

Albania

People's Advocate of Albania

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Albanian NHRI was reaccredited with A status in October 2014. The SCA encouraged the NHRI to continue advocating for a more transparent and merits-based selection and appointment process. While noting the expansion of the NHRI's mandate, the SCA recommended adequate funding to be provided to allow the institution to carry out its extended mandate.

The Albanian NHRI was due for accreditation in March 2020, but the session was postponed due to the COVID-19 outbreak.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Impact on the Albanian People's Advocate of the Political Situation and the lack of functioning of Constitutional Court and Supreme Court

The role of the People's Advocate as envisioned in its enabling legislation, is to directly and indirectly influence all decision processes in the society that affect the freedoms provided by the Constitution and other normative Acts of the Republic of Albania, as well as the generally recognized principles and norms of international law. This provision ensures that the People's Advocate must be the national focal point and expertise centre for the human rights and freedoms of everyone, with close connections to and cooperation with all state structures, business structures and civil society structures. The strategic ambition of the People's Advocate is to become the key human rights actor of a well-functioning national human rights system in Albania as described in the role of the People's Advocate.

This strategic ambition has encountered various obstacles due to the ongoing political conflicts, the lack of functioning of Constitutional Court and Supreme Court, the country difficult social and economic situation, and the inadequate financial and human resources

of People's Advocate institution that has hampered its work as the national human rights institution.

The People's Advocate institution has requested an increased attention and awareness of its role from the government and the parliament in order to secure increased support, in terms of both financial and human resources, to be able to better fulfil its role, but the several proposals made to ensure that the People's Advocate can properly carry out all of its functions have not been properly addressed.

The need to increase the budget and human resources

As a Status "A" national human rights institution with a wide mandate, the People's Advocate has to enjoy constant support via a good financial and human infrastructure which provides the realization of the objectives in total compliance with the Paris Principles and also with the principles determined by the Venice Commission.

Since 2014 the People's Advocate institution has been allocated another range of duties and human and financial resources are needed to ensure their implementation. This is an obligation which derives from the resolution of the Assembly of the Republic of Albania as well as from recommendations of the European Commission against Racism and Intolerance (ECRI) which foresee that each new mandate is accompanied with extra financial support.

From August 2019, the People's Advocate institution has entered the process of the re-accreditation of the "A" status, where some of the evaluation criteria are related to the financial support from the state's budget and how much this budget can cover the needs of the institution to fully realize its mandate. This is because the Paris Principles and also the principles established by the Venice Commission underline the fact that financing granted to the national human rights institution has to reasonably ensure the gradual and progressive realization of its functions with a view to facilitate the realization of its mandate.

Funding from external sources (donors), cannot replace the financial support coming from the state's budget, because it is the responsibility of the latter to secure the minimal budget for the activity of the NHRI so that it can be allowed for it to function normally to fulfil its mandate. All the international organisations reports (the European Commission reports, the report of the Under-Accreditation Committee, year 2014 and the recommendations in the framework of the Universal Periodical Revision (UPR), year 2019) separately and jointly, in

their evaluation continue to emphasize the fact that the independent institution of the People's Advocate has limited financial and human resources to exercise fully its mandate and that increased support is needed.

Despite all the above, the budget of the institution for this year (2020) is projected to decrease further, due to the situation created by COVID-19.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

The People's Advocate Institution operates according to the Constitution and the Law "On the People's Advocate", as amended. The latter has been amended in 2014 (law no.155, dated 27.11.2014) where, among other changes, there has also been an amendment in Articles 2 and 29 of the law clearly defining the People's Advocate institution as a promoter of the highest standards of human rights and freedoms in the country. The People's Advocate is vested with a dual mandate: to both protect and promote human rights. The direct instance to which the People's Advocate reports is the Parliament and the core object of its mandate are all the human rights and freedoms enshrined in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Albania.

References

- The law "On the People's Advocate" No.8454, dated 04.02.1999, supplemented by the law no. 8600, dated 10.04.2000, amended by the law no. 9398, dated 12.05.2005, added to and as amended by the law 155/2014, dated 27.11.2014, "ON THE PEOPLE'S ADVOCATE"
<https://www.avokatipopullit.gov.al/en/article/legislation>

Human rights defenders and civil society space

Restrictions on the right to assembly/protest

In 2019, the People's Advocate Institution has monitored 31 protests organised by various entities (opposition political parties, civil society, students, various categories of citizens, etc.), some of which have ended up with physical confrontations. The People's Advocate, through parallel working groups, has been monitoring closely the situation on the ground, in order to immediately verify the cases when there were evidences of possible illegal

actions committed by state authorities. The People's Advocate has maintained its institutional stance in several cases, for example on the use of tear gas by the police during several assemblies considering it disproportionate, preventing the citizens from exercising the right to peaceful assembly. Also, The People's Advocate Institution has ascertained and condemned the unacceptable acts of restriction by the part of the Police, for journalists or other free media employees, to exercise their duty.

