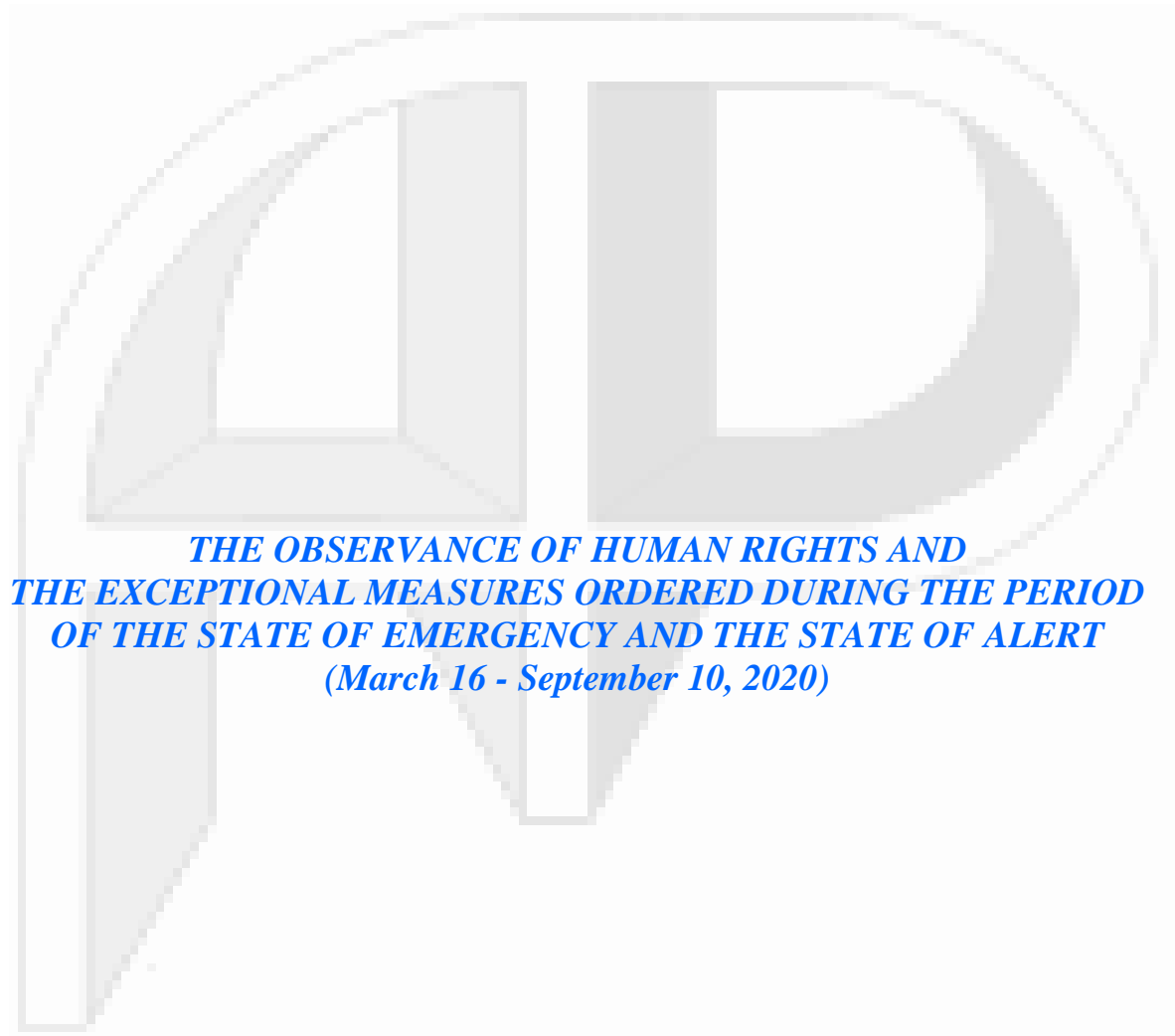


PEOPLE'S ADVOCATE



***THE OBSERVANCE OF HUMAN RIGHTS AND
THE EXCEPTIONAL MEASURES ORDERED DURING THE PERIOD
OF THE STATE OF EMERGENCY AND THE STATE OF ALERT
(March 16 - September 10, 2020)***

Bucharest, September 2020

“Never, never be afraid to do what's right (...).” – Martin Luther King Jr.

This report reflects the work of the People's Advocate during the crisis we are going through, as well as the responses and reactions of the authorities.

Despite the difficulties created by the COVID-19 epidemic, the People's Advocate has continued and will continue to fulfill its constitutional and legal mission.

All the steps taken by the People's Advocate even before the establishment of the state of emergency on the Romanian territory were carried out for the fulfillment of its constitutional mandate as guarantor of the rights and freedoms provided by the Fundamental Law of Romania.

Regarding the human rights situation, the People's Advocate, taking note of the establishment of the state of emergency and the state of alert on the territory of Romania, carefully monitored the application of these measures.

Ever since the establishment of the state of emergency on the Romanian territory by Decree no. 195 of March 16, 2020, the People's Advocate made a public appeal to the public and the media to report by telephone, e-mail, post or fax any acts or facts in connection with which there are suspicions regarding possible violations of fundamental rights or freedoms.

Prior to this date, the People's Advocate, seeing the administrative measures adopted to combat the spread of the COVID-19 virus, requested the President of Romania to declare the state of emergency and the Romanian Parliament to approve it, in accordance with Art. 93 para. (1) and (2) of the Constitution. On this occasion, the appropriateness of the measures taken so far, the need to restrict the exercise of certain rights, was not questioned, even though this would have been mandatory to happen, as provided by the basic law, in such exceptional cases. These are the requirements of the rule of law, in which the restriction of certain

rights and freedoms can be done only under the conditions of Art. 53 of the Constitution.

During the state of emergency and the state of alert, the People's Advocate continued to carry out its usual activity, with the restrictions imposed by the fight against the coronavirus pandemic. Regarding the prevention of the spread of the COVID-19 virus, the People's Advocate implemented the work from home, but ensured the permanence both at the headquarters and at the territorial offices.

At the same time, in order to avoid travel, people were instructed to submit petitions exclusively by mail, post, or fax during the state of emergency.

In order to show total transparency, but also openness towards citizens, authorities, media, as well as any other interested person, on the home page of the institution's website were created 2 new sections:

§ ACTIONS OF THE PEOPLE'S ADVOCATE RELATED TO DECISIONS ON THE STATE OF EMERGENCY AND THE STATE OF ALERT, in which the requests and recommendations addressed to the authorities in connection with their decisions on the state of emergency and the state of alert can be consulted – http://www.avp.ro/index.php?option=com_content&view=article&id=526&lang=ro-ro&Itemid=208

§ THE PEOPLE'S ADVOCATE INFORMS YOU, where the normative acts regarding human rights adopted / issued during the state of emergency and the state of alert can be found – http://www.avp.ro/index.php?option=com_content&view=article&id=525:informare-a-cu-privire-la-actele-normative-cu-incidenta-in-materia-drepturilor-cetatenilor&catid=2&lang=ro-ro&Itemid=121



Although **Romania** did not have a number of victims during the state of emergency comparable to the countries that were hit hardest by the pandemic – the United Kingdom, Spain, Italy, France and Germany – and no significant number of people hospitalized in the ICU departments of hospitals, **it is the only country in the European Union where:**

- **the most drastic measures have been taken in the sense of restricting certain rights and freedoms; some of these measures were beneficial in that they prevented the community spread of COVID-19 virus;**

- **the largest number of fines were registered, 310,000, their amount being 120 million Euros, in the context in which the average income is 3,189 lei;**

- **the longest period of restrictions was established starting with March 16, 2020, totaling 180 days, namely: twice the state of emergency and four times the state of alert, each for a period of 30 days;**

- **all infected persons were compulsorily hospitalized during the state of emergency and during the state of alert, even if they did not show symptoms, this situation being maintained to the present day.** This caused some asymptomatic people to be hospitalized for 40-50 days and even up to 63-65 days, until 2 PCR tests gave negative results, while many patients with other serious chronic diseases couldn't receive the medical assistance necessary for their specific pathologies. In this sense, the People's Advocate was notified by an appeal document, signed by 722 doctors, who expressed their dissatisfaction with the lack of proportionality of the measure of compulsory hospitalization of asymptomatic patients tested positive for COVID-19, which they consider to be far too restrictive compared to the measure of isolation at home, which they considered much more appropriate for the diagnosis and purpose of combating the contagious disease. Moreover, if asymptomatic

persons refuse hospitalization, they will be subjected to criminal prosecution.

Regarding the impact of the COVID-19 epidemic on human rights, the People's Advocate institution took many steps during this period, as shown by the increased number of ex officio proceedings, but also of petitions received, which tripled (Annex 1). The number of hearings, inquiries and visits decreased, as these activities were suspended during the state of emergency and the state of alert. The dispatch service of the People's Advocate institution continued to be available to persons who wished to address petitions by telephone, or to request information, support, etc.

At the same time, more than 65 actions were formulated – letters and recommendations – addressed to: the Prime Minister, the Strategic Communication Group, the Minister of Internal Affairs, the Minister of Health, the Minister of Labor and Social Protection, the Minister of Education and Research, the Minister of Public Finance regarding their decisions on the state of emergency and the state of alert, all of which can be found on the institution's website in the section *Actions of the People's Advocate concerning decisions on the state of emergency and the state of alert* –

http://www.avp.ro/index.php?option=com_content&view=article&id=526&lang=ro-ro&Itemid=208.

Many of the actions taken by the institution materialized in decisions of the decision makers responsible for managing this crisis, which were taken only after the People's Advocate drew their attention, through letters and recommendations, such as: the inclusion of COVID-19 in the group of category A infectious diseases, so that the temporary incapacity for work be paid in proportion of 100%; carrying out the teaching – learning – assessment process in the online environment, for which the financing sources necessary for the purchase of desktops, laptops, tablets or



smartphones necessary for the teaching – learning – assessment process in the online environment have been identified and used as such; issuing the order of the Minister of Health by which asymptomatic patients who test positive to the control test can be discharged after 10 days, provided isolation at home is ensured until the end of the 14 days of the isolation period from the time of admission (4 days after discharge); asymptomatic patients who test negative to the control test can be discharged after 10 days without the need for isolation at home.

In this report we intended to focus on the overall situation in Romania during this period, thus trying to identify system malfunctions, individual cases being treated according to the usual procedure for solving petitions.

§ Steps taken at the level of public authorities:

Government of Romania – Prime Minister:

- **March 31, 2020**

- **Request for capping prices for certain medicines, medical devices and health products;**

<http://www.avp.ro/rec/doc1.pdf>

The People's Advocate, taking into account the evolution of the epidemiological situation in Romania, which indicated a significant increase in the number of people infected with SARS-CoV-2 coronavirus and considering that there was a substantial increase in demand for certain drugs, medical devices and health products, given that supply was much lower than usual, and in order to prevent certain unfair or illegal commercial behavior, recommended, for a specified period, that the prices of the above products be capped in order to protect citizens from possible sudden and substantial price increases, which would have led directly to a breach of their right to the protection of health.

Response: –

- **April 1, 2020**

- **Request for capping the price of food of strict necessity;**

<http://www.avp.ro/rec/doc6.pdf>

In the current context of the state of emergency caused by the spread of the SARS-CoV-2 coronavirus, between February and March 2020, the central and local media broadcasted several news items on staple foods prices that rose sharply after the declaration of the state of emergency; in order to swiftly take all necessary social protection measures, but also to prevent the occurrence of abusive trade behaviors amid a substantial increase in demand for staple foods, in the current context, we have notified the Prime Minister about the necessity to adopt economic measures, during the period of the state of emergency, in the sense of capping the prices for food of strict necessity, within the average price of the last 3 months, before the declaration of the state of emergency, according to Art. 15 of the Decree no. 195/2020 on the establishment of the state of emergency on the territory of Romania.

The response of the General Secretariat of the Government

The answer of the General Secretariat of the Government shows that the *Government of Romania takes into consideration and analyzes the aspects notified by our institution.*

- **May 27, 2020**

- **Request for the formulation of a point of view – analyzes and statistics on human mobility during the COVID-19 epidemic;**

<http://www.avp.ro/rec/doc42.pdf>

The People's Advocate requested information regarding the analyzes and statistics for the prevention and control of COVID-19 performed by the company Vodafone Romania S.A. namely: if the Romanian authorities requested the mobile network operators to carry out such analysis of the mobility of persons?; what other mobile network operators, apart from Vodafone Romania S.A., practice this



analysis of people's mobility?; has Vodafone Romania S.A. transmitted analyzes and statistics aimed at the mobility of people, in the context of its monitoring.

The response of the Authority for the Digitalization of Romania

The Romanian Government forwarded the request to the Authority for the Digitalization of Romania which informed us that it has no duties on monitoring and analyzing the mobility of persons, so that the request of the People's Advocate institution exceeds the limits its powers.

• **July 21, 2020**

► **Request regarding the transmission of the database of the Ministry of Health to the Ministry of Internal Affairs, respectively the communication of the administrative act by which the transmission of the database is performed;**

http://www.avp.ro/rec/solicitare_21iulie2020_1.pdf

In the context in which the transmission of the entire database of the Ministry of Health to the Ministry of Internal Affairs is expected, a measure likely to lead to a possible violation of the right to confidentiality of information and privacy of the patient, the People's Advocate requested the following: the nature of the data to be transmitted and the conditions for making this transfer; the holder of the right of access to the transmitted data and the conditions for granting this access; the period for which the data thus transmitted are made available and the measures to be taken after the expiry of that period; the manner of interpretation and eventual application of the provisions of Art. 25 of Law no. 46/2003, regarding the patient's rights; a copy of the administrative act by which the database of the Ministry of Health is transmitted to the Ministry of Internal Affairs.

Response –

Strategic Communication Group:

• **March 31, 2020**

► **Request for psychological assistance for the medical staff and support staff;**
<http://www.avp.ro/rec/doc2.pdf>

Given that, in terms of safety and security at work, even though the most important problems appear to be the physical ones, but also the emotional problems can generate states of work incapacity, for different periods or, worse, irreversible, the People's Advocate has advanced, as a solution for the proper management of such situations, that all medical and auxiliary staff, at the forefront of the fight against this pandemic, be registered with a clinical psychologist and, depending on the needs identified or on request, to benefit from specialized assistance and support.

This psychological assistance, crisis counseling or psychotherapy for a limited time, can be provided face-to-face or through online applications.

In this context, were mentioned, as a human resource, necessary for the implementation of this project, the necessary specialists for several institutions such as: at the level of military units in those areas, both those belonging to the Ministry of National Defense and those of Ministry of Internal Affairs; for the staff of the ambulance services, the provision of psychological assistance, in their current situation (under the command of the I.G.S.U.), can be done by the specialist / specialists at the level of the Inspectorates for Emergency Situations.

Response of the Ministry of Internal Affairs - Department for Emergency Situations

Response of the Ministry of Internal Affairs - Center for Psychosociology

From the answers received from the Department for Emergency Situations and the Center for Psychosociology within the Ministry of Internal Affairs, the following emerged:

- clinical psychologists were identified at the level of medical units, within the institutions of defense, public order, etc.;
- regarding the Ministry of Internal Affairs (MAI) staff, which is at the forefront of the fight against the pandemic, at the ministry level, the provision of specialized



psychological assistance is provided by specialists of the MAI Psychosociology Center and, implicitly, by the psychologists of each unit;

- starting with March 1, 2020, the Psychosociology Center provides to the MAI staff e-mental health services, virtual clinic, for rapid assessment and scientific therapy for anxiety, depression, problems related to emotion control, panic attacks, as well as and those generated by stress. This solution aims to facilitate the beneficiaries' access to specialized psychological assistance services (structured on multimedia therapeutic modules), online, under the guidance of accredited specialists, through the professional prevention and psychotherapy platforms DEPRETER and PAXonline;
- in order to fulfill their duties, the psychology structures within the Ministry of Internal Affairs carry out specialized activities aimed at describing, classifying, explaining, predicting and optimizing human behavior, as well as measuring, analyzing and interpreting facts, processes and social phenomena at the level of each subordinate structure, through a network of almost 300 psychologists;
- The Psychosociology Center ensures the activity of psychological assistance for the staff of the units from the composition of the central apparatus of the ministry and these subordinated to it which don't have psychologists in their staff structure.

► **Request for psychological assistance for quarantined persons;**

<http://www.avp.ro/rec/doc4.pdf>

It was considered that the quarantine of persons coming from red areas of the epidemic, given the restrictive nature (severe restriction of freedom of movement for 14 days) should be accompanied, at least for those with severe behavioral decompensation or other mental vulnerabilities, at their request or in case of undesirable behaviors or personal history with such a pathology, assessment and

psychological assistance, face to face or online.

Response –

• **April 27, 2020**

► **Request regarding the restriction of the freedom of expression;**

<http://www.avp.ro/rec/doc20.pdf>

In the period following the establishment of the state of emergency on the Romanian territory, the People's Advocate took note of the requests addressed to the National Authority for Administration and Regulation in Communications (ANCOM) by the Ministry of Internal Affairs, at the proposal of the Strategic Communication Group, to shut down several websites that were considered to broadcast fake news about the evolution of the SARS-CoV-2 epidemic, with the potential to create panic among the population.

