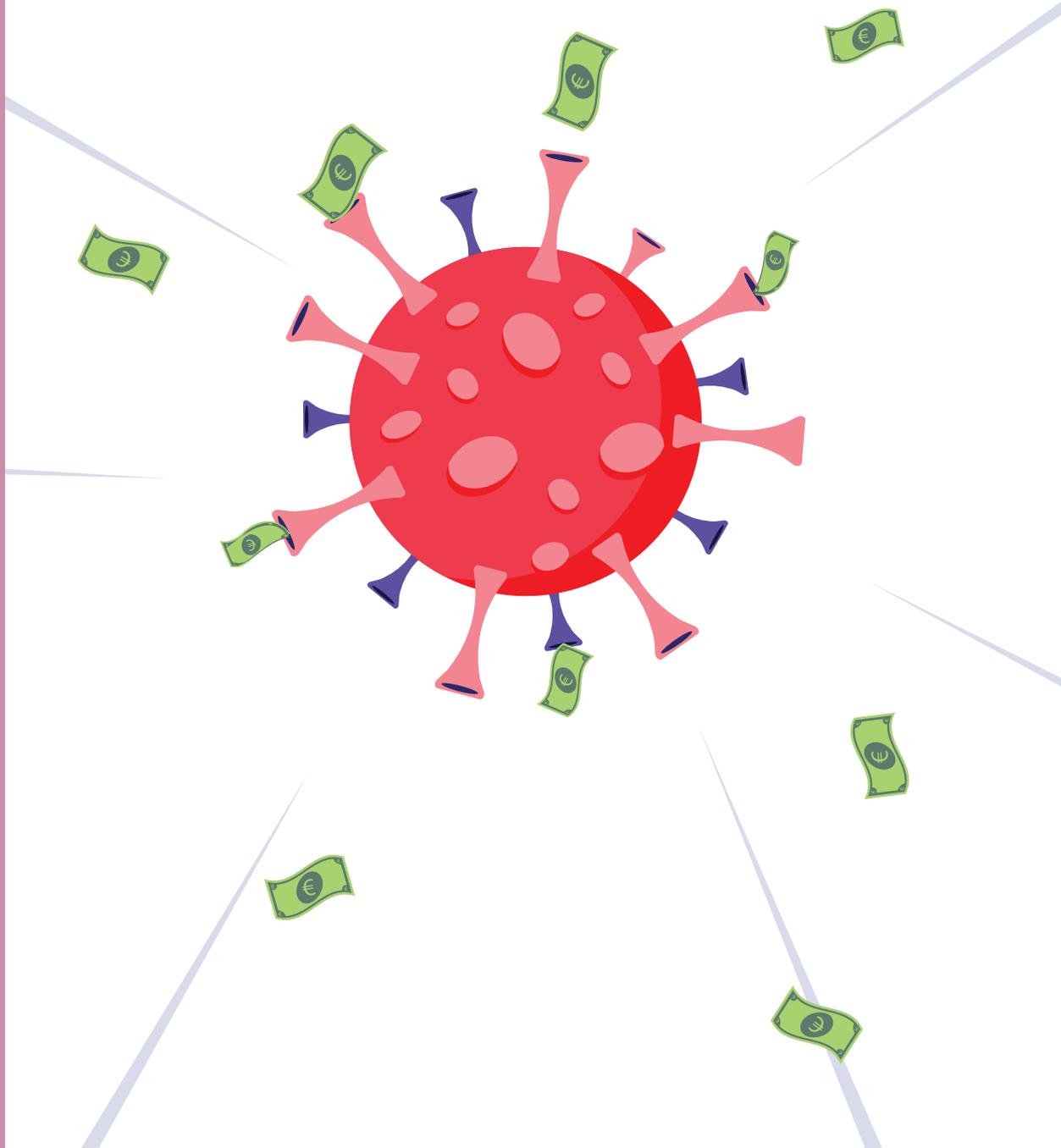


Social & Democratic Watchdog

COVID-19 Pandemic Management in the Republic of Kosovo



INTRODUCTION

The Social & Democratic Watchdog monitors developments regarding Covid-19 pandemic management by public authorities in the Republic of Kosovo.

In this second edition you can read a brief analysis of the new government's restrictive measures, information and comments on the undertaken measures from the Emergency Package, as well as data on domestic violence with recommendations for relevant institutions.