In cases where violations of the rights of citizens have been ascertained, the People's Advocate has made the relevant recommendations addressed to the competent bodies for taking the necessary criminal or administrative measures. In July 2019, the Parliament amended the Criminal Code by adding a new article (Article 293 - Prevention of the circulation of vehicles - "Obstruction or prohibition, in every single way, of the circulation of vehicles, railway, by water or air, is punished by paying a fine or serving the sentence up to three years"), which in some cases has been used to restrict freedom of assembly. The People's Advocate has assessed that the right of citizens to assembly cannot be unjustifiably restricted by the authorities charged by law in order to ensure their well-being and has recommended to the State Police to take fair measures and appropriate implementation of the legislation on assembly, in order not to stop or restrict the organization or participation of citizens in peaceful assembly, respecting and protecting basic human rights and freedoms, both that freedom of assembly and that of free movement.

Limitations on the right to freedom of expression

The People's Advocate Institution, in accomplishment of its constitutional mission, has been giving opinions regarding the exercise of freedom of expression and hate speech. Among others, the People's Advocate has published a Legal Opinion addressed to the Committee on Legal Affairs, Public Administration and Human Rights in the Albanian Parliament, where were highlighted a number of issues of law no. 91/2019 "On some changes and additions to the law 97/2013" On audio-visual media in the Republic of Albania ". These legal changes were also part of the discussions during the Annual Conference of The People's Advocate Institution, organised on December 18, 2019. (Note: more details on this topic will be informed in point 6 "Media Pluralism").

To date, the most recent development on this regard is the draft opinion no 980 / 2020 presented to the authorities by The Venice Commission on May 28th, opposing the laws of the "Anti-Defamation Package" proposed by the Albanian government. These assessments follow the initiative of the Council of Europe to send opinion laws to the Venice

Commission, at a time when the assembly has decided to return the President's decree on the proposed laws. In the draft opinion dated May 28, the Commission evaluates the improvements made, but notes the criticism of international experts on the effects these laws will have on freedom of expression.

Among other the Venice Commission has assessed that the Audiovisual Media Authority with the approval of the "anti-defamation package" receives great administrative powers for online media and the independence of the AMA body according to them is worrying. "The main principle is that an institution that oversees the media should be independent and impartial. This should be reflected especially in the way their members are appointed. All members of the AMA have a clear political affiliation, with members nominated by the ruling party / coalition who have the majority in this body, " the Venice Commission said in a statement.

References

- December 18, 2019 Avokati I Popullit shpreh shqetësim mbi ndryshimet e propozuara ligjore lidhur me Shërbimet Mediatike në Shqipëri (People's Advocate Expresses Concerns About Proposed Legal Changes Related to Media Services in Albania)
<https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-248/>
- December 20, 2019 U zhvillua me sukses Konferenca Vjetore e Avokatit të Popullit në Shqipëri (Held successfully the Annual Conference of the People's Advocate in Albania)
<https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-250/>
- May 28th, 2020: Komisioni i Venecias- Thirrje qeverisë të rishikojë "paketën anti-shpifje" (Venice Commission- Calls on government to review "anti-defamation package")
<https://citizens-channel.com/2020/06/05/komisioni-i-venecias-thirrje-qeverise-te-rishikoje-paketen-anti-shpifje/> <https://issuu.com/citizenschannel/docs/cdl2020004-e.pdf>

Checks and balances

The justice reform and improper functioning of the judicial system

The Justice Reform was given special focus within the work of the People's Advocate Institution, not only because of the legal obligations set out in the legislation, but also because of the importance that this reform has and which is directly related to the observance of human rights in the country.

The non-functioning of the Constitutional Court and the minimal functioning of the Supreme Court due to the vetting process of the Justice Reform are a major problem that directly affects the democracy situation in the country and that brings a significant deterioration in the level of guaranteeing the implementation of human rights in the country. It is clear now that to achieve this reform according to the constitutional and legal provisions, in addition to the political will (in the sense of supporting the parliament), there is a need for greater human resources than those currently made available. The People's Advocate has raised these issues in all meetings covering these topics, demanding that this is dealt with as a priority by both the executive and the legislative powers.

