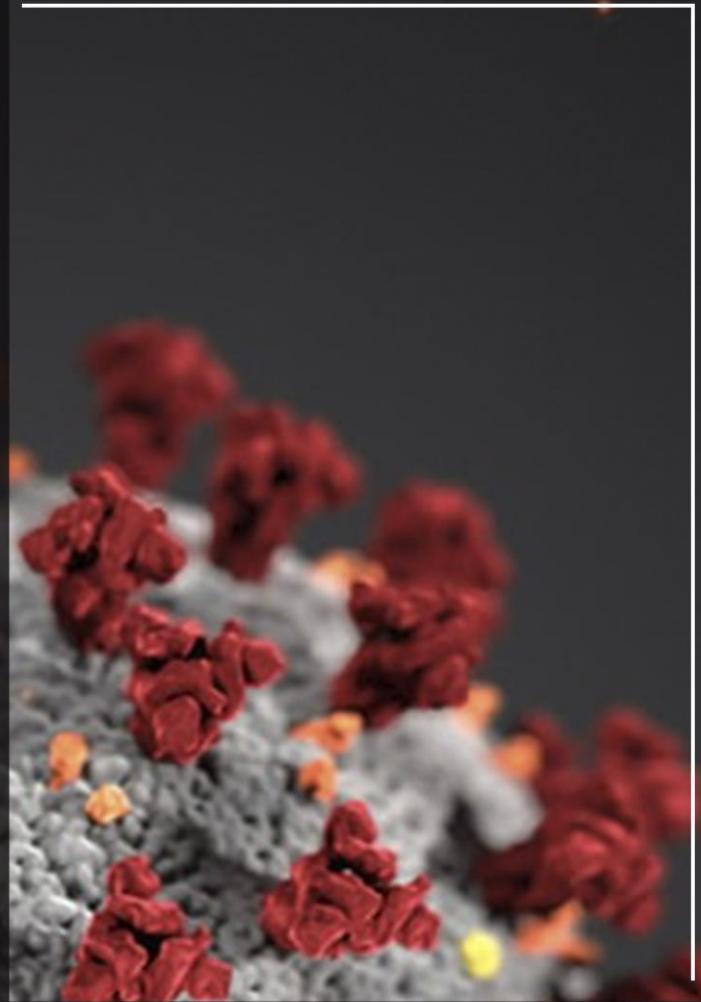


HUMAN RIGHTS  
SITUATION IN THE  
REPUBLIC OF ARMENIA  
UNDER THE STATE OF  
EMERGENCY  
ESTABLISHED FOR THE  
PREVENTION OF  
COVID-19 PANDEMIC



REPORT

Part 2

Labour and  
Social Security Rights

This report has been prepared with the financial support of Open Society Foundations. The views, comments and conclusions expressed in this report are those of the authors and may not necessarily reflect the views of the funding organization.

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# Introduction

On 11 March 2020, the World Health Organization (WHO) announced an outbreak of the COVID-19 virus (COVID-19 virus), reaching the level of a COVID-19 pandemic. The WHO called for states to take urgent and aggressive action to curb the spread of coronavirus. The WHO statement stressed that countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

In order to prevent the spread of the new coronavirus (COVID-19) infection in the Republic of Armenia (hereinafter referred to as also the RA), a state of emergency was declared in the country by Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia. By Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, relevant decisions of the Commandant envisaged temporary restrictions on the rights and freedoms of natural and legal persons, which inevitably had their impact on labour and social security rights.

Based on the results of monitoring of the situation of human rights protection under the state of emergency, Helsinki Citizens' Assembly Vanadzor Office (HCAV) published the 1st part of the report titled "Human Rights Situation in the Republic of Armenia Under the State of Emergency Established for the Prevention of COVID-19 Pandemic" on 4 May 2020. The report presented the legal assessment on the compliance of the legal acts adopted under the state of emergency with the norms and principles of the international human rights law.

The second part of the report assesses the situation of protection of labour and social security rights in the period from 16 March to 4 May, 2020, based on the alarms raised relating to labour and social security rights received by HCA Vanadzor.

The legal assessment is based on the international obligations undertaken by the Republic of Armenia in the field of protection of labour and social security rights, the recommendations of international organizations, the legislation of the Republic of Armenia and other materials.

# 1. Restrictions on the Rights and Freedoms of Natural and Legal Persons Defined by the Commandant's Decisions due the Legal Regime of the State of Emergency

By Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia on Declaring a State of Emergency to prevent the spread of the new coronavirus (COVID-19) infection in the Republic of Armenia, temporary restrictions on the rights and freedoms of natural and legal persons were envisaged, which inevitably had their impact on labour and social security rights causing various violations.

Article 8 of the RA Law “On the Legal Regime of the State of Emergency” stipulates that, in accordance with the decision of the Government of the Republic of Armenia on declaring a state of emergency in order to eliminate the circumstances that served as a basis for declaring a state of emergency and to resolve other urgent issues conditioned by the state of emergency, the Prime Minister of the Republic of Armenia or as prescribed by that decision, the Deputy Prime Minister officially acts as a Commandant of the state of emergency territory (hereinafter referred to as the Commandant). The mentioned regulation was established after the declaration of a state of emergency in the Republic of Armenia, according to the law HO-238-N "On Making Amendments and Changes to the Law on the Legal Regime of the State of Emergency" of 29 April 2020".

Before making appropriate changes and additions in the RA Law On the Legal Regime of the State of Emergency, it was not envisaged that the Commandant should be authorized to adopt regulatory legal acts and to act officially.