NEW GOVERNMENT, CONTINUITY IN ANTI-CONSTITUTIONAL MEASURES RESTRICTING FREEDOM OF MOVEMENT

The previous Government decisions regarding citizen's freedom of movement restriction were ruled as anti-constitutional by the Constitutional Court of Kosovo. This setting stemmed from the Law on Prevention and Control of Infectious Diseases' inadequacy to allow such measures. Although objection to these illegal and unconstitutional decisions has been raised by the opposition - now the new Government, the latter has continued to make similar decisions.

Decisions taken on July 5, 8 and 13 of 2020, through which the freedom of movement outside people's homes was prohibited in these municipalities: Prishtina, Ferizaj, Prizren and Vushtrri, then in the municipalities of North Mitrovica, Zubin Potok, Leposavic and Zvecan starting from 21:00 to 05:00 was a restrictive measure which directly violated the previous constitutional ruling and was unfound in a special law regarding to the pandemic. On July 28, the decision for regarding freedom of movement was changed from 21:00-05:00 to 22:30-05:00. Instead of improving the decision-making process and respecting the rulings of the Constitutional Court, the new Government acted in the same way as the previous, making decisions that are not based on law and the constitution.

Such restrictions and this kind of decision-making practice is problematic in three main aspects:

1. Any restriction on freedom of movement, which is not based on legislation and which is unconstitutional, constitutes a serious violation of human rights by public authorities in Kosovo. The same goes for the mandatory wearing of face masks. What would happen if tomorrow the Government of Kosovo hypothetically decides that all citizens should wear only white clothes? Should citizens be fined for non-compliance with such arbitrary and illegal decisions?

To avoid misunderstandings, the Institute for Social Policy "Musine Kokalari" supports the protection measures that every responsible citizen must respect and adhere to, for the protection of themselves and others, but these measures must be reasonable, possible and have a legal basis.

2. The rulings of the Constitutional Court are acts with legal-constitutional force and as such create obligations of a general nature (*erga omnes*). Their disregard has set a dangerous precedent for the future of human rights in the Republic of Kosovo. The practice followed in relation to the protection measures decisions regarding to the Covid-19 pandemic has shown the high authoritarian tendencies of both governments of 2020.

3. The measures that have been implemented and that due to non-compliance by various subjects, different entities have been prosecuted for violating them and some subjects have been imposed sanctions which may be presented as a basis for compensation due to the legal arbitrariness that constitute it. So, the implementation of such measures also represents a financial cost, taking into account that many businesses and individuals have been fined and banned from their legal activities, and even in certain cases we have had deprivation of liberty in the name of violation of such unconstitutional measures.

On August 25, four months after its proceeding and six months after the appearance of Covid-19, Law no. 07 / L-006 on Prevention and Combating Pandemic Covid-19 in the territory of the Republic of Kosovo entered into force. An analysis in terms of human rights and the implementation of this law will be published in the third issue of the Social and Democratic Watchdog.

APPLICATION PROCEDURES AND STATISTICS OF THE BENEFICIARIES FROM EMERGENCY

MEASURES

- **Measure 3a** – € 170 net salary compensation for active employees;
- **Measure 3b** – 50% rent compensation for small and micro businesses;
- **Measure 7** – € 100 (GROSS) compensation for employees exposed to risk from infection in grocery stores, bakeries and pharmacies;
- **Measure 8** – compensation in the amount of € 130 (NET) for inactive employees (employees fired during and because of the pandemic);
- **Measure 14** – compensation in the amount of € 130 (NET) for new employees (registered during the pandemic with a contract of at least one year, from March 2020).

PROCEDURES

- May 15, 2020, was the deadline for application by employers to benefit from one of the above measures.
- May 24, 2020 was the deadline to correct eventual errors in the application.

