

**INPUTS TO THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS  
REGARDING THE COVID-19 PANDEMIC AND THE ROLE OF  
NATIONAL HUMAN RIGHTS INSTITUTIONS**

The Portuguese Ombudsman hereby responds to the information request made by the UN High Commissioner for Human Rights regarding the COVID-19 pandemic and the role of National Human Rights Institutions.

The Ombudsperson is currently Prof. Maria Lúcia Amaral.

\*

**1- Portuguese Legal and Political Measures on the context of the Pandemic Crisis**

Before the declaration of the state of emergency, the Government had already adopted some measures to fight against the epidemic crisis. In a Decree-Law dated of 13 march, it determined the suspension of teaching and non-teaching training activities in all educational establishments (public, private and cooperative) and in all levels of education. Notwithstanding, the diploma safeguarded the possibility that school clusters continued to provide food support to students in need. Several complementary social and labor measures were established, aimed at regulating workers' absences to comply with quarantine or accompanying children under 12 years old. This act has also determined the closed of day care homes for older persons.

The President of the Republic declared the state of emergency in Portugal by a Decree dated March 18 (Decree of the President of the Republic no. 14-A / 2020), based on a “public calamity situation” arising from the COVID pandemic. The measure covered the entire national territory and lasted for 15 days, having been renewed for 15 days more on April 2, 2020. After

two renewals, the State of Emergency ceased on the 4<sup>th</sup> May 2020. After this date, a series of measures for lifting the confinement started to be implemented.

In total, there were three Presidential State of Emergency declarations, which suspended several fundamental rights, such as: a) Right to freely move and settle anywhere in the national territory; b) Ownership and private economic initiative; c) Rights of workers (who can be asked to work in different conditions and to different entities, as it is the case of health sector workers; e) Exercise the right to strike insofar as it may compromise the functioning of critical infrastructures or health care units, as well as in economic sectors vital to the production, supply and supply of essential goods and services to the population; f) International circulation; g) Right to assemble and demonstrate; h) Freedom of worship, in its collective dimension and i) Right of resistance. The second state of emergency declaration added the suspension of the right to learn and teach, authorizing the necessary measures to prevent and combat the epidemic, including the prohibition or limitation of face-to-face classes, the imposition of distance learning by telematics (using the internet or television), the postponement or extension of school periods, the adjustment of assessment methods and the suspension or rescheduling of exam tests or the opening of the school year, as well as any adjustments to the teaching model. Data protection rights were also suspended by this second declaration, but in a very limited manner, as allowing that public authorities can determine that telecommunications operators send their customers written messages (SMS) with alerts from the Directorate-General for Health or other related to the fight against the epidemic.

The Government adopted several measures aimed at applying these decrees, which we will summarize as follows:

- Restrictions to the freedom of movement in three levels: (1) at the highest level, patients infected with COVID-19, as well as citizens who are subject to active surveillance by health authorities, who remain in compulsory confinement, under penalty of the crime of disobedience; (2) at the medium level, citizens who are subject to a special duty of protection (persons aged over 70 years of age, carriers of a chronic disease) – these citizens can only leave their homes for reasons of force majeure or imperative necessity; (3) Finally, in a lower threshold, general other citizens, who have a general duty of remain at home. They may, however, leave home for several reasons such as: acquisition of goods, health reasons, post offices, bank agencies and insurance agencies, physical activity (being forbidden collective physical activity), pets' walking, assistance to vulnerable people, people with disabilities, children, parents and older persons; short moments for the purpose of enjoying outdoors; family reasons, namely the fulfillment of parental

responsibility sharing; delivery of essential goods to people who are disabled or deprived of their freedom of movement;

- Teleworking became mandatory, whenever the workers' functions so allow;
- Prohibition of religious celebrations and other worship events that involve an agglomeration of people. The holding of funerals is conditional on the adoption of organizational measures that guarantee the absence of clusters of people and the control of safety distances, namely the establishment of a maximum attendance limit, to be determined by the local authority that exercises the management powers of the respective cemetery;
- Several financial and social support measures, to protect the sustainability of the economy, private business and entrepreneurs, companies, workers and employers, families, and measures within the public sector of essential goods;
- In order to “reduce the risks to public health”, appointments in the Aliens and Borders Service were suspended. As for all foreigners who had a regularization request pending at the time of the declaration of state of emergency, the Government declared that they were considered as having their status regularized;
- Asylum requests continued to be accepted and registered during the whole time.

In April, 10, the Parliament approved an exceptional regime for easing the execution of sentences and pardon measures, which was promulgated by the President of the Republic, “taking into account ethical, humanitarian and public health reasons, as well as the United Nations Recommendation”. The Law sets forth a partial pardon of prison sentences (namely prisoners who would only remain in prison for only two more years or less), a special regime for the pardon of sentences (inmates who are above 65 years old and have a disease or a degree of autonomy incompatible with the normal stay in prison in the context of this pandemic), an extraordinary regime for the administrative leave of convicted prisoners (for a period of 45 days, provided that they cumulatively fulfil several requirements).

After 4<sup>th</sup> of May 2020, the Portuguese State is under public calamity declaration. This is not, contrarily to the state of emergency, a state of constitutional exception, but rather a specific status foreseen on the Basic Law on Civil Protection. That means, *inter alia*, that those fundamental rights are no longer suspended, and any further restriction to them has to be made by a formal legislative act.

## **2. Work of the Portuguese NHRI during the State of Emergency.**

According to the Portuguese Law on of siege and state of emergency, during a declaration of state of emergency, the Ombudsman remains fully in functions. The Portuguese NHRI (as well as the General Prosecutor Office) has, thus, the important task to remain especially vigilant as regards the respect of citizens' fundamental rights.