Non-execution of decisions of the European Court of Human Rights

The People's Advocate has also monitored and examined issues related to the non-execution of final court decisions which were delivered by Courts in the Republic of Albania, or the European Court of Human Rights, where there have been identified problems that violate the principle of due process (as a result of non-execution of executive titles, within a reasonable time, by the authorities charged by law with their implementation). This remains an important issue for the Albanian state, as it is related to the strengthening and development of a respectable judicial system by all. The prolongation of the execution, the "questioning" of justice given by the courts, affects the loss of trust in the state. For the improvement of this situation, the Ombudsman has intervened on a case-by-case basis through proposals/recommendations for amendments to legal and sub-legal acts related to the implementation of executive titles in the civil, administrative or criminal field.

Failure to review the special reports of the People's Advocate by the Parliament

According to the Law "On the People's Advocate", one of the most important tools that the People's Advocate has at its disposal is the Special Report to the Parliament. Despite the fact that the People's Advocate has drafted several special reports, only one of them has been discussed on plenary session by Parliament (special report on the rights of LGBTI in Albania deposited on September 5, 2012).

References

- Annual Report 2019 "On the activity of the Albanian Ombudsman's Institution"
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20Vjetor%202019%20-%20Avokati%20i%20Popullit.pdf>

Functioning of justice systems

The People's Advocate has identified several problems in relation to the functioning of justice systems.

Failure to provide legal aid

The People's Advocate has identified problems in the judicial bodies, that are mainly related to the violation of the right to a due legal process, and more specifically to the failure to provide primary and secondary legal aid, pursuant to the law "On the legal aid guaranteed by the State", as well as procrastination of court proceedings (in particular overdue deadlines by the Administrative Court of Appeal and the High Court).

Regarding the implementation of no. 111/2017 "On legal aid guaranteed by the State", the People's Advocate conducted administrative investigations and followed all the steps taken by the responsible institutions, for the approval of bylaws, as well as for the establishment of structures provided by law. Failure to comply with legal obligations by the responsible bodies, in order to fill the sub-legal vacuum and create, within the legal deadlines, the relevant structure to provide free legal aid, has brought to lack of representation through a free of charge lawyer for certain issues, making thus access to justice impossible for people in need.

Delays in court proceedings

Due to the process of the vetting in the justice system (lack of appointments of new judges and prosecutors in the vacant positions as a result of this process), and the failure over years to fill the vacancies in the Supreme Court, delays in court proceedings have become a worrying problem. We have recommended that the resolution of this issue should be a priority, as it is directly linked to the protection of human rights, especially to the right of a fair trial within a reasonable time. The fact of high quantitative workload of administrative judges, especially in the Administrative Court of Appeal, is another factor that creates

delays in the review of cases, which also requires intervention as these delays are harming citizens.

Observation of the work of the Judicial Appointments Council (JAC)

In the framework of the constitutional amendments of 2016, the specific mandate of the observation of the work of the Judicial Appointments Council was given to the People's Advocate, detailed by law no. 115/2016 "On governance institutions of the justice system". The first task in this process is related to monitoring the drawing of lots for the election of members of the Judicial Appointments Council, where in the respective reports drafted for the draws of December 2017 and December 2018 a series of concerns were raised. One of the main concerns was the non-implementation of the criteria of the law to make the lists of candidates, submitted by the proposing bodies and without any explanation; while for some bodies and categories represented, more limited criteria were applied.

The first issue during 2019 was presented with the process of drafting the Rules of Procedure of JAC, as the JAC tried to limit the legal competencies of the institution of the People's Advocate. More specifically, the JAC adopted a regulation in which it introduced the concept of "Advisory Chamber" in the meetings of this administrative body (which was not foreseen in any law), which has limited the legal competencies of the People's Advocate, to guarantee and maintain transparency in its entirety of JAC's activity. Also, in the regulation (in its final version), the possibility of the People's Advocate to give opinions to the Council was limited only in relation to any procedural violation, during the procedure of verification of candidates and not in relation to the substance of the case, or the issue submitted for discussion by the rapporteurs. Assessing the above provision contrary to the competencies given to the People's Advocate, our institution filed a lawsuit in the Administrative Court of Appeal in Tirana, with the object of repealing some of the articles in three of the regulations approved by JAC, process who is currently on trial. Throughout 2019, the People's Advocate pointed to other problems, such as:

- Non-disclosure of minutes of JAC meetings (the disclosure and publication of minutes of meetings of this body was delayed by 11 months, while the chairman of JAC refused to make these minutes available to our institution);

- the fact that the Chairman of JAC sent to appointing bodies the final lists of the candidates for the vacancies in the Constitutional Court many days after the meeting for their ranking ended and with a difference for the two institutions (after 15 days to the President of the Republic and after 21 days to the Parliament of the Republic of Albania),

which greatly reduced the choice of candidates. For this action the President of the Republic filed a criminal complaint against the Chairman of JAC, accusing him of abuse of office and taking powers. The Venice Commission also engaged on this issue by sending a team of experts to Albania (who also met with our institution which informed them about the problems identified), but has not yet presented its final opinion.

