human rights even in difficult conditions. The line between human rights and policies that state authorities may be forced to take to deal with emergencies is narrow and quite delicate. International human rights instruments recognize emergencies as situations that could legitimize states to take measures to limit some of the rights protected by domestic legislation and international conventions, provided that decision-making and action by state authorities be in proportion to the situation that has dictated the need for these restrictions, and in no case become pretexts for legitimizing the annihilation of fundamental rights.

For a society with fragile democracies, such as the Albanian society these days, the management of natural or health emergencies in the right balance with the proportional restriction of some basic freedoms of citizens has been a difficult challenge. It is already clear that this global pandemic is a global emergency and that restrictions on the fundamental freedoms of citizens are a necessity for a higher public interest.

It is with this fact in mind that we, as human rights defenders, intended to fulfill our mission while having as reference and orientation the statements, calls and advices of the highest international authorities for the protection of human rights<sup>1</sup>. In this regard, from the beginning of the state of emergency in Albania, our role as NHRI has been focused in ensuring the highest standards of human rights protection and creating the right conditions for their real enjoyment as one of the basic elements of our constitutional mandate. Meanwhile we learned the lesson of the necessity to

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<sup>1</sup>Statement of the High Commissioner of the United Nations Human Rights Organization, Mrs. Michelle Bachelet, the statement by the Commissioner for Human Rights in the Council of Europe Ms. Dunja Mijatovic and the recommendations of a group of United Nations experts, who suggest to the relevant authorities of different states, that in the measures they will take to deal with pandemics, to pay attention to respect for human rights, the letter of The European Union's Ombudsman, Emily O'Reilly;

maintain the right balance between two high interests: respect for the rights of citizens on the one hand and protection of public health on the other.

## **PEOPLE’S ADVOCATE ACTIVITY TO COPE IN THE COVID-19 CRISIS**

### **❖ ORGANIZATION OF WORK WITHIN OUR OFFICE**

The People’s Advocate staff, embraced teleworking on full working hours, and “on the call groups” 24/7. In necessity of work at office, the staff members were required to respect the rules of personal hygiene and social distancing. According to a graph that was approved in the beginning of each month, a group of employees (typically composed of 5 employees, one per each section/unit) were every day present at the office on a rotation basis in order to ensure the continuity of the institution’s activity. Daily reports of work were presented in accordance to the chain of hierarchy by all staff. Virtual conference calls were made periodically within each Section, Cabinet, Ombudsman and Commissioners, Ombudsman and several working groups, etc.

The Citizen’s Reception Office was closed and the communication with citizens was made possible through other means like e-mail, telephone, post and the application for smart phones (on March 11 on the website it was published: Notice that the complaints should be sent only through official mail or e-mail). The announcement published on the website of the institution "On the continuity of work in the institution of The People’s Advocate Institution during the measures within Covid-19" gave information on all the ways of the contact with the institution.

Inspections were suspended, and reporting was agreed upon request. As a result, in order to properly fulfill our mission, we followed-up administrative investigations in written form (through official letters and e-mails), and also via direct phone contacts with the latter.

As of the latest statistics, the number of complaints received is lower, but we must emphasize that the number of cases for which an administrative investigation has started on the initiative of our institution has increased<sup>2</sup>. This is a result of the

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<sup>2</sup> One of the activities of our institution is monitoring the media in order to identify different issues for further follow-up. During the period of the pandemic, this activity is intensified by the very nature of the situation in which we find ourselves. As a result, the number of cases for which an administrative investigation has started on the initiative of our institution has increased.

monitoring work of our staff who monitors the media (written media, television or even social media) to identify cases of violation of fundamental rights of the citizens that are made public, and propose these cases for follow-up to the People's Advocate, on a daily basis. As a result of this work, there are a number of issues that are under investigation by our institution, mainly related to the situation caused by the global pandemic.

The staff of the Reception Office, as well as the assistant-commissioners, and in some specific cases even the members of the cabinet, offered legal assistance in the form of legal counseling to different issues and questions that are addressed to our institution by citizens, mainly via e-mail.

