

Albania

People's Advocate of Albania

International accreditation status and SCA recommendations

The Albanian NHRI – the People’s Advocate (PA) – was reaccredited with A status in December 2020. While recognizing that the NHRI interprets its mandate broadly, the SCA encouraged the NHRI to advocate for a broader mandate that includes the ability to address human rights violations resulting from the acts and omissions of private entities and an explicit mandate to encourage ratification or accession to regional and international human rights instruments. The SCA also called on the NHRI to continue to advocate for adequate funding, including to ensure fulltime staff in its regional offices.

Impact of 2020 rule of law reporting

Follow-up by State authorities

To the PA’s best knowledge, state authorities did not engage in any specific follow-up initiative to address the issues raised in the 2020 E NHRI rule of law report.

Impact on the Institution’s work

The report was a useful tool in getting synthesised information on the work of other NHRIs and was used to learn from best practices and gather new perspectives on how to improve our everyday work in pandemic times.

Follow-up initiatives by the Institution

The several issues reported on in last year’s ENNHRI rule of law report are still of relevance. 2020 has been a difficult year, where planning and adjustments were needed in all layers of society, the PA included. The institution’s work was impacted by shortages of staff due to COVID-19, technical issues due to combined office and online working, restriction measures, and practical difficulties to comply with administrative requirements. Despite these challenges, in all its initiatives and follow-up activities the PA has continued to work towards ensuring the highest standards of human rights protection and creating the right conditions for their real enjoyment. For this purpose, the PA kept as reference and orientation the statements, calls and advice of the highest international authorities for the protection of human rights. Meanwhile the Institution thoroughly

reflected on the necessity to 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.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The national regulatory framework applicable to the Institution remains the same. 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) and 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 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

- Chart Of The Status Of National Institutions // Accredited By The Global Alliance Of National Human Rights Institutions, Accreditation status as of 20 January 2021
<https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20as%20of%2020%2001%202021.pdf>
- 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>

Enabling space

This is an issue that requires careful and realistic consideration, as it concerns two aspects:

- Considering the necessary and appropriate space on the basis of which the institution should function in the legal regulatory aspect, an adequate framework exists and is

appropriate. With regard to the issues related to budgeting and staffing, the budget and human resources have been progressively increased since 2013, but given the importance for the Institution to become even more present and proactive, the financial and human resources provided by the government should have been more extensive. The budgets allocated throughout the years do not serve the function of the Ombudsman/PA as a national institution for the protection and promotion of human rights, contrary to the recommendations included in all reports of international organisations. Reports of the European Commission, the report of the Sub-Committee on Accreditation, the recommendations given in the framework of the Universal Periodic Review (UPR), the recommendations of ECRI, on their own and assessed together have repeated and continue to repeat the fact that the institution of the People's Advocate has limited human and financial capacities to fully exercise its constitutional mandate and that greater support is required from the state budget in this regard. Nevertheless, the PA has continuously managed to secure supplementary budget for implementing its mandate.

- Considering the effective exercise of the mandate by the People's Advocate, there are still issues and problems related to the observance of this legal regulatory basis with binding effects on public bodies. In general, the People's Advocate is notified and consulted on the draft laws that are related to human rights, but in many cases this consultation is missing. The timeframe for such consultations has been usually very short. Further, during the past year the ability of the governmental institutions to respond to the PA's requests has been slower and it has impacted the Institution's work in relation to the investigation of individual complaints. There are still quite a few cases where the PA's requests within an administrative procedure sent to public bodies are not answered or are answered partially, incorrectly or late. The institution's recommendations are welcomed in principle, but in several cases, they are not taken into consideration despite the severe implications that several laws may have on the human rights and rule of law in particular. This is not specific to the PA's recommendations as public bodies do not respond to quite an important number of recommendations, or they respond beyond the legal deadlines set for this purpose in law no. 8454 dated 4.02.1999 "On the Lawyer of the People", as amended. In order to address this issue, the Albanian Parliament has set up a special inter-institutional mechanism to monitor the implementation of recommendations by independent institutions in the country. However, despite some progress made, the problem still persists.

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

As mentioned above, the changes that occurred during the period of the COVID-19 pandemic affected the operations of the People's Advocate, like all other state institutions. Direct contact with the citizen and public bodies became more difficult, at a time when not all the population in the country enjoys access and/or informed access to the Internet.