When declaring a state of emergency in the Republic of Armenia, the legal regime that severely limited the powers of the Commandant and the Commandant's office was in force and which defined clear functions. It was envisaged that in order to eliminate the circumstances that served as a basis for declaring a state of emergency and to resolve other urgent issues, a Commandant's office of the state of emergency territory may be established by the decision of the Government of the Republic of Armenia, which carries out joint management of forces and means to ensure the state of emergency in the territory of the state of emergency. The Commandant's office is managed by the Commandant appointed by the Government of the Republic of Armenia<sup>1</sup>.

With the legislative changes<sup>2</sup> made, the Commandant carries out the joint management of the forces and means of ensuring the legal regime of the state of emergency in the territory of the state of emergency, as well as the implementation of the

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<sup>1</sup> <https://www.arlis.am/DocumentView.aspx?docid=140775>

<sup>2</sup> <https://www.arlis.am/DocumentView.aspx?docid=142124>

measures applied under the state of emergency and the application of restrictions. For the exercise of the powers defined in this part, the Commandant may adopt secondary regulatory legal acts of the Prime Minister or Deputy Prime Minister, respectively.

In the absence of relevant legislative regulations, the RA Deputy Prime Minister Tigran Avinyan, appointed in the position of the Commandant by Decision No. 298-N of 16 March 2020 of the RA Government, in fact continued to exercise the powers entitled to the RA Deputy Prime Minister by the RA legislation. As a result, the rights and freedoms of natural and legal persons were restricted by the decisions of the Commandant during the whole period of the state of emergency.

The absence of authority to adopt regulatory legal acts by the Commandant in the RA Law on the Legal Regime of the State of Emergency, which lasted until 07.05.2020, gives grounds to state that the Commandant's decisions, which define the rules of isolation or self-isolation or other limitations of the right to free movement, have been adopted without proper legislative regulation, and therefore the principle of legality has been violated<sup>3</sup>.

"Referring to the legality of the restrictions on certain types of economic activity defined by the Commandant's decisions, it should be noted that due to the legal regime of the state of emergency, the powers of the Commandant to define the conditions, scope and nature of the restrictions on the rights and freedoms applied in the whole territory of the Republic of Armenia are defined only by Decision 298-N of 16 March 2020 of the RA Government, and point 20 of the appendix to the decision envisages that by the decision of the Commandant the implementation of certain types of economic activity in the whole territory of the Republic of Armenia or in separate communities may be prohibited. By the decision of the Commandant, the activities of certain legal entities carrying out economic activities, the activities of individual entrepreneurs (including sales by natural persons in the markets of agricultural products) may be temporarily prohibited at the place (address) where the rules set by the Commandant's decisions and instructions are not observed.

After declaring a state of emergency in the whole territory of the Republic of Armenia, on the basis of the powers reserved to the Commandant by No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, decisions No. 13 of 23 March 2020, No. 14 of 24 March 2020, No. 19 of 27 March 2020, No. 27 of 31 March 2020, No. 63 of 3 May 2020 restricted certain types of economic activity, a number of other decisions of the Commandant (No. 20, 22, 24, 28, 29, 30, 33 and others) temporarily limited the activities of a number of businesses.

It is noteworthy that Part 3 of Article 7 of HO-238-N Law On Making Amendments and Changes to the Law on the Legal Regime of the State of Emergency, adopted on 29 April 2020, stipulates that before the entry into force of the law, the acts adopted by the Commandant will continue to act as secondary legal acts of the Deputy Prime Minister. Through this legislative formulation, the decisions of the Commandant adopted during the whole period passed by the rule of retroactive force become legal and acts having a nature of regulatory legal act, while in this case we are dealing with restrictions on the rights and freedoms of natural and legal persons by the decisions of the Commandant.

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<sup>3</sup> See the above-mentioned report, page 22



It is also problematic that the legislative changes legitimize the decisions and the arbitrary powers of the Commandant before the implementation of the changes through reserving the Deputy Prime Minister's powers to the Commandant.

It should be noted that point 3, part 1, Article 2 of the RA law "On Regulatory Legal Acts" defines the concept of the secondary regulatory legal act — a regulatory legal act is an official written document provided for by law and adopted by the bodies prescribed by the Constitution within the scope of their powers, in cases and as prescribed by the Constitution, laws of the Republic of Armenia. In light of the above-mentioned legislative norms, we can conclude that the secondary regulatory legal act must meet the following mandatory requirements:

1. Regulatory legal acts shall be adopted on the basis of the Constitution and laws and for the purpose of ensuring their implementation<sup>4</sup>.
2. Draft regulatory legal acts shall undergo compulsory state expert examination<sup>5</sup>.
3. The rules of legislative technique referring to the secondary regulatory legal acts are subject to execution<sup>6</sup>.

Whereas, the substantive and procedural study of the Commandant's decisions on restrictions on the rights and freedoms of natural and legal persons, proves that these acts are adopted on the basis of Decision No. 298-N of March 16, 2020 of the Government of the Republic of Armenia "On Declaring a State of Emergency in the Republic of Armenia." Therefore, we have a situation when the secondary regulatory legal act is adopted in fulfillment of another secondary regulatory legal act.

In accordance with Article 242 of the RA Labour Code "Safety and health of the employees shall be a system of maintaining the life and health of employees during the working activity, which includes legal, social and economic, organisational and technical, sanitary hygienic, medical and preventive, rehabilitation and other measures." In accordance with Part 1, Article 250 of the RA Labour Code "Employment shall be temporarily terminated in the manner prescribed by regulatory legal acts, if:

- 1) the employee has not been introduced to the rules for safe performance of labour;
- 2) the means of labour is in a non-operable condition or there is an accident;
- 3) the work is performed with violations of the technical regulation;
- 4) employees are not provided with collective and/or individual safety measures;
- 5) the workplace is dangerous or harmful to life and health.