The People's Advocate asked the Strategic Communication Group to clarify the following issues:

- What is the reporting procedure and the procedure through which it monitors the occurrence of fake news in the context of the current crisis caused by the SARS-CoV-2 epidemic? Indication of the applicable legal framework;
- From what perspective are analyzed the news which raise suspicions regarding the authenticity, credibility of the sources, but also those without scientific basis?
- How is the analysis performed, in relation to the content of the information, their authenticity and accuracy, the credibility of the websites that host the information, the credibility of the sources, but also the purpose pursued by publishing that information;
- Is there any intention at the level of the Group to identify and develop other ways to warn the public about fake news?

The request took into account the opinion constantly expressed by the People's Advocate, in the sense that one cannot talk about freedom of expression without the existence of freedom of opinion which allows any individual to participate in



political, social, cultural life, manifesting public opinions, thoughts, beliefs.

The response of the Ministry of Internal Affairs

The Ministry of Internal Affairs communicated the following:

- no ban was imposed for journalists to communicate data and information, opinions or informative materials about the evolution of the situation generated by the new type of coronavirus;
- The Strategic Communication Group had and still has a constant dialogue with journalists and media institutions with assumed identity, and the measure to block access to the content of certain websites was proposed by the Group only in the case of portals whose identity was not assumed and which represented a clear danger of being a driver of misinformation of the population;
- the measures to block the fake news were stipulated in the two Presidential Decrees, establishing the state of emergency (195/2020), respectively extending the state of emergency (240/2020), and the analysis process was a complex one, based on: the way in which the European Union has managed, through Stratcom within the EEAS, to identify certain portals that constantly promote false information and that are categorized as unbelievable sources of information; the process of verifying the information published by certain websites, verifications which were made even at the origin source of that information, when this was possible; the purpose could be clearly established from the way the materials are made, for example exhortations to attack law enforcement or doctors, corroborated with false information about how all citizens will be injected with chips to control their minds.

Ministry of Internal Affairs:

- **March 31, 2020**

► **Request for supplementing the number of police and gendarmes operating in rural areas;**

<http://www.avp.ro/rec/doc3.pdf>

The intervention of the Minister of Internal Affairs was requested in the exercise of the duties recognized by Art. 18 and Art. 19 of the Government Emergency Ordinance no. 1/1999, in identifying the most appropriate solutions to supplement the number of police and gendarmes operating in rural areas.

The response of the Ministry of Internal Affairs

The answer of the Ministry of Internal Affairs revealed the following:

- the specialized structures from the Ministry of Internal Affairs elaborated the Procedure regarding the filling, without competition, of the vacant positions in the MAI units, for a period of 6 months, in the context of establishing the state of emergency on the Romanian territory, thus creating the mechanisms which allowed the structures of the ministry to start the procedures for selecting staff from external sources, for employment, for a determined period;
- steps were initiated to fill over 500 vacancies, at the request of: the General Directorate of Medical Emergency Management, Medical Directorate, Romanian Gendarmerie, General Inspectorate for Emergency Situations, General Inspectorate of Border Police, General Inspectorate for Immigration and General Inspectorate of Aviation;
- a number of 1,868 workers from the structures of the Central Apparatus as well as the structures subordinated to the ministry, who diminished their activity due to the evolution of the epidemiological situation determined by the spread of SARS-CoV-2 virus were seconded to the operative structures of the Romanian Police.

- **April 1, 2020**

► **Request regarding the use, in future military ordinances, of rigorously exact wording in defining the constitutive and legal content of the facts that represent contraventions and regarding the**



training of the persons responsible for the application of these norms;

<http://www.avp.ro/rec/doc5.pdf>

Starting from the petitions addressed to the People's Advocate institution, and the aspects highlighted by the written press, through which cases of possible illegal and/or unfounded application of the incriminating and sanctioning provisions of the military ordinances were notified, situation also generated by the non-unitary interpretation and application of the relevant legal provisions, as well as the fact that the simple explanations provided by the Ministry of Internal Affairs to the public were not sufficient to ensure compliance with the principle of legality of the offense, which means that a sanction cannot be applied to a person unless the offence committed is provided and sanctioned by law, it was considered that the preventive action of training those responsible for the application of these rules, would be an effective approach in the current context, both in terms of the rights of the addressees of the rules in question, as well as the activity of the courts which could face a significant number of appeals concerning the sanctions applied.

In this context, the intervention of the Minister of Interior was considered imperative in identifying the most appropriate solutions to ensure the development of rigorous and precise rules on the definition of contraventions, and to ensure the uniform interpretation and application of the incriminating and punitive rules provided by military ordinances.

Response –

► Request regarding the provision of the protective equipment and apparatus necessary to combat COVID-19 to doctors; <http://www.avp.ro/rec/doc7.pdf>

The People's Advocate informed the Minister of Health and the Minister of Internal Affairs of the chain resignations of the medical staff, generated by the lack of equipment necessary to combat COVID-19

and stressed that in the absence of necessary protective equipment, the medical staff cannot carry out their activity in compliance with occupational health and safety conditions and in full safety, from the point of view of ensuring the health of both colleagues and patients, families, and the community in general.

The competent authorities must implement the necessary measures to ensure that the medical staff can take precautions to protect themselves and to prevent the transmission of the virus during their work. Also, in the absence of protective equipment and apparatus necessary to combat the COVID-19 epidemic, the medical staff is unable to perform the medical act properly in order to heal the patient and to protect and promote the health of the population.

Thus, the People's Advocate requested to be informed about the current situation of the medical staff in the hospitals and about the measures taken to ensure the appropriate necessary means / equipment of protection and equipment necessary in the fight against COVID-19 virus, for medical staff, nationwide. At the same time, clarifications were requested regarding a possible military ordinance to prevent the resignation of medical personnel.

Thus, the People's Advocate requested to be informed about the current situation of the medical staff in hospitals and about the measures taken to ensure the appropriate necessary means / equipment of protection necessary in the fight against COVID-19 virus, for medical staff, nationwide. At the same time, clarifications were requested regarding a possible military ordinance to prevent the resignation of medical personnel.

The response of the Ministry of Internal Affairs – Department for Emergency Situations

By the response of the Department for Emergency Situations we were informed that until May 1, 2020, were distributed to all health units involved in combating the spread of the epidemic caused by Sars-Cov-2 the following protective materials and



sanitizers: 448870 overalls, 5609450 protection masks, 14500 liters of sanitizer, 706000 visors, 61300 pairs of gloves.

- **April 6, 2020**

► **Request regarding the strategy to counteract the criminal phenomenon in order to guarantee the safety of persons and property;**

<http://www.avp.ro/rec/doc8.pdf>

In this approach, the increase of cases of criminal acts committed, some even with violence, against persons or their property was highlighted. Given that the application of measures specific to the state of emergency means that the efforts of the authorities with responsibilities in the field of crime prevention are focused in preventing the spread of the virus, we expressed concern about the possible undesirable effect which could be the increase in the number of crimes against property and people in the next period.

The People's Advocate asked the Minister of Internal Affairs to communicate whether: a strategy has already been established or is being developed to counteract the criminal phenomenon that may manifest itself in this concrete context, in order to guarantee the safety of persons and property; if there is such a project, we requested that it be communicated to us; the People's Advocate institution may be useful to them by contributing in the development of such a strategy.

The response of the Ministry of Internal Affairs

The response of the Ministry of Internal Affairs revealed the following:

- in terms of ensuring a climate of public order and safety for citizens, based on the planning documents at the MAI level, activities were carried out mainly to: intensify / adapt the measures within the competence of the specialized structures within the MAI and increase the number of staff engaged in missions of public order with the aim of preventing and combating antisocial / criminal acts; carrying out specific actions, according to the

competencies, for the identification of known persons with criminal activity;

- at the level of the Ministry of Internal Affairs, was elaborated the Plan for the implementation of the MAI commitments from the Government Program, among which are, as main priorities of the ministry, the increase of the quality of public order and safety for the benefit of the citizen, by ensuring a high degree of safety and protection of property;

- all the steps taken at the level of the MAI on public order during the state of emergency are subsumed to an integrated action system, based on the principles of legality and judicious use of resources, so that the main institutions of the ministry (Police and Gendarmerie) provide an adequate and quick response, according to specific challenges;

- correlated with the necessities generated by the situation at national level, the law enforcement structures permanently adapt their mode of action, by increasing the visibility of the troops, intensifying the patrol activities, generating balanced but firm reactions, in an integrated and unitary manner, in order to ensure the climate of public normality.

- **April 8, 2020**

► **Request for taking into consideration of the cessation of deforestation during the state of emergency and the intensification of controls in forests by the representatives of the Forest Guards, together with the police, and the performance of traffic controls aimed at forest specific matters;**

<http://www.avpoporului.ro/rec/doc10.pdf>

Considering the materials published in the media, regarding the felling of forest lands, for the protection of the property right (public and private), and considering that, at present, the process of restitution of forest lands is blocked (both in terms of restitution of the right on the old sites of the dispossessed owners, as well as in the case of approving the restitution of the areas established by court decisions), but also for respecting the right to healthcare and the



right to a healthy environment, the People's Advocate proceeded ex officio and took steps to: the Ministry of Environment, Waters and Forests, the National Directorate of Forests - Romsilva and the National Committee for Special Emergency Situations, requesting the following:

- Ministry of Environment, Waters and Forests:

- what are the measures taken by the ministry, in order to reduce the illegal logging and prevent the destruction of forests;

- whether a map has been drawn up to identify areas where illegal logging takes place, with a view to effectively intensify the measures for preventing and combating illegal logging;

- what are the solutions identified to prevent the occurrence of similar situations in the future, and respect the right to healthcare and the right to public and private property of entitled persons / entities.

- National Forest Administration – Romsilva:

- to what extent did Romsilva fulfil its legal control duties;

- what were the sanctions applied during the state of emergency;

- how to ensure the protection of forests;

- what are the identified solutions for preventing the occurrence of similar situations in the future, for respecting the right to healthcare and the right to public and private property of entitled persons / entities.

- National Committee for Special Emergency Situations:

- analyze, together with the Ministry of Environment, Waters and Forests and the National Forest Administration – Romsilva, and discuss the cessation of deforestation during the state of emergency and the intensification of controls in forests by representatives of the Forest Guards, together with law enforcement authorities, and performing, in traffic, specific forest control activities.

[The response of the Ministry of Internal Affairs](#)

The Ministry of Internal Affairs informed us that the request of the People's Advocate was forwarded to the Ministry of Environment, Waters and Forests, as it concerns the forestry field, and the matters in question will be analyzed by specialists within this ministry.

- **April 9, 2020**

- **Recommendation on the right to healthcare and the right to social protection of the category of vulnerable persons in institutionalized care;**

<http://www.avp.ro/rec/doc11.pdf>

- **Recommendation on the right to healthcare and the right to social protection of persons with disabilities who are not in institutionalized care;**

<http://www.avp.ro/rec/doc12.pdf>

Given the cases of infection with Covid-19 among institutionalized elderly people in public or private centers, the People's Advocate recommended to the Minister of Internal Affairs to request the prefects to order the notification of all state and private centers on the need to tighten the rules on the access of employees to the centers to protect institutionalized persons, to ensure the training of the staff by the representatives of the county public health directorates on the correct use of the protective equipment, as well as to establish supply circuits and proper cleaning to eliminate any risk of contamination.

The People's Advocate also recommended to be completed the Plan of measures for the management of coronavirus infections at county level, with measures targeting the category of persons with disabilities that are not institutionalized, including: the allocation, at the level of each town hall, of a telephone number and an e-mail address dedicated to persons with disabilities and the establishment of an immediate reporting procedure for such situations; making available to the DGASPCs by the county public health directorates the free protective equipment (masks, sanitizer) for people with disabilities and their personal assistants.



The response of the Ministry of Internal Affairs – Institution of the Prefect of Bucharest

The Institution of the Prefect of Bucharest sent a request to the Mayor of Bucharest, to the mayors of the sectors and to the Bucharest Public Health Directorate asking them to inform the management of all care centers – state or private, located within the municipality / sectors of Bucharest, of the need to tighten the rules for the protection of institutionalized persons.

In order to achieve this objective, it is necessary to establish concrete measures regarding the access of employees to care centers, the use of protective equipment, the establishment of circuits for supply, cleaning and conclude contacts with the beneficiaries of the center.

In this regard, the mayors will ensure, for each care center in the territorial area of competence, the training of all the staff of the center by representatives of the Public Health Directorate, so that in the care centers, the most vulnerable people can benefit from protection measures and any risk of contamination is eliminated.

• April 10, 2020

► **Request concerning, among others, clarifications regarding the content of Order no. 74553/2020, more precisely the interpretation of the notion of medical emergencies;**

<http://www.avp.ro/rec/doc13.pdf>

The People's Advocate took note from the media that *“starting with April 7, both public and private hospitals are no longer allowed to admit patients other than those that represent emergencies. Also, the outpatient consultations were suspended”*. At the same time, the explanations given by the authorities in the days after the adoption of Order no. 74553 provide an interpretation that leaves to physicians the decision on how to apply the provisions, a measure that may lead to a non-uniform interpretation of the provisions that will cause a series of irregularities in the system

and obstruct equal access of citizens to health services.

In this context, the People's Advocate asked the Minister of Internal Affairs and the Minister of Health to provide us with clarifications regarding the content of Order no. 74553/2020, more precisely the interpretation of the notion of medical emergencies, given that it raises questions, both for doctors and patients, and to:

- modify that order, given that the uncertainty about the notion of what is urgent and what is not urgent, or what is reprogrammable or not, can lead to more loss of life than COVID-19;
- allow managers, ward heads, as well as doctors on hospital duty not to refuse treatment to patients coming to hospitals, on the grounds that there is no confirmation or refutation of the fact that they are COVID-19 positive or negative;
- ensure that all health units have the necessary equipment for the protection of the medical staff.

The response of the Ministry of Internal Affairs – Department for Emergency Situations

The institution concerned stated the following:

- Order no. 74553/2020 was applicable during the state of emergency;
- the provisions of Art. 1 of Order no. 74553/2020 referred to hospital care provided in public or private units, as well as specialized outpatient medical care provided in outpatient structures;
- the interdictions provided in Art. 1 of the mentioned order were not applied absolutely and automatically, but on the basis of the analysis of the specialist doctor, which would justify: the need for hospitalization or discharge of patients, for hospital care provided in public and private hospitals or postponement / rescheduling of consultations or outpatient treatments, in public or private units that provide outpatient care;
- the qualified medical staff had the obligation to analyze each medical case



and, subsequently, to decide on the medical act.

- **May 6, 2020**

- **The point of view of the People's Advocate on the matter of suspending the conclusion of civil marriages during the state of emergency;**

<http://www.avp.ro/rec/doc25.pdf>

The lack of references regarding the conclusion of marriages in the civil registry office, during the state of emergency, represents a gap in the measures provided by the military ordinances. Thus, considering that, in the Military Ordinance no. 2/2020, clarifications were made regarding the permission of the religious marriage with the participation of a maximum of 8 persons and that, according to Art. 48 paragraph (2) of the Constitution, the measures regarding civil marriage and religious marriage should have been regulated together and also brought to the public's attention, for ensuring the uniformity of the measures at national level and to avoid creating a state of confusion among the population (information on the new measures had to include all the elements related to the conclusion of the civil marriage: the necessary documents and the manner of officiating of the civil marriage). However, in the case of civil marriage, the restriction on the exercise of a fundamental right was announced through a radiogram of the Ministry of Internal Affairs (no. 3220473 / 27.03.2020), providing that, during the state of emergency, all the county directorates of the Registration of Persons and Database Administration have suspended the submission of marriage declarations and the officiating of civil marriages.

By the measure on the suspension of civil marriages, the right of persons to marry and to start a family has suffered a restriction that affects the very right to marry and we do not understand why no measures were taken such as: officiating the marriage online or under conditions similar to those imposed for religious marriage, in which

case the restriction would have just limited the number of persons present, under conditions that comply with the rules on social distancing.

The response of the Ministry of Internal Affairs – Department for Emergency Situations

The notified institution clarified the issues raised on this occasion and informed us that the States have full competence to dispose of all measures, either preventive or combative, which they consider necessary to adopt in order to protect public health. The interpretation of the above is that as long as the prohibition of concluding civil marriages is not expressly stipulated, the criticism does not have valid arguments.

The response of the Ministry of Internal Affairs – Department for Emergency Situations

In addition to the previous answer, the notified institution informed us that it was not ordered to suspend the submission of marriage declarations and the officiation of marriages, fact proved by the statistical situation regarding the conclusion of marriages between March-April 2020, according to which, at national level were officiated 4,304 marriages.

- **May 27, 2020**

- **Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19 epidemic;**

<http://www.avp.ro/rec/doc43.pdf>

The response of the Ministry of Internal Affairs – Department for Emergency Situations

The Department for Emergency Situations, which in terms of legal obligations ensured the "command of the action" (action commander) at national level, did not request from mobile operators data or information on the mobility of people during the emergency situation created by the COVID-19 epidemic; Vodafone Romania S.A. did not send to the action commander any analysis or statistics aimed at the mobility of people.