More information on the impact of the pandemic on the PA's functioning can be found in the COVID-19 section of this report.

Human rights defenders and civil society space

The People's Advocate Institution has put efforts in identifying laws, measures or practices that could negatively impact on civic space and/or reduce human rights defenders' activities, while recommending necessary measures and solution.

The COVID-19 pandemic and measures taken to address it are having a serious impact on civil society space. After the declaration of the state of the worldwide pandemic on March 11, 2020, by the World Health Organization, Albania put to a halt 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 movement by public transport, restriction of movement within the country, termination of court proceedings, etc. The PA noticed that the Albanian state authorities, in their efforts to handle the pandemic, ought to be more attentive to regulate, improve, and build permanent administrative and legal instruments, and give proper information to public. The Institutions has in particular found that the government did not take all necessary measures to cope with the challenges that this situation brings to freedom of association, freedom of assembly, freedom of expression or access to information, and many other aspects that are intertwined in the conglomerate of a healthy society. On the contrary, some of the actions taken by the authorities, such as the demolition of the national theatre, prompted critical reactions. This led to the organisation of several protests which were considered to be against the law in force. In some cases, participants were arbitrarily detained.

The PA also noticed that people working in civil society organisations were not included in the assistance packages that the Albanian Government provided for small business and employees in the sectors of economy that were temporarily closed or effected by the complete lockdown during March to June 2020. Both issues were addressed by PA with specific recommendations.

The importance of protecting the civil society space and supporting the civil society sector was among the issues the PA raised attention to within its numerous interventions in the context of

the COVID-19 emergency (see dedicated section below). In particular, the PA's actions included: addressing continuous public appeals on pressing issues (e.g. special care for the civil society sector); enhancing the PA's role as promoter of the highest standards of human rights and freedoms in the country (his appearances in the media increased significantly); publicly addressing human rights issues in national and international events (e.g. ODIHR Webinar on "The role of HRDs in promoting and protecting human rights" or at a Civil Society round table on "right to protest during pandemic", both in November 2020); translating and publishing on the PA's website international institutions' statements (e.g. of the Council of Europe experts 'Appealing on countries to guarantee freedom of expression and information for independent media during the COVID-19 pandemic').

References

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Checks and balances

Impact of COVID-19 on checks and balances

Regarding the functioning of the rule of law and the checks and balances system in Albania during 2020, several issues persisted from previous years, and other problems deteriorated due to the pandemic.

The prolonged political crisis and the absence of the real parliamentary opposition remains an obstacle to the effective functioning of the checks and balances system. The absence of the Constitutional Court and the suspension of the work of some courts of appeal as well as of the High Court directly impact the state of rule of law.

Despite the fact that the work of the Parliament and the Parliamentary Committees had to switch to online meetings that were aired live through media channels, the parliamentary activity still fails to be supported by effective public consultation.

There was a general lack of transparency in the decision-making process in particular during the state of emergency supplemented by the lack of parliamentary substantial revision of the measures introduced by the normative acts that were approved by the Albanian Council of Ministers.

Although the electoral reform was accelerated after reaching an agreement with the extra-parliamentary opposition, the country failed to address all the OSCE-ODIHR recommendations issued in the two latest reports. After the consensual changes, the majority changed the Constitution through a non-consensual process. This process was questioned by the Venice Commission opinion, who referred the issue to the constitutional jurisdiction in Albania, which was however not functional until December 2020.

Trust in state authorities

The general perception of citizens of state authorities, as indicated by several polls conducted by different agencies, is that of a moderate to low trust on the public administration. However, the public opinion remains polarised with respect the performance of the public administration.

The PA believes that the state authorities does not sufficiently foster trust among citizens. The factors that directly impact the relationship between citizens and state authorities, namely the transparency and accountability of state authorities with regard to means of reactions used by law enforcement agencies, warranty and security, are not nurtured. This was particularly visible during the pandemic. State authorities should communicate in a timely and effective manner regarding fundamental rights restrictions and relevant measures. Decisions related to the pandemic – including those taken under accelerated or emergency procedures – need to be taken as transparently as possible, while temporary measures should be publicized, explained, and regularly reviewed. The state should be cooperating with civil society and the private sector, including all communities and stakeholders in efforts to find solutions to the challenges posed by the pandemic. The reaction of law enforcement authorities during the exercise of their authority should be focused on strengthening the citizens' trust towards state institutions while guaranteeing equal protection for all society. That means adapting appropriate policies to meet the needs of the entire population, with a special attention to groups that are disproportionately impacted such as elderly, poor people, Roma, people with disabilities, woman and children, etc.