- Irregularities in sending of meeting materials by JAC for our institution and other guests (incomplete materials, the deadline for their preliminary submission was not respected); no timely publication of materials on the website; non-suspension of the process of reviewing candidates who had not completed the transitional re-evaluation process; incomplete procedures followed by JAC, to verify the fulfilment of certain criteria by the candidates; etc.

The People's Advocate also found that JAC significantly exceeded the deadlines provided in laws no. 8577/2000 "On the organization and functioning of the Constitutional Court in the Republic of Albania" and no. 115/2016 "On governance institutions of the justice system", for the review of candidates for vacancies in the Constitutional Court, but in our opinion, this issue has to do with the short legal deadlines provided by the legislator and not with the performance of JAC during 2019.

On the activity of the Judicial Appointments Council during 2019 (including in detail all the issues mentioned above, which significantly limited the possibility of the People's Advocate to exercise the duties assigned by the Constitution and the law, and potentially have limited the possibility of candidates to have equal treatment), the People's Advocate has prepared a special report.

- Judicial Appointments Council, Report of December 2017
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20KED%202017.pdf>
- Judicial Appointments Council, Report of December 2018,
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20KED%202018%20.pdf>

Monitoring of the vetting process

The People's Advocate institution has followed with special attention the implementation of justice reform as a whole, with a special focus on the establishment of the institutions for the transitional re-evaluation of judges and prosecutors and the functioning of these

institutions. In this context, we have followed and monitored with special attention the hearings held by the Independent Qualification Commission (KPK), the Appeal Chamber (KPA), as well as the complaints filed by the Institution of Public Commissioner. Our findings (mainly on the work of the KPK) include the following:

- The pace at which the transitional reassessment process is taking place is not sufficient for its completion within the legal deadline set out in the Constitution (Article 179 / b) and Law 84 / 2016 "On the Transitional Re-evaluation of Judges in the Republic of Albania" (Article 70/1);
- Transparency in the conduct of hearings has been partially satisfactory, as in some cases there have been reservations about the recognition of facts and circumstances by the public, or on the assessment or not of certain evidence and facts;
- In many cases, the reporting has not been clear and does not reflect all the facts and circumstances that have led to certain decisions, thus reducing their transparency for the public;
- Evaluation of evidence is unequal for subjects of re-evaluation (the application of multiple standards, in the evaluation of evidence of the same type, or of the same facts, or circumstances);
- Difficulties or inability of some of the subjects to submit information concerning past occurrences/events (in relation to a timeframe of over 20 years ago), due to the unavailability of documents even in the archives of state institutions (eg because the deadline for their preservation has passed). In such cases, the obligation of the burden of proof goes beyond the real possibilities for the subjects to submit information.

References

- <https://www.avokatipopullit.gov.al/en/articles-layout-1/media/justice-reform/materialet-pr-reformn-n-drejtsi-480/#>

Media pluralism

In 2019, the Albanian government took the initiative to draft some legal amendments, mainly related to the activity of online portals. The law no. 91/2019 "On some changes and additions to the law 97/2013" On audio-visual media in the Republic of Albania "aimed at

regulating the activity of online portals through a legal framework, in order to achieve a balance between access to online content services, consumer protection and competition, while guaranteeing human rights, respecting copyright, achieving a professional, free and independent journalism, as well as respecting and guaranteeing the right to privacy, and not allowing broadcasts that incite intolerance, hate speech and violence in society. As a national human rights institution in the Republic of Albania, the Ombudsman considers that there should be a well-structured balance in the relationship between the fundamental rights and freedoms of individuals on the one hand, and media freedom on the other.

In the opinion of journalists and civil society, this draft law was considered as restrictive of freedom of expression. The initial project was sent for consideration to international institutions active in this field (CoE and OSCE). Despite the changes made to the original draft, a number of problems still remained. The People's Advocate Institution also engaged in this process, taking an active part in some of the roundtables and eventually presenting a legal opinion to the Law Commission in Parliament. Its opinion highlighted the following issues:

