

RULE OF LAW IN THE TIME OF CORONAVIRUS EPIDEMIC



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From the outset of the crisis caused by the spread of COVID-19, the competent authorities have endeavored to respond in a timely manner and to take appropriate measures. Civic Alliance (CA) greets their efforts, primarily in the field of health care, with a purpose to mitigate the effects of epidemic. To this end, 89 measures and 19 recommendations have been introduced up to date.

All health measures, as announced, have been adopted upon recommendations of the health experts, which is commendable, because at these moments the seriousness is shown by placing the expertise in the first place. We have thus witnessed that, even before the announcement of the first confirmed COVID-19 case in Montenegro, that the Ministry of Health reacted in a timely manner by issuing an Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro no. 15/20 dated 15 March 2020) and ordering, among other things, the closure of hospitality venues, shopping malls, bookmakers, etc. After the confirmed 15 cases of COVID-19 patients in municipality Tuzi, the Ministry of Health once more reacted in a timely manner by issuing an Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro, No. 023/20 dated 25.03.2020), which prohibits the citizens of Tuzi Municipality from leaving the housing facilities and leaving the territory of Tuzi municipality. This measure has proven to be effective, since a very small number of COVID-19 cases have been confirmed since its adoption.

The state has also adopted economic measures to alleviate economic situation caused by coronavirus epidemic, the effectiveness of which is still early to be discussed, with experts from this field who need to comment on its effects. It is indisputable that the state is also working in this field, trying to meet the challenges posed by the coronavirus epidemic to Montenegro, and by preserving the health of citizens, to create preconditions for an adequate recovery of Montenegrin economy.

We believe it is necessary to point out also some shortcomings in the system functioning, which are related to the protection and respect of human rights.

The first case of unconstitutional activity was publication of lists of persons in self-isolation. Despite the public's tumultuous reaction and reasoned warnings from the civil sector, the Government did not react in terms of correcting this error. Of particular concern is that the list was published with prior approval of the Agency for Personal Data Protection. This list, which contains name and surname, address of residence (at first, the list which also leaked, contained the unique identification number, contact telephone number, names of police officers) of the persons who received the decision on self-isolation is continuously updated. This has been criticized by many international human rights organizations.

We recall that the Council of the Agency for Personal Data Protection and Free Access to Information issued a statement emphasizing the confidentiality of health data, only one day before the Agency gave its consent to publish the lists of persons in self-isolation, at the request of the Government. Also, after the data were published, a website appeared that allows calculation of distance of the person from the list.

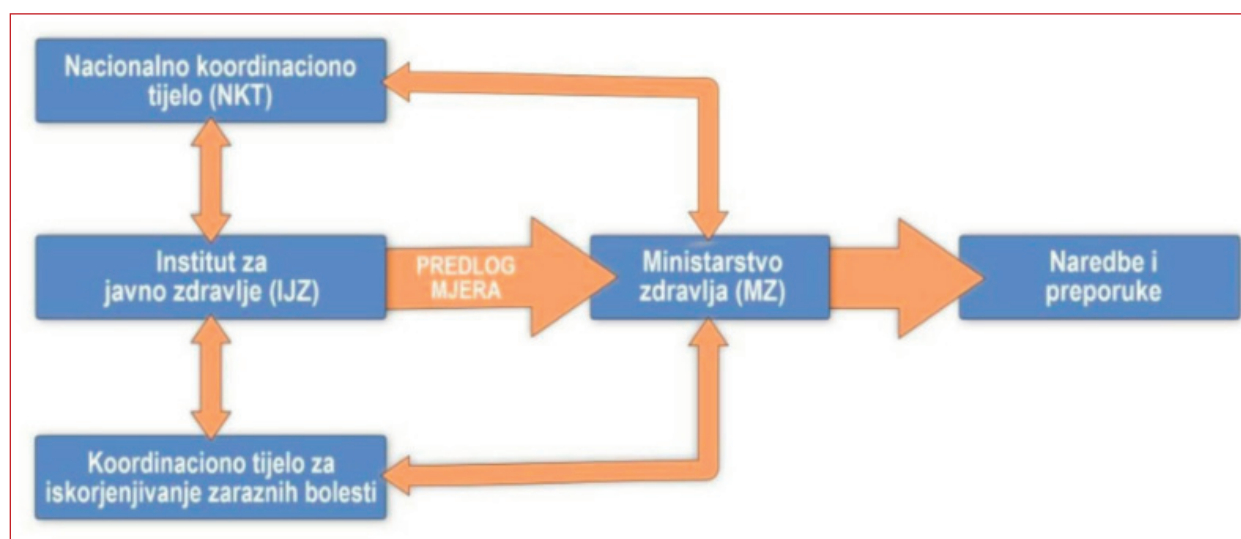
The grave violation of human rights occurred when a list of those infected by the coronavirus "leaked" to the public. We welcome the Government's condemnation of this violation and request for an immediate response, which occurred, and the suspect has been arrested. Disclosure of