- **July 21, 2020**

► **Request regarding the transmission of the database of the Ministry of Health to the Ministry of Internal Affairs, respectively the communication of the administrative act by which the transmission of the database is performed;**

http://www.avp.ro/rec/solicitare_21iulie2020_2.pdf

The response of the Ministry of Internal Affairs

The response of the Ministry of Internal Affairs revealed the following:

- at the level of the specialized structures of the ministry there is no information regarding the transmission of the entire database of the Ministry of Health to the Ministry of Internal Affairs;
- the structures of the Ministry of Internal Affairs with responsibilities in implementing measures aimed at preventing and limiting the spread of the new coronavirus cooperate with other authorities and public institutions to maintain and ensure public order, the safety of citizens, ensure emergency management and coordination of medical response measures, as well as for the realization of an integrated management, both at intra-institutional and inter-institutional level, including for the application of Law no. 136/2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk.

In view of the answer received, the Ministry of Internal Affairs was notified again and the issues already specified were reiterated.

The Ministry of Health:

- **April 1, 2020**

► **Request regarding the protective equipment and apparatus necessary to combat COVID-19 which must be ensured to doctors;**

<http://www.avp.ro/rec/doc7.pdf>

Response –

- **April 10, 2020**

► **Request concerning, among others, clarifications regarding the content of Order no. 74553/2020, more precisely the interpretation of the notion of medical emergencies;**

<http://www.avp.ro/rec/doc14.pdf>

The response of the Ministry of Health

The Ministry of Health's response showed the following:

- according to Order no. 74553/2020, were suspended hospitalizations for surgeries and other hospital medical treatments and investigations that are not an emergency and that can be rescheduled, respectively do not endanger the lives of patients and do not lead to a reserved prognosis of their pathological evolution;
- the attending physician determines the therapeutic conduct of the patient, so that it does not lead to an unfavorable evolution of the disease or to other undesirable effects;
- considering the standardization of the types of treatment in oncological pathology, the specialist doctor who has established the medical conduct can assess which cases are the reprogrammable or not.

- **April 14, 2020**

► **Request for the provision of psychological assistance to the medical and auxiliary staff;**

<http://www.avp.ro/rec/doc15.pdf>

With regard to some healthcare professionals at the forefront of the fight against the new coronavirus who face a number of shortcomings and dysfunctions in the workplace, it was considered that setting appropriate targets for intervention in the psychological crisis, generated by the action of potentially traumatic events, in emergency situations, it must be based on a realistic wording of what crisis intervention means. Thus, in the opinion of the People's Advocate, a solution for the proper management of such situations would be that the medical and auxiliary staff, from the medical units whose management is provided by medical-military personnel, who are in the first line of fighting with this pandemic, to be registered to a clinical



psychologist and, depending on the needs identified or on request, to benefit from specialized assistance and support. Forms of psychological intervention can be given face to face or through online applications. In this context, the contribution of psychologists and volunteer psychotherapists was also mentioned, but for a better management of resources, it was appreciated that they should be in a record of the health unit where they want to provide services and be assigned cases, depending on the skills they have.

Response -

- **April 16, 2020**

► **Request regarding the discriminatory situation created for patients with serious mental illnesses, in application of Government Decision no. 252/2020;** <http://www.avp.ro/rec/doc16.pdf>

The People's Advocate proceeded ex officio in connection with the discriminatory situation for patients with mental illnesses, created in application of Government Decision no. 252/2020 on the establishment of measures in the field of health during the establishment of the state of emergency on the Romanian territory.

A discriminatory situation was created in the application of the Government Decision no. 252/2020 for patients with severe mental illness who, unlike other patients under medication, are required to first go to the doctor in order to present the original prescription to the pharmacist (on paper) in order to receive the drugs they need. For this reason, it was requested to urgently analyze this situation and take the necessary legal measures to correct this situation, so that this category of patients is not unnecessarily exposed to the risk of getting the new coronavirus. To this end, it may be possible to establish medical procedures which don't require the exposure of the patient, at a time when traffic restrictions are imposed on the population, as a measure of protection against SARS-CoV2 coronavirus infection (e.g. online medical correspondence between the family doctor /

specialist and the local pharmacist / who prescribes to the patient their treatment for mental illness or the sending of prescriptions by mail, by registered letter, or other measures).

The response of the Ministry of Health – Department of Medicines and Medical Devices Policy

The response of the Ministry of Health shows that no additional measures are needed to protect patients with serious mental illness, given that:

- in accordance with the Order of the Minister of Health no. 1283/2010, the base therapy recommended for patients with serious mental illness is represented by drugs that are not under national control, not being included in tables II and III of the Annex to Law no. 339/2005 on the legal regime of plants, with subsequent amendments and completions.

- only the prescription of narcotic and psychotropic substances and preparations provided in tables II and III of the Annex to Law no. 339/2005 is made on special, secure forms, valid for 30 days, which are retained in the pharmacy, these measures representing a mechanism for controlling the traceability of narcotic and psychotropic drugs on the doctor-prescriber-pharmacy-patient relationship. Regarding the medicines included in this category, the Romanian College of Pharmacists expressed a point of view, stating unequivocally that they should not be subject to legislative changes that allow online prescription, due to the special regime they have.

- **April 27, 2020**

► **Request regarding the exclusion, by Order no. 629/2020, of the category of asymptomatic persons confirmed with coronavirus from those for whom quarantine is instituted at home, given that this category of persons isn't included in the institutionalized quarantine either – ex officio notification of the People's Advocate;** <http://www.avp.ro/rec/doc19.pdf>



The People's Advocate proceeded ex officio in relation to the existence of a legislative gap regarding the obligation to admit / hospitalize asymptomatic people found positive with COVID-19, which must be solved according to the law, by a ministerial order.

This legislative gap is given by the existence of several normative acts: Order of the Minister of Health no. 533 of March 29, 2020, Order of the Minister of Health no. 622 of April 14, 2020, for the amendment and completion of the Order of the Minister of Health no. 414/2020 on the establishment of a quarantine measure for persons in a situation of international public health emergency caused by COVID-19 infection and establishing measures to prevent and limit the effects of the epidemic, Order of the Action Commander, Secretary of State, Head of the Department for Emergency Situations, no. 74,546/2020 and Art. 25 para. (2) of Law no. 95/2006 on health care reform, republished, with subsequent amendments and completions, which provides that measures on the prevention and management of emergencies caused by epidemics, as well as communicable diseases for which the declaration, treatment or hospitalization are mandatory, are established by order of the Minister of Health.

The People's Advocate requested the Minister of Health to examine the situation created and to communicate a point of view regarding the issuance of an order regulating the obligation to admit / hospitalize asymptomatic persons found positive with COVID-19.

The response of the Ministry of Health

The Ministry of Health informed us that it is no longer necessary to issue a ministerial order in response to our requests, considering the following:

- in accordance with the provisions of Art. 6 para. (1) of the Order of the Minister of Health no. 414/2020, for persons in institutionalized quarantine, a test for COVID-19 is performed only if they become symptomatic. Until the results are

received, they will be properly isolated. If the result is positive for COVID-19, they will be transported and isolated in the hospital;

- according to the Test Prioritization Recommendations for COVID-19, testing for SARS-CoV-2 virus infection is performed only for symptomatic individuals, including healthcare professionals, with some exceptions;

- for the classification of suspects with the SARS-CoV-2 virus, the case definition for the acute respiratory syndrome with the new coronavirus (COVID-19) is used. Depending on the county characteristics, the associated diseases and the possibility of providing separate circuits for patients suspected of SARS-CoV-2 virus until confirmed by testing, the county and Bucharest public health departments may establish other health units for hospitalization of these patients, meaning that suspected patients are also hospitalized in support hospitals (until confirmation);

- the criteria regarding the hospitalization and discharge of patients with COVID-19 are provided by the Order of the Minister of Health no. 753/2020 for the amendment of the Order of the Minister of Health no. 555/2020.

• April 30, 2020

► **Request regarding the methodology for surveillance of the acute respiratory syndrome caused by the new coronavirus, currently and after May 15, 2020;** <http://www.avp.ro/rec/doc21.pdf>

In the context of the evolution of the SARS-Cov-2 epidemic, the People's Advocate took note of the content of the methodology for surveillance of acute respiratory syndrome with the new coronavirus (COVID-19), a document prepared by the National Institute of Public Health in January 2020 and last amended on April 28, 2020. The declared purpose of the document was to know the epidemiological situation of Acute Respiratory Syndrome with the new coronavirus (COVID-19) in Romania and to recommend measures /



interventions to prevent the occurrence of secondary cases or an epidemic in Romania.

In the opinion of the People's Advocate, from the presentations made by the competent authorities, including the President of Romania and compared to other states, the number of tests performed is very small, but even in these conditions, there can be noticed an increase in the number of people infected with the new coronavirus.

The People's Advocate asked the Minister of Health to clarify the following issues:

- How will the methodology for surveillance of the acute respiratory syndrome with the new coronavirus (COVID-19) be adapted after the cessation of the state of emergency in Romania?
- Does the Ministry of Health consider completing the testing prioritization system for COVID-19? As an example, will the category of asymptomatic contacts of cases confirmed with COVID-19 also be considered?
- Knowing that the test for molecular diagnosis (Real Time PCR) determines whether or not the COVID-19 virus is present in the patient's body, and the result, at a theoretical level, can be obtained several hours from the time of harvest, we asked them to specify which is the average duration until the release of these results at present and what measures do they intend to take to reduce this duration?

[The response of the Ministry of Health](#)

The Ministry of Health's response showed the following:

- the notions of *Case Definition*, respectively of *Methodology for surveillance of the acute respiratory syndrome with the new coronavirus* (COVID-19) were introduced by the Order of the Minister of Health no. 313/2020. At the same time, on January 23, 2020, the Ministry of Health developed a first Norm for the Prevention and Control of Suspected Infections with the New Coronavirus (SARS-CoV-2) in health facilities. This was followed by a permanent update and

adaptation through the Methodology for surveillance of acute respiratory syndrome with the new coronavirus with updates on: March 16, 23, 27, 2020, April 3, 10, 16, 28, 2020 and May, 14 2020;

- with regard to the recommendations for prioritizing testing for COVID-19, these are: symptomatic persons, including medical and support staff; close symptomatic contacts of confirmed cases; patients up to 48 hours before the transplant procedure (asymptomatic) and organ donors, tissue and stem cell donors before donation; patients with organ transplants or tissues and hematopoietic stem cells undergoing immunosuppressive therapy before each hospitalization during the post-transplant monitoring period; asymptomatic patients with immunosuppression in the context of the disease or drug-induced, up to 48 hours before hospitalization; asymptomatic cancer patients undergoing chemotherapy and / or radiation therapy; asymptomatic cancer patients before surgery or invasive maneuvers; asymptomatic hemodialysis patients; asymptomatic hemodialysis patients who are contacts of confirmed case; symptomatic hemodialysis patients; asymptomatic institutionalized persons - upon admission to a residential center or upon return to the residential center from the family / health unit; symptomatic institutionalized people; care staff and support staff in residential centers - 2 times a month; asymptomatic pregnant women who are in quarantine / isolation at home or have been in close contact with a confirmed case - on day 14, if they have not become symptomatic; asymptomatic medical and support staff who are direct contacts with confirmed case, in the 6-7th day after the last possible infectious contact;
- The Ministry of Health has taken a number of measures to optimize and increase the capacity of the testing process at the national level, from the beginning. By Order no. 807/2020, it was established that the process of issuing the results of the RT-PCR tests cannot take longer than 24 hours,



regardless of the number of samples in progress. The number of laboratories where RT-PCR tests are performed has increased from 10 in March to 98 today, and this process continues. In this way it is intended to optimize the testing process by increasing the capacity, reaction speed and optimizing the distribution of samples in laboratories that have downtime without influencing the quality of the testing process or the quality of the results obtained;

◦ by the Methodology for surveillance of the acute respiratory syndrome with the new coronavirus (COVID-19) updated on May 14, 2020 are defined the sets of measures for the situation of community transmission, as well as the indications for prioritizing the testing, among other provisions.

► **Request regarding the inclusion of Covid-19 disease in the group of infectious diseases from group A, provided in the Government Decision no. 1186/2020, and, consequently, paying the incapacity for work paid in percentage of 100% - ex officio proceeding of the People's Advocate;**
<http://www.avp.ro/rec/doc23.pdf>

The People's Advocate proceeded ex officio and requested the Ministry of Labor and Social Protection and the Ministry of Health to take urgent measures for including COVID-19 in the group A of infectious diseases, provided in Government Decision no. 1186/2000, and, consequently, pay the temporary incapacity for work paid in percentage of 100% of the salary, keeping in mind that, according to the specialists, the disease is extremely contagious and with a very large area of spread. Currently, according to the legislation in force, those who are temporarily unable to work due to the coronavirus disease, receive only 75% of the salary in the period of incapacity for work.

The response of the Ministry of Health

In the response received during June 2020, the Ministry of Health informed us that they have taken Decision no. 423 of May 27, 2020 for the approval of the List comprising medical-surgical emergencies, as well as group A infectious diseases, for which the insured persons receive for temporary for incapacity for work, 100% of the salary.

- **May 13, 2020**

- **Request regarding:**

- **the legal framework on the basis of which are established the measures for the protection of patients with oncological diseases, which must present themselves to the doctor in order to carry out the necessary treatments;**
 - **the possibility for people suspected of having oncological conditions to present themselves in order to carry out the investigations necessary to detect the oncological condition, as well as what are the available modalities, in the context of the Covid-19 pandemic;**
<http://www.avp.ro/rec/doc29.pdf>

Following an ex officio notification regarding oncology patients discharged from state hospitals and sent home, sometimes without treatment, the People's Advocate notified the Ministry of Health, which provided some general information regarding the evaluation, monitoring and treatment of all categories of people, regardless of diagnosis.

Whereas the Ministry of Health has not communicated a specific legal framework applicable at national level, and the fact that it has only taken general recommendatory measures, which may lead to dysfunctions within the health units regarding the protection of persons suspected of having oncological diseases or who must continue these treatments, in the context of the continuity of the COVID-19 pandemic, we notified the Minister of Health again with a new request.



In this context, the People's Advocate requested the ministry to communicate the legal framework for establishing measures to protect patients with oncological diseases, which must present themselves in order to carry out the necessary treatments, but also if the persons suspected of having oncological conditions have the possibility to carry out the investigations necessary to detect these conditions, as well as the modalities available in the context of the COVID-19 pandemic.

The response of the Ministry of Health

The Ministry of Health's response showed the following:

- according to the Order of the Minister of Health no. 555/2020, were reduced by up to 80% the scheduled hospitalizations, such as scheduled surgeries for chronic patients in health facilities with beds in university centers and by up to 50%, compared to February, the outpatient activity, except for chronic patients or pregnant women who require diagnostic or therapeutic interventions, whose delay may lead to a reduction in the chances of survival. In this regard, health facilities will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection;
- all health units in the public and private system have the obligation to ensure the provision of medical care to all patients. The refusal to ensure the provision of medical care according to the specific attributions is sanctioned according to the legal provisions;
- during the entire state of emergency, hospitalizations for surgeries, other treatments and medical investigations that did not represent an emergency were suspended and could be rescheduled in all public health units with beds, public and private, as well as consultations and treatments that could be rescheduled, in all outpatient structures, both public and private. According to them, the prohibitions were not absolutely and automatically applicable, but based on the analysis of the specialist doctor;

- considering the standardization of the types of treatment in oncological pathology, the delay of which may lead to a reserved prognosis, the decision to continue / interrupt the ongoing chemotherapy and radiotherapy treatments is at the discretion of the attending physicians, who makes the decision according to the risk of SARS-COV-2 virus infection and the benefits of continuing the oncological therapy, given that the prohibitions were not applicable to patients with chronic oncological conditions.

The response of the Ministry of Health - General Directorate of Medical Assistance and Public Health

The General Directorate of Medical Assistance and Public Health communicated the following:

- health service providers in a contractual relationship with health insurance companies have the obligation to take all measures during the state of emergency to ensure a proper assessment, monitoring and treatment of all categories of persons, regardless of diagnosis, and during the treatment they should also be monitored from the perspective of COVID-19, in order to limit the spread of the pandemic; on the website of the Ministry of Health, are published the recommendations of the Romanian National Society of Medical Oncology regarding the measures for the protection of cancer patients who must see the doctor;
- to reduce congestion in oncology services, patients who require only palliative care will be referred to other medical units. If there is only one county oncology service, with the support of DSP, the hospitals / support sections in the territory will be identified where patients who need exclusive palliative care can be directed;
- with regard to the avoidance of the virus and the shortening of time in the waiting rooms (consultation), all cancer patients must wear masks in the waiting rooms, provided by the health facilities; keep a minimum distance of 2 meters between patients; patients are scheduled at intervals



of 20-30 minutes (where possible) and the harvest of samples for medical tests is done in stages, by hours; avoiding contact with medical staff when it is not absolutely necessary, etc.;

- excessive bureaucratic procedures associated with medical activity, which are time consuming and prevent operational hospitalization and discharge, will be reduced.