- The administrative procedure for the process of complaints and reviews does not provide guarantees for an objective and impartial decision-making, in accordance with the obligation to respect the freedom of the media to freely express. Inserting the administrative body such as the Audio-visual Media Authority (AMA) close to judicial powers does not provide sufficient constitutional guarantees for the impartiality of this institution. (The AMA Board is elected on the basis of the proposals of the political parties and since its establishment until today, it has turned out to have not created the trust of the mass media, for the exercise of the role it has played in this field.)
- The Complaints Council (the decision-making structure at the end of the review of complaints towards e-service operators) and the AMA Board itself do not guarantee the necessary impartiality to address such a delicate issue as the boundary between freedom of the media and freedom of expressions. We consider that self-regulation should be the way fake news issues should be addressed.
- Sanctions on fines provided by law are too high and their application will put operators providing electronic publishing services in unequal positions. We consider that the application of sanctions should ensure compliance with the principle of proportionality, taking into account not only the capacity of capital (size) of electronic publishing service providers, but also the violation committed by operators, in order to impose sanctions in accordance with the capacities of the

providers of electronic publishing services, as well as with the importance or consequences of the violation committed.

- There was insufficient transparency and lack of consultation in the review of this law.

Despite the critical opinions given by local actors (institutions such as ours, civil society organizations, etc.), but also by international organisations which our country is part of (see in particular the [public statement](#) expressed by the Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, recommending to abandon the draft law), most of the recommendations were not taken into account. For these reasons, the President of the Republic of Albania decided to refer back the law for reconsideration to the Albanian Parliament.

Regarding this law, the European Commission requested the opinion of the Venice Commission, which sent a mission to Albania on February 10th-11th 2020. The People's Advocate Institution had a meeting with the representatives of the Venice Commission where, among other things, expressed the opinion on the possible negative implications that some of the articles of this law may have for human rights. The opinion of the Venice Commission is expected to be considered at its June 2020 session.

The People's Advocate believes that it is essential that the Parliament duly takes into account the arguments put forward so far as regards this draft law (by our institution, civil society, the President, as well as statements by international institutions expressed so far) as well as the upcoming opinion of the Venice Commission.

References

- Commissioner urges Albania's Parliament to review bills which restrict freedom of expression, <https://www.coe.int/en/web/commissioner/-/commissioner-urges-albania-s-parliament-to-review-bills-which-restrict-freedom-of-expression>
- December 18, 2019 Avokati i Popullit shpreh shqetësim mbi ndryshimet e propozuara ligjore lidhur me Shërbimet Mediatike në Shqipëri (People's Advocate Expresses Concerns On Proposed Legal Changes Related to Media Services in Albania) <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-248/>

Corruption

The People's Advocate Institution does not have as its direct object of work the fight against corruption, but when such cases are found, we do act. In 2019, during an administrative investigation in connection with "Non-compliance with the right to property", the People's Advocate identified acts potentially integrating criminal offences committed by employees of state institutions, as well as reasonable suspicion of corrupt practices. In these conditions, The People's Advocate Institution recommended to the Prosecution body, the initiation of investigations regarding the activity of three state institutions, for the criminal offense of "Abuse of power", as well as for other criminal offences, which may result during the investigation of this process, referring to the legal violations found by the administrative investigation.

References

- Annual Report 2019 "On the activity of the Albanian Ombudsman's Institution"
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20Vjetor%202019%20-%20Avokati%20i%20Popullit.pdf> page 108

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

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. The imposition of restrictions on the exercise of certain rights during the period of pandemic, aims 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 include the right of the state health authorities to identify citizens who could potentially be carriers of the disease and undertaking the necessary health checks on them, but all the restrictions, or actions of the state authorities, in all cases must be made in respect of human rights. In order to exercise the

constitutional duty entrusted to The People's Advocate Institution, we are aware that human rights cannot be secondary even in a pandemic situation.

Proactive actions of The People's Advocate Institution and its role in promoting the highest standards of human rights and freedoms during COVID-19

(1) Statements of the People's Advocate Institution

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 the Albanian people and state institutions in relation to the impact of measures adopted in response to the COVID-19 emergency:

- 9th March: The People's Advocate Institution appealed for a practical plan of action in the context of the coronavirus situation in Albania;
- 18th March: The People's Advocate Institution supported the restrictive measures and at the same time appealed for responsibility from state authorities;
- 19th March: Published on its website an information on human rights issues during the COVID-19 pandemic situation;
- 20th March: The People's Advocate Institution appealed for the need to focus on the protection of children's rights in a pandemic situation;
- 20th March: The People's Advocate Institution appealed on the problems that are created by frequent changes in measures against Pandemic;
- 24th March: The People's Advocate Institution appealed for the strengthening of social solidarity, in addition to social distancing;
- 25th March: The People's Advocate Institution appealed for attention to Albanian citizens left outside the country's territory;
- 26th March: The People's Advocate Institution appealed for measures to ensure normal living, within the conditions of self-isolation, for the Roma and Egyptian community;
- 29th March: The People's Advocate Institution appealed against the publishing of the identities of those affected by coronavirus;
- 6th April: The People's Advocate Institution issued recommendation made by the People's Advocate on the Albanians abroad in need of return;
- 6th April: The People's Advocate Institution appealed against the blocking of the Albanians at the borders as a violation of human rights;
- 6th April: The People's Advocate Institution appealed against holding of the Albanian immigrants held in Kapshtica (border with Greece);