In accordance with Part 3 of the same Article "In cases provided for by part 1 of this Article, where the employer does not take measures to protect employees from the potential danger, the service of the organisation in charge of ensuring the safety and healthcare of employees, as well as the representatives of the employees shall have the right to demand termination of work. If the employer refuses to fulfill the demand of the service of the organisation in charge of ensuring the safety and healthcare of employees and the representatives of the employees, the latter shall notify the State Labour Inspectorate thereon. The state labour inspector may take a decision to make the

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<sup>4</sup> RA law "On Regulatory Legal Acts" Article 2, part 1, point 3

<sup>5</sup> RA law "On Regulatory Legal Acts" Article 6, part 3

<sup>6</sup> RA law "On Regulatory Legal Acts" Article, chapter 4

employer obliged to terminate work after assessing the safety assurance and state of health of the employees. If the employer refuses to fulfill the demands of the state labour inspector, the latter shall have the right to address the Police for execution of the demand for termination of work and the evacuation of employees from the dangerous workplaces.”

According to the publication made by the RA Healthcare and Labour Inspectorate, “During the last month, by the instructions of the Commandant, the RA Healthcare and Labour Inspectorate carried out monitoring in 766 organizations and branches. On the basis of it, the RA Commandant made a temporary suspension decisions on 98 organizations.” The temporary restrictions on the types of economic activity due to the legal regime of the state of emergency, show that as a result of the monitoring, the protocols of the head of the RA Healthcare and Labour Inspectorate are compiled on the basis of those decisions of the Commandant, which set safety rules preventing the spread of a new type of coronavirus disease (covid-19) to be maintained by organizations<sup>7</sup>.

The restrictions on the activities of economic entities in the permitted areas cannot be substantiated by the provisions of Article 250 of the Labour Code of the Republic of Armenia on the grounds that in accordance with the provisions of this article work/employment may be temporarily suspended as prescribed by regulatory legal acts. whereas, in the current situation, the types of economic activity are limited by the procedure defined by the decisions of the Commandant, which, as already mentioned, does not comply with the legislative requirements, as well as by the fact that in case of appropriate conditions, the head of the RA Healthcare and Labour Inspectorate may submit a claim to the employer to suspend the work on the basis of assessing the provision of the safety and health conditions of the employees of the organization.

**Thus, assessing the legality of the Commandant's decisions on temporary restrictions on the types of economic activities due to the legal regime of the state of emergency, it should be noted that these decisions are not legal insofar as**

- **Before the entry into force of the Law HO-238-N On Making Amendments and Changes to the Law on the Legal Regime of the State of Emergency adopted on 29 April 2020, the commandant was not authorized to adopt a regulatory legal act.**
- **Regulatory legal acts adopted by the Commandant do not comply with the requirements of the RA Law on Regulatory Legal Acts and the RA Constitution.**

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<sup>7</sup> See e.g. Commandant's decisions number 20 of 27.03.2020, number 22 of 28.03.2020, number 24 of 30.03.2020



## 2. International Standards on Labour Rights and Social Protection Guarantees

In accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights “The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

In accordance with Part 1 of the Revised European Social Charter (hereinafter referred to as Charter) /was adopted on 3 May 1996, Armenia signed it on 18 October 2001 and ratified on 21 January 2004/<sup>8</sup> “The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:”

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

(...)

12. All workers and their dependents have the right to social security.

(...)

26. All workers have the right to dignity at work.

(...)

30. Everyone has the right to protection against poverty and social exclusion.

In accordance with Article 13 of the Charter<sup>9</sup> “with a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

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<sup>8</sup> The charter has 31 (thirty-one) Articles, 98 (ninety-eight) paragraphs, of which Armenia ratified 20 (twenty) Articles, 67 (sixty-seven) paragraphs.  
[https://lib.ohchr.org/HRBodies/UPR/Documents/Session8/AM/COE\\_UPR\\_ARM\\_S08\\_2010\\_CouncilofEurope\\_Attachment1.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session8/AM/COE_UPR_ARM_S08_2010_CouncilofEurope_Attachment1.pdf)

<sup>9</sup> Armenia ratified Articles 13.1 and 13.2 of the Charter  
<https://www.coe.int/en/web/european-social-charter/armenia-and-the-european-social-charter>

3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.”

With the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) the International Labour Organization recommends the member states to adopt a phased multi-track approach implementing coherent and comprehensive strategies for promoting peace, preventing crises, enabling recovery and building resilience that include:

- stabilizing livelihoods and income through immediate social protection and employment measures;
- promoting local economic recovery for employment and decent work opportunities and socio-economic reintegration;
- promoting sustainable employment and decent work, social protection and social inclusion, sustainable development, the creation of sustainable enterprises, in particular small and medium-sized enterprises, the transition from the informal to the formal economy, a just transition towards an environmentally sustainable economy and access to public services;
- conducting employment impact assessments of national recovery programmes,
- providing guidance and support to employers to enable them to take effective measures to identify, prevent, mitigate and account for how they address the risks of adverse impacts on human and labour rights in their operations, or in products, services or operations to which they may be directly linked;
- promoting social dialogue and collective bargaining;
- building or restoring labour market institutions, including employment services, for stabilization and recovery;
- developing the capacity of governments, including regional and local authorities, and of employers’ and workers’ organizations; and
- taking measures, as appropriate, for the socio-economic reintegration of persons who have been affected by a crisis, in particular those formerly associated with armed forces and groups, including through training programmes that aim to improve their employability<sup>10</sup>.