In the current crisis, and due to the public health threat, only physical public attendance was suspended. However, citizens maintain full possibility to address complaints to the Ombudsman, both through its website, through email and by phone. The three Hotlines ran by the Ombudsman also remain fully available – the Hotlines on Rights of Older Persons, Children and Persons with Disabilities.

On the 16<sup>th</sup> March, the Ombudsman Office's staff started to work from home. The transition was gradual and smooth, starting with the most vulnerable persons, followed by parents with children aged below 12 (after the schools' closure) and, finally, almost every worker. The Ombudsperson designated only a “task force” of very limited persons who still work from the Ombudsman Headquarters: besides the Ombudsperson herself, two members of the Cabinet, the two Deputy Ombudsmen, department coordinators, a public relations collaborator and two members of the accounting and staff departments.

All legal advisers that deal with complaints have remote access to their computers and, thus, to the IT program for complaints handling. Therefore, with some minor IT problems, the staff has been coping well with the new scheme. Staff is in permanent dialogue, so they can share technical difficulties and good practices. As for phone calls, staff have forward all phone calls received in their office to their personal cell phones. Whenever they need to speak to the public entities or to complainants, they may call the Ombudsman Office, and the limited staff that remains therein may forward the call to the legal advisers, who may then, in case of need, talk to the complainants. The same is happening with the Hotlines, whose staff are also working from home. However, staff with young children report that it is difficult to have the same productivity while homeschooling children and without domestic help. This situation can be even more difficult when there is only one computer in the household and children need to assist to their classes through internet platforms.

Due to the public health crisis, the National Preventive Mechanism had to cease its monitoring activity. So, currently, visits to all places of deprivation of liberty are suspended. The NPM has been accompanying remotely (by phone, by email) the conditions of detention.

### **3. Number and type of complaints**

Until 10<sup>th</sup> April, the Ombudsman witnessed a rise on the number of complaints, the majority of them related to the COVID-19 crisis and the measures adopted after the declaration of state of emergency. Until 6<sup>th</sup> May, the number of complaints were more than 600.

These complaints touch upon several issues, which are dealt with almost every department. Some complaints raise especially sensitive issues:

- Domestic Violence towards women who live with their aggressor and must respect the duty to remain in the household;
- Parents who are deprived to contact with their children due to refusal of the ex-partner on the basis of health protection;
- Prohibition of visits to patients infected with COVID-19 in hospitals;
- Refusal of follow-up at birth by fathers of children born to infected mother;
- Refusal of breastfeeding for mothers infected with COVID-19
- Suspension of medical acts and medical appointments not related to COVID-19;
- Support to mental health patients infected with COVID-19
- Children living in informal settlements who have no access to electricity and no TV or computer, being, thus, deprived from remote schooling;
- Support to gipsy communities;
- Support to students with special educational needs;
- Support to deaf-mute students;
- Restrictions to religious celebrations;

The situation of older persons is particularly concerning, due to their special vulnerability to the disease and the especially restrictive measures that are applied to them. In this context, the number of calls received in the hotline on rights of older persons suffered a dramatic increase. The biggest part of calls were connected to the current crisis. We can summarize these complaints as follows:

- Discrimination on the grounds of age as regards confinement measures (persons aged above 70 had a stronger duty to remain at home);
- Elderly persons deprived of family contact in Home Care-Centers;
- Hygiene and health safety of Elderly Home Care-Centers;



- Closure of daily centers for older persons, who have lost their daily care and became isolated.
- Older persons who claim that they do not have support or help to buy basic goods and medication;
- Workers who claimed that they could not benefit from family-support work leave in order to provide help to their elderly ascendants;
- Functioning of Older Persons' Homes and protection of persons residing therein, in case of infections.

Another topic that is considered as highly sensitive is the treatment of inmates in prisons. The Ombudsman has been receiving also complains as regards overcrowding and risk to health, both from inmates and from prison guards. Inmates also report problems deriving from their growing isolation, due to the suspension of visiting rights and to the restriction of the entry of goods in prisons. Access to health care also became more difficult, namely when it involves going to appointments in the exterior.

There have been many other complaints in other areas, such as, for example:

- Free movement of residents who work outside their home location;
- Families who are in mandatory confinement in their household, for being infected with COVID-19 and do not have access to basic goods;
- Persons who are compelled to work even despite suffering from a chronic illnesses (diabetes, asthma)– namely professionals in the health sector;
- Lack of governmental support to independent workers;
- Lack of governmental support to housekeeper workers in the informal sector;
- Payments to day-care centers;
- Reimbursement of travel costs by travel agencies;
- Violation of closure orders (restaurants, shops);
- Workers who were put in lay-off labour scheme;
- Banks that demand fees for home banking service;
- Elderly persons who do not have access to home banking and need to go physically to the banks;
- Working parents in remote work scheme who cannot accompany the homeschooling of their children;
- Suspension of tax enforcements;
- Inflated prices of medical supplies;



- Financial Support to Independent workers
- Support to health professionals with children;
- Restriction to freedom of movement of children with shared custody;
- Lack of training and of technological materials to teachers in public schools;

\*

The Ombudsman has been intervening for overcoming all complaints that fall in its competences, through its usual means of working, and promoting a permanent dialogue with the official authorities.

Some of the problems referred to were already solved, after successful recommendations or suggestions of the Ombudsman. That is the case of the support to independent workers and the enlargement of the family-support work leave in order to provide help to their elderly ascendants.

The Ombudsman also suggested to the Ministry of Justice to extend the duration of exit licenses for inmates who had already benefited from a judicial leave successfully, in order to alleviate the prisons' population. The NHRI also sent a recommendation to the Government on restrictions during childbirth and puerperium, as well as on allowing more family presences in funerals.

6<sup>th</sup> May 2020