



HUMAN RIGHTS ACTION | AKCIJA ZA LJUDSKA PRAVA

UNITED NATIONS

The Special Rapporteur on the right to physical and mental health, Mr. Dainius Pūras

The Special Rapporteur on the right to privacy, Mr. Joe Cannataci

Podgorica, Montenegro 24 March 2020

URGENT APPEAL: PUBLICATION OF NAMES AND ADDRESSES OF PERSONS ORDERED SELF-ISOLATION DUE TO ASSUMPTION OF COVID-19.

Dear Mr. Pūras and Mr. Cannataci,

The National Coordination Body for Communicable diseases, founded by the Government of Montenegro, decided on Saturday evening to start publishing online a list of names, surnames and addresses of persons who were ordered into obligatory 14-day self-isolation due to COVID-19 risk. Thus far, the private information of 1022 people has been published on the following web site of the Government: <http://www.gov.me/naslovna/samoizolacija>. The Human Rights Action (HRA), an NGO from Montenegro, considers this act illegal, unconstitutional, and against the international standards of the right to privacy. We called upon the Government to end this practice to no avail.

The Government founded this measure on the opinion of the Montenegrin Agency for Personal Data Protection and Free Access to Information, which supported the measure stating that publishing personal names and addresses of person in self-isolation is not contrary to the Personal Data Protection Law of Montenegro (the opinion is enclosed in English language as attachment).

The Government never enacted a written decision on this measure outlining the legal basis for it. Instead, the Government published the following statement on its web site¹:

“The National Coordination Body for Communicable Diseases has decided tonight, with the approval of the Agency for Personal Data Protection and Free Access to Information, to begin to disclose the names of persons who have been prescribed mandatory 14-day self-isolation decisions.

The decision was made after it was established that some persons – who were subject to this measure upon their arrival in Montenegro – were leaving their homes, thus exposing everyone who come into contact with them and the whole of Montenegro to a high degree of risk.

As nowhere in the world can security forces control every citizen who should be in self-isolation at any time, and given that every person who leaves self-isolation poses a danger to their family and the whole community, it was decided to disclose the names of persons in self-isolation.

The only alternative to this solution was to ban the movement of all citizens. The National Coordination Body assessed that this measure should not be introduced, since the experience of some countries in the region shows that declaring a state of emergency and banning movement in certain parts of the day does not guarantee respect for self-isolation at a time when movement is not prohibited.

The National Coordination Body, with full awareness that this Decision can be viewed from various aspects, decided unanimously with the firm conviction of all members that protecting the lives and health of citizens is our primary duty, obligation and highest priority.

The National Coordination Body appeals to all citizens not to offend the vast majority of responsible citizens who zealously respect self-isolation with a single word or act, but to give them all assistance and support, respecting social distance and other recommendations of the Public Health Institute. They are the best examples of responsibility because they can stop the spread of this epidemic and therefore deserve the high respect and support of all of us.”

Before publication of the list with names and the above statement, the following tweet was published by the Government:

National coordination body for communicable diseases will start publication of identity of persons in self-isolation tonight: let every citizen know which one of his neighbors and co-citizens threatens their safety by indiscipline

The screen shot of the tweet is enclosed as attachment.

HRA is worried about the stigmatization of people and children, whose identities and addresses had been revealed in such a way by the Government, which may ultimately lead to violence. HRA is especially concerned that the measure violated the much-needed trust in confidentiality of personal data especially regarding medical status. It may well be expected that people, who feel the symptoms of

¹ National Coordination Body for Communicable Diseases begins to disclose identity of persons in self-isolation: protecting health and life of citizens is our highest priority, statement available at: <http://www.gov.me/en/News/223144/National-Coordination-Body-for-Communicable-Diseases-begins-to-disclose-identity-of-persons-in-self-isolation-protecting-health.html>

the virus, will not seek medical help promptly or at all, fearing that their identity may also be disclosed in the same way.