At the same time the Members should, as quickly as possible:

- seek to ensure basic income security, in particular for persons whose jobs or livelihoods have been disrupted by the crisis;
- develop, restore or enhance comprehensive social security schemes and other social protection mechanisms, taking into account national legislation and international agreements; and

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<sup>10</sup> Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205):

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:3330503:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3330503:NO)

- seek to ensure effective access to essential health care and other basic social services, in particular for population groups and individuals who have been made particularly vulnerable by the crisis<sup>11</sup>.

The announcement of the World Health Organization (WHO) about an outbreak of the COVID-19 virus (COVID-19 virus) reaching the level of a pandemic on 11 March 2020, was followed by the assessment of the situation by various international organizations and their suggestions for appropriate solutions. The Organization for Economic Cooperation and Development (OECD) said in a statement that the epidemic will undoubtedly have a profound effect on the global labour market<sup>12</sup>.

Referring to the problems in the labour market due to the spread of COVID-19, the International Labour Organization (hereinafter also referred to as the ILO) has singled out the main standards of the ILO, which are applicable to the problems of labour rights in the labour market in special cases of this type.

Governments should take measures to extend unemployment benefits to workers facing a loss of earnings due to partial unemployment, particularly in cases of temporary reduction in normal or statutory hours of work, and the suspension or reduction of earnings due to a temporary suspension of work<sup>13</sup>.

Workers who are infected by COVID-19 should be entitled the right paid sick leave or sickness benefits if they are considered unemployed. Workers who are absent from work for undergoing preventive or curative medical care and whose salary is suspended should be granted a (sickness) cash benefit<sup>14</sup>.

In the current situation, the international experience is a guideline for a number of countries, in order to maintain the country's economic stability in the conditions of the epidemic and to solve the problems of the population's livelihood.

Due to the increase in economic crisis and the nature of the epidemic, countries are adopting a policy of rapid strategic decision-making aimed at solving the existing problems. The following events were held in a number of countries:

- Statutory Sick Pay (SSP). Is a regular payment to persons who are absent from work due to self-isolation or being infected<sup>15</sup>.
- Réduction de l'horaire de travail (RHT). Is a program which compensates workers in the event of reduced working hours and orders<sup>16</sup>.
- L'attestation de salaire: is a document provided by the employer to the worker after his or her leave or after his or her dismissal from work. On the basis of this document the employee can claim social or health benefit<sup>17</sup>.

<sup>11</sup> Employment and Decent Work for Peace and Resilience Recommendation No. 205, 2017, para. 21

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:3330503:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3330503:NO)

<sup>12</sup> OECD Economic Outlook, Interim Report March 2020

[https://read.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2019/issue-2\\_7969896b-en#page5%20https://read.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2019/issue-2\\_7969896b-en#page5](https://read.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2019/issue-2_7969896b-en#page5%20https://read.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2019/issue-2_7969896b-en#page5):

<sup>13</sup> ILO Standards and COVID-19 (coronavirus), p. 11:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_739937.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_739937.pdf):

<sup>14</sup> ILO Standards and COVID-19 (coronavirus), p. 19

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_739937.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_739937.pdf):

<sup>15</sup> [https://www.gov.uk/employers-sick-](https://www.gov.uk/employers-sick-pay?fbclid=IwAR1eU03CoR9F7_UGIWn_AfpoF1BLfJj4puxLpThG7EUqL2FZNDLTef8YxZQ)

[pay?fbclid=IwAR1eU03CoR9F7\\_UGIWn\\_AfpoF1BLfJj4puxLpThG7EUqL2FZNDLTef8YxZQ](https://www.gov.uk/employers-sick-pay?fbclid=IwAR1eU03CoR9F7_UGIWn_AfpoF1BLfJj4puxLpThG7EUqL2FZNDLTef8YxZQ)

<sup>16</sup> <https://www.bdo.ch/fr-ch/publications/articles/nl/coronavirus-quelles-consequences-economiques-pour-les-salaries-et-les-employeurs>

- State subsidies due to the disruptions due to the epidemic and the causal link of labour relations<sup>18</sup>.

In New Zealand the Government has developed a Wage Subsidy Scheme to help employers and workers who suffered the negative impact of COVID-19, so that employers can continue to pay their employees and employees continue to receive their salaries. The wage subsidy scheme is available to all employers (including self-employed, contractors, sole traders) who have had a 30% revenue drop due to COVID-19. A lump sum from the state is provided to employers, who pay the employee the amount of assistance during the salary payment period<sup>19</sup>.

The Republic of France has announced the creation of an exclusive system with a capacity of EUR 300 billion for companies, through which they will be able to delay tax and social payments, support the postponement of credit obligations; and the smaller companies that face difficulties will not make payments, which means they will pay neither taxes nor social payments. Water, gas and electricity bills will be suspended for these companies, and partial unemployment benefits for employees will be widely extended.<sup>20</sup>

A special state foundation has been set up in the Netherlands to provide financial support to employers so that they can pay their employees during the coronavirus epidemic. Employment benefits have also been expanded<sup>21</sup>.