- 7th April : The People's Advocate Institution appealed for the risk of intensifying violence against women in the conditions of isolation imposed by COVID-19;
- 8th April : The People's Advocate Institution appealed for more social inclusion and equality for the Roma community on their international day;
- 10th April: The People's Advocate Institution appealed for special care for the civil society sector in this difficult period.
- 15th April: The People's Advocate Institution appealed on the threats to human rights that would bring the proposed changes to the Criminal Code;
- 16th April: The People's Advocate Institution appealed against Legal Initiatives for Amendments to the Criminal Code and imprisonment as an excessive measure against citizens;
- 17th April: The People's Advocate Institution appealed on the threats to human rights that would bring the proposed changes to the Criminal Code;
- 18th April: The People's Advocate Institution appealed for the respecting of the fundamental rights of returnees from emigration;
- 20th April: The People's Advocate Institution appealed for appropriate measures to be taken in Albania compared in the global context;
- 23rd April: The People's Advocate Institution appealed for adequate information about the current situation in the penitentiaries;
- 23rd April: The People's Advocate Institution appealed for Constructive cooperation and transparency of state bodies as of particular importance on during the COVID-19 pandemic situation;
- 28th April: The People's Advocate Institution appealed on the threats to human rights that would bring the proposed changes to the Criminal Code;
- 6th May: The People's Advocate Institution appealed for a functioning legal system in Albania;
- 10th May: The People's Advocate Institution appealed for a functioning legal system in Albania and presented institutional opinion on the temporary withdrawal from the Convention on Human Rights;
- 12th May: The People's Advocate Institution appealed for respecting the rights to peacefully protest during emergency situations;
- 17th May: The People's Advocate Institution appealed for respecting the rights to peacefully protest during emergency situations in reply to illegal actions taken by state with regard to the demolition of the National theatre;
- 17th May: The People's Advocate Institution appealed for respecting the rights of the arrested protestant with a special focus on the right to health while at the police stations;

- 18th May: The People’s Advocate Institution appealed for legal actions from the state with regards to the disturbing situation created by the demolition of the National Theatre;
- 19th May: The People’s Advocate Institution appealed for a path to normality while the situation evolved from a health crisis to a political one;
- 25th May: The People’s Advocate Institution appealed for the de-freezing of the Justice reform;
- 1st June: The People’s Advocate Institution appealed for Police accountability;
- 5th June: The People’s Advocate Institution appealed for special attention to address the rights of abused women and children.

References

- <https://www.avokatipopullit.gov.al/sq/categories-and-detail/media/multimedia>
- <https://www.facebook.com/avokatipopullit/>

(2) Dissemination of Declarations by International Institutions

Meanwhile for the awareness of state institutions and the recognition of compliance with international standards, The People’s Advocate Institution translated and published on the official website of the institution, a series of statements of international institutions, as follows:

- 18th March: Statement of UN Experts: “States should not abuse with the emergency measures against COVID-19 to suppress human rights”;
- 21st March: Principles of the Council of Europe “On the treatment of persons in countries deprived of their liberty”.
- 3rd April, CoE Commissioner for Human Rights Dunja Mijatovic Statement: Press freedom must not be undermined by measures to counter disinformation about COVID-19;
- 6th April, CoE: COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe;
- 15th April, UN High Commissioner for Human Rights Michelle Bachelet calls on States to taking action to increase the health response while acknowledging migrants and minority communities’ contributions to the fight against the pandemic

and the importance of health and education in building stronger and more resilient societies;

- 17th April, European Court of Human Rights on the Protection of Human Rights In COVID-19 Situation;
- 22nd April, CoE Commissioner for Human Rights Dunja Mijatovic Annual Activity Report 2019;
- 30th April, UN High Commissioner for Human Rights Michelle Bachelet calls on States to ensure that human rights are not violated under the pretext of the need to take extraordinary measures;
- 6th May, CoE: European NPM Newsletter (6th);
- 8th May, ENNHRI: The EU must put economic and social rights at the heart of its economic response to COVID-19;
- 18th May IOI: Board of Directors adopts COVID-19 Resolution;
- 8th June APT: Guidance on monitoring places of deprivation of liberty during COVID-19.