Beneficiaries vs. Applicants:

Measure 3a - 170 € - Active Employees	
Applications	36,232
Beneficiaries applied for	164,766
Approved claims	148,188
Refused claims	16,578

* Refusal level 10%

Measure 7 - 100 € - Employees At Risk	
Applications	3,110
Beneficiaries applied for	18,386
Approved claims	14,925
Approved claims	3,461

* Refusal level 18.82%

Measure 8 - 130 € - Inactive Employees	
Applications	515
Beneficiaries applied for	1,860
Approved claims	834
Refused claims	1,026

* Refusal level 55.16%

Measure 14 - 130 € - Newly Registered Employees	
Applications	6,383
Beneficiaries applied for	15,652
Approved claims	14,988
Refused claims	664

* Refusal level 4.24%

Measure 3b - Rent 50%	
Applications	9,891
Beneficiaries applied for	12,637
Approved claims	10,369
Refused claims	2,268

* Refusal level 17.94%

Application criteria:

1. MEASURE 3a: To receive financial support in the amount of € 170 (NET) for March and April 2020, taxpayers were required to meet the following criteria:

- The employer, through the electronic EDI system, must complete and upload the form and list designed by TAK, no later than May 15, 2020;
- The employer must prove that his activity has been negatively directly or indirectly affected by the health emergency situation with the decisions of the Government of Kosovo to prevent the spread of the Covid-19 virus, either by proving that he/she operates with one of the activity codes in Annex A, whose work has been suspended by order of MEPTINIS, stating how the Government's decisions have affected the decline in their revenues, proving financial difficulties through the cash register, bank balance and other similar evidence;
- The employee can benefit only if the same is declared as primary in the list of monthly salaries of the employer, for the month of February 2020;
- The self-employed can benefit only if the same is declared with the form "IS" or "IL" for the period Q1 / 2020, respectively the first quarter of 2020.

2. MEASURE 3b: To receive financial support for rent subsidies up to 50% of the rent value for small and medium enterprises for March and April 2020, taxpayers were obliged to meet the following criteria:

- For the purposes of evaluating the criteria for this measure, enterprises are classified in size according to the number of employees;
- employees;
- For the purposes of implementing this measure, small enterprises with legal term include small enterprises and micro-enterprises;
- The lessee, through the electronic EDI system must complete and upload the form and list designed by TAK, no later than May 15, 2020;
- The tenant must enter into the lease agreement between the landlord and the tenant, which must be concluded before March 1, 2020;
- The tenant must prove that his activity has been negatively affected by the emergency situation directly or indirectly with the Government decisions about the state of health emergency (similar to the evidence in measure 3 point a. above) which will then benefit subsidy until 50% for rent payment;
- This measure cannot benefit tenants who have prepaid the annual rent, only those who have the obligation of unpaid rent for two months from the beginning of the pandemic;

3. MEASURE 7: 7: To receive an additional payment in the amount of € 100 (GROSS) for employees of grocery stores, bakeries and pharmacies for March and April 2020, taxpayers were required to meet the following criteria:

- Those who will benefit from this measure will be only workers who have direct contact with the customer during the performance of works;
- Employers who carry out activities such as: grocery stores, bakeries and pharmacies, for employees according to the point above, will be approved automatically the request for compensation of € 100 (GROSS) for employees registered in those activities, for the period March and April 2020;
- This salary for tax purposes will be considered as a secondary salary.

4. MEASURE 8: To benefit from the payment of monthly assistance in the amount of 130 € (NETO) for citizens who lose their jobs due to the public health emergency situation, for the months of March, April and May 2020, taxpayers were obliged to meet the following criteria:

- The former employee has been fired as a result of the decline in the activity of the enterprise due to the pandemic situation (evidenced by documentation), other reasons for dismissal are not covered by this measure;
- The former employer through the electronic EDI system must complete and upload the form and list designed by TAK, no later than May 15, 2020;
- The former employee must be part of the payroll submitted by the employer in February 2020;
- This salary for tax purposes will be considered as a primary salary.

5. MEASURE 14: To benefit from financial support for companies and other employers that register employees with an employment contract of at least one year during a public health emergency situation, from € 130 (NETO) for the following two months after registration, for March and April 2020, taxpayers were obliged to meet the following criteria:

- The employer and the employee must have an employment contract for a period not shorter than one (1) year;
- The employer, through the electronic EDI system, must complete and upload the form and list designed by TAK, no later than May 15, 2020;
- The employment contract must be signed in March 2020;
- The employer must declare the employee on the list the monthly payment from the beginning of the employment contract;
- Persons who benefit from this measure will be paid pension contributions on behalf of the employer and the employee and the tax liability, in order for the employee to receive a net salary of € 130.