We understand the legitimate aim of protecting health and lives the Government's National Coordination Body had in mind, but nevertheless believe that the measure, which was enforced in a situation where a state of emergency *had not been declared* by the parliament, does not have legal basis and represents a dangerous precedent. The supervision of persons in self-isolation should have been secured in another manner, without expecting from the public to do police work.

And even if some legal basis for the measure could be constructed, the measure was arbitrary, and not reasonable in the given circumstances, in view of the CCPR General Comment No. 17, Article 17 (Rights to Privacy), 8 April 1988.

The Law on Personal Data Protection of Montenegro clearly prescribes in Article 13, paragraph 3 that any data pertaining to the "detection, prevention, or diagnosis of a subject's illness or the administration of medical treatment to them", can only be processed "if the processing is conducted by a health worker or other professional under duty of confidentiality". From this, it is clear that these data should have remained confidential, i.e. that the information should not have been made publicly available, as is still being done. Although the Agency for Personal Data Protection and the Free Access to Information, which approved the Government's decision, referred to this provision of the Law in its opinion, it did not explain in any way why it interpreted the provision as an argument in favor of the measure.

The Agency also referred to the Law on Health Care, and its Article 6 which entitles citizens to be informed about the protection of their health in the event of epidemics and other major disasters and accidents. However, the Agency ignored Article 11 of the same Law, which prescribes that in exercising health care, each citizen has the right to equality in overall treatment when implementing health care, as well as the right to privacy and confidentiality of all data regarding their health (paragraph 1 line 7).

In this context, the European Data Protection Board in its Statement on the processing of personal data in the context of the COVID-19 outbreak, adopted on 19 March 2020, highlighted the following: „... data subjects should receive transparent information on the processing activities that are being carried out and their main features, including the retention period for collected data and the purposes of the processing. The information provided should be easily accessible and provided in clear and plain language. It is important to adopt adequate security measures and confidentiality policies ensuring that personal data are not disclosed to unauthorised parties.”²

Also, the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data stipulates that personal data relating to health belong to a special category of data that can only be processed if their proper protection is ensured.

HRA recalls that Article 24 para. 1 of the Constitution of Montenegro stipulates that "guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution and to such an extent which is necessary to meet the purpose for which the limitation is allowed, in an open

² European Data Protection Board „Statement on the processing of personal data in the context of the COVID-19 outbreak”, available at: https://edpb.europa.eu/sites/edpb/files/files/news/edpb_statement_2020_processingpersonaldataandcovid-19_en.pdf

and democratic society." We remind that in the provisions protecting the right to privacy and guaranteeing the protection of personal data (Art. 28, para. 2, Art. 40, Art. 43) do not prescribe any basis for limitation of these rights. They may be restricted only in times of emergency, but only to the necessary extent (Article 25, paragraph 1 of the Constitution of Montenegro).

Article 8 of the European Convention on Human Rights outlines the right to protection of privacy and family life. This right may be restricted for the protection of health, but only to the extent necessary in a democratic society.

The European Court of Human Rights held that "the right to privacy applies especially when it comes to protecting the confidentiality of data relating to viruses, since disclosure of such information can have detrimental effects on the private and family life of the individual and his or her social and professional situations, including exposure to stigma and possible exclusion from the community." The Court emphasized, "that without providing privacy protection, those in need of medical attention, could be deterred from disclosing the personal and intimate information needed to receive appropriate treatment and even deter from seeking such assistance. In this way, they can endanger their health and, in the case of communicable diseases, the health of the community." (*Z v. Finland*, application no. 22009/93, 1997, and *Mockute v. Lithuania*, application no. 66490/09, 2018).

As app. 5000 persons in Montenegro have been issued with Decision for Self-isolation, and their names and addresses are going to be made public, we kindly urge you, the Special Rapporteurs on the Right to Privacy and on the Right to Privacy to urgently communicate with Montenegrin Government on this topic and prevent this breach of human rights.

Please do not hesitate to ask for more information.

Sincerely Yours,

A handwritten signature in blue ink, appearing to read 'T. Gorjanc'.

Tea Gorjanc Prelevic,

Executive director

+382 67 600 506