► **Request regarding the taking of urgent measures concerning the dramatic situation at the Dărmănești Neuropsychiatric Recovery and Rehabilitation Center;**

<http://www.avp.ro/rec/doc28.pdf>

The People's Advocate took note of the situation at the Dărmănești Neuropsychiatric Recovery Center, Bacău County, after several people, both among the beneficiaries and among the employees, were transported to the hospital after being infected with the new coronavirus. The three nurses on duty were transported to the hospital, and the center was left with only one member of the medical staff. In the absence of nurses, the 61 beneficiaries there were treated by unqualified persons: accountant, administrator, unskilled worker, at the instructions of the only doctor on duty.

The management of the Neuropsychiatric Center from Dărmănești stated that they did not request the testing of the beneficiaries, because they suspected them to be pretending and thought they were mimicking the symptoms of illness.

On May 12, 2020, the Center had a number of 41 beneficiaries confirmed positive with SARS-CoV2 virus, who were monitored by 4 employees and 20 beneficiaries whose results came negative in the care of a single occupational therapist, so that in the absence of specialized staff, psychomotor crises and other episodes of agitation specific to mental diagnoses could not be managed, the staff being extremely few and exhausted from all points of view.

The situation set out above is not singular, the People's Advocate institution being

notified in two other cases, namely the Păstrăveni Center for the Recovery of Persons with Disabilities and the Piatra Neamț Center for the Recovery of Children with Disabilities, where also the Neamț Public Health Directorate and the institution of the Prefect of Neamț County did not take measures for the proper management of the notified issues.

The People's Advocate asked the Minister of Health and the Minister of Labor and Social Protection to take all necessary measures to ensure the conditions imposed by the relevant legislation, both for beneficiaries and employees, but also to ensure the observance of their rights, to formulate a point view on the measures they envisage for the period after the cessation of the state of emergency on the Romanian territory, in order to respect the right to healthcare and social protection of the category of persons with disabilities in institutionalized care.

The response of the Bacău Public Health Directorate

The response of the Bacău Public Health Directorate shows the following:

- following the appearance of the COVID-19 community outbreak at the level of the Dărmănești Neuropsychiatric Recovery and Rehabilitation Center, the Communicable Diseases Surveillance and Control Department within the Public Health Directorate of Bacău County carried out the epidemiological investigation in question (on May 25, 2020).

- COVID-19 community outbreak (outbreak with 107 cases), with onset in the community, subsequent evolution in the center and extension in families: 55 cases of beneficiaries (7 symptomatic cases + 49 asymptomatic cases), 50 cases of staff (25 symptomatic cases + 25 asymptomatic) and 2 symptomatic cases - extension in the family;

- 92 people were tested on 03.05.2020 (62 beneficiaries and 30 staff = 50% staff) and 8 staff members on 10.05.2020, following other tests in: 11, 16, 19 May 2020;



- on 20.05.2020 were tested all the people from the center who had a negative result in the previous tests (16 positive beneficiaries on 03.05.2020 and negative on 16.05.2020, 16 negative beneficiaries on 03.05.2020 and 11 staff members from the half of the staff who were not quarantined and stayed in their homes) and 2 tests for 2 beneficiaries with two negative samples previously, following the tests, 5 new cases were detected, two for beneficiaries and three staff members;

- on 21.05.2020, it was established the temporary relocation to another center (separate building), with the same profile, of the beneficiaries with two negative tests, of the discharged beneficiaries cured in another location, the hospitalization of the beneficiaries and asymptomatic staff in order to clean and sanitize the center; subsequently the staff and the negative beneficiaries will return, except the quarantined staff at this time who will enter self-isolation together with their families, based on the contact status with confirmed cases;

◦ throughout the COVID-19 outbreak, the Public Health Directorate of Bacău County kept in touch with the center's representatives to identify and solve all problems related to healthcare and specific activity at the unit level: isolation of beneficiaries positively confirmed from beneficiaries who tested negative; the initially tested positive medical staff was accommodated separately from the negative staff; the proposals regarding the isolation of the beneficiaries and the employed staff were verified by the representatives of the Public Health Control Service within the Bacău Public Health Directorate; identification of a doctor specialized in pneumophtisiology, to support the medical activity at the center (they were consulted by a pulmonologist and it was decided to hospitalize a staff member); the doctor performed medical consultations for all persons in the center, as well as in other medical services; identification of a doctor specializing in

infectious diseases, to support the medical activity at the center; subsequent tests of asymptomatic positives (beneficiaries + staff) will be performed according to the recommendations of the infectious diseases specialist.

◦ on 23.05.2020, all the staff and all the beneficiaries tested positive, asymptomatic, who were still present in the Center were hospitalized and thus, the quarantine measure established on 05.05.2020 for the beneficiaries and staff lost its validity;

◦ on 24.05.2020, cleaning and sanitizing actions were carried out at the level of all the spaces in the center; after ventilation, the staff and beneficiaries tested negative will be brought back to the center, and after the discharge of those tested positively, they will return to the center.

► **Request for ensuring a legal framework aimed at readjusting the measures to prevent and combat the spread of Covid-19, for persons in residential centers (beneficiaries and employees of the centers);** <http://www.avp.ro/rec/doc31.pdf>

Starting with April 11, 2020 and until May 14, 2020, was applied the measure of preventive isolation at work, respectively of preventive isolation at home, provided in Art. 10 of the Military Ordinance no. 8/2020. With the application of the preventive isolation measure at the workplace of the employees, it was imposed the restriction of all entrances and exits in / from the unit, according to Art. 10 para. (7) of the Military Ordinance no. 8/2020. As of May 15, 2020, there are no regulations requiring preventive isolation at work, Military Ordinance no. 8/2020 ceasing its applicability.

Given that the failure to take the necessary measures to support the elderly in care centers would have a particularly serious impact, mainly on the right to life and, secondly, on the right to health, the Ombudsman called on the Minister for Health and the Minister of Labor and Social Protection, to examine the situation and communicate the following information:



- if it is envisaged to ensure a legal framework to readjust the measures to prevent and combat the spread of COVID-19, for persons in residential centers (beneficiaries and employees of the centers);
- in case the measure of preventive isolation of employees ceases, what measures are applied / taken for the personnel who carried out their activity outside the unit (e.g. drivers) and those who were on rest leave, taking into account that they were not tested for COVID-19; if the provision found in the draft law on some measures to prevent and combat the effects of the COVID-19 pandemic, namely that “the heads of residential care and assistance centers for the elderly (...) have the obligation to ensure the continuation of activity during the state of alert, having the right to establish the work schedule of employees, in accordance with the law ” will be adopted, will there be issued subsequent acts regulating the financing sources for maintaining preventive isolation measures (measures which imply coverage for accommodation and meals for employees) or will there be established a work program which ensure the observance of employees’ rights contained in Art. 116 of Law no. 53/2003 - Labor Code, according to which “the concrete way of establishing the unequal work schedule within the 40-hour working week; during the compressed work week, it will be negotiated through the collective labor agreement at the level of the employer or, in its absence, it will be provided in the internal regulation”.

The response of the Ministry of Health

The Ministry of Health informed us that both employed personnel and hospitalized persons are remain included in the testing algorithm. RT-PCR testing is recognized as a confirmation method for COVID-19 worldwide, including at European level, and is included in the case definitions for COVID-19, on the recommendation of WHO and ECDC.

At the same time, it is mentioned that in accordance with the provisions of Art. 19 of Law no. 55/2020, the heads of residential care and assistance centers for the elderly, residential centers for children and adults, with and without disabilities, as well as for other vulnerable categories, provided in the Nomenclature of social services, as well as in the framework regulations for organization and functioning of social services, have the obligation to ensure the continuity of activity during the state of alert, having the right to establish the work schedule of employees, in accordance with the law.

Regarding the strategy for the prevention of SARS-CoV-2 infection for medical staff, this is achieved by observing the universal precautions that involve the correct wearing of personal protective equipment (including when putting it on and taking it off) and correct hand hygiene in the 5 steps.

• May 29, 2020

► **Request regarding the restriction of the access of patients with chronic diseases in hospitals designated as Covid-19 support by ministerial order, based on the provisions of Decree no. 195/2020 on the establishment of the state of emergency on the territory of Romania, respectively of Decree no. 240/2020 regarding the extension of the state of emergency on the Romanian territory;**
<http://www.avp.ro/rec/doc33.pdf>

The People's Advocate Institution proceeded ex officio because, with the outbreak of the COVID-19 pandemic, the access to hospitals of patients with chronic diseases was restricted.

Order of the Minister of Health no. 753 of May 7, 2020 for the amendment of the Order of the Minister of Health no. 555/2020 was based on the provisions of Decree no. 195/2020 on the establishment of the state of emergency on the territory of Romania and of Decree no. 240/2020 regarding the extension of the state of emergency on the Romanian territory; the provisions of Art. 16 para. (1) letters a) and



b) and of Art. 25 para. (2) of Law no. 95/2006 on health care reform, republished, with subsequent amendments and completions.

Thus, the measures established by Order 753/2020 are not legal, given that the state of emergency has ceased.

The People's Advocate considered that it is no longer justified to restrict patients' access to hospitals designated as Covid-19 support, as there are several patients with serious chronic diseases for whom urgency is imperative, patients requiring complex medical procedures, which can only be performed in hospital and requested the Minister of Health to communicate the measures taken to allow the resumption of the activity of these hospitals.

Response: -

- **June 5, 2020**

► **Recommendation no. 116/2020, addressed to the Minister of Health;**
http://www.avp.ro/recomandari2020/recomandare116_2020.pdf

The People's Advocate received several petitions from patients, their relatives, but also from patients' organizations, through which they expressed their dissatisfaction with the ban on access to hospitals for performing complex medical procedures that can only be performed in hospital units. The People's Advocate has been taking steps since May 13, 2020, pointing out at the time that the Ministry of Health no longer justified restricting patients' access to hospitals designated as COVID-19 support, as there were several patients with serious chronic diseases who required urgent complex medical procedures, which can only be performed in the hospital.

Although Order no. 961 of May 29, 2020 stipulated that after the cessation of the state of emergency, depending on the local epidemiological evolution, admissions and scheduled surgeries can be resumed, as well as outpatient activity, the situation remained unchanged in many health units. This leads to the deterioration of the health

of many people, and even to the loss of human lives.

In this context, the People's Advocate issued a Recommendation requesting the Ministry of Health to issue, urgently, a circular to all COVID-19 support hospitals, requesting them to resume hospitalizations and scheduled surgeries, as well as the activity of outpatient clinics, in safe conditions, thus respecting the right of patients to protection of health.

Response: -

- **June 10, 2020**

► **Request to analyze the opportunity to amend Order no. 4267/841/2020, in the sense of ceasing the use of disinfection tunnels;**
<http://www.avp.ro/rec/doc36.pdf>

According to Art. 5 of the Joint Order of the Ministry of Education and Research and the Minister of Health no. 4267/841/2020 for the establishment of measures to prevent and combat SARS-CoV-2 infection in educational units / institutions, public institutions and all structures under the subordination or coordination of the Ministry of Education and Research, educational units, in collaboration with local public authorities, may take other additional measures to prevent and combat SARS-CoV-2 infection (installation of disinfection tunnels, additional sinks for hand washing, safety measures for students on the way from home to school and back, etc.).

As a result, according to numerous press articles published on this subject, dozens of schools have installed such tunnels, an aspect that could endanger the health of both students and teaching and support staff.

The People's Advocate proceeded ex officio and requested the Minister of Health and the Minister of National Education to analyze the opportunity to amend Order no. 4267/841/2020, in the sense of ceasing the use of disinfection tunnels.

Response -

- **June 12, 2020**



► **Recommendation no. 119/2020 regarding the observance of the provisions of Art. 16 of the Romanian Constitution, regarding equality in rights and Art. 32 of the Romanian Constitution on the right to education;**
http://www.avp.ro/recomandari2020/recomandare119_2020.pdf

The People's Advocate appreciated that denying the access of students who exceed the permitted body temperature level, 37.3°C, has the effect of violating the right to education, on equal terms, of students who would be excluded from national assessment and baccalaureate exams, thus affecting their results and, in turn, their access to high school or university studies. Thus, it requested the Ministry of Education and Research and the Ministry of Health the following:

- identifying and applying, as a matter of urgency, all the measures required to ensure the right to education, on equal conditions, in the context of preventing the spread of SARS-CoV-2;
- eliminate the discriminatory provisions from the criticized normative act and allow access of the candidates, on equal terms, to exams in regular sessions of the calendar for the national assessment for 8th grade graduates, in the 2019-2020 school year and for the baccalaureate exam calendar national – 2020.

The response of the Ministry of Health

The Ministry of Health made the following clarifications:

- students in isolation / positively confirmed with the new coronavirus will take the tests for the National Assessment and Baccalaureate according to a special procedure, between June 22-July 4 and June 29-July 12. In this stage, will participate only graduates who have had a temperature above the maximum allowed, have been in isolation, quarantine, have chronic diseases that may make them more exposed to the disease in the context of the pandemic, are hospitalized, in the first stage of national examinations, for various diseases;

- on the days of the exams, at the entrance to the exam center / educational unit, the medical staff will perform the epidemiological triage of the students;
- regarding the measure of thermal scanning, the temperature threshold of 37.3°C is a reference indicated by the World Health Organization, and the organization under the special procedure of the National Assessment and the Baccalaureate represents a measure to combat discrimination.

• **June 17, 2020**

► **Request for issuing an express regulation to ensure the financing of the COVID-19 test for all employees and beneficiaries of residential social services through the National Public Health Program;**
<http://www.avp.ro/rec/doc51.pdf>

The People's Advocate proceeded ex officio regarding the dysfunctions and difficulties that appeared in the testing process of the staff and beneficiaries from the residential centers regulated by the Government Decision no. 867/2015 for the approval of the Nomenclature of social services, as well as the framework regulations for the organization and functioning of social services and in the application of Art. 50 para. (1) of Decree no. 240/2020 on the extension of the state of emergency in Romania.

Prevention of SARS-CoV-2 infection of vulnerable people in residential social centers is a national public health issue, which is why an express regulation is needed to fund COVID-19 testing for all employees and beneficiaries of social residential services through the National Public Health Program.

In this regard, we requested the identification of an optimal solution to regulate this situation, taking into account all types of residential services under the subordination / coordination of the general directorates of social assistance.

Response -



• **June 18, 2020**

► **Recommendation no. 125 of June 18, 2020 regarding the obligation to hospitalize asymptomatic persons found positive with COVID-19;**

http://www.avp.ro/recomandari2020/recomandare125_2020.pdf

The People's Advocate proceeded ex officio following articles published in the media in connection with the legal situation of persons infected and hospitalized during the COVID-19 pandemic. Initially, the compulsory hospitalizations were ordered based on the Order of the Minister of Health 414 of March 11, 2020. Subsequently, it was replaced by the Order of the Minister of Health no. 622 of 14 April 2020, according to which "the home quarantine measure (...) is established, only if the space allows individual quarantine or in conditions of complete separation from the rest of the persons living in the same home, based on a declaration on their own responsibility", including for "asymptomatic individuals confirmed with coronavirus (COVID-19)".

After only one day, it was modified by Order no. 629 of April 16, 2020, which excluded the category of asymptomatic persons confirmed with coronavirus among those for whom quarantine is instituted at home, practically returning to the compulsory hospitalization of people who do not show symptoms, against their will and who have the possibility of self-isolation at home.

At the same time, however, the People's Advocate made several written requests to the Ministry of Health, requesting the examination of the situation created and the waiver of the obligation to hospitalize and keep in hospital asymptomatic persons found positive with COVID-19. The Ministry of Health informed us about the normative acts elaborated in the current epidemiological context, meant to regulate the way of establishing quarantine measures and isolation at home for persons positively confirmed with COVID-19, including asymptomatic ones, without

amending the order that made compulsory the admission of asymptomatic persons.

At international level, the information provided on the official website of the World Health Organization shows that the Member States of the European Union, as well as the United Kingdom and Switzerland, have not taken the measure of compulsory hospitalization of people confirmed positive with COVID-19, who are asymptomatic. In fact, both the World Health Organization and the European Center for the Prevention and Control of Infectious Diseases within the European Union recommend the possibility of home quarantine of people confirmed positive with COVID-19 who have no symptoms or represent mild cases. Furthermore, the guideline on criteria for releasing COVID-19 patients from isolation, updated on 17 June 2020, provides for the discharge of patients after a maximum of 10 days, without the need for testing of the persons concerned. (<https://www.who.int/news-room/commentaries/detail/criteria-for-releasing-covid-19-patients-from-isolation>). Romania is the only state in the European Union that has compulsorily hospitalized both during the state of emergency and during the state of alert, all infected people, even if they did not show symptoms.

In this context, the People's Advocate recommended to the Minister of Health:

- taking the necessary measures to ensure compliance with the legal provisions in force regarding the consent of patients, on the occasion of hospitalization of persons tested positive for COVID-19 in hospital units;

- urgently regulate the situation of asymptomatic persons detected positively with COVID-19, taking into account the recommendations of international forums;

Response: No answer was received, but it was issued the Order of the Minister of Health no. 1137 of June 23, 2020, by which asymptomatic patients who test positive to the control test can be discharged after 10 days, provided



isolation at home is ensured until the end of the 14 days of the isolation period from the time of hospitalization (4 days after discharge); asymptomatic patients who are negative to the control test can be discharged after 10 days, without the need for isolation at home.