References

- <https://www.avokatipopullit.gov.al/sq/index/home>
- <https://www.facebook.com/avokatipopullit/>

Findings and recommendations of The People's Advocate Institution

During the practical implementation of the set restrictions, the People's Advocate institution has identified the following problems:

- (1) Timely disclosure of normative acts and right to information

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), and that in some cases acts were not even published at all. The lack of publication of these acts hinders citizens from obtaining 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 of confinement.

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.

(2) Obstacles faced by citizens to obtain authorization to move with vehicles for work or health emergencies

After the imposition of measures in the context of pandemic, Albanian citizens who had to move with vehicles for work or health emergencies experienced difficulties 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 authorisations for the movement of vehicles, or to increase the staff in the Traffic Police Directorate that was responsible for this service.

(3) Transportation of citizens from the border entrance to their homes

After the imposition of the measures due to the pandemic, Albanian citizens who entered through the land border crossing points and especially to those who returned from Greece and Northern Macedonia to Albania experienced difficulties. 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.

- (4) Denial of the right to enter the territory to Albanian citizens blocked by the Albanian police, on the land border with the Greek and the Montenegro state

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 an unpublished act, it was decided not to allow Albanian citizens to enter the territory of their state, even though they had reached the land borders by means of their personal expenses. More concretely, the Joint Order no. 240, dated 07.04.2020, of the Minister of Health and Social Protection and the Minister of Interior, "On the self-assembly of Albanian citizens who want to enter the territory of the Republic of Albania from all Land Border Points", which is a sub-legal act normative, until the drafting of the Peoples Advocate Recommendation on 28.04.2020, has not been published in the Official Gazette no. 76, dated 27.04.2020. Thru its recommendation, the People Advocate urged the authorities to:

- Take the necessary measures for the immediate publication in the Official Gazette of the Joint Order no. 240, dated 07.04.2020, of the Minister of Health and Social Protection and the Minister of Interior "On the self-assembly of Albanian citizens who want to enter the territory of the Republic of Albania from all Land Border Points".
- Take measures to guarantee (if no such thing has been done so far) the right of citizens to complain about the quarantine measures and the inclusion of this right in the acts that communicate such a binding measure.
- Take immediate measures for the reflection on the official pages of Ministry of Health and Social Protection as well as the Ministry of Interior of the sub-legal act cited above for the measures taken pursuant to law no. 15/2016, as amended, in the context of taking special administrative measures during the duration of the COVID-19 infection period.

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.

(5) Declaration on 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).

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

(6) Temporary release of detainees

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.

(7) Declaration of a state of natural disaster

With the decision no. 243, dated 24.3.2020, the Council of Ministers, decided to declare the state of natural disaster, while on April 21st, 2020 the Council of Ministers has asked the Parliament to give consent for the extension of the state of natural disaster for another two months, which was approved on April 23rd.

(8) Changes in the Criminal Code

One of the measures taken by the government in the context of pandemic was the introduction of a number of amendments to the Criminal Code. This changes did not take into the account the Council of Europe guidance to governments on respecting human rights, democracy, and the rule of law during the COVID-19 crisis, where it was noted that in the current state of emergency it is advisable not to continue the process of reform and that states should minimize the legislative activity to the extent necessary to address the situation in which the state finds itself.

The changes proposed disregarded among other the constitutional obligation of Article 170, point 5, which explicitly stipulates that under the conditions requiring extraordinary measures, none of these laws on emergency measures should be altered. Furthermore, summary reports of the draft laws, foreseen that proposals had no financial effect. In fact, in our opinion they have financial effects because the toughening of criminal policy and increasing the sentence and / or imposing a minimum sentence for some types of offences implies, in an initial phase until there is a proper awareness of potential offenders of the new provisions, the imposition of lengthy prison terms on offenders with an extra cost to the Ministry of Justice and the General Directorate of Prisons.

The People's Advocate found some of these amendments problematic and therefore notified its opposition to the Committee of Laws in the Assembly (April 14th). The proposals for amendments to the draft law "On an amendment to the law no. 7895, dated 27.1.1995," Criminal Code of the Republic of Albania ", as amended", were treated by us in three respects: first, as an extraordinary measure which cannot be changed during the duration of the situation itself, secondly as an act in violation of the legislative procedure, and thirdly as an aggravation and disproportionate criminal policy:

- Any legislative and / or executive activity during the state of emergency should be subject to the principle of legitimacy and proportionality. The principle of legitimacy

is a principle that goes beyond the possibility of decision-making or the possibility of enforcing the law and for this sufficient jurisprudence and doctrinal thought.