Judicial oversight

The non-execution of final court decisions issued by courts in the Republic of Albania, or the European Court of Human Rights, in a reasonable time, remains a serious issue and negatively affects the creation, strengthening and development of a credible and respectful judicial system for all.

Role of NHRI in the system of checks and balances

A proactive stance has been taken by the People's Advocate to address the many issues raised with respect to the system of checks and balances and rule of law through its legal means. Among others the PA has addressed:

- the guarantee of the right to vote and the right to be elected, as well as the stand related to the implementation of the law on decriminalization regarding the integrity of the figures running for local and general elections in the framework of the latest changes of Electoral Code.
- the delayed publication of the normative acts which imposed restrictions, and 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 authorities (i.e., Ministry of Health and Social Protection) took measures to reflect on the recommendations, however the same problems persisted.
- the non-issuance of bylaws necessary for the implementation of the law "On the protection of national minorities in the Republic of Albania", which made it impossible to implement the law in concrete elements.
- the PA issued a recommendation on the irregular deportation procedure of a Turkish Citizen on January 1, 2020.
- the PA expressed opinions on three issues for which the Venice Commission has been called to express an opinion in Albania.

References

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Functioning of the justice system

Albania is in its 4th year of the implementation of a substantial reform of the Justice System. Such reform has been supported by substantial assistance and oversight from the European Union. Despite substantial efforts the pace of the reforms has not been the one initially intended in the proposed framework and in the timelines provided for in text of the legislation itself. This reform was composed of several pillars, one of them being the vetting of all judges and prosecutors in Albania. In total 834 judges and prosecutors were planned to be vetted for a period of 5 years. A number of judges and prosecutors have been removed from their office, causing substantial vacancies in the level of the highest court of the judiciary system. This has resulted into a complete suspension of the work of some courts in the country and in severe delays in some courts at the level of the courts of appeal.

The Constitutional Court was not functional for almost three years. The Constitutional Court is composed of 9 members. In April 2016 the mandate of two members expired. Starting from June 2018 the Constitutional Court did not have the possibility to make decisions in plenary sessions, thus, to exercise its function of constitutional review of the laws in Albania. As of July 2018, the court was composed of one member only with expired mandate. In November 2019, three new members were nominated according to new procedures provided for in the legislation of the justice reform. The presence of the minimal quorum necessary for the Constitutional Court to begin exercising a significant part of its functions, was verified only in late December 2020, when the sixth judge was appointed in office. Yet, there are still three judges to be appointed.

The High Court of Albania was also not able to perform any of its functions since December 2018. In 2013 the number of members of the High Court was increased from 17 to 19, although these two members were never elected. Since then, the number of judges appointed began to decrease for various reasons until the beginning of the implementation of the justice reform, when their number dropped to 15. In September 2017 the constitutional mandate for five members of the high court ended, and as of that date the High Court did not have a quorum to convene in joint colleges as the number of members fell to 10. Furthermore, on 31st July 2018 the number of members of the High Court fell below five, thus this Court did not have the possibility to make decisions, although it continued to function only on certain issues and decision-making in the deliberation room. Meanwhile, from December 2018 until March 2020, the number of members of the High Court fell below three thus completely paralyzing the work of the Court. In mid-March of 2020, following the appointment of three new judges, the minimum legal conditions were created for the Supreme Court to begin exercising its judicial functions partially. Yet, still today, the Court continues to have only three members, which makes it possible only to consider a very limited number of cases.

The appeal courts are also facing significant shortages. Furthermore, the judicial system faced new difficulties caused by the COVID-19 pandemic, in addition to those explained above. Of course, the suspension of the activity and judicial services in all courts of the country, as in the general and special jurisdiction, with the exception of cases of an urgent nature, for a long period of three months resulted in delays in court proceedings, postponement of the trial of new cases, as well as problems in full respect of procedural rights during the court proceedings.