### **❖ PROACTIVE ROLE, AS A PROMOTER OF THE HIGHEST STANDARDS OF HUMAN RIGHTS AND FREEDOMS**

In the framework of its proactive role, as a promoter of the highest standards of human rights and freedoms in the country, The People's Advocate Institution undertook **a series of actions to raise awareness** of state institutions, by:

- Addressing continuous public appeals and informations<sup>3</sup> on thorny issues like:
  - the need for practical plan of action in the context of the coronavirus situation in Albania;
  - the need for responsibility from state authorities;
  - information on human rights issues during the Covid-19 pandemic situation;
  - the need to focus on the protection of children's rights in a pandemic situation;
  - the strengthening of social solidarity, in addition to social distancing;
  - attention to Albanian citizens left outside the country's territory;
  - measures to ensure normal living, within the conditions of self-isolation, for the Roma and Egyptian community;
  - the risk of intensifying violence against women in the conditions of isolation imposed by Covid-19;
  - more social inclusion and equality for the Roma community on their international day;
  - special care for the civil society sector;
  
- Enhancing the role as a promoter of the highest standards of human rights and freedoms in the country, by being present and active in the national media, on

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<sup>3</sup> In the institution's webpage, link: <https://www.avokatipopullit.gov.al/sq/categories-and-detail/media>, as well as in the social network "Facebook"

different topics regarding the situation created by the state of emergency. The number of the public statements of People's Advocate in the media increased significantly, with about 7 public appearances per month, compared to an average of about 3 public appearances in previous month.

- Addressing human rights issues and ensure human rights protection during state of emergency, by discussing on the concrete role of the People's Advocate in this regard, in several national and international activities, such as:
  - European Network of Ombudsmen conference, on October 26<sup>th</sup> 2020;
  - ODIHR Thematic Webinar on “The role of human rights defenders in promoting and protecting human rights” on November 6<sup>th</sup> 2020;
  - OSCE Human Rights and Minority Academy in Voskopojë, on October 27<sup>th</sup> 2020
  - Civil Society round table on “right to protest during pandemic”, on November 5<sup>th</sup> 2020
  
- Translated and publishing on the official website of the institution, a series of statements of international institutions, to raise awareness of state institutions and the recognition of compliance with international standards, among which:
  1. Statement by the Commissioner for Human Rights in the Council of Europe, Dunja Mijatović: “We must respect human rights and stand united against the coronavirus pandemic”.
  2. Statement of UN Experts: “States should not abuse with the emergency measures against Covid-19 to suppress human rights”.
  3. Principles of the Council of Europe “On the treatment of persons in countries deprived of their liberty”.
  4. Statement by the United Nations Special Rapporteur on the Rights of Persons with Disabilities, Ms. Catalina Devandas: “We must respect the rights of people with disabilities as an integral part of human rights”.
  5. Committee of Experts on Media and Reform at the Council of Europe: Appealing on countries to guarantee freedom of expression and information for independent media during the Covid-19 pandemic.

All these activities through which we have tried to play our role as a national institution of human rights brought as a result not only the increase of the visibility of our institutional activity, but also the increase of the engagement of the citizens towards our activity.

According to the People's Advocate page insights, during March – April 2020 people reached increased by 359% while post engagements increased by 167%.

## MAIN CHALLENGES AND AREAS OF CONCERN DURING THE CRISIS

This crisis should be an opportunity to learn from mistakes and avoid repeating them in the future. The People's Advocate Institution has put strong efforts in bringing to light problems identified and recommending necessary measures and solution.

In concrete terms, the Albanian state authorities, while taking care of successfully coping with the health situation, should be more attentive regulate, improve, and build permanent administrative and legal instruments, to which proper publicity should be given.

We have found that the government must take all necessary measures to cope with the challenges that this situation brings to education, gender equality, the right to protection from discrimination, protection from domestic violence and the right to a peaceful family life, the right to healthy food and the right to mental health care, the right to care for vulnerable people, the right to employment, and many, many other dimensions that are intertwined in the conglomerate of a healthy society.

All these aspects, which are of great importance expect to be treated with attention, seriousness and responsibility by specialists in relevant fields and become the object of strategic plans and programs of competent state structures. The aim should be, first and foremost, to avoid as much as possible the consequences of this pandemic.

After the declaration of the state of the worldwide pandemic on March 11, 2020, by the World Health Organization, Albania took measures for the general cessation of social and economic activities. These measures concerned the closure of schools; prohibition of public and non-public activities; prohibition of mass gatherings in closed or open places; restriction or prohibition of movements by public transport; restriction of movements within the country, termination of court proceedings, etc.

*Concrete examples:*

*Retirees were one of the categories who were barred from leaving the house during the pandemic period. However, although the authorities took over the supply of food aid to these categories, our institution's observations have shown that this has not always worked, putting this vulnerable category in difficulty.*

*Another case that we can mention is the way of obtaining authorization from*

*persons who wanted to leave the house. The means of communication made available by the state authorities, namely the telephone numbers were in most cases unavailable, resulting in citizens not being able to obtain the required service (authorization to move) in time. This often put citizens in difficulty, as on the one hand they could not move without authorization, on the other hand it was not possible to obtain authorization in time.*

The imposition of restrictions on the exercise of certain rights during the period of pandemic, aimed to preserve the life and health of citizens, their awareness and obligation not to engage in activities that pose a risk to the spread of the disease. These rules also included the right of the state health authorities to identify citizens who could potentially be carriers of the disease and undertake the necessary health checks on them.

