**Call for contributions by the National Institutions and Regional Mechanisms Section on Covid-19 NHRI measures**

The Portuguese Ombudsman hereby replies to the call for contributions by the National Institutions and Regional Mechanisms Section of the UN Office of the High Commissioner for Human Rights on measures adopted in the context of the pandemic of Covid-19.

Current Ombudsman: Professor Maria Lúcia Amaral.

**1. Constitutional and legal framework**

In Portugal, in 2020, the state of emergency was initially in force from 18 March to the 3rd of May[[1]](#footnote-1). Since the beginning of May until November 2020, the Government imposed several different restrictive measures on the basis of ordinary legislation (notably the Public Health Act and the Civil Protection Act). On the 6th of November 2020, the President of the Republic declared again the state of emergency, which has been continuously renewed since.

During the state of emergency, several fundamental rights have been suspended, notably: (i) free movement and fixation in national territory; (ii) private property and economic and social initiative; (iii) worker's rights; (iv) right to travel internationally; (v) freedom of reunion and demonstration; (vi) freedom of religion; (vii) right to resistance; (viii) freedom to teach and learn; (ix) data protection; (x) right to healt in its negative dimension and right to freely develop one's personality.

There has been public debate on the proportionality of some measures imposed by the Government in response to the pandemic. The discussion has been most acute on measures adopted throughout the period not covered by the state of emergency.

**2. Measures adopted by the Ombudsman in response to the pandemic**

In 2020, a significant number of complaints submitted to the Ombudsman focused on various aspects of Covid-19 regulations touching upon very different rights-related issues (ranging from free movement of citizens to access to basic goods of people in confinement, lack of governmental support to independent workers, reimbursement of travel costs by travel agencies, lay-off schemes, banking services, domestic violence, parental responsibilities, access to education, among others). There also was a dramatic increase of the number of calls to the hotline for the support of the elderly, who have been particularly affected by the pandemic and by the measures adopted in response.

In this context, throughout the pandemic, several types of Covid-19 issues arrived at the Ombudsman’s Office, on for instance the obligatory use of masks, mandatory quarantine, testing and control of temperature, mandatory use of “stay-away Covid” application for mobile phones, right of access to information, and freedom of reunion and demonstration.

In general, the Ombudsman considered that constitutional safeguards were ensured in the majority of cases. However, in some situations, the Ombudsman manifested concerns issuing recommendations and asking for clarifications, for example: (i) on the need to have uniform quarantine regimes throughout the national territory, (ii) on the mandatory quarantine in Azores, in hotel facilities, exclusively for non-residents and at one’s expenses; (iii) isolation measures for children placed in foster care; and (iv) suspension of distance learning in January 2021.

The Ombudsman further submitted several recommendations to different public authorities on Covid-19 measures[[2]](#footnote-2):

* Recommendation on the adoption a specific temporary licence for prisoners;
* Recommendation on the adoption of an exceptional regime for the extension of medical certificates on disabilities/incapacities;
* Recommendation on the adoption of financial support measures for providers of services/independent workers;
* Recommendation on breastfeeding and the right to have a companion of the mother’s choice during delivery;
* Recommendation on the possibility of visits by family members to Covid-19 dying patients and on their presence in funerals;
* Recommendation on the suspension of tax and social security execution procedures;
* Question to the Government on the exclusion of medical professionals from the scope of application of the special protection regime applicable to chronical patients and immunosuppressed individuals;
* Questions to the Government on the scope of application of the lay-off regime.

Furthermore, the Ombudsman decided not to refer the first presidential decree on the state of emergency to the Constitutional Court for lack of constitutional issues. More recently, a pandemic norm on the support regime applicable to rents of shops located in shopping centres was sent to the Constitutional Court[[3]](#footnote-3).

Moreover, since March 2020, the Ombudsman increased its efforts to ensure closer monitoring of the Roma communities, especially in light of the need to protect Roma children and ensure access to education and to basic living conditions. Attention to the needy and homeless people has also been a priority of the Ombudsman action ever since.

At the international level, the Ombudsman has contributed to several questionnaires, surveys and requests from different entities, such as the UN High Commissioner for Human Rights, the European Ombudsman, the Global Alliance of National Human Rights Institutions and the Federación Iberocamericana de Ombudsman[[4]](#footnote-4).

Lastly, the Ombudsman has initiated an in-depth and systematized reflexion on the impact of the pandemic on rule of law issues, an exercise which is expected to be completed in 2021.

**3. Impact of the pandemic on the Ombudsman’s Office functioning and organization methods**

The work performed by the Ombudsman has suffered limited changes since the pandemic started in Portugal.

According to national legislation on the state of emergency, the Ombudsman keeps working in permanent session. Thus, in compliance with rules and recommendations and in order to limit social contacts, full time teleworking was progressively introduced for the Ombudsman staff since March 2020. The staff was granted access to computers and phone lines, and regardless of minor IT difficulties, has well adapted to current arrangements. A limited task force - composed of the Ombudsperson, two members of Cabinet, the two Deputy Ombudsmen, department coordinator, a public relations collaborator and two members of accounting and staff departments – keeps on working in the headquarters.

In person services were suspended for a few weeks during the first wave of the pandemic. All other services remained fully functional, with individuals submitting complaints through alternative means, notably the website, email and phone lines, and in presence once public attendance was resumed.

The three hotlines ran by the Ombudsman – for the protection of the elderly, children and persons with disabilities – kept operating as usual.

Visiting activities of the National Preventive Mechanism were suspended for several months but have been resumed since July 2020. Notwithstanding, considering the status of the pandemic some visits have been ensured by videoconferencing.

During the first state of emergency on site visits following the submission of a complaint were also suspended, but have also meanwhile been resumed.

1. See the President of the Republic declaration and the Government implementation order available in English at <https://dre.pt/documents/10184/2816226/DPR_14-A_Traducao.pdf/9cd3619b-2bc6-47fb-a8f7-1e651113cb03> and <https://dre.pt/documents/10184/2816226/D_2A_2020_EN.pdf/3525fda3-b1e3-4d05-ab1b-2c418fce47c9> . [↑](#footnote-ref-1)
2. All available here: <http://www.provedor-jus.pt/?idc=67&dta=2020> . [↑](#footnote-ref-2)
3. See <http://www.provedor-jus.pt/site/public/archive/doc/2020_11_20_Tribunal_Constitucional.pdf> . [↑](#footnote-ref-3)
4. Most relevant international reports by the Portuguese Ombudsman are available here <http://www.provedor-jus.pt/?idc=169> . [↑](#footnote-ref-4)