**According to international experience, states take appropriate measures to mitigate or eliminate the negative economic consequences of the coronavirus by providing one-time financial assistance to employers and employees, expanding and facilitating the requirements for unemployment benefits and standards, deferring taxes and social payments by employers, suspending water, gas and electricity payments.**

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<sup>17</sup> [https://www.journaldunet.fr/management/guide-du-management/1200555-attestation-de-salaire-bien-la-remplir/?fbclid=IwAR2UVPZLxgNdDVsjFzIQdF\\_T6jwj2QbIAEooYi-wRmrhXyyYAgOiu1dfvs4](https://www.journaldunet.fr/management/guide-du-management/1200555-attestation-de-salaire-bien-la-remplir/?fbclid=IwAR2UVPZLxgNdDVsjFzIQdF_T6jwj2QbIAEooYi-wRmrhXyyYAgOiu1dfvs4)

<sup>18</sup> [https://www.karanovicpartners.com/news/slovenia-employment-situation-covid-19/?fbclid=IwAR2cmtLUf8vrSrQtdGnFonjSqMIHfT-X9asAY6JSt\\_hYbiMtF4XUs0eerl](https://www.karanovicpartners.com/news/slovenia-employment-situation-covid-19/?fbclid=IwAR2cmtLUf8vrSrQtdGnFonjSqMIHfT-X9asAY6JSt_hYbiMtF4XUs0eerl)

<sup>19</sup> <https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/wage-subsidy/>

<sup>20</sup> <https://www.fip.am/10821>

<sup>21</sup> <https://business.gov.nl/subsidy/corona-crisis-temporary-emergency-measure-now/>

# 3. Problems of Protection of Labour and Social Security Rights

After declaring a state of emergency in the country, HCA Vanadzor (hereinafter also referred to as the Organization) received 50 (fifty) reports regarding social security, health protection and labour rights. Only 28 (twenty-eight) of the alarms refer to labour rights (see Appendix 1).

The reports on labour rights identified the problems relating to the remuneration of persons in idleness, the organization of remote work, provision of paid and unpaid leave, overtime payment and reduction of working hours under the state of emergency<sup>22</sup>.

**The persistent problems relating to labour rights and social guarantees under the state of emergency indicate that the measures taken by the state to address the problems that have arisen from the current situation are inadequate and ineffective.**

## 3.1 The rights of Persons in Idleness under the State of Emergency

After declaring a state of emergency in the whole territory of the Republic of Armenia, as a result of the restrictions on the rights and freedoms of natural and legal persons, the labour rights were also restricted. In particular, in the current situation, many workers were deprived of the opportunity to appear for work for reasons caused not by their fault, as it became impossible to organize work due to the restriction of certain types of economic activity defined by the Commandant's decisions. In some cases, employers urged employees to go on unpaid leave. Many workers, assessing the situation, tried to offer the employer to allow them to use the days of their unused annual leave.

**Most of the reports received by the Organization refer to the remuneration of employees who are in idleness under the state of emergency<sup>23</sup> (see also Appendix 2).**

Before entry into force (entered into force on 8 May 2020) of the Law HO-236-N On Making Amendments to the Labour Code of the Republic of Armenia (hereinafter also referred to as the Code) on 29 April 2020, the regulations existing in the Code did not fully regulate the labour relations in the current situation, which was problematic for both employees and employers.

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<sup>22</sup> See: <https://hcav.am/covid-19-25-04-2020/>

<sup>23</sup> <https://hcav.am/labor-rights-may1/>:



In particular, the regulations, prescribed by Part 1 of Article 186 of the Code, which were into force before 8 May 2020 defined that “Where during the period of idleness<sup>24</sup> not due to the fault of the employee, the employee is not offered another job that complies with his or her profession, qualification and that he or she could have performed without causing harm to his or her health, the employee shall be paid two-thirds of his or her average hourly salary prior to idleness for every hour of idleness, but not less than the minimum hourly rate established by legislation.” In accordance with Part 6 of the same Article “The employee shall not be paid for idleness for reasons considered as force majeure in the manner prescribed by the legislation of the Republic of Armenia, as well as for idleness due to the fault of the employee.”

In accordance with Article 6 of the Law HO-236-N On Making Amendments to the Labour Code of the Republic of Armenia, Article 186 was changed and stated in the following way: “1. Where during the period of idleness not due to the fault of the employee, the employee is not offered another job that complies with his or her profession, qualification and that he or she could have performed without causing harm to his or her health, the employee shall be paid at least two-thirds of his or her average hourly salary prior to idleness for every hour of idleness, but not less than the minimum hourly rate established by legislation.”

(...

6. The employee may not be paid for idleness for reasons considered as force majeure in the manner prescribed by the legislation of the Republic of Armenia, as well as for idleness due to the fault of the employee.

7. Temporary restrictions on the rights and freedoms of natural and legal persons by legislation during the period of prevention or immediate elimination of the consequences of natural disasters, technological accidents, epidemics, accidents, fires and other emergencies, in which case it is impossible to perform work responsibilities, including remotely, is considered force majeure as defined in part 6 of this Article.

In terms of the mentioned issue, we are dealing with three different situations: idleness due to the employer's fault, idleness due to the employee's fault, and idleness due to force majeure. In cases when the activity of the economic entity is (was) prohibited by the Commandant's decisions No. 13 of 23 March 2020, No. 14 of 24 March 2020, No. 19 of 27 March 2020, No. 27 of 31 March 2020, No. 63 of 3 May 2020 and it is (was) not possible to organize the work remotely (from home), the rule of force majeure applies in terms of Article 186 of the Labour Code, in the condition of which the idleness shall not be paid. In cases when the activity of the economic entity is allowed or the work can be organized remotely (from home), but the employer refuses to organize it, then the situation is considered to be by the fault of the employer, for which the employee must be paid according to the manner prescribed by Part 1, Article 186 of the RA Labour Code.