However, we are aware that human rights cannot be secondary even in a pandemic situation, and as a result all the restrictions or actions of the state authorities, in all cases, must be made in respect of human rights.

Bearing this in mind we have addressed several recommendations/opinions to the state authorities, to address the following areas of concern:

➤ ***Disclosure of normative acts in time***

Regarding the normative acts (legal or sub-legal), which imposed restrictions, our institution found that there were delayed publication (both on the official website of the relevant state institution and in the Official Journal), or in some cases were not even published at all. The lack of reflection of these acts, consequently leads to the lack of access of citizens to obtain complete and accurate information about the measures taken and the restrictions made by the responsible authorities in the country, and makes their legal power arguable. That is why The People's Advocate Institution assessed that the level of transparency should be increased. Also, The People's Advocate recommended that in addition to publishing acts, citizens should be given the opportunity to contact the institutions that provide services, whether by telephone or electronically, especially in this period when they should stay at home.

The People's Advocate Institution reminded the state authorities that they are responsible for disseminating information in a simple and understandable language and that information should be available to national minorities as well as people with disabilities. It is also very important that the information is understandable to children, as UNICEF has advised in recent publications.

On the above issue, on March 31, a Recommendation was sent to the Ministry of Health and Social Protection, to take immediate measures to reflect on the official website of the bylaws issued for measures taken in accordance with the law no. 15/2016 “On the prevention and control of infections and infectious diseases” and normative acts of the Council of Ministers, in the framework of taking special administrative measures during the duration of the pandemic caused by COVID-19.

➤ ***Getting permission for the categories of citizens who have to move with vehicles for work needs, or health emergencies***

After the imposition of measures in the context of pandemic, a concern was created to Albanian citizens who had to move with vehicles for work needs, or health emergencies because due to the high number of applications, most applicants not only did not receive the required authorization, but also did not receive any response from this structure. Also, the two telephone numbers available to the public to get information about this problem, from the verifications made turned out to be busy all the time.

For the above issue, on March 31, a recommendation was sent to the General Directorate of State Police, to take the necessary measures to decentralize the competence to issue authorizations for the movement of vehicles, or to increase the staff in the Traffic Police Directorate that was responsible for this service.

➤ ***Transportation of citizens from the border entrance to their homes***

After the imposition of the measures due to the pandemic, a concern was created to the Albanian citizens who entered through the land border crossing points and especially to those who returned from Greece and Northern Macedonia to Albania. After entering the territory of our country, they had medical examinations for COVID-19 infection and after being advised to stay self-isolation in quarantine for 14 days, they remained at the border, because there were no means of transport (neither public nor private) for them to go to their houses.

On the above issue, on March 31, a Recommendation was sent to the General Directorate of State Police, to take the necessary measures to allow or provide transport service at all border crossings, especially with Greece and Northern Macedonia, in order to enable the movement and transportation in their houses, of the Albanian citizens who came from these countries during that period of time.

➤ ***Denial of the right to enter their territory, of Albanian citizens who were blocked by the Albanian police, on the land border.***

With the suspension of flights, the Albanian state made possible that a number of about 2000 citizens were repatriated, from the places where they had remained trapped (at the end of March 2020), a welcomed decision by our institution.

Meanwhile, about a week later (the first week of April 2020), through a vague act, it was decided not to allow Albanian citizens to enter the territory of their state, even though they had reached the land borders (with the Greek and the Montenegro state) by means of their personal expenses. As the albanian citizens might be left out without means of subsistence as a result of the measures taken by other states against the situation created by COVID-19 (no work, no food, no home), our institution insisted that this situation be resolved as soon as possible and in no case may they be deprived of their right to shelter in their country. The Albanian government after several days of hesitation, allowed these citizens to enter the Albanian territory, provided that they could not go to their homes, but would stay in quarantine (in hotels designated by the state, but at the citizens own expenses). This situation again created different kinds of problems, since some did not have the necessary financial means, while others complained that they could not have other necessary services (medical visits, purchase of medicines, etc., because the hotels where they were staying were guarded by the armed forces (police and army), which did not allow them to leave the quarantine.)

Regarding the above issue, on April 5, a Recommendation was sent to the Inter-Ministerial Committee of Civil Emergencies and the General Directorate of State Police and to the attention of the Parliament and the President of the Republic of Albania.