- **July 16, 2020**

► **Recommendation no. 133 of July 16, 2020, on the existing Euthyrox crisis at national level, a medicine necessary for thyroid disease patients;**

http://www.avp.ro/rec/solicitare_16iulie2020.pdf

The People's Advocate proceeded ex officio, after the Covasna Observatory published, on March 25, 2020, an article showing that there is a national crisis of Euthyrox, a necessary medicine for thyroid patients.

Our country is located on the endemic area in the case of thyroid diseases, the number of people with thyroid problems amounting to approximately 738,000 adult patients with hypothyroidism, and 20,000 children (according to data cited by the Ministry of Health). Therefore, for many patients using Euthyrox, the lack of this drug on the market is a particularly serious problem. Euthyrox is an essential medicine for patients with thyroid problems. However, thyroid patients have started to report the lack of the needed medicine since February 2020, the complaints suddenly increasing in March 2020.

In this context, the People's Advocate recommended to the Minister of Health:

- to take the necessary measures to prevent, rapidly identify and solve drug crises, respectively for the efficient management of the existing situation;
- to take the necessary measures for the Electronic Inventory Reporting System-SER to be functional, to activate the national alert and be able to take appropriate measures to prevent the lack of medicines on the market;
- to proceed to take the necessary legal measures for making functional the

Mechanism for preventing the lack of medicines on the market, described in the Order of the Minister of Health no. 269/2017;

- The National Agency for Medicines and Medical Devices to proceed to the identification and application of sanctions for non-compliance with the public service obligation according to the law in force, both at the level of the company holding the marketing authorization and at the level of wholesale distributors, more precisely, compliance the obligation to ensure adequate and continuous stocks to cover the needs of the respective medicine, throughout the country, according to the provisions of Art. 699 point 19 and Art. 804 para. (2) of Law no. 95/2006 on health care reform, republished.

Response -

- **July 21, 2020**

► **Request regarding the transmission of the database of the Ministry of Health to the Ministry of Internal Affairs, respectively the communication of the administrative act by which the transmission of the database is performed;**

http://www.avp.ro/rec/solicitare_21iulie2020_3.pdf

The response of the Ministry of Health

The Ministry of Health informed us that:

- at the level of the ministry, the database referred to, was not identified;
- The Ministry of Health does not have information regarding the expected transmission of the entire database of the Ministry of Health to the Ministry of Internal Affairs.

Given the response received, we notified again the Ministry of Health and the issues already mentioned were reiterated.

- **August 7, 2020**

► **Request to analyze the opportunity to amend Order no. 1092/2020 in accordance with the provisions of the law, so that the persons suspected of COVID-19 who have been in quarantine**



for a certain period, can benefit from the medical leave allowance, in the amount of 100% of the salary;

https://www.avp.ro/rec/solicitare_7august2020_1.pdf

According to an article published in the journal Capital, on June 1, 2020, *many people complained that they were asked as a condition for hospitalization to take the test for the new coronavirus, which is considered not only an abuse, but also a danger of creating new outbreaks, given that not everyone can afford the costs of testing on their own.*

<https://www.capital.ro/abuzuri-in-spitalele-din-romania-cum-sunt-santajati-pacientii-la-internare.html>

Considering that the medical emergencies (other than those generated by COVID-19), as well as scheduled hospitalizations are of utmost importance for the observance of people's right to health, the People's Advocate proceeded ex officio and took steps at the Ministry of Health.

The answer received was as follows:

- regarding the request to perform the RT-PCR test, according to the provisions of the Order of the Minister of Health no. 828/2020 with subsequent amendments and completions, upon presentation to the hospital, the triage of all persons is performed and, depending on the symptoms presented, suspicious cases will be hospitalized in special isolation areas (buffer zones), to be tested by RT-PCR for SARS-CoV-2 infection, in the buffer zone they will receive all necessary medical care for their condition(s) until the result of this test. **Patients who after triage have no reason to be suspected of SARS-CoV-2 infection will be hospitalized in the wards related to their specific medical condition, ensuring a distance of at least 2 meters between patients;**

- starting with May 15, 2020, the hospitalizations and the scheduled surgical interventions were resumed, as well as the activity in the outpatient clinics, and regarding the situation of the patients who are not suspected for COVID-19, following

the triage, they **will be hospitalized in the wards corresponding to their pathology without RT-PCR. Suspected patients will be hospitalized in special isolation areas (buffer zones), to be tested by RT-PCR for SARS-CoV-2 infection, tests reimbursed to the health units through the National Program of Priority Communicable Diseases.**

Therefore, persons who represent medical emergencies or are scheduled for hospitalization should not be conditioned by performing a COVID-19 test in advance and presenting its result upon admission, and if a hospital unit asks someone anything else, they have also the possibility to go to court.

Response -

- **August 14, 2020**

- **Request regarding analyzing the opportunity to organize as soon as possible the specialty examinations for doctors who have completed their residency and have been waiting for more than 5 months to participate in this exam in order to acquire the right to practice;**
https://www.avp.ro/rec/solicitare_14august2020_1.pdf

In the context of the increase in the number of people infected with the new coronavirus, the press reported on the worrying situation in some hospitals, such as Ploiești County Emergency Hospital, but also in other hospitals in the country, due to lack of specialized medical staff ("Tense situation at the County Intensive Care Unit. Steps to maintain the second shift", "The ICU truck from SJU Ploiești is still just decorative. Questions to which we are waiting for urgent answers"), published on *Observatorulph* website.

The People's Advocate proceeded ex officio, and took steps at the Prahova Public Health Directorate, but also at the Ploiești County Emergency Hospital.

Both the management of the Prahova Public Health Directorate and that of the Ploiești County Emergency Hospital had a similar point of view, which showed that among the difficulties encountered in ensuring the



necessary medical staff, was the suspension of competitions organized to fill vacancies for doctors, since the establishment of the state of emergency on the Romanian territory.

Given the lack of specialist doctors facing hospitals in Romania, amid the current pandemic, but also the fact that in March 2020, according to information released by the press, over 700 doctors had registered for the specialty exam, which was canceled and which has not been organized to this day, in the context of the existence of health units that register major staff shortages, but also of the significant increase in the number of patients in need of medical care, the rapid organization of the specialized examination for doctors who have completed their residency, represents a minimum of help for exhausted medical staff, who work with the most severe cases in ICU departments, but also in the rest of the medical wards.

Response: No answer was received, but the dates of the specialized exams were set.

Ministry of Labor and Social Protection:

- **April 6, 2020**

► **Request to constantly inform the People's Advocate regarding the evolution of the situation in the homes / centers for the elderly (possible suspicions or confirmed cases of infection with Covid-19, the procedure adopted in such situations);**

<http://www.avp.ro/rec/doc9.pdf>

Considering that the National Preventive Mechanism regularly monitors the living conditions and treatment of persons in detention, in order to strengthen the protection of persons deprived of their liberty against torture and inhuman or degrading treatment and punishment and ensure the non-discriminatory exercise of their rights and their fundamental freedoms, as well as the fact that, among the places subject to NPM monitoring are the homes / centers for the elderly, the People's

Advocate Institution, requested the Minister of Labor and Social Protection to communicate to us the following:

- the situation of the homes / centers for the elderly, public and private (indication of the total number of homes / centers, as well as of those who suspended / ceased their activity during the state of emergency);
- the situation of the beneficiaries in the homes / centers for the elderly (indicating the number of beneficiaries existing at the date of declaring the state of emergency, the number of admitted beneficiaries and those for whom the cessation of services was decided during the state of emergency);
- measures taken to protect beneficiaries against contamination with COVID - 19 and to respect fundamental rights (right to physical and mental health, personal and room hygiene, accommodation conditions - number of beds/room, psychosocial assistance, and properly informing the beneficiaries about COVID-19, difficulties encountered in ensuring appropriate treatment and living conditions during the state of emergency);
- the situation of deaths during the state of emergency, indicating the following aspects: medical diagnoses of the beneficiaries, causes of deaths, who found the death (the doctor of the home / center, ambulance doctor), place where the death occurred, if a forensic autopsy was performed;
- possible difficulties in the provision of medical assistance (calls to the emergency number 112 and the way the cases were solved, presentation to medical consultations, provision of the necessary treatment, etc.);
- the measures taken to ensure the connection of the beneficiaries with their families or with other persons relevant to them;
- measures taken with regard to staff (employee awareness of the need to notify the family doctor and the employer in the event of symptoms specific to COVID-19 infection or others similar to a respiratory infection, number of staff in isolation or



quarantine, resignations of staff employed during the state of emergency, new employment during this period, staff protection strategies, etc.).

We also requested to be taken the necessary measures to permanently inform the People's Advocate about the evolution of the situation in homes / centers for the elderly (possible suspicions or confirmed cases of COVID-19 infections, the procedure adopted in such situations).

Response –

- **April 30, 2020**

► **Request regarding the inclusion of Covid-19 disease in the group of infectious diseases from group A, provided in the Government Decision no. 1186/2020, and, consequently, pay the temporary incapacity for work in percentage of 100% of the salary - ex officio notification of the People's Advocate;**

<http://www.avp.ro/rec/doc24.pdf>

Response –

- **May 12, 2020**

► **Request regarding the extension of the validity of the disability certificates;**

<http://www.avp.ro/rec/doc26.pdf>

Considering the termination of the validity of the certificates of classification in a degree and type of disability, issued by the evaluation commission of adults with disabilities on the date of cessation of the state of emergency (the provisions of Art. 39 of Decree no. 195/2020 on establishing the state of emergency on the territory of Romania, in conjunction with Article 58 of Annex I of 14 April 2020 to Decree No. 240/2020 on the extension of the state of emergency in Romania, provide that the certificates of disability for children and the certificates of assistant issued by the Commission for the Protection of the Child, as well as the certificates of disability issued by the Commission for the Assessment of Adults with Disabilities, whose validity expires during the declared state of emergency, shall extend their

validity until the end of the state of emergency), the People's Advocate requested the Minister of Labor and Social Protection, the elaboration of a normative act to regulate the situation of persons with disabilities in the sense of extending the term of validity of disability certificates.

The response of the Ministry of Labor and Social Protection - National Authority for the Rights of Persons with Disabilities, Children and Adoptions

The Ministry of Labor and Social Protection has elaborated, through the National Authority for the Rights of Persons with Disabilities, Children and Adoptions, a legal provision meant to ensure the continuity of disability certificates and implicitly the continuity of ensuring the rights deriving from this document.

Thus, according to the provisions of Art. 6 para. (3) of the Emergency Ordinance no. 70/2020, the validity of the following documents is maintained for a period of 60 days from the cessation of the state of emergency: the certificates of classification of the child in a degree of disability, issued by the commission for child protection; certificates of degree and type of disability, issued by the evaluation commission for adults with disabilities; the certificates of maternal assistant, issued by the commission for child protection and the certificates establishing that a person or family are fit to adopt, issued by the general directorate of social assistance and child protection.

- **May 13, 2020**

► **Request for taking urgent measures against the dramatic situation at the Dărmănești Neuropsychiatric Recovery and Rehabilitation Center;**
<http://www.avp.ro/rec/doc27.pdf>

The response of the Ministry of Labor and Social Protection - National Authority for the Rights of Persons with Disabilities, Children and Adoptions

The response of the National Authority for the Rights of Persons with Disabilities,



Children and Adoptions shows the following:

- on April 21, 2020, the General Directorate of Social Assistance and Child Protection Bacău requested the Bacău County Public Health Directorate to test the staff in order to prevent the infection of the beneficiaries of the center with the new virus;
- on May 3, 2020, the representatives of the Public Health Directorate tested the employees and staff of the center, 43 beneficiaries and 20 employees being tested positive;
- on May 5, 2020, the General Directorate of Social Assistance and Child Protection Bacău requested the Bacău County Public Health Directorate to hospitalize the beneficiaries infected with COVID-19 from the center in specialized medical units, as the existing medical staff in the unit is not qualified to provide assistance in case of infectious diseases;
- although, on countless occasions, the management of the Bacău Public Health Directorate has been informed that it is impossible to second specialized personnel from other residential centers, as all human resources are either in preventive isolation at work, or at home, DSP Bacău requested "the appointment of staff from the personnel employed in other centers with the same specific activity"; DSP Bacău informed the DGASPC Bacău that it has no duties in providing medical assistance in socio-medical centers, recommending, repeatedly, the secondment of staff from other centers; DGASPC Bacău requested again, DSP Bacău to proceed to the emergency hospitalization of the beneficiaries infected with COVID-19 in specialized medical units in order to benefit from appropriate medical treatment;
- The National Authority for the Rights of Persons with Disabilities, Children and Adoptions proceeded ex officio and requested the Bacău County Council, respectively the Institution of the Prefect of Bacău to take all necessary measures to remedy the situation in this institution and ensure the same treatment both for the

beneficiaries from the residential centers and for the staff, respectively ensuring an adequate medical treatment.

► **Request for ensuring a legal framework to readjust the measures aimed at preventing and combating the spread of Covid-19, for persons in residential centers (beneficiaries and employees of the centers);**

<http://www.avp.ro/rec/doc30.pdf>

The response of the Ministry of Labor and Social Protection

The response of the Labor Inspectorate

The Ministry of Labor and Social Protection submitted the request to the Labor Inspectorate to resolve the matter.

In the response received during July 2020, the Labor Inspectorate informed us that the measures to prevent and combat the spread of COVID-19, for persons in residential centers (beneficiaries and employees of the centers) are regulated by the provisions of Law no. 55/2020, respectively of the Government Decision no. 476/2020.

• **May 29, 2020**

► **Request regarding the formulation of a point of view related to the application of the provisions of Art. 2 of the Government Emergency Ordinance no. 59/2020 for establishing additional measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus;**

<http://www.avp.ro/rec/doc35.pdf>

According to the provisions of Art. 2 of the Government Emergency Ordinance no. 59/2020, the salary rights of the staff from the residential centers isolated at the workplace are granted, regardless of the actual time worked, at the level of the salaries paid in the month prior to the decree of the state of emergency. The application of these provisions could generate a violation of the provisions of Art. 41 of the Constitution, on the right to work and social protection of labor, as staff who, although in March and April 2020, performed night



work and work during weekly rest days over the level performed in February 2020, will not be paid for work performed, according to the mentioned legal provisions.

Thus, it is possible that in the month prior to the decree of the state of emergency (February 2020), a short month, the respective employee did not perform night work, or had performed a reduced number of hours, or had been on medical leave / rest leave, and by applying the provisions of Art. 2 of the Government Emergency Ordinance no. 59/2020, the salary rights will be paid without taking into account the actual time worked.

In these circumstances, we asked the Minister of Labor and Social Protection to inform us if clarifications were sent to the authorities concerned, clarifications related to a unitary application of the legal provisions mentioned in the notification.

The response of the Ministry of Labor and Social Protection

The response of the Ministry of Labor and Social Protection shows the following:

- the Labor Inspectorate was asked for an informed and unitary point of view on this issue, subsequently being sent a series of clarifications regarding the work regime of the employees of the residential centers in the context of applying the provisions of Military Ordinance no. 8/2020;
- the staff in preventive isolation at work will take over, in the 14 days, also the duties of the staff who is in preventive isolation at home, therefore the duration of the daily working time will exceed 8 hours/day, meaning that, during the two weeks in which they are in the center, will perform the working hours corresponding to a month;
- the period in which the staff of the center is in isolation at home cannot be counted as working time, but will be considered as such, respectively, preventive isolation at home (recovery), which will not affect the rights of employees arising from the employment relationship;

◦ therefore, in the situation presented, the employees provided in Art. 10 of the Military Ordinance no. 8/2020 are entitled to salary rights that include hours worked on public holidays / weekly rest days, bonuses for shift work or for night work and not only the actual income realized in the month prior to the decree of the state of emergency which can be reduced in the situation when the employee was on leave for temporary incapacity for work, rest leave, etc.

• June 19, 2020

► **Request addressed to the Minister of Labor and Social Protection regarding the salary situation of the employees within the General Directorate of Social Assistance and Child Protection Giurgiu; providing in the budget the funds needed to finance social services in the child protection system, public centers for adults with disabilities and homes for the elderly;**
<http://www.avp.ro/rec/doc52.pdf>

The president of the Giurgiu Child Protection Union notified us that due to the lack of funds, the salaries of the employees of the General Directorate of Social Assistance and Child Protection Giurgiu can no longer be paid starting with May 2020.

Considering the situation faced by approximately 1000 employees within the General Directorate of Social Assistance and Child Protection Giurgiu, we requested the communication of a point of view on this situation.

Response -

Ministry of Education and Research:

• April 24, 2020

► **Request addressed to the Ministry of Education and Research regarding the clarification of several aspects concerning the interpretation and application of Order no. 4135/2020;**



The People's Advocate received several petitions in which concerns were expressed regarding the conduct of the teaching-learning-assessment act in the online environment, as it is regulated by Order no. 4135/2020 of the Minister of Education and Research, but also aspects regarding the lack of infrastructure necessary for the conduct of classes, both for students and teachers.