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<sup>24</sup> “Idleness not caused by the employee at the workplace is the situation when the employer, due to production or other objective reasons, fails to provide the employee with the job envisaged by the employment contract.” Article 107, part 1.

It becomes obvious that as a result of replacing the words "shall not paid" in Part 6 of Article 186 of the Code with the words "may not be paid", the issue of remuneration of hired workers as a result of force majeure, is left to the discretion of the employer.

*Based on the statement of the RA Prime Minister made in the RA National Assembly, only the issue of compensation of salaries of the employees of the organizations funded from the RA state budget was solved as a priority, envisaging full compensation of salaries for them<sup>25</sup>. It should be noted that on 22 March 2020, some provisions of the draft law On Making Amendments and Changes to the Labour Code developed by the RA Ministry of Labour and Social Affairs were put into circulation, which, inter alia (among others) provided that the salaries of the organizations funded by the state and community budgets, as well as the employees of the Central Bank of the Republic of Armenia, are fully preserved. While, the amendments to the RA Labour Code envisaged no special regulations on the remuneration of the employees of the organizations funded from the state budget.*

Based on the abovementioned, we can state that the Government of the Republic of Armenia regulated the issue of remuneration of the employees of the organizations funded from the state budget of the Republic of Armenia without any legislative basis, taking into account only the statement of the Prime Minister.

It is obvious that the employee in the private sector, due to the situation, appearing in an unpaid idleness, is in a more vulnerable position, and the labour rights of the employees of the private sector remain without effective protection guarantees<sup>26</sup>.

It should be noted that as a result of the restriction on certain types of economic activity in accordance with the Commandant's decisions, the issue of financial security of employees of a number of organizations is not solved even by the Government's eighth program of neutralization of the economic impact of coronavirus, as only hotel and lodging services, public catering services, tourism services, hairdressing and beauty salons, retail services, including shopping activities in a mall or shopping center, except for retail services that also sell food, medicine, cigarettes or alcoholic drinks<sup>27</sup>, were considered as areas that suffered. And by decision N 558-L of 16 April 2020 of the RA Government, the list was added by the activities of land transport (minibus transport), pre-school education (private kindergartens), sports activities (sports clubs, swimming pools), entertainment and other recreational activities (except activities relating to organization of computer games and internet clubs) <sup>28</sup>. This list later was added by a number of other areas, including production of clothes, production of footwear and other leather goods, etc., providing one-time financial assistance to the workers of about 22 (twenty-two) areas, workers hired based on civil-legal contracts and individual entrepreneurs<sup>29</sup>.

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<sup>25</sup> <https://hcav.am/covid-faq-9-04-2020/>

<sup>26</sup> <https://hcav.am/labour-rights-2020-04/>

<sup>27</sup> Decision number 412-L of 30 March 2020 of the RA Government.  
[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/03/412.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/03/412.pdf):

<sup>28</sup> Decision number 558-L of 16 April 2020 of the RA Government.  
<https://www.arlis.am/DocumentView.aspx?docid=141446>:

<sup>29</sup> Decision number 646-L of 30 April 2020 of the RA Government.  
<https://www.arlis.am/DocumentView.aspx?docid=141993>:

It remains unclear what methodology and criteria were used to decide on the areas for the above-mentioned program, which do not fully include the types of economic activities<sup>30</sup> prohibited by the Commandant's decisions, in which case the employees are deprived not only of their salary but also of the support programs provided by the state.

Based on the above-mentioned problems, we believe that in order to provide adequate solutions to this situation, the Government should take effective measures, including expansion of the scope and conditions of beneficiaries of state support programs.

## 3.2 The Procedure for Organizing Remote Work

*In the current situation, remote work is the only way out for employees to keep their jobs and income, but not everyone can afford to work remotely, therefore, a large group of workers remain vulnerable.*

The RA Labour Code, which was adopted on 9 November 2004 and entered into force on 21 June 2005, at the time of declaring a state of emergency, and for some time after that - before the adoption of HO-236-N Law on Making Amendments and Changes to the RA Labour Code (29 April 2020), did not have regulations for organizing remote work.

Due to the restrictions of the state of emergency, the activities of some businesses were stopped and the state bodies urged to organize the work remotely (from home) if possible. Due to the situation, many employers started working remotely, without assessing the real risks that could result from this type of work.

Article 106.1 was added in the RA Labour Code by Article 3 of the RA Law on Making Amendments and Changes to the RA Labour Code, which defined remote work in the RA Labour Code for the first time.

**Despite the fact that the RA Labour Code defined<sup>31</sup> "remote work" through legislative changes, some issues, such as the provision of materials and tools (including computers, internet) necessary for the organization of remote work, cases of compensation for work with one's own equipment or materials with the employee's consent, or the absence of it, the possibilities, the limits for oversight of the work, performance assessment, implementation of monitoring by the employer remain problematic.**

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<sup>30</sup> Commandant's decision number 27 of 31 March 2020  
<https://www.gov.am/am/covid-economic-limits/>

<sup>31</sup> "Remote work is the work carried out not from the place of work during the period of prevention or immediate elimination of natural disasters, technological accidents, epidemics, accidents, fires and other emergencies, in the case when due to these events it is not possible to ensure the implementation of work in the place of work", RA Labour Code, Article 106.1, part 1

### 3.3 The Right to Paid and Unpaid Leave

**After the declaration of the state of emergency, many employers demand that employees use paid and unpaid leave, which is a gross violation of workers' labour rights.**

In accordance with Part 2 of Article 164 of the Labour Code of the Republic of Armenia “Annual leave for the first working year shall be granted, as a rule, after six months of uninterrupted work at the organisation, except those performing combined job. For the second and subsequent working years annual leave shall be granted at any time of the working year, in accordance with the succession for granting annual leaves. The procedure for establishing succession shall be defined by a collective agreement, and where such agreement is not made — upon the consent of the parties.” In accordance with Part 3 of Article 176 of the Labour Code “In the cases prescribed by the collective agreements or employment contracts or upon the consent of the parties, the employee may be granted an unpaid leave for duration of not more than 60 days throughout the year (...).”