- Attempts to add provisions to the Criminal Code, moreover with extreme sentencing measures, do not come into coherence either with the situation or with the circle of persons that the legal provisions should protect. As an example, the measures of punishment proposed in Article 242/2 "Violation of quarantine rules for the prevention of the spread of infectious diseases" are so severe that they exceed the measure of punishment that has been determined for serious criminal offenses, grievous bodily harm, violent theft or negligent homicide, etc.
- The Ombudsman is of the opinion that, as a rule, acts of a permanent nature cannot be produced in an extraordinary situation. In no democratic country can there be fundamental reforms in the legal system during situations that require extraordinary measures, except in cases where they are absolutely necessary.

References

- April 14, 2020 Mendim për projektligjin "Për një ndryshim në ligjin nr. 7895, datë 27.1.1995, "Kodi Penal i Republikës së Shqipërisë", të ndryshuar". (Opinion on the draft law "On an amendment to law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania", as amended).
https://www.avokatipopullit.gov.al/media/manager/website/reports/Mendim%20p%C3%ABr%20projektligjin_d40LwTY.pdf
- April 30 Avokati i Popullit kërkon publikimin e vendimeve për lehtësimin e hyrjes së shtetasve shqiptarë në pikat kufitare (People's Advocate Requests Publication of Decisions on Facilitating Entry of Albanian Citizens at Border Points)
<https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-472/>

Most important challenges due to COVID-19 for the NHRI's functioning

After the imposition of measures in the framework of pandemics, it is foreseen to reduce the budget of the institution.

An expression of solidarity with those affected by the difficult economic situation, the Council of Ministers decided that for the next three months, the cabinet would receive only ½ of payment, while the other ½ would be transferred to the fund that will be used for the economic package, which will be donated to citizens who are economically affected by the

COVID-19 situation. They also invited other senior officials to join the initiative, and the People's Advocate was one of them.

Following the imposition of containment measures in the context of pandemics, the institution of The People's Advocate Institution took the following measures:

- 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 are required to respect the rules of personal hygiene and social distancing. Daily reports of work done are presented in accordance to the chain of hierarchy by all staff. Virtual conference calls are made periodically within each Section, Cabinet, Ombudsman and Commissioners, Ombudsman and several working groups, etc.
- The People Reception Office was closed and the communication with the people 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" gives information on all the ways of the contact with the institution.
- Inspections in places of deprivation of liberty, or other state institutions were suspended, and reporting was agreed upon request. As a result of these measures, so far there are no employees of our institution affected by COVID-19.

References

- Vazhdimësia e punës në Institucionin e Avokatit të Popullit gjatë masave në kuadër të COVID-19 (Continuity of work in the Institution of the People's Advocate during COVID-19). <https://www.avokatipopullit.gov.al/sq/articles-layout-1/home/news/this-article-is-available-only-in-albanian-420/>

Other relevant developments or issues having an impact on the national rule of law environment

Throughout 2019, Albania experienced an increased number of arrivals of irregular foreigners entering through the southern and south-eastern border with Greece, mainly aiming to continue further towards Montenegro, with final destination the European Union

countries. The increase in the inflow of irregular foreigners was accompanied by an increase in asylum applications in Albanian territory, and the necessity for properly addressing priority needs for protection, assistance and services, especially for the most vulnerable groups, such as women and children, people with special needs, or persons with health problems.

The Albanian People's Advocate Institution in its role as the National Mechanism for the Prevention of Torture, continued the ongoing implementation of the joint UNHCR-AP project "Refugees and Asylum Seekers in Southeast European Countries". In close cooperation with the UNHCR central and local office of Gjirokastra, the representatives of the Albanian People's Advocate Institution in three cross-border areas, attentively monitored the process of identification of irregular foreigners carried on by the employees of the immigration sector at the Border Police. The experts enjoyed full monitoring access during the entire process of transportation, interviewing and accommodation. During the monitoring, the experts contacted hundreds of irregular foreigners and made sure for them to be informed on their rights. Furthermore, the experts coordinated the cooperation with the structures in charge of offering humanitarian and medical assistance, in order to ensure that the immediate needs for food, clothing and medical assistance of the irregular migrants were properly met.

The People's Advocate experts have worked for the quality improvement of various elements in the mechanism of protection of migrants, by identifying several gaps in the asylum system. One of the challenges the system faces is the lack of translators for rare languages (as one person from the migrant group serves as improvised English translator for the rest of the group) and such language barriers affect the identification process and selection. This and other identified problems were presented to the authorities and were followed-up in compliance with the relevant instructions in order to create and maintain a stand for the implementation of international standards and best practices in the migration field.