The People's Advocate asked the Minister of Education and Research for clarifications on the following issues:

- What is the time horizon in which the training activities and webinars recommended by the Ministry of Education and Research, ISJ / ISMB and the management of the educational unit will be carried out and the concrete way in which they will take place? Are there funds in the budget of the Ministry of Education and Research for such training courses for all teachers in Romania?
- Considering that pre-university education in Romania is compulsory and free, how will the Ministry of Education and Research identify and use the funding sources necessary for the purchase of desktops, laptops, tablets or smartphones necessary for the teaching-learning-assessment act in the online environment?
- What solutions are to be identified for families with several children, with a single terminal such as desktop, laptop, tablet or smartphone and who have to use it at the same time, given the schedule of their teaching activities?
- What is the way in which the Ministry of Education and Research will manage the situation of lack of GSM signal coverage for voice and data services in certain rural communities in Romania?
- How plans the Ministry of Education and Research to support the cost of internet services?
- Does the Ministry of Education and Research currently have a statistical situation regarding the number of students in rural areas and their access to desktop, laptop, tablet and smartphone terminals and

to voice and data services? If not, when will the ministry have this data? Clarifications regarding the situations in which the teaching-learning-assessment act in the online environment becomes mandatory, given that the order does not specify.

Response -

- **May 15, 2020**

► **Request regarding the urgent need to regulate the methodology for organization and conduct of the aptitude tests for admission in vocational high schools, but also those related to aptitude tests within the Baccalaureate exam, adapted to the conditions imposed by the SARS-CoV2 epidemic;**

<http://www.avp.ro/rec/doc32.pdf>

The reported problem concerned the practical tests specific to this type of education that cannot be organized in an online system or completed through a form of equivalence, since they are predominantly practical.

At the time of notification to the Ministry of Education and Research, respectively the date of May 15, 2020, there was no calendar and methodology for aptitude tests, adapted to the present situation, and the petitioners considered that the only viable solution at this time would be to postpone these exams, after the written tests of the national evaluation and baccalaureate.

The response of the Minister of Education and Research

Regarding the notified situation, the Ministry of Education and Research informed us that a series of regulations have been elaborated (joint orders of the Minister of Education and Research and the Minister of Health), the provisions of these normative acts taking into account the ways of solving possible special situations that may arise in the current epidemiological context, ensuring equal opportunities for all students.

- **May 29, 2020**

► **Request regarding the situation of young people who reach the age of 18**



during the registration period for the 2020 National Baccalaureate exam or during the examination tests, and to whom new identity cards must be issued; <http://www.avp.ro/rec/doc34.pdf>

The People's Advocate Institution was notified about the situation of young people who turn 18 during the registration period for the Baccalaureate exam 2020 or even during the exams and to whom new identity cards must be issued.

According to the information provided by the petitioners, in order to obtain identity cards, the Community Public Records Service requires that the submission and issuance of documents be carried out with prior telephone appointment, the applicants not having the certainty that their documents will be issued on time. Given that people who turn 18 have the obligation to change their identity card, and the deadline communicated by the Community Public Services for the registration of persons for solving the applications for issuing identity documents is at least 10 days, there is a risk that many young people who turn 18 during this period may not be able to register for the 2020 baccalaureate exam or will not be able to take this exam, as they do not have a valid identity card.

The People's Advocate requested the Ministry of Education and Research to order, as a matter of urgency, the appropriate institutional steps to be taken, so that young people who turn 18 during the registration for the Baccalaureate exam 2020, to be granted unrestricted access to enrollment and participation in the Baccalaureate exam 2020.

The response of the Minister of Education and Research

The notified institution clarified the issues reported on this occasion and gave us assurances that the documents of the young people in the above situation have extended their validity for a period of 90 days from the end of the alert.

• June 10, 2020

► **Request to analyze the opportunity of amending Order no. 4267/841/2020, in the sense of stopping the use of disinfection tunnels;**

<http://www.avp.ro/rec/doc37.pdf>

The response of the Minister of Education and Research

Regarding the notified situation, the Ministry of Education and Research informed us that it requested a point of view from the Ministry of Health regarding the opportunity to amend Joint Order no. 4267/841/2020.

• June 12, 2020

► **Recommendation no. 119/2020 regarding the observance of the provisions of Art. 16 of the Romanian Constitution, concerning equal rights and Art. 32 of the Romanian Constitution on the right to education;** http://www.avp.ro/recomandari2020/recomandare119_2020.pdf

The response of the Minister of Education and Research

The Ministry of Education and Research made the following clarifications:

- Joint Order of the Minister of Education and Research and of the Minister of Health no. 4267/841/2020 provides all the necessary measures from the perspective of organizing the educational act in the best conditions;
- with regard to the alleged act of discrimination, through the measures taken by the authorities, the access of students to the education system is ensured, respectively the participation in national exams, including for students with health problems, but for the latter a separate stage is organized, within the same session, according to the calendars annexed to the Methodologies governing the organization and conduct of national examinations approved by order of the Minister;
- the measure was taken in order to protect the health of all those involved in the educational activity, creating a series of obligations for the authorities involved in the process of organizing national



examinations. Its censorship would increase the risk of illness for students and teachers and irreparably affect the right to health. If these measures were not provided, taking the exams at the same stage could lead to the illness of a much larger number of people. This stage, even if it is organized separately, is part of the same exam session, which clearly shows that the right of all students to participate in this exam session was not restricted in any way.

- **August 14, 2020**

- **Request regarding the opening of the new school year;**

https://www.avp.ro/rec/solicitare_14august2020_2.pdf

The People's Advocate learned from the media about the uncertain situation regarding the opening of the new school year on September 14, 2020, in the context of the COVID-19 pandemic. In this regard, the press reported that the *Guide on measures for school functioning during the COVID-19 pandemic* has not been finalized at this time.

In view of the mentioned aspects, the People's Advocate asked the Minister of Education and Research to communicate to us the stage in which is the adoption of the Methodological Norms and the Guide of sanitary rules, as well as the solutions identified for:

- ensuring the access of all students to electronic means that will ensure the possibility of conducting distance learning, as well as the connection to the Internet networks of all educational units;
- ensuring the transport of all students, including those in hard-to-reach areas, in adequate sanitary conditions;
- guaranteeing the quality of the educational act in all localities of the country, so that there are no discrepancies between different areas of the country and to ensure adequate training for all students regardless of their domicile and pandemic situation in the locality where they study;
- ensuring equal opportunities in the end-of-cycle examination for students who have

completed the school year in different conditions;

- offering the parents the possibility to decide together with the student if they will opt for the education carried out in the educational unit or by technical means.

As no reply was received, on 7 September we notified again the Ministry of Education and Research.

The Ministry of Environment, Waters and Forests:

- **April 8, 2020**

- **Request to consider the cessation of deforestation during the state of emergency and the intensification of forest controls by the representatives of the Forest Guards, together with the police, and the performance of forest control specific activities in traffic;**

<http://www.avp.ro/rec/doc10.pdf>

The response of the Ministry of Environment, Waters and Forests

The response of the Ministry of Water Environment and Forests shows the following:

- on the initiative of the Minister, a draft law was submitted to Parliament, amending and supplementing Law no. 46/2008 - Forestry Code (PL-x no. 356/2020), which aims, among other things, to improve the management of wood, measures to prevent and deter illegal logging, etc. At the same time, a draft law (L59 / 2020) was initiated, which is in the approval procedure in the Senate, which mainly aims at facilitating the unconditional access of ascertaining agents to forest properties, as well as the application of sanctions for delays in providing the information necessary to carry out controls;
- it is neither necessary nor appropriate to adopt the measure of "cessation of deforestation", which would create disservice and harm the national forest fund as well as the national economy.

The response of the National Forest Administration – Romsilva



The response of the National Forests Administration – Romsilva shows the following:

- the process of restitution of forest lands is not blocked, but following the Decision of the Constitutional Court no. 395/2017, the reconstitution procedure is extended, the forest lands that are the object of the reconstitution must first pass from the public domain of the state to the private domain of the state (which is not regulated), by government decision and then can be passed into private property;
- in the first quarter of 2020, 22,345 timber movement control actions were carried out, which resulted in 373 forest crime reports and 2525 forest misdemeanor reports, fines were imposed with a total value of 4,284,350 lei and wood materials with a volume of 4,060 cubic meters were confiscated. Also, 58 actions were carried out for the control of the logging installations, which materialized in the elaboration of 18 reports of ascertaining the forest contraventions. 6,180 background and partial controls were performed, at the level of forest canton, and a volume of 10,388 m³ wood illegally cut was found.

The Ministry of Economy, Energy and Business Environment:

- **April 27, 2020**

► **Request regarding the procedure for obtaining the Emergency Situation Certificate by the economic operators whose activity has been suspended as a result of the express provisions of the issued military ordinances – ex officio notification of the People's Advocate;**
<http://www.avp.ro/rec/doc22.pdf>

The People's Advocate proceeded ex officio after several publications presented news according to which any economic operator whose activity is affected in the context of the SARS-CoV-2 pandemic and registered the reduction of income or revenues in March 2020, in a percentage of at least 25% of the average income or

revenues made in the period January - February 2020 or is closed, may request the Emergency Situation Certificate, to obtain, from public institutions, in accordance with the law, benefits / support measures (such as payment of utilities, in commercial relations, etc.).

The People's Advocate requested the identification of an adequate solution for the economic operators whose activity was totally closed / suspended as a direct effect of the implementation of Decree no. 195/2020 on the establishment of the state of emergency on the territory of Romania, and of the military ordinances that closed the activities in restaurants, bars, cafes, etc., so that these economic agents benefit from support measures in obtaining quickly the benefits granted by the legislator, by removing the conditions and restrictions of excessive bureaucracy, which ultimately lead to the non-granting of aid to employees and employers during the pandemic.

The response of the Ministry of Economy, Energy and Business Environment

The response of the Ministry of Economy, Energy and Business Environment shows the following:

- The Government of Romania came to the help of small and medium enterprises, by issuing, free of charge, these certificates, which are opposable to third parties during the state of emergency;
- as regards the submission of documentation for the settlement of technical unemployment, the procedure has been simplified and it is no longer necessary to obtain the Emergency Situation Certificate in advance;
- the procedure for obtaining the Emergency Situation Certificate has been made more flexible, requiring the declaration on one's own responsibility, validated by the digital signature, and the revocations (errors) mentioned in the press were isolated cases determined either by the use of electronic signatures out of validity, or by the material error of the platform user who incorrectly selected the type of certificate.



The Ministry of Transport, Infrastructure and Communications:

- **May 27, 2020**

► **Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19 epidemic;**

<http://www.avp.ro/rec/doc44.pdf>

The response of the General Secretariat of the Government

The General Secretariat of the Government informed us that neither the Department for Emergency Situations, which ensured the “command of actions” at national level during the management of the situation created by the COVID-19 epidemic, nor the Ministry of Transport, Infrastructure and Communications, nor the Association of Mobile Operators from Romania requested any data, information, analysis or statistics regarding the mobility of people.

Ministry of Public Finance:

- **June 19, 2020**

► **Request addressed to the Minister of Public Finance for formulating a point of view regarding the salary situation of the employees within DGASPC Giurgiu;**

<http://www.avp.ro/rec/doc53.pdf>

Response –

The National Authority for the Supervision of Personal Data Processing:

- **May 22, 2020**

► **Request for the formulation of a point of view from the perspective of non-compliance with the rights of consumers, who, in order to have access, for example, in a store for the purchase of food products are obliged to accept the verification of body temperature;**

<http://www.avp.ro/rec/doc39.pdf>

The People's Advocate requested a point of view regarding the non-observance of consumers' rights, who, in order to be granted access, for example, in a food store, are obliged to accept the body temperature check, an act performed by a person without medical qualification, without respecting data protection, because when entering a store the physical distance is not always respected, and those around you hear the discussion between the one who measures the temperature - most often the security guard - and the person whose temperature is measured.

The response of the National Authority for the Supervision of Personal Data Processing

The response of the National Authority for the Supervision of Personal Data Processing shows the following:

- only to the extent that the information on the body temperature of an identified or identifiable person is recorded in a system, the provisions of Regulation (EU) 2016/679 become applicable;
- in so far as it is necessary to ensure important objectives of general public interest of a Member State, such as in the field of public health, the national law applicable to the data operator may restrict, by a legislative measure, the scope of obligations and rights under Regulation (EU) 2016/679.

- **May 27, 2020**

► **Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19 epidemic;**

<http://www.avp.ro/rec/doc46.pdf>

The response of the National Authority for the Supervision of Personal Data Processing

The Authority informed us that the provisions of Regulation (EU) 2016/679 provide that the processing of personal data is carried out with the consent of the data subject, or in other situations, depending on the nature of the data and categories of data collected and processed can also be done



without the consent of the data subject. In such a situation, the operator is always obliged to inform the data subjects in a concise, transparent and easily accessible manner. The Authority also assured us that the aspects reported by our institution will be analyzed and it will exercise its control powers.

The National Council for Combating Discrimination:

- **May 22, 2020**

► **Request for the formulation of a point of view regarding the prohibition of access for persons whose body temperature, measured at the entrance to the premises, exceeds 37.3 °C in educational units, public institutions and all structures under the subordination or coordination of the Ministry of Education and Research ;**
<http://www.avp.ro/rec/doc38.pdf>

The People's Advocate requested a point of view regarding a possible discriminatory situation, created as a result of the regulations of the Joint Order of the Minister of Education and Research and the Minister of Health no. 4,259 / 827/2020, in the context in which the body temperature above the allowed limit of 37.30C, for other causes than those related to the SARS-CoV-2 virus, may lead to the violation of the right to education of the participants in the admission / graduation exams.

The response of the National Council for Combating Discrimination

The National Council for Combating Discrimination analyzed a possible act of indirect discrimination, because the condition for participation in the above-mentioned exams is a neutral one, the body temperature being measured to all participants. In the Council's view, the seemingly neutral condition disadvantages participants whose body temperature exceeds the limit and the measure of exclusion from examinations is based on a simple presumption that all participants who reach a certain body temperature are

suspected of being carriers of SARS-CoV-2. This simple presumption has the effect of discrimination by association, since the participant in the examination with a body temperature above the limit, is treated as if they were a carrier of SARS-CoV-2, although there is no medical confirmation in this regard. Therefore, it follows that the differential treatment is based on an unconfirmed chronic disease.

In conclusion, the National Council for Combating Discrimination found that the act notified by the People's Advocate institution represents an indirect discrimination, in accordance with the provisions of Art. 2 para. (3) of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished.

The National Authority for Administration and Regulation in Communications:

- **May 27, 2020**

► **Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19 epidemic;**

<http://www.avp.ro/rec/doc45.pdf>

The response of the National Authority for Administration and Regulation in Communications:

The National Authority for Administration and Regulation in Communications (ANCOM) communicated to us the following:

- ANCOM is not aware of the existence of requests from the public authorities of the Romanian state, addressed to providers of electronic communications networks or services, regarding the analysis of persons' mobility, nor about the practices of other providers of electronic communications networks or services conducting analyzes aimed at the mobility of people;

- on June 3, 2020, Vodafone Romania S.A. informed ANCOM that the International Monetary Fund requested the above-mentioned data in order to correlate them



with various parameters of economic activity;

- ANCOM was not notified regarding the deletion of the data obtained for the control and combating of the spread of COVID-19 infection.

§ Steps taken to European institutions:

During the reference period, the People's Advocate maintained a constant connection with the Ombuds institutions in Europe, but also with other authorities at European level.

The Federal Ministry of Labor and Social Affairs of the Federal Republic of Germany:

- **April 22, 2020**

► Request regarding the sanitation safety of the Romanian seasonal workers; <http://www.avp.ro/rec/doc18.pdf>

In the context of reveals in the media about the conditions in which workers who leave Romania for seasonal agricultural activities in Germany are accommodated and work, the People's Advocate sent a letter to the German Federal Minister of Labor and to the Chairman of the German Parliament's Committee on Petitions, requesting clarifications regarding the situation of seasonal Romanian workers:

- whether German employers had to demonstrate compliance with expected hygiene standards in accommodation and workplaces during this period, in order to be allowed to bring in seasonal workers?
- what happened and what will happen to seasonal workers diagnosed with coronavirus? If there is the possibility of establishing isolation or quarantine, with the possibility of working for newly arrived workers, who have to carry out their activity separately from other employees for 14 days and are not allowed to leave the company headquarters?
- what happens to seasonal workers who get sick and need medical care? Who provides

them with medicines? Under what conditions do they have access to specialized medical care in the hospital?