Attaching great importance to the exclusion from the system of individuals who do not meet all of the three constitutional criteria (asset assessment, background assessment and proficiency assessment), other important aspects of the reform, such as new entries into the system, the career system, improving the quality of work in the administration of justice, transparency, increasing independence and professionalism, have not been given the necessary importance. Despite the efforts, only little progress has been made in these very important intended outcomes of the justice reform.

The complaints submitted by the citizens to the People's Advocate institution focused mainly on:

- delayed court proceedings, in particular overdue deadlines for consideration of cases by the Courts of Appeal, the Administrative Court of Appeal and the High Court
- delays in the issuance of a reasoned decision/failure to notify the parties within the deadlines specified in the codes of procedure;
- failure to consider new cases by the courts of first instance for a period of several months;

- numerous requests for expedited trial by appellate courts, for justified reasons such as illness and economic hardship;
- request for benefit of secondary legal aid from the courts, etc.

The People's Advocate has presented these issues addressed by the citizens, to the relevant judicial bodies, as well as to the Albanian Parliament with the annual report 2019, being discussed and adopted in June 2020. We will continue to include findings on these matters in the annual report for year 2020.

In conclusion, it is the obligation of the responsible constitutional institutions to fill in the vacancies in the respective courts, starting from the Constitutional Court to the courts of first instance, in order to guarantee the right to a fair legal process for citizens who have lost faith and hope in the adjudication of their cases within a reasonable time.

Free legal aid

The PA has paid special attention to the monitoring and implementation of law no. 111/2017 "On free legal aid guaranteed by state" based on one hand on the delayed duration of the establishment of the relevant structures as well as the issuance of bylaws, and on the other hand, the need of state to guarantee this service to citizens. It is worth mentioning that primary legal aid has been provided and is continuously being provided by the staff of the People's Advocate institution.

For this reason, the People's Advocate recommendations addressed to the Minister of Justice, focused on the most important issues, such as the approval of the organogram of the Directorate of Free Legal Aid provided in implementation of the order no. 59, dated 25.03.2019 of the Prime Minister "On the approval of the structure and staff of the Directorate of Free Legal Aid"; approval of bylaws in implementation of the law; setting up free primary legal aid centres, ensuring a fair geographical distribution (there were seven opened, but only one with state budget funds); conducting information campaigns for the community; authorization of non-profit organisations; the increase of legal clinics at higher education institutions based on relevant agreements nationwide (ten were opened), as well as extensive consultation on the future of free legal aid priorities and improvements, that representatives of state institutions, civil society and interest groups are part of. These recommendations were accepted and implemented during 2020.

Notwithstanding, the PA notes that there have been cases when court decisions on the benefit of secondary legal aid and exemption from payment of court fees and expenses have not been implemented by local bar association. Also, the minimum criteria set by law, make it possible for only a small category of groups with insufficient income and wealth to benefit from free secondary legal aid.

The People's Advocate institution, in cooperation and with financial support of a UNICEF project, conducted four inspections – either pursuant to the new legal framework for the administration of criminal justice, or pursuant to the recommendations addressed of the People's Advocate from one year ago – in the main institutions that deal with juveniles in conflict with the law and in conditions of deprivation of liberty. In the framework of the problems identified when conducting inspections, the PA recommended to the Ministry of Justice and the Ministry of Interior to guarantee a juvenile-friendly justice, be it for a victim or a witness, application of rehabilitation programs and / or mediators for alternative sentences or the application of alternative sentences provided for in the juvenile criminal justice code, as well as the application of alternative measures to avoid punishment for juveniles in conflict with the law. The PA also recommended to improve the conditions and services in the premises of institutions of deprivation of liberty or detention where juveniles in conflict with the law are treated as victims or / witnesses, especially during the pandemic.

References

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Media pluralism and freedom of expression

The Institution has been raising attention, through opinions, to issues affecting the exercise of freedom of expression and to 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 it highlighted a number of issues related to law no. 91/2019 "On some changes and additions to the law 97/2013 on audio-visual media in the Republic of Albania". This law no. 91/2019 aims 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 NHRI in the Republic of Albania, the People's Advocate 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. Despite the changes made to the original draft, a number of problems still remain.

The most recent development in this regard is the Opinion no 980 / 2020 presented to the authorities by The Venice Commission on May 28th. The Venice Commission, has among others assessed that the Audiovisual Media Authority (AMA) with the approval of the "anti-defamation package" receives great administrative powers for online media and that the independence of the AMA body according to them remains a concern. The Venice Commission stressed that "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".