Through these regulations, the legislator has envisaged only a procedure for providing leave with the consent of the parties, which excludes any requirement for the employee to take/use the paid or unpaid leave upon the demand by the employer. As a result of the amendments to the Labour Code, Part 3 of Article 106.1 of the Code provides that in cases where it is not possible to continue the work stipulated in the employment contract, including remotely, the employer provides the employee with an annual leave upon the request of the employee in case the latter has unused annual leave. The amendments to the Labour Code confirm once again that the employer's claim to take/use the paid or unpaid leave is ruled out in all cases.

**Therefore, due to the above-mentioned issues, the problems existing in practice and the lack of mechanisms for their immediate and adequate solution allows us to state that giving the RA Healthcare and Labour Inspectorate the function of implementing the state oversight of the implementation of the requirements of labour legislation, other regulatory legal acts containing collective law norms, collective and labour contracts during the prevention of natural disasters, technological accidents, epidemics, accidents, fire and other emergencies or during the elimination of their consequences was appropriate, but belated.**

### 3.4 Legal Consequences of Reduced Working Hours

***Due to the current situation, some employers reduce their working hours and pay the employee in accordance with the reduced working hours.***

In accordance with Part 1 of Article 105 of the Labour Code of the Republic of Armenia, “The essential conditions of employment are allowed to be changed in the case of changing the conditions of production capacity and/or economic and/or technological and/or organisation of labour.” The regime of working hours (work and rest) is an essential condition for work<sup>32</sup>. According to point 2, Part 2 of the same Article “In case of reducing the daily and (or) weekly working hours, when other conditions are preserved, the employer is released from the obligations of notification established by Article 115 of this Code.”

In accordance with Part 2 of Article 180 of the Labour Code “The hourly, work-based and monthly rates, other forms, amount and conditions of remuneration for work, the labour standards shall be defined by the collective agreement or the employment contract.” In accordance with Part 2.1 of the same Article “The employee’s hourly rate for the current month shall be determined by dividing the main salary or official rate in the given month by the total number of working hours of the month established by the legislation of the Republic of Armenia, or the collective agreement or employment contract or by a legal act of the employer or upon the consent of the parties, and the employee’s daily rate for the current month shall be determined by dividing the main salary or official rate in the given month by the total number of working days of the month established by the legislation of the Republic of Armenia, or the collective agreement or employment contract or by a legal act of the employer or upon the consent of the parties.”

It becomes obvious from the Comparative analysis of the mentioned articles, that the Code allows the employer to reduce the weekly working hours in case of changing the conditions of production capacity and/or economic and/or technological and/or organisation of labour, and to re-organize the payment in accordance with Part 2.1 of Article 180 of the Code. The above-mentioned regulations of the Labour Code allow employers to be flexible - to describe the situation as a basis for changing production capacity and to reduce working hours, to pay the employee in accordance with working hours.

Meanwhile, in the case of an employee with normal working hours (40 hours per week), receiving a salary of AMD 90,000 (ninety thousand), a reduction of 20 hours per week leads to a salary below the minimum salary.

**Therefore, we believe that this problem should be solved either through state support programs or through relevant legislative regulations, stipulating that in cases when weekly working hours are reduced due to the declaration of a state of emergency in Armenia, the employee should be paid in accordance with the actual working hours he or she worked or the actual work performed, but not less than the minimum monthly salary defined by the legislation.**

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<sup>32</sup> Working hours - normal working hours or partial working hours or short working hours or the sum of the working time (RA LC Article 84, part 1, point 11).



### 3.5 The Rights of Unregistered/Undocumented Employees

*In the current situation, unregistered workers are more vulnerable. They were not only deprived of their salaries, but also did not have the opportunity to be included in the Government's anti-crisis programs.*

The key objective of the protection of labour rights of unregistered employees is raising this issue by the unregistered employees. In particular, citizens who apply to the organization for legal support generally refuse to speak about this issue, reasoning that they will lose their jobs. In the current situation, one of the priority tasks of the state should be the protection of the rights of this group.

### 3.6 Problems Relating to the Provision of Unemployment Benefits

With the spread of the new coronavirus, economic crises were predicted around the world, resulting in job cuts. Many international organizations, including the ILO, issued statements urging states to take appropriate measures, including facilitation of conditions for unemployment benefits for those facing a loss of jobs caused by the situation (see the first part of the report).

Under the excuse of implementing active employment programs, unemployment benefits in Armenia have been suspended since 1 January 2014.

In the current situation, the state provided only the sixth anti-crisis program for those who lost their jobs and lump amount of AMD 68.000 (minimum monthly salary) financial assistance was provided to those people who were dismissed from their job from 13 March to 30 March, 2020 and did not get another job during the same period<sup>33</sup>. However, the financial assistance provided under this program cannot be considered an adequate solution to the problem, given that the assistance is provided once, and the current situation inevitably affects the country's economy, and no one can predict how long it will take to eliminate the consequences. Therefore, any employee who has lost his or her job in this situation, will face the problem of finding a new job and earning the living in the coming months.