The reply of the Federal Ministry of Labor and Social Affairs

The response of the Federal Ministry of Labor and Social Affairs revealed, among other things, the following:

- The German Federal Government has taken measures to ensure safety and health at work, as well as to protect against infection, especially during the COVID-19 crisis;
 - for all seasonal workers arriving in Germany, a health check will be carried out at the airport before check-in at the federal police;
 - the Länder are responsible for monitoring compliance with occupational safety, health and infection protection measures; checks are planned to be carried out by the border authorities, the occupational safety and health authorities of the Länder, as well as by accident insurance supervisory services, in areas where employees are regularly accommodated in common housing;
 - the employer has the obligation to provide separate accommodation for persons confirmed or suspected of infection. If there are reasons to believe that a worker is infected with the new coronavirus, they should be isolated immediately, after which a doctor will be contacted so that the worker can be tested specifically. In order not to leave seasonal workers without protection in the event of illness, the employer usually ensures private health insurance for the entire group of workers. These insurances cover all necessary medical services, such as outpatient treatment, hospitalization and necessary medicines;
 - on 20 May 2020, in the context of the wave of infections in the meat industry, the Federal Cabinet decided to establish key points in an occupational safety and health program for the meat industry;
- It was decided to expand the existing information channels on coronavirus infection among workers from other countries working in Germany, so that the



Federal Government can promptly inform the embassies of the countries of origin of potential risks. These key points also provide for a doubling of the fine for employers who break the rules on working time, from 15,000 to 30,000 Euros.

The Petitions Committee of the German Parliament:

- April 22, 2020

► Request regarding the sanitation safety of the Romanian seasonal workers;
<http://www.avp.ro/rec/doc17.pdf>

The response of the Petitions Committee of the German Parliament - Federal Ministry of Food and Agriculture

The response of the Federal Ministry of Food and Agriculture states the following:

- in order to ensure health and safety at work, during this Coronavirus pandemic – including for seasonal workers from abroad working on farms – the Federal Ministry of Food and Agriculture published an action plan on April 2, 2020;
- The Social Insurance Institution for Agriculture, Forestry and Horticulture, which is responsible for occupational health and safety on agricultural holdings in Germany, has published a number of complementary measures.

European Data Protection Supervisor:

- May 22, 2020

► Request for the formulation of a point of view from the perspective of non-compliance with the rights of consumers, who in order to have access, for example, in a store for the purchase of food products are obliged to accept the verification of body temperature;
<http://www.avp.ro/rec/doc41.pdf>

Response –

- May 27, 2020

► Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19

epidemic;

<http://www.avp.ro/rec/doc48.pdf>

Response –

European Ombudsman:

- May 22, 2020

► Request for a point of view from the perspective of non-compliance with the rights of consumers, who in order to have access, for example, in a store, for the purchase of food, are obliged to accept the body temperature check / denying access to persons whose body temperature, measured at the entrance to the premises, exceeds 37.3 °C, in educational units, public institutions and all structures under the subordination or coordination of the Ministry of Education and Research;
<http://www.avp.ro/rec/doc40.pdf>

Response –

- May 27, 2020

► Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19 epidemic;
<http://www.avp.ro/rec/doc47.pdf>

Response –

European Commissioner – Values and Transparency:

European Commissioner – A Europe fit for the digital age:

- May 27, 2020

► Request for the formulation of a point of view – analyzes and statistics on the mobility of people during the COVID-19 epidemic;

<http://www.avp.ro/rec/doc50.pdf>;

<http://www.avp.ro/rec/doc49.pdf>

Joint response of the European Commissioner – A Europe fit for the digital age and of the European Commissioner – Values and transparency

The answer received shows the following:



- The European Commission has asked European mobile network operators to communicate anonymized and aggregated data to its Joint Research Center (JRC). The aim of the initiative is to provide information that can help to understand the territorial dynamics of COVID-19, to assess the impact of physical distance measures on mobility, including the phasing out of these measures, data supply for epidemiological models, estimation of the economic costs of different interventions, as well as the impact of specific control measures on intra-EU cross-border flows due to the pandemic.
- The European Commission holds technical discussions with mobile network operators that have offered to provide data, including data covering Romania;
- the request to mobile network operators is strictly limited to anonymized data and will not in any way lead to the tracking of persons. The Commission is not in possession and will not attempt to use any other database or technical means that could theoretically lead to the unintentional re-identification or identification of persons;
- JRC will keep the data for no more than 90 days or until the end of the COVID-19 crisis, depending on which term is met first. This period may be extended, with the consent of the telecommunications operators, if the COVID-19 crisis continues. The Commission will share the results of the analysis with Member State authorities and the European Center for Disease Prevention and Control.

The People's Advocate may get involved in the ***constitutional review of laws and ordinances*** done by the Constitutional Court. Thus, the People's Advocate can notify the Constitutional Court regarding the unconstitutionality of the laws adopted by the Parliament, before

their promulgation by the President of Romania; it may raise ***before the Constitutional Court, exceptions of unconstitutionality regarding the laws and ordinances in force***; formulates, at the request of the Constitutional Court, points of view on the exceptions of unconstitutionality of laws and ordinances, which refer to the rights and freedoms of citizens.

It is obvious that through this important power, the People's Advocate has a serious and efficient lever for fulfilling its constitutional role.

Although neither the Constitution nor its organic law regulates the cases in which the exception of unconstitutionality can be raised, it can be concluded that the reason for which the institution is invested with this power concerns the objective of defending civil rights and freedoms.

By the possibility to notify the Constitutional Court, it was not intended that the institution of the People's Advocate be transformed into an arbitrator between the public authorities, nor to replace the Constitutional Court or the Parliament. Precisely for this reason, ***the direct raising of the exception of unconstitutionality is and remains at the exclusive discretion of the People's Advocate as part of the institutional and functional independence it enjoys, as it cannot be forced or prevented by any public authority to raise such an exception.***

In Romania, constantly, the People's Advocate is an institution that is being pressured by politics and the media. Thus, we remind: in 2012, the People's Advocate at that time was dismissed from office; in 2013, the People's Advocate resigned after a term of only 11 months; the next People's Advocate was criticized for not challenging emergency laws and ordinances in the Constitutional Court; now, pressure is being put on the People's Advocate to take too many actions.

Also, in recent years, the headquarters of the institution has been stormed / picketed by various NGOs,



representatives of political parties, etc.: (protests at the headquarters of the People's Advocate on December 10, 2013; protests demanding to challenge in the Constitutional Court the Government Emergency Ordinance No. 13/2017 and the Government Emergency Ordinance No. 92/2018, pressures to challenge the Administrative Code – Government Emergency Ordinance No. 57/2019, and, last but not least, the “support” of the protesters starting with July 20, 2020, for challenging the Law No. 136/2020, regarding the establishment of measures in the field of public health in situations of epidemiological and biological risk).

The power of the People's Advocate to notify the Constitutional Court, aims to fulfill its fundamental purpose – defending the rights and freedoms of citizens – and not to transform this institution into a center of power, above public authorities, to arbitrate or to resolve their political disputes.

The People's Advocate shows neutrality, impartiality and objectivity, without engaging in disputes with a political connotation between state institutions.

It is imperative that the Ombudsman institution maintains its independence, so that it is not possible for it to be used by representatives of the political sphere, otherwise the aforementioned values could be undermined and its role as a defender of fundamental human rights and freedoms distorted.

§ Proceedings at the Constitutional Court:

During the **state of emergency and the state of alert, established following the declaration of the coronavirus pandemic (COVID-19)**, in the exercise of its constitutional and legal powers to verify the constitutionality of laws or ordinances, contributing to the observance of fundamental rights and freedoms, **the People's Advocate notified the Constitutional Court with 5 exceptions of unconstitutionality which sought to**

clarify, improve and strengthen the legal framework for the establishment of state of emergency, state of alert, as well as quarantine and isolation measures, so that they are compatible with the constitutional requirements for restricting certain rights and fundamental freedoms by law, as a formal act of Parliament.

Thus, through the constitutional and legal steps taken, **the People's Advocate contributed to:**

✓ *The observance of the constitutional limits within which fundamental rights and freedoms can be restricted, by notifying the Constitutional Court with:*

• *The exception of unconstitutionality having as object the Emergency Ordinance no. 1/1999 on the establishment of the state of emergency*

In the context of issuing Decree no. 195/2020 of the President of Romania on the establishment of the state of emergency, administrative act by which were restricted many fundamental rights and freedoms (freedom of movement, right to privacy, family and private life, right to work, right to strike, right to private property, free access to justice, economic freedom, etc.) The People's Advocate notified the Constitutional Court regarding Art. 14 letters. c¹)-f) of the Government Emergency Ordinance no. 1/1999, appreciating them as unconstitutional as they allow the President of Romania to legislate in areas for which the Basic Law requires the intervention of the primary legislator or the delegate legislator, by amending some organic laws and by effectively restricting the exercise of human rights.

The People's Advocate stressed that, **according to the Constitution, fundamental rights and freedoms can only be restricted by law as an act of Parliament, and not by decree of the President.**



The solution of the Constitutional Court:

In the recitals of **Decision no. 152/2020**, the Constitutional Court considered that **no legal provision of the Government Emergency Ordinance no. 1/1999 does not entitle the President to adopt norms with the rank of law**, therefore the constitutional court can find the violation of the invoked constitutional norms. Therefore, **the measures of first urgency that the President may adopt are of an administrative nature and may cover only those matters regulated by law**.

However, the Court noted that the way in which the President exercised his constitutional power, by going beyond the legal framework, is not the consequence of any defect in the constitutionality of the primary regulatory act by virtue of and within the limits of which the public authority was empowered to act.

Finally, it is important to note that the constitutional court held that the **legal regime of the state of siege and the state of emergency, in the current constitutional framework, can only be regulated by a law, as a formal act of the Parliament, adopted in accordance with the provisions Art. 73 para. (3) letter. g) of the Constitution, in the regime of organic law**.

► ***The exception of unconstitutionality regarding the provisions of the Government Emergency Ordinance no. 21/2004 on the National Emergency Management System, approved by Law no. 15/2005, with subsequent amendments and completions***

The People's Advocate formulated criticisms of unconstitutionality regarding the provisions of the Government Emergency Ordinance no. 21/2004 by reference to Art. 1 para. (4) and (5), Art. 53 and Art. 61 para. (1) of the Constitution, as they allow measures to restrict the exercise of fundamental rights through administrative acts (regulations, plans,

operational programs or documents approved by decisions or orders) issued by fundamentally administrative bodies (National Committee for Emergency Situations, county committees for emergencies).

In its arguments, the People's Advocate considered that, in the absence of a clear and complete definition of the state of alert and of a procedure to ensure the legality of the measures ordered, the interference generated by this state may concern fundamental rights, namely the right to individual freedom, the right to free movement, the right to intimate, family and private life, freedom of assembly, labor and social protection of labor, economic freedom and others, violating the provisions of Art. 53 of the Constitution.

In these conditions, the People's Advocate claimed that the provisions of the Government Emergency Ordinance no. 21/2004 do not comply with the condition that the measure restricting the exercise of certain rights be established by law.

The solution of the Constitutional Court:

In the recitals of **Decision no. 157/2020**, the Constitutional Court held that the legislation providing for the legal regime of crisis situations imposing exceptional measures requires a greater degree of generality than the legislation applicable during the normal period, precisely because the peculiarities of the crisis situation are a deviation from the normal (exceptionality) and because of the unpredictability of the serious danger that affects both society as a whole and each individual. However, **the generality of the primary norm cannot be attenuated by infralegal acts that complement the existing normative framework**.

The measures that organize the application of the legal provisions and customize and adapt those provisions to the existing factual situation, to the fields of activity essential for the management of the situation that generated the establishment of the alert state cannot deviate (by



modifications or completions) from the circumscribed legal framework, therefore they **cannot concern fundamental rights and freedoms**.

Therefore, regarding the criticism of the People's Advocate regarding the possibility of ordering restrictive measures concerning fundamental rights through administrative acts, the Court noted that the **actions and measures ordered during the alert, under the provisions of Government Emergency Ordinance no. 21/2004, cannot target fundamental rights or freedoms**. The Court also found that the delegated legislator, in turn, cannot delegate to an administrative authority / entity what itself does not have jurisdiction to do.

✓ ***Compliance with the ban on the adoption of emergency ordinances that have negative consequences in terms of restricting fundamental rights and freedoms***

► ***The exception of unconstitutionality of the Government Emergency Ordinance no. 34/2020***

The solution of the Constitutional Court:

The Constitutional Court found that the Government Emergency Ordinance no. 34/2020 for the amendment and completion of the Government Emergency Ordinance no. 1/1999 was adopted in violation of Art. 115 para. (6) of the Constitution.

► ***The exception of unconstitutionality of Art. 8 para. (1) of the Government Emergency Ordinance no. 11/2020***

The solution of the Constitutional Court:

The Court also admitted this argument of unconstitutionality, reiterating that according to the provisions of Art. 115 para. (6) of the Constitution, regulations affecting fundamental rights and freedoms may not be the subject of emergency ordinances.

The Court specified that Art. 53 of the Constitution considers the law *stricto sensu*, as a legal act adopted by the

Parliament, being excluded the emergency ordinances, as it is also provided by Art. 115 para. (6) of the Constitution and the infralegal legislation.

✓ ***Guaranteeing the rights of individuals by adopting a predictable and proportionate contravention legislation***

In order to achieve this goal, the People's Advocate invoked the unconstitutionality of the following normative acts:

- The provisions of Art. 9 and Art. 28 of the Government Emergency Ordinance no. 1/1999 were considered to violate the provisions of Art. 1 para. (5) and Art. 23 para. (11) of the Constitution, since, on the one hand, by the generic wording used in Art. 9, a general obligation is imposed to comply with certain rules, without incriminating a concrete fact, and sanctions are established, without providing minimum objective criteria in their differentiated application, and, on the other hand, the burden of proof is reversed, the aspects noted in the minutes of finding the contravention being presumed to be real.

- The provisions of **Art. 65 letters s), ș), Art. 66 letters a), b) and c) and Art. 67 para. (2) letter b) of Law no. 55/2020** on certain measures to prevent and combat the effects of the COVID-19 pandemic. The People's Advocate found that the criticized legal norms lack clarity and predictability, since the **material object of the contravention** is uncertain and ambiguous, due to the reference to a **legal norm that does not exist in the active legislation**. Moreover, the legislative problem is not without practical effects, because the inappropriate way of regulation intervenes in the field of contraventions. And in the case of contraventions, in order to respect the principle of legality, the legislator must clearly and unequivocally indicate their material object in the very content of the legal norm or it must be easily identifiable by referring to either a text in the content of the law, or to another normative act of equal rank with which the sanctioning text is in



connection, in order to establish the existence of the contravention.

The solution of the Constitutional Court:

The Constitutional Court **admitted both exceptions invoked by the People's Advocate.**

✓ ***Respect for the rule of law and the principle of separation of powers in the State***

By the exception of unconstitutionality of Art. 4 para. (3) and (4) of Law no. 55/2020, the People's Advocate drew attention to the fact that the **approval by the Parliament of a Government decision establishing the state of alert determines the violation of the principle of separation of powers in the State, enshrined in Art. 1 para. (4) of the Constitution, because such an intervention of the legislative power in the activity of the executive power does not have a constitutional basis.** From the analysis of the way in which the primary legislator understood to regulate the establishment of the state of alert, it is observed that **an analogy was tried with the establishment of the state of emergency**, without taking into account the fact that the latter is regulated by the Constitution which implies a difference of legal regime between the **decree of the President and the decision of the Government.** The need for Parliament's approval of the establishment of the state of alert, as exception from the legal regime of the institutions consecrated at constitutional level, represents an impermissible interference in the powers of the executive power.

The solution of the Constitutional Court:

The Constitutional Court found that **the criticisms formulated by the People's Advocate are well-founded**, having as consequence the unconstitutionality of Art. 4 para. (3) and (4) of Law no. 55/2020 in relation to the provisions of Art. 1 para. (4), Art. 21, Art. 52, Art. 108 and Art. 126 para. (6) of the Constitution, since, through these legal texts: the Parliament cumulates the legislative and executive functions, a

situation incompatible with the principle of separation and balance of powers in the State, enshrined in Art. 1 para. (4) of the Constitution; the legal regime of Government decisions, as acts of executing the law, enshrined in Art. 108 of the Constitution, is distorted; a confusing legal regime of Government decisions is created, likely to raise the issue of their exemption from judicial control under the conditions of Art. 126 para. (6) of the Constitution, with the consequence of violating the provisions of Art. 21 and Art. 52 of the Constitution, which enshrine the free access to justice and the right of the person aggrieved by a public authority.

✓ ***Protection of persons against the arbitrariness of measures restricting the liberty necessary to prevent and combat contagious diseases, with the aim of adopting detailed regulations designed to ensure solid guarantees for the protection of fundamental rights and freedoms***

Noting the non-existence, at the level of primary legislation, of normative acts containing guarantees against arbitrary measures restricting the liberty, necessary to prevent and combat contagious diseases, the People's Advocate notified the Constitutional Court **with the exception of unconstitutionality of Art. 25 para. (2) of Law no. 95/2006 on health care reform, republished, with subsequent amendments and completions, and those of Art. 8 of the Government Emergency Ordinance no. 11/2020 on medical emergency stocks, as well as some measures related to the establishment of quarantine.**

The arguments invoked by the People's Advocate started from the following premises: the legal nature as measure restricting the liberty which quarantine has in all its forms; the lack, at the level of the primary legislation, of any concrete regulations regarding the procedure and conditions for the



establishment of measures restricting the liberty, the powers of each public authority in the execution of the measures, the gradual application of the measures according to the severity of the cases and the possibility of judicial review of the ordered measures; the observation that the omission of regulation has constitutional relevance.