Based on the above data (provided by the Ministry of Finance) **three problems emerge:**

- 1.** The main problem with the established procedures is the concentration of the application in the hands of the employer, which has greatly strengthened the position of employers towards employees. In Measure 3a. this problem has risked increasing the employer's pressure on employees to treat € 170 in government assistance as a part of her/his full reimbursement (which could be in addition to the employee's salary in case the employer has financial difficulties to compensate the full salary). This potentially harms workers who during these months have received a much lower wage compared to their regular wage. The same applies to Measure 7, and especially to it. Also, this

concentration of the right to apply to the employer may have harmed workers who have lost their job as a result of the pandemic and for which employer may not have taken the trouble to enter the procedures to provide their former employees compensation of € 130, as he/she sees no interest in this regard. According to official data in this measure there are the least applications (515) for the least applicants (1860) with the incomparably higher rate of rejected applications (55.16%).

2. Another problem with these procedures is the reduction of the risk assessment only for workers who have direct contact with consumers (workers of grocery stores, bakeries and pharmacies), while other workers were not entitled to benefit from this measure (Measure 7). This is unfair to employees of these enterprises who perform other work (not related to direct contact) and who are also exposed to the risk of infection (perhaps to a lesser degree). One of the reasons given by government officials (VV-LDK Government) for this measure was the fact that the government had asked these types of businesses to continue working even during the quarantine period due to the vital service they provide. In this regard EVERY employee of these companies is obliged to provide this service. Consequently going to work and spending time with third parties (in this case other employees of the enterprise) has increased the exposure to the risk of infection even for these employees who have not had direct contact with customers. But it is also unequal treatment compared to the large number of public sector employees who have not been required to go to their jobs due to the risk of exposure to the Covid-19 virus, and for whom this failure to work has not had any negative financial effect.

3. The criteria of Measure 3b also contain unequal treatment of its potential beneficiaries. Those small and medium enterprises that have paid in advance the rent for their premises for a one year period were not entitled to apply for rent compensation. This is unfair as those businesses, if all other circumstances were the same, were damaged in the same way as those who pay rent on monthly basis. So this exclusion of them from the right to compensation of half the cost of the monthly rent is arbitrary and unequal.

DOMESTIC VIOLENCE CASES

JUNE 2020

94 cases in relation to Article 248 of the Kosovo Criminal Law
06/L074 - Domestic Violence

83 other cases

90 arrested

39 in detention

5 restraining orders

11 sheltered victims

1 case ruled with no basis

Total number of victims: **185**

Gender: **145** Women & **40** Men

Age:

0-18	19-59	60-90
Women: 6 Men: 3	Women: 128 Men: 30	Women: 11 Men: 7

JULY 2020

186 cases reported to the police

116 cases in relation to Article 248 of the Kosovo Criminal Law
06/L074 - Domestic Violence

70 other cases

77 arrested

37 in detention

4 restraining orders

9 sheltered victims

2 case ruled with no basis

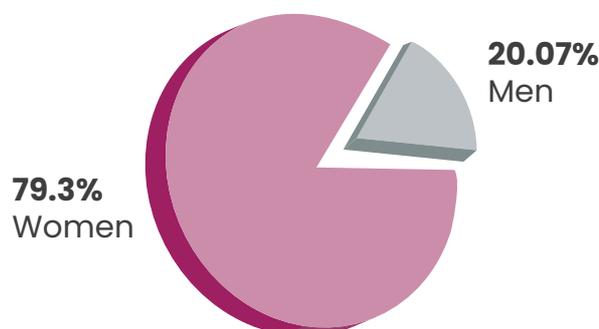
Total number of victims: **186**

Gender: Women **150** & Men **37**

Sipas moshës:

0-18	19-59	60-90
Women: 7 Men: 4	Women: 135 Men: 27	Women: 8 Men: 6

Note: The number of victims is higher than the cases reported to the police because one reported case may have more victims within the same family.



*No cases reported in relation to **LGBT+**

Domestic Violence data during the winter months **before** the Covid-19 pandemic:

December 2019 – 130 Women & 38 Men – Total: **168**

January 2020 – 124 Women & 42 Men – Total: **166**

February 2020 – 126 Women & 33 Men – Total: **159**

Domestic Violence data during the **isolation** period because of the Covid-19 pandemic:

March 2020 – 130 Women & 44 Men – Total: **174**

April 2020 – 126 Women & 39 Men – Total: **165**

May 2020 – 122 Women & 57 Men – Total: **179**

Note: The data presented is official data from the Kosovo Police.