➤ ***Changes in the Criminal Code***

One of the measures taken by the government in the context of pandemic was the amendments to the Criminal Code, with some of which the People's Advocate did not agree with, therefore submitted to the Committee of Laws in the Assembly (April 14<sup>th</sup>) the relevant opposition to the amendments and changes in the "Criminal Code of the Republic of Albania".

➤ ***Transparency and information of citizens on central government normative acts and other acts during the pandemic situation***

In order to fully and accurately inform citizens about the measures taken by state institutions pursuant to law no. 15/2016 "On the prevention and fight of infections and infectious diseases"- amended, or even through other acts normative issued by them, on April 30 a Recommendation was sent to the Inter-Ministerial Committee of Civil Emergencies, the Ministry of Health and Social Protection, the Ministry of Interior and the Ministry of Justice, to publish in conformity to the law of all central government normative acts and other acts during the pandemic situation.

➤ ***Recommendation for the protection of children / students of pre-university***



### ***education during the online learning process***

During the exercise of the constitutional function in the period of the Covid-19 pandemic, the institution of the People's Advocate, has ascertained the following essential problems, as follows:

- first, the lack of communication technology equipment and internet line supply;
- secondly, surfing the Internet for a long and continuous time, without security filters.

In this context, on April 17<sup>th</sup> and May 26<sup>th</sup> 2020 we have recommended to the bodies responsible for the education system to take a series of measures to strengthen the system of monitoring and evaluation of respect for children's rights and placing children's rights at the heart of the education system.

#### **➤ *Recommendation for taking immediate measures to guarantee the right of citizens to test for COVID-19***

Bearing in mind the need to ensure the greatest standard of health protection, our institution has recommended to health authorities several measures regarding policies of testing population:

- on June 19<sup>th</sup> 2020 we recommended that the Albanian state should immediately take the necessary measures to ensure that no Albanian citizen who wants to take the Covid-19 test is denied the right to take it. The state authorities should find alternative ways and solutions to accomplish this. Population testing may not be a luxury, but a right to be carried out in the pandemic situation we are going through.
- on July 22<sup>nd</sup> 2020 we recommended taking immediate measures to create opportunities for testing of students and students studying abroad for COVID-19, even against the payment of a cost-oriented fee as a right of theirs and an obligation of the state to realize it.

#### **➤ *Monitoring of anti-COVID measures in institutions of deprivation of liberty***

The proposal of the Minister of Justice, at the end of March 2020, the Council of Ministers approved the temporary release (suspension for 3 months) of about 600 persons deprived of their liberty, who were serving their sentences in re-education institutions, in order to protect their health due to the risk that may come from COVID-19 pandemic.

In the framework of exercising our mandate in the capacity of the National Mechanism for the Prevention of Torture (NPM), we have conducted inspections in the premises of deprivation of liberty, respectively in the Local Police Directorates, Commissariats and Institutions for the Execution of Criminal Decisions, to verify

compliance with the measures necessary to protect against COVID-19. At the end of these inspections, our findings together with the relevant recommendations were communicated to the relevant institutions.

➤ ***Pronouncement of the temporary suspension of the application of certain articles of the European Convention on Human Rights.***

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 Article 15/3 of the ECHR, has fully informed the Secretary General of the Council of Europe of the derogation from certain rights provided by the articles of the Covenant, due to the state of the epidemic, concretely: the right to respect private and family life (Article 8 of the ECHR), freedom of rally and organization (Article 11 of the ECHR), protection of wealth (Article 1 of the ECHR Additional Protocol), the right of education (Article 2 of the ECHR Additional Protocol), freedom of movement (Article 2 of the ECHR Protocol No. 4).

As of June 25th 2020, with another verbal note of the Permanent Mission of the Republic of Albania to the Council of Europe, the Albanian Government has withdrawn its derogations under the remaining Articles of the Convention and of Protocols thereto, and the provisions of the Convention are being fully executed again.

From the verifications of our institution, it results that the communication of the verbal notes has not been given the appropriate visibility (eg publication in the Official Journale, on the website of the Ministry for Europe and Foreign Affairs, or shared to the media).

➤ ***Demolition of the National Theatre***

The Ombudsman's Institution has followed with special attention the events related to the National Theater and with deep concern those which occurred in the early morning hours of the date 17.05.2020 at the National Theater and protests in the following hours. On this date around 04:30 o'clock, the Territorial Defense Inspectorate of Tirana's Municipality, backed by State Police forces and Tirana Municipal Police, implemented the decision of the Municipal Council of Tirana, for the demolition of the National Theater building (NT). Regarding this issue, our institution has recently issued a recommendation which identifies problems regarding the actions of the General Directorate and Local Directorates of the State Police.