There is still insufficient transparency and lack of consultation in the redrafting process of this law. Due to the elections to be held on April 25, 2021 the process has been essentially suspended.

References

- May 28th, 2020 The Venice Commission – Calls on government to review "anti-defamation package": [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)013-e)
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Corruption

The People's Advocate has continuously followed the problems and concerns raised regarding corruption and its perception. In 2020 there was only little progress made in the fight against this harmful phenomenon of our state and society that is still in transition. Corruption is contributing to an ongoing crisis of democracy. Referring to recent international reports on the perception of corruption and its index, Albania has made insignificant progress, since it has increased by only one point from the previous year. This lack of improvements clearly underlines a lack of rule of law and legal certainty. The existence of these circumstances and causes also affects the effectiveness of institutions in the fight against corruption. A number of mechanisms have been set up currently in Albania, but there is much room for improvement and focus of the work in identifying and documenting high state corruption. The effectiveness of these mechanisms is also influenced by the strong political influence on the judiciary and lack of independence of the judiciary to pursue, investigate and prosecute corruption cases, particularly when these structures are already under the strong influence and pressure of the transitional re-evaluation process of judges and prosecutors.

The PA has also stated publicly the concerns regarding transparency in public procurement procedures, for the purchase of protective equipment, medical equipment and other health equipment, etc., regarding the pandemic situation. This issue is being pursued by special investigative structures, but there is still no concrete result regarding these proceedings. On the other hand, due to the situation and the restrictions imposed, there are still some problems in exercising and guaranteeing a number of rights, such as that of gathering, education, property, etc., as some procedures are provided in electronic platforms regardless of the functionality and the possibility of access to these necessary tools to exercise the rights.

The construction sector is particularly affected by lack of transparency and corruption. There is a lack of information on construction permits and revival of the construction industry and there have also been public concerns about the involvement of certain private entities in money laundering and intervention or influence in local government structures in order to approve building permit applications. There is currently an electronic system for issuing construction permits, but there is no transparency on the various elements that can be identified by this system in order to be a service accessible to the public. In this context, the PA believes that a concrete and specific role can be played by structures such as the Bank of Albania, HIDCACI, Directorate of Money Laundering, State Police and Special Prosecution anti-Corruption and Organized Crime.

Cases of conflict of interest are often public and indisputable, but there is no evidence and follow-up of these cases by HIDCACI as there are no concrete developments regarding the system of

whistleblowers of corruption cases, which must function in accordance with the Law “On signaling and protection of Whistleblowers”.

This Law, considered as one of the most important instruments in the fight against corruption and protection of public funds, entered into force on 1 October 2016 for the public sector and on July 1st, 2017 for the private sector. But despite the declarations as one of the most important normative acts of anti-corruption there has not been any result, neither in the public administration nor in the private sector. On the one hand, self-declarations of lack of conflict of interest are very formal and a very strong obstacle in the fight against corruption, but also a strong criterion for benefiting from public funds on grounds of family relations in tendering procedures of public services, reconstruction, health and education.

The rapid spread of the COVID-19 virus and its consequences have eventually affected almost every aspect of society. In these conditions, due to lack of transparency and accountability, a favourable ground has been created for the increase of corruption, whose dangers and consequences threaten and harm in particular the most marginalized strata of the population.

References

- Law 60/2016 published in the Official Gazette no. 115 dated 23.06.2016, amended by Law no. 150/2020.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The line between the need not to disproportionately interfere with human rights and the urgency of measures or policies that state authorities may be obliged to adopt while facing emergencies, is quite narrow and delicate. The emergency caused by the global COVID-19 pandemic proved to be a major challenge for democratic societies. This is a real indicator in testing the ability of a government to respect human rights, even in such conditions. The Albanian democracy is still fragile, consequently striking the right balance in the management

of natural or health emergencies and ensuring proportionality of restrictions of basic freedoms of citizens, has been a difficult challenge.

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 authorities to identify citizens who could potentially be carriers of the disease and undertake the necessary health checks on them.

However, human rights cannot be disregarded 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.

Main areas of concern identified by the People's Advocate

In general, the PA found that the government did not 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, freedom of association, freedom of assembly, freedom of expression or access to information, and many other aspects that are intertwined in the conglomerate of a healthy society. But more particularly, it identified three main areas of concern.