Significant in the statistical data is that a considerable part of the cases of domestic violence are being treated in criminal proceedings. This is a result of the criminalization of domestic violence according to the new criminal law that has been codified with the approval and entry into force of the No. 06 / L-074 Criminal Code of the Republic of Kosovo. With the new provisions in this legal act, Article 248 criminalizes domestic violence as a separate criminal offense, and in this chapter, in addition to the basic form of the offense, the qualified forms of this special criminal offense are also provided. This kind of sanction has defined the form of committing this criminal offense by not limiting it only to physical violence, but including the exercise of violence through psychological, economic and sexual means.

Providing treatment for victims of domestic violence is always challenging, but in the current situation created by the Covid-19 pandemic, it only further complicated the possibilities. Victims, not only are locked up in confined spaces with their abusers, but the severity of their financial situation and job losses has led to an increase in the use of violence against them. Now, due to the state of emergency, victims with limited options may be reluctant to notify the authorities, considering that they will not be taken into account. Such violence in Kosovo is widely considered to be a private matter within the family, the above figures are only cases that have been reported and it is known that the real number is much higher.

The number of people infected with Covid-19 has increased significantly during the summer months and a second wave is expected to occur during the autumn and winter months as well. We may find ourselves in a situation where some municipalities may enter quarantine again and other restrictive measures. We should not wait for a repetition of the circumstances to understand that the number of domestic violence cases will continue to raise.

We, as an Institute, consider it as extremely important for the public authorities to intervene in order to prevent and combat such violence. Physical, sexual, economical and psychological violence causes not only immediate consequences, but also long-term and often irreversible damage, and as proven in the past also resulting in loss of life.

The Government of Kosovo must design and implement an action plan to combat domestic violence combined with the needs arising from the Covid-19 pandemic. Based on the policies and practices of other countries and the certain circumstances in Kosovo, the “Musine Kokalari” Institute recommends the following:

- Establishing the Emergency Fund for Combating Domestic Violence. This fund should be used to cover the services that the state should provide to victims of this type of violence;
- Design and launch a campaign against domestic violence. This campaign should be raising public awareness, as well as informing people of all the opportunities offered (Not everyone has access to social networks or the Internet, notification of important numbers can also be done via SMS);
- Providing free legal aid for victims;
- Focus on capacity building in Social Work Centers, including observation of professional services of social workers; In cooperation with the Judicial and Prosecutorial Councils, to provide special legal training through the Academy of Justice for treating and prosecution of acts of domestic violence and gender violence, with special focus on the treatment of victims of these crimes;
- Restrictive measures should not apply if the life and health of the victims are endangered (the victim has the right to leave the house even during the restriction times without legal consequences);
- Providing medical and psychological assistance to family medicine centers, regional hospitals and Clinical & University Center of Kosovo;
- Training the medical staff to identify domestic violence, how to treat victims (not only medical treatment, but also psychological and other supportive means) and also all the tools to cooperate with law enforcement agencies;
- Training special units in the police force for a better handling of these cases (treatment of victims and abusers);
- Cooperation between central institutions and municipalities for creating more safe spaces (in lack of space in shelters in many municipalities, hotels and rental accommodation can temporarily serve as shelters);
- Providing financial assistance to victims if they are forced to leave the family environment for security reasons;
- A part of the emergency fund for combating domestic violence should be allocated to organizations and associations that care directly for victims of domestic violence;

- Providing psychological assistance to treat people who have problems with stress management and who are potentially abusive or recurrent. Rehabilitation policies should be provided for perpetrators of violence so that it does not recur;
- Full implementation of the law on protection from domestic violence;
- State bodies must keep statistical and analytical records on the current situation and monitor it continuously. Improvements and the success of certain measures taken can be measured only through a database.

Ky projekt është financuar nga European Endowment for Democracy

This project is funded by the European Endowment for Democracy

“B” Str.- Residio 5, Entrance B, Nr. 15

10 000 Pristina, Republic of Kosovo

info@musineinstitute.org

www.musineinstitute.org

www.facebook.com/musineinstitute