patient health information is a grave violation of the right to privacy. In addition, the infected and their families have been exposed to stigmatization, which has further aggravated their current situation. In a state of epidemic and mass vulnerability, the manner in which medical records are kept and other matters related to this situation must be taken care of, in order to determine full responsibility. The question of the necessity of such a accumulative list arises: who ordered it to be kept, who is in charge of keeping the list, who decides to forward the list to the IT officer of the Health Center, how many persons have access to this information, why the list was forwarded to the Health Center, are such lists kept for other infectious diseases as well? Has this database been reported to the Agency for Personal Data Protection and Free Access to Information?

The identity of patients on the list can be protected by providing codes instead of personal information, with strict control over access to personal data. There are many ways to keep a careful record of patients; however, the health care system did not respond properly to this challenge, which caused more severe consequences for patients. It is especially important to response whether the list was forwarded to some other institutions, primarily to the Police Administration and did they distribute it to their officers?

Freedom of speech is also one of fundamental rights which was questioned in this situation. The prosecution's reaction was also too harsh when detaining individuals for allegedly spreading panic during epidemic. The European Commission has also condemned this, stating that it is necessary to find a balance between freedom of speech and prosecution.

Inadequate informing about the formation of the NCB (National Coordinating Body for Infectious Diseases) and misleading the public has raised a number of doubts. Most of the decisions made by this team have been estimated to be timely and effective; nevertheless, a shadow on their work was cast by accusations about its composition, legal basis of action, exact date of establishment, etc. The cause of these accusations lies exactly in the lack of adequate information, transparency in the establishment of the body and lack of explanation of its responsibilities. The name alone of the body led the public to the wrong conclusion that this is a body of narrow jurisdiction, which can be formed in the event of an epidemic (Coordinating Body for Eradication of Infectious Diseases envisaged by the Law on Health Care). The Government explained the legal basis and structure of the NCB only after a month, and after a long public debate. Citizens have the right to know who and in what manner adopts important decisions about their health, freedom, restriction of fundamental human rights, especially since violations of these decisions



are subject to criminal liability. It further confused the public that NCB represents itself as a decision maker in all media appearances, on the web site and on social networks. On the other hand, in legal terms, NCB proposes measures, and decisions about orders are made by the Ministry of Health, which are published in the Official Gazette. Such a legal order NCB should also implement in practice, as well as persons in charge of public relations in the Government. Preciseness in this area is particularly important for the sake of legal certainty, so that those concerned may have the possibility for potential legal protection.

It is inevitable to notice the passive position of the Assembly in this whole situation. As the holder of constitutional and legislative authority, and above all as the highest representative body of the people, the Assembly had to take a proactive approach towards solving the occurring problems and monitoring the adopted measures. It is unacceptable that a session of the Parliament is scheduled one and a half months after the beginning of the crisis.

We have noticed that at a time when Montenegro is facing one of the greatest health threats in its history, this topic has become the subject of inadequate political promotion and fight. The challenge with the coronavirus is difficult and as a society we have shown that we can take it seriously. Therefore, precise and clear communication with citizens, according to the prescribed procedure, is very important. We appeal that these should not be the topics for political calculations and gaining political points, which the parties may do and continue after the crisis. The failures that occur must serve as lessons for the Government that resolution of the primary problem should be implemented in accordance with the principles of protection of fundamental human rights and that one right (including the right to life and health) does not necessarily exclude the other.

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List of decisions adopted up to date

- ▶ **13/03/2020**
Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 014/20)
- ▶ **15/03/2020**
Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 015/20)
- ▶ **16/03/2020**
Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 016/20)
- ▶ **17/03/2020**
Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 017/20)
- ▶ **18/03/2020**
Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 018/20)

▶ **19/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 019/20)

▶ **20/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 020/20)

▶ **22/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 021/20)

▶ **24/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 022/20)

▶ **26/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 024/20)

▶ **27/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 025/20)

▶ **30/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 026/20)

▶ **31/03/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 027/20)

▶ **02/04/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 028/20)

▶ **07/04/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 030/20)

▶ **08/04/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 031/20)

▶ **13/04/2020**

Order to take temporary measures to prevent the introduction into the country, suppress and prevent the transmission of new coronavirus (Official Gazette of Montenegro 032/20)