Children's rights

During 2020, based on the review and treatment of cases with initiative, online monitoring and field inspections, we have found the following violations of children's rights:

- Violation of children's **right to education**: the closure of educational institutions during the first period of the pandemic (quarantine) brought inequality in children's access to the online education process. Specifically, children of families living in difficult socio-economic conditions lacked communication technology equipment and access to internet line. The lack of a standardised experience on the *online* teaching process affected the (conjunctive) learning process of the children depending on the school and their residence. In this process, children with disabilities did not have proper access to the teaching process with appropriate and effective services, therefore being the most affected ones. Also, these children have experienced trauma while returning to the educational institutions to catch the rhythm of the gaps created during the *online* teaching process. During the beginning of the 2020-2021 academic year, with the reopening of educational institutions, it was

found that many children were newly isolated for long periods of time, due to the COVID-19 protocol, creating inequality in their access to the teaching process.

- Lack of protection of children from **online violence**, as a result of surfing the Internet for a long and continuous time, without security filters due to the education process on the online platform.
- Lack of protection of children from **domestic violence**, as a result of restrictive measures and isolation of families at home, children who had experienced various forms of violence had difficulty obtaining specialised services, due to lack of physical contact with psychologists and field professionals at school. During this period the structures responsible for children protection were focused on ongoing cases. At the beginning of the pandemic, children protection services and the support of relevant services were reduced, due to the lack of cooperation and coordination of the responsible identification structures operating in the local government units, which could identify in time the issues in question.
- Violation of the **right to life and normal development** of the child. The COVID-19 pandemic significantly affected children of families living in poverty, making it impossible to guarantee daily food, due to insufficient of economic assistance, job loss, closure of the daily services and damage caused by the earthquake of November 26, 2019. During this period, the local government units have distributed food aid and clothing to ensure the minimum standard of living for these families.
- Violation of the **right to life and health of minors in conflict with the law and deprived of liberty**. The movement restrictions significantly reduced access to education for this category spending most of the time self-isolated. Juveniles in conflict with the law experienced an extended period of time without face-to-face contact with their families, lawyers, support services, extension of court proceedings. These problems have consequently affected the mental health of this category.
- Lack of protection of **children placed in residential social care institutions**. During the isolation and quarantine period, children placed in social care institutions had disconnection physical contact with their relatives, extending in time their institutionalisation.

The People's Advocate Institution drafted and published a monitoring report on violations of children's rights during COVID-19. This report consists of the evaluation and review of legal and sub-legal acts adopted after the announcement of the pandemic situation in the Republic of Albania, in terms of children's rights, in identifying problems during this period that continue to have short-term, medium-term and long-term impacts on the children's rights to education, health, survival and development as well as adequate living standards. An essential part of this

report is also addressing the recommendations to provide support to all responsible state institutions in the exercise of their functional duties to successfully cope with the pandemic situation in order to protect and guarantee the lives of children in accordance with their profile and needs.

Older persons' rights

Older persons were one of the categories who were barred from leaving their house during the pandemic outbreaks. Although the authorities took over the supply of food aid to the elderly, the PA monitoring has shown that this has not always been sufficient, and that this vulnerable category faced particular difficulties.

Freedom of movement

The way of obtaining authorization to leave someone's home during lockdown was also problematic. The means of communication made available by the state authorities, i.e. telephone numbers, were in most cases unavailable, resulting in citizens not being able to obtain the authorisation to move in time. This has often put citizens in difficulty, as on the one hand they could not move without authorization, and on the other hand it was not possible to obtain the required authorization in time.

The PA also pointed out an important development that affected the legal framework of Albanian Citizens rights: 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. These are the right to respect for private and family life (Article 8 of the ECHR), freedom of assembly and association (Article 11 of the ECHR), protection of property (Article 1 of the ECHR Additional Protocol), the right to education (Article 2 of the ECHR Additional Protocol) and 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 the Protocols thereto, and the provisions of the Convention are being fully executed again.

Actions taken by the People's Advocate

In response to the many issues identified by the PA's monitoring, the institution addressed several recommendations/opinions to the state authorities, to address the following issues:

Timely disclosure of normative acts

The PA found that there was delayed or even lack of publication (both on the official website of the relevant state institution and in the Official Journal) of the normative acts (legal or sub-legal), that imposed COVID-19 restrictions. This consequently led to the lack of access for citizens to 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. The PA therefore assessed that the level of transparency should be increased, and it 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 PA 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 publish on the official website 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.