The solution of the Constitutional Court:

The Constitutional Court **admitted** the referral of the People's Advocate and held that the mere mention of a custodial measure, such as compulsory hospitalization to prevent the spread of communicable diseases, cannot be considered sufficient to meet the condition of legality. As it appears from the constitutional and international provisions invoked, also at the level of the law, and not by normative acts subordinated to it, must be established the reasons and conditions in which such a measure can be ordered, the applicable procedure, the right of the person to challenge in court the act on the basis of which it was ordered their compulsory hospitalization and the provision of guarantees for an effective access to justice.

In this regard, it should be mentioned that Art. 5 paragraph 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". Moreover, the Constitutional Court, in its jurisprudence, emphasized that an effective right of access to justice "is not only characterized by the possibility for the court to examine all the means, arguments and evidence presented and to rule, but also by the fact that the pronounced solution determines the elimination of the reported violation and its consequences for the holder of the violated right." [Decision no. 17 of January 17, 2017, published in the

Official Gazette of Romania, Part I, no. 261 of 13 April 2017, paragraph 42].

The legislator must also keep in mind that **the provisions on compulsory hospitalization are the last option for the authorities in order to prevent the spread of a communicable disease, so it is necessary to regulate other measures of lower severity, to be applied, if they are effective, as stated by the European Court of Human Rights in the relevant case law.**

✓ The observance, by the legislative power, of the decisions of the Constitutional Court pronounced in the matter of deprivation of liberty measures imposed in order to prevent and fight contagious diseases

The People's Advocate notified the Constitutional Court with the exception of unconstitutionality of Art. 8 para. (3) - (9) of Law no. 136/2020, considering that the legislative solution regarding the isolation in a medical unit or at an alternative location attached to the medical unit is constitutional, by reference to the considerations of Decision no. 458/2020, only to the extent that this type of isolation is required as a last resort measure, after all other measures, of a lower severity, have been exhausted. On the contrary, isolation in a health unit or at an alternative location attached to the health unit, established *ope legis*, results in non-compliance by the legislator with the decision of the Constitutional Court, disregarding both the considerations and the decisions of the constitutional court.

By legislating the obligation of compulsory isolation as a measure of first instance, without regulating the possibility of replacing it with a measure of lower severity, the state fails both in its obligation to protect public health (by releasing a contagious person, without applying home restrictions, when the measure of isolation in the health unit isn't taken), as well as in the constitutional obligation to regulate the measure of



compulsory isolation as a measure of last resort.

The People's Advocate considers that the possibility of isolation at home also for diseases considered highly contagious (not only for low-risk diseases), as well as the judge's right to order the replacement of isolation in a health unit with the measure of isolation at home, would have met the requirements of the Constitutional Court and the European Court of Human Rights.

The arguments invoked by the People's Advocate started from the need to respect the decisions of the Constitutional Court and, implicitly, the fundamental rights and freedoms of citizens, by ensuring a coherent, predictable legislative framework, allowing the proportional and justified restriction of fundamental rights and freedoms in exceptional situations caused by the spread of contagious diseases.

✓ ***Guaranteeing the rights of the specialized medical, paramedical and auxiliary personnel from the public health system against some abusive transfer measures determined by the insufficient regulation of the legal nature of these measures***

In the invoked exception, the People's Advocate showed that the provisions of Art. 19 para. (1) of Law no. 136/2020, which regulate a new legal institution arising from employment relationships, called secondment, but having the characteristics of a forced transfer, are unconstitutional, contravening Art. 1 para. (5) and Art. 73 paragraph (3) letter p) of the Constitution, since, firstly, it leaves room for arbitrariness in the employment relations of specialized medical, paramedical and auxiliary staff in the public system and, secondly, because they do not provide concrete ways to end the ordered secondment and don't provide express guarantees for the *sine die* extension of this secondment, by successive acts concluded for a maximum of 30 days.

The solution of the Constitutional Court:

Until the date of this report, the Constitutional Court has not resolved the aforementioned exception of unconstitutionality.

Conclusions:

Specifically, the involvement of the People's Advocate in the protection of human rights and freedoms through the constitutional review exercised during the state of emergency and the state of alert created **the premises for the adoption by Parliament of the following normative acts:**

- Law no. 55/2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic

- Law no. 136/2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk.

§ Steps taken by the National Preventive Mechanism:

During the state of emergency:

• Preparation of a number of 737 letters to the managements of the places of detention / their subordinate authorities / ministries:

- ***as regards homes for the elderly, residential centers for children and residential centers for adults with disabilities: 545 letters*** (National Authority for the Rights of Persons with Disabilities, Children and Adoptions, Ministry of Labor, general directorates of social assistance and child protection, private homes for the elderly, town and city halls);

- ***regarding psychiatric units: 129 letters*** (Ministry of Health, psychiatric hospitals, psychiatric hospitals for safety measures, psychiatric wards within general hospitals, courts of appeal);

- ***on migrant centers: 10 letters*** (General Inspectorate for Immigration, regional accommodation and procedure centers for asylum seekers, centers for the



accommodation of aliens taken into public custody);

- **regarding institutionalized quarantine sites: 53 letters** (prefectures).

- **Preparation of a number of 68 letters to other institutions / organizations / associations** involved in monitoring the treatment applied to persons deprived of liberty: **non-governmental organizations** – 26 letters, **bar associations** – 42 letters.

- **Daily monitoring of authorities' websites:** Ministry of Internal Affairs, Government, Ministry of Health, National Institute of Public Health, Department of Emergency Situations, in order to identify all measures taken during the state of emergency and analyze those that fall within the competence of the NPM for identifying the risk of torture or other ill-treatment.

All information received following the communications is analyzed and the conclusions will be included in the Special Report prepared by the National Preventive Mechanism on the monitoring of places of detention in the context of the COVID-19 epidemic.

During the alert state and until now:

- **Monitoring of detention places by making visits to penitentiaries and other places of detention:** Bacău Penitentiary, Târgu Ocna Hospital Penitentiary, Craiova Penitentiary – Exterior Section Ișalnița, Craiova Pelendava Penitentiary, Deva Penitentiary, Bistrița Penitentiary, Suseni Care and Social Assistance Center – Gorj County, Sfânta Maria Sisești Home for the Elderly, Mehedinți County.

Objectives specific to the pandemic period were developed for the visits, NPM staff consulting the experience of international NPMs and adapting the objectives, including the following: incident monitoring, video camera verification, pandemic health care, incident management, sufficient distribution of sanitizing materials and means of

protection, distribution and analysis of questionnaires for persons in places of detention and staff, other issues relevant to the activity of the NPM.

- **Monitoring of psychiatric hospitals and quarantine centers:**

- **Săpoca Psychiatric Hospital for Safety Measures and Săpunari Psychiatric Hospital.** The main objective of the monitoring activity was to verify the implementation of the People's Advocate's recommendations, formulated after the visits made during 2016-2017, but also to monitor other aspects relevant to the NPM activity, including objectives specific to the pandemic period.

- **Quarantine centers located in Constanța county.** Considering that the institutionalized quarantine places are new places of detention, appeared in the context of the coronavirus epidemic, we opted for the monitoring of the quarantine centers located in Constanța county (Techirghiol Spa and Recovery Sanatorium).

Monitoring was carried out by alternative methods to classic visits, taking into account, as far as possible, the triangulation of information (characteristic of classic visits) by: obtaining information from persons deprived of their liberty, their relatives, obtaining information from the management of the unit and from staff members and studying the documents sent by the managements of the monitored units at the request of the NPM, access to the video surveillance system strictly regarding the common spaces (access to the unit and pavilions, halls, spaces for activities, dining room, etc.) and isolation rooms (in the case of psychiatric hospitals), the development of questionnaires for patients / former patients in psychiatric hospitals and persons who are (or who have been) in institutionalized quarantine, as well as for their relatives, meetings on Skype and Zoom with representatives of the monitored units.

- **Monitoring of hospitals providing healthcare to patients infected with the SARS-CoV-2 virus (phase I,**



phase II and support), given that COVID-19 hospitals are new places where people are deprived of their liberty, established in the context of the coronavirus epidemic.

In February 2020, the United Nations Subcommittee on Prevention of Torture – SPT mentioned that: *any place where a person is held in quarantine and is not free to leave, is a place of detention, according to Art. 4 of the Optional Protocol.*

In the current context, it must be borne in mind that persons admitted to Covid hospitals have the possibility of leaving them only on the basis of a decision of an authority. Moreover, both symptomatic and asymptomatic patients suspected of Covid are hospitalized in these hospitals, as they do not have the possibility of refusing hospitalization.

Based on the mandate and its application, NPM has the obligation to monitor the treatment applied to any person in places of detention, and the monitoring activity aims to ensure that the fundamental rights and dignity of hospitalized persons are respected.

In our monitoring activity, we requested more information and documents and we asked that patients be informed about the monitoring of the hospital by the People's Advocate, but also about the possibility to access and complete an online questionnaire prepared by our institution. Moreover, our recent actions have included similar monitoring activities in quarantine centers, psychiatric hospitals, residential centers for children and adults with disabilities, homes for the elderly, prisons, centers for migrants, during which we enjoyed the full openness of these entities in providing the requested information and documents.

Because there was no possibility to make visits, we sent everyone questionnaires adapted to each category of institution. This initiative launched a furious attack from the Government, which completely distorted our initiative, publicly

stating that the People's Advocate accuses doctors of torturing.

In 2014 and 2016, evaluation missions of the Committee for the Prevention of Torture took place in Romania, respectively of the Subcommittee on Prevention of Torture, during which were visited, among others, hospitals, placement centers, etc. Also, the members of the missions had meetings with representatives of the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Labor, Family, Social Protection and the Elderly and those of the Ministry of Health, in order to present the conclusions of the missions.

The following institutions are subject to monitoring activity:

- Phase I hospitals: National Institute of Infectious Diseases „Prof. Dr. Matei Balș”, Clinical Hospital for Infectious Diseases “Dr. Victor Babeș” (Bucharest); Constanța Clinical Hospital for Infectious Diseases;

- Phase II hospitals: “Marius Nasta” Institute of Pneumoftiziologie, Central Military Emergency University Hospital “Dr. Carol Davila”, “Ana Aslan” National Institute of Gerontology and Geriatrics (Bucharest); The Agigea external section of the Constanța County Emergency Clinical Hospital, the Constanța Pneumoftiziologie Clinical Hospital, the Military Emergency Hospital „Dr. Alexandru Gafencu” Constanța (Constanța County); Giurgiu County Emergency Hospital – infectious diseases department (Giurgiu county); Ploiești County Emergency Hospital – adult infectious diseases department, children's infectious diseases department and pneumology department (Prahova county);

- support hospitals: Râmnicu Sărat Municipal Hospital (Buzău County); Oltenița Municipal Hospital (Călărași County); Medgidia Municipal Hospital (Constanța County); Pucioasa City Hospital, Târgoviște County Emergency Hospital (Dâmbovița County); Bolintin Vale City Hospital (Giurgiu County); Fetești Municipal Hospital (Ialomița County);



County); Câmpina Municipal Hospital; CF Ploiești Hospital (Prahova County); Caritas Municipal Hospital Roșiori de Vede (Teleorman County); Tulcea County Hospital – Infectious Diseases Department (Tulcea County); Colentina Clinical Hospital, Policlinico di Monza Medical Center – "Monza Metropolitan Hospital" (Bucharest).

The monitoring activity is carried out by alternative methods to the classic visits, taking into account, as far as possible, the triangulation of information. The management of the hospitals was contacted in writing, and were communicated / requested the following: the possibility to complete a questionnaire on the website of the People's Advocate institution; transmission of documents (on paper and/or in electronic format), including anonymized observation sheets.

- Another essential aspect during the state of emergency and alert was maintaining liaising with international bodies, especially with: Association for the Prevention of Torture – APT, other NPMs, international experts, through exchanges of experiences and participation of NPM staff in webinars on topics specific to the current context.

In this report it is important to also mention that the attacks of maximum intensity on our institution, but also on the Ombudsperson, as well as the pressure on the Ombudsperson to act in a certain way, are likely to lead, on the one hand, to the decrease of the trust that people have in the institution, of its credibility, and on the other hand, they can represent an indirect message for the public authorities not to respect the actions of the People's Advocate institution.

It is of the utmost importance for the People's Advocate to maintain its independence, as the Constitution itself intended, so that there is no possibility for

the institution to be used by political representatives, otherwise its very role as defender of fundamental human rights and freedoms would be distorted.

As noted by the Venice Commission in **Opinion no. 685/2012, adopted in December 17, 2012, CDL-AD (2012) 026**, *the observance of the rule of law cannot be limited only to the implementation of the explicit and formal provisions of the law and the Constitution. It also involves constitutional behavior and practices that facilitate compliance with formal rules by all constitutional bodies and mutual respect between them.*

(...) In order to be effective in the protection of human rights, the Ombudsman must be independent, including from the Parliament, which elects the mandate holder. Given this need for independence, special safeguards are needed against unjustified dismissal, as well as references to the principle of symmetry. The lack of such safeguards can lead to serious problems, not only with regard to the protection of human rights, which is an essential task of the People's Advocate, but also with regard to the control of Government emergency ordinances and, consequently, on the rule of law.

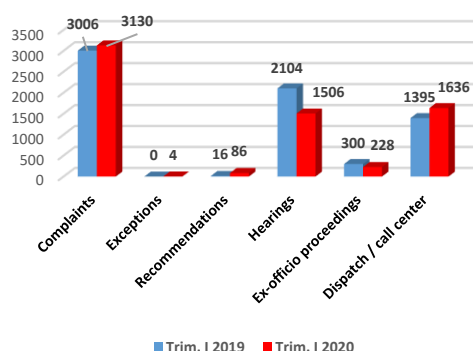
At the same time, the International Ombudsman Institute (IOI) in its **Wellington Declaration** of November 2012, stressed that *especially in times of economic crisis, financial and social difficulties affecting large parts of society, strong Ombudsman institutions are essential to ensure respect for human rights and that it is an expression of the democratic maturity and of the rule of law when governments and parliamentary majorities allow independent Ombudsman institutions to express their criticism.*

Consequently, Ombudspersons who diligently fulfill their mandate will not be subject to any form of unjustified physical, mental or legal constraint.

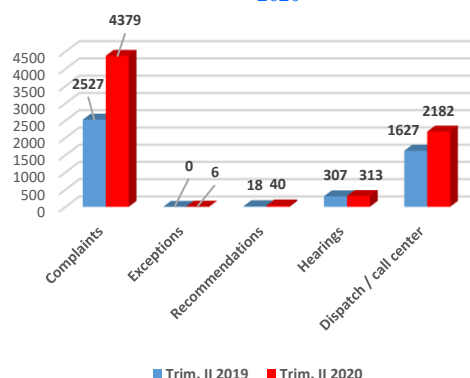
Annex 1

GRAPHS SHOWING THE INDICATORS REGISTERED IN THE ACTIVITY OF THE PEOPLE'S ADVOCATE INSTITUTION

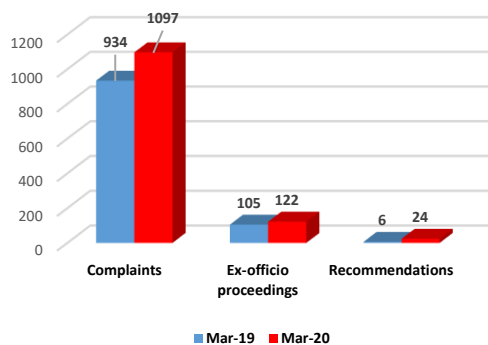
Comparative indicators Trim. I, years 2019, 2020



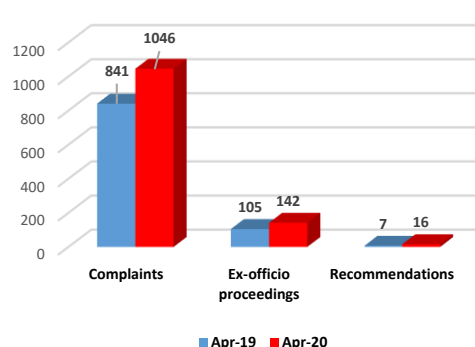
Comparative indicators Trim. II, years 2019, 2020



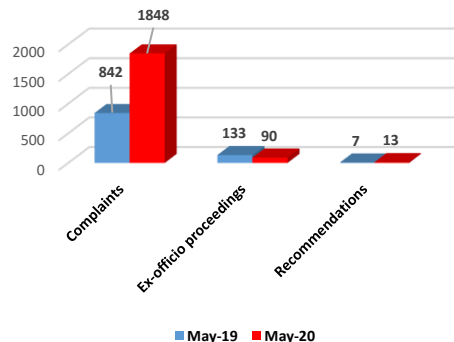
INDICATORS MARCH, YEARS 2019, 2020



INDICATORS APRIL, YEARS 2019, 2020



INDICATORS MAY, YEARS 2019, 2020



INDICATORS JUNE, YEARS 2019, 2020