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" as 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 with the law all central government normative acts and other acts during the pandemic situation.

Free of movement restrictions

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 of the high number of applications most applicants not only did not receive the required authorization, but also did not receive any response from the responsible body. Also, the two telephone numbers available to the public to get information turned out to be busy all the time. To address this issue, on March 31, the PA sent a recommendation 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.

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, especially to those returning from Greece and Northern Macedonia to Albania. They were subjected to medical examinations for COVID-19, and remained at the border after being advised to stay self-isolated in quarantine for 14 days, because there were no means of transport (neither public nor private) for them to return back home. To address this issue, on March 31, the PA sent a Recommendation 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.

The Albanian state at first facilitated the repatriation of around 2000 citizens from where they had remained trapped (at the end of March 2020), a decision welcomed the PA. However a week later, 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), the PA 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, allowed these citizens to enter the Albanian territory, provided that they would stay in quarantine (in hotels designated by the state, but at the citizens' own expenses). This situation caused new set of problems: insufficient financial means, lack of access to necessary services (medical visits, purchase of medicines, etc., as the hotels were guarded by armed forces, which did not allow them to leave the quarantine). To address this issue, on April 5, the PA sent a Recommendation 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 the pandemic was the amendments to the Criminal Code to enhance criminal sanctions for persons violating quarantine rules. The People's Advocate did not agree with some of the amendments and therefore submitted to the Committee of Laws in the Assembly (April 14th) the relevant opposition to the amendments and changes in the "Criminal Code of the Republic of Albania".

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:

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

The PA, on April 17th and May 26th, 2020, 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, the PA institution has recommended to health authorities several measures regarding policies of testing population:

- on June 19th, 2020 it 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 cannot be a luxury, but a right to be carried out in the pandemic situation we are going through.
- on July 22nd, 2020 it 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. We have stated that students should be able to be tested, even by paying a fee which covers the costs of this service for students, against the supporting documentation related to schooling.

Maximizing the right to review specific issues on initiative, the People's Advocate also issued some recommendations addressing concrete measures that should be taken mainly by local authorities. These include the assistance that local authorities should provide (food aid, disinfectants, etc.) and preparations necessary for the prevention of COVID-19 infection, increased financial support, or even the provision of protection barriers / masks for the most marginalized, vulnerable individuals or groups without established support in their administrative territories.

Other issues

In addition to these recommendations on precise issues, the People's Advocate undertook many activities related to the COVID-19 context in 2020, such as:

Addressing continuous public appeals and information on pressing issues like:

- special care for the civil society sector;
- the strengthening of social solidarity, in addition to social distancing;
- the risk of intensifying violence against women in the conditions of isolation imposed by COVID-19;
- measures to ensure normal living, within the conditions of self-isolation, for the Roma and Egyptian community;
- more social inclusion and equality for the Roma community on their international day.

Publicly discussing the concrete role of the PA in addressing human rights issues and during the state of emergency, in several national and international events, such as:

- European Network of Ombudsmen conference, on October 26th 2020;
- ODIHR Thematic Webinar on "The role of human rights defenders in promoting and protecting human rights" on November 6th 2020;
- OSCE Human Rights and Minority Academy in Voskopojë, on October 27th 2020
- Civil Society round table on "right to protest during pandemic", on November 5th 2020

Translating 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:

- 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".
- Statement of UN Experts: "States should not abuse with the emergency measures against COVID-19 to suppress human rights".
- Principles of the Council of Europe "On the treatment of persons in countries deprived of their liberty".
- 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".
- 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

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

All these activities brought as a result a significant increase of visibility of the PA's institutional activity, as well as increased engagement of citizens towards our activity. A special focus was given to the promotion, prevention of violations and protection the rights of children. The PA, through the Commissioner of the Children's section has carried out various promotional activities playing a proactive role in terms of promoting children's rights in order to inform and raise awareness of state administration institutions at central and local level, in the exercise of their functional duties, in accordance with the law. The development of promotional activities was made possible through the publication on the official website of People's Advocate and the children commissioner such as by informing/ consulting children in a accessible language; advocating and sharing best practices of international organisations; and formulating concrete recommendations to properly address the problems identified during the pandemic.

Long term implications

During the global pandemic human rights have often been challenged and questioned. In many cases, the debate has been fierce, as the extraordinary measures taken by governments to prevent the spread of the disease severely restricted human and civil rights raising questions about the actual necessity and proportionality of certain measures. While state authorities may be obliged to impose severe restrictions on a range of rights to protect public health, it is crucial to remain very vigilant for the present and the future to come, because a life without rights is a life as endangered as that under the threat of an epidemic.

References

Link to the derogation:

- <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>
- https://www.avokatipopullit.gov.al/media/manager/website/media/Mendim%20p%C3%AABr%20projektligjin_8D2xJ0M.pdf

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

The changes that occurred during the period of the COVID-19 pandemic affected the operations of the People's Advocate, like all other state institutions. Direct contact with the citizen and public bodies became more difficult, at a time when not all the population in the country enjoys access and/or informed access to the Internet.

The situation demanded a revision of the People's Advocate's approach – including a significantly increased handling of cases on initiative, an increased presence to visual and print media with opinions especially on elements of restriction of rights in the conditions of the state of natural disaster, and an increased number of recommendations to central and local governments for concrete and appropriate measures – precisely for the non-deterioration of the standard of respect for fundamental rights and freedoms under these conditions.

Taking into account the aggravated situation created in Albania due to COVID-19, the international guidelines and the observance of the Albanian "Legal Acts for COVID-19", during 2020 the PA switched mainly to online inspections, in order to avoid the risk of infection and to prevent further spread of the pandemic.

There have been numerous institutional interventions following on the PA's recommendations sent to public bodies, which aimed at protecting the most needy, vulnerable, or at risk, creating new improved standards for the promotion, protection and prevention of rights from violations, such as and the systemic intervention that public bodies must undertake. Further the Institution increased significantly its presence in media in order to address the aspects of the pandemic and its repercussions with respect to human rights.

During the lockdown, the PA ensured teleworking on full working hours, and created "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) secured every day presence 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 with the chain of hierarchy by all staff. Virtual conference calls were held 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. 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 fulfil the Institution's mission, the PA followed-up administrative investigations in written form (through official letters and e-mails), and also via direct phone contacts.

The number of complaints received decreased, but at the same time the number of cases for which an administrative investigation has started on the initiative of our institution has increased. This is a result of the monitoring work of the PA staff of the different 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 the 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 counselling on different issues and questions of citizens.

After lockdown, the staff resumed gradually office working on rotation bases. The good practices assumed during lockdown (e.g., media monitoring, etc.) were continued.

In the framework of exercising its mandate in the capacity of the National Mechanism for the Prevention of Torture (NPM), the PA has exercised its duty by continuously monitoring online institutions of deprivation of liberty, police stations, centres for the treatment of irregular migrants in Albania, centres of anti-trafficking, psychiatric hospitals, Residential Social Care Institutions for elderly and people with disabilities, as well as border detention points. During these online inspections, the NPM's teams communicated in turns with the directors of the institutions and their responsible staff for security, legal, health and psycho-social issues, as well as with people accommodated to the respective institutions (e.g., groups of pre-detainees/detainees, etc.).

A number of inspections were carried out to verify the measures taken pursuant to Normative Act No. 3, dated on 15.3.2020 "On taking special administrative measures during the period of infection caused by COVID-19", as amended; Order No. 156, dated on 10.3.2020 of the Minister of Health and Social Protection "On taking special measures to prevent the spread of infection caused by COVID-19", as amended; Order No. 3614/1 dated 26.05.2020 of the Secretary General in the Ministry of Interior for drafting the plan of protective measures against COVID-19 according to the requirements provided in the Regulation of the Department of Public Administration "On taking organizational measures to exercise the activity of state administration institutions during the epidemic caused by COVID-19", as well as a many orders approved by the General Director of the State Police, for this purpose.

The NPM also shared the important regulations/guidelines/proposals/suggestions from international institutions, such as the JTS Councils for governments, NPMs of CoE member states and ENNHRI, on its social media. Throughout this period, NPM have been very active in the media with opinions and suggestions on the activity of the penitentiary system, managing the problems of foreign asylum seekers and the problems faced by Albanian emigrants who wanted to enter Albania during the pandemic period.

References

- <https://www.avokatipopullit.gov.al/sq/categories/mechanisms-against-torture/dentention/article>