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<sup>33</sup> Decision number 410-L of 30 March 2020 of the RA Government  
[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/03/410.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/03/410.pdf):

## 4. Government's Anti-Crisis Programs

Decision No. 354-L of the RA Government was adopted on 26 March 2020, which approved the comprehensive program of measures to counteract the consequences of the coronavirus. The comprehensive program envisaged the following:

- support to individual businesses in Armenia according to sectors to mitigate the risks of predictable current realization due to the spread of coronavirus;
- stable and ongoing development of economy;
- adjustment of capital investment priorities by the state and activation of the implementation process;
- identification and support of groups of people who have lost their jobs due to coronavirus (including those who are self-employed), for whom it may be impossible to find another job in the near future.
- ensuring the social security of socially vulnerable groups, supporting them and the economic stabilization of their families;
- equipping the healthcare system to effectively fight coronavirus;
- increasing the effectiveness of managing food, pharmaceutical, raw material, material and other necessary reserves;
- approving the funding plan for the activities envisaged by the program, according to the sources and indicative capacity.

After the approval of the comprehensive program of measures to counteract the consequences of coronavirus, the Government of the Republic of Armenia implemented 11 (eleven) social programs, within the framework of which one-time financial assistance was provided to the following groups:

1. Families with children under 14 years old, where the child's parent or parents were fired between 13 March and 25 March 2020 (inclusive), thus being deprived of their main source of income<sup>34</sup>.
2. Persons having been fired from 13 March to 30 March 2020 and having no other jobs during the same period<sup>35</sup>.
3. Single pregnant women or pregnant women having no job as of 30 March 2020, whose spouses did not have a job during the same period<sup>36</sup>.
4. Employees and individual entrepreneurs of the affected sectors<sup>37</sup>.

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<sup>34</sup> The fourth anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/03/358-%D4%BC.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/03/358-%D4%BC.pdf):

<sup>35</sup> The sixth anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/03/410.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/03/410.pdf):

<sup>36</sup> The seventh anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/03/411.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/03/411.pdf):

<sup>37</sup> The eighth anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/03/412.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/03/412.pdf):

5. Families with minor children where the parents, single parent or guardian have no registered job<sup>38</sup>.
6. Families who could not afford to pay for utilities<sup>39</sup>.
7. Families who are beneficiaries of family and social benefit program<sup>40</sup>.
8. The students of the educational institutions of the Republic of Armenia having higher and postgraduate (clinical residency) educational programs<sup>41</sup>.
9. Unemployed people through creating temporary jobs in the agricultural sector<sup>42</sup>.

**Despite the fact that the Government's anti-crisis programs were intended to help people facing social problems caused by the spread of coronavirus, it should be noted that the reports received by the Organization show that the measures taken are not adequate to the problems existing in this situation.**

□ In particular, through the call to the Organization, the citizen informed that she was on childcare leave of up to 3 years old child, and the husband had a registered and main job and his salary for the period of 1 January – 1 March, 2020, did not exceed AMD 500,000. However, her request submitted to the online system of the social security service within the ninth anti-crisis program has been rejected, while the requests of other similar families have been satisfied. It is noteworthy that the employees of the police, the Ministry of Defense, the Patrol Service Regiment, who received the financial assistance within the ninth program, also faced a problem, as they were urged to return the money they had received<sup>43</sup>.

□ In another case, the citizen informed that his request within the framework of the ninth anti-crisis program was rejected on the grounds that his family was included in the family vulnerability assessment system, while he had a reference letter from the regional social security agency stating that his family is not included in that system and they do not receive any benefit as of the date of request submission.

□ The applications submitted by the citizens within the framework of the ninth anti-crisis program are rejected on the grounds that according to the data entered, persons have not been found in the state population register, while the citizen assures that he or she is registered and resides in the same place of residence.

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<sup>38</sup> The ninth anti-crisis program

<https://www.irtek.am/views/act.aspx?aid=104602>:

<sup>39</sup> The eleventh, twelfth, sixteenth anti-crisis programs

1. [https://www.e-gov.am/u\\_files/file/decrees/varch/2020/542-L.pdf](https://www.e-gov.am/u_files/file/decrees/varch/2020/542-L.pdf),

2. [https://www.e-gov.am/u\\_files/file/decrees/kar/2020/04/550-%D4%BC%D4%BC.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/04/550-%D4%BC%D4%BC.pdf),

3. [https://www.e-gov.am/u\\_files/file/decrees/kar/2020/05/658-%D4%BC.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/05/658-%D4%BC.pdf):

<sup>40</sup> The thirteenth anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/04/557.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/04/557.pdf):

<sup>41</sup> The fourteenth anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/04/596voroshum.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/04/596voroshum.pdf):

<sup>42</sup> The fifteenth anti-crisis program

[https://www.e-gov.am/u\\_files/file/decrees/kar/2020/04/642.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2020/04/642.pdf):

<sup>43</sup> <https://news.am/arm/news/576495.html>

□ An employee of a beauty salon who applied to the organization informed that although hairdressing and beauty salons were included in the list of affected areas within the eighth anti-crisis program, she and her colleagues could not receive the assistance.

□ The organization received reports from citizens that their requests were successfully entered in the online system as part of the anti-crisis program, but they did not get any feedback about the acceptance or rejection of the request, about the money transfer to their preferred bank and only after checking with the bank they were informed that the payable amount had been transferred to the bank.

□ The access to applying to competent state authority has a special place among the problems that have been recorded. Getting clarifications from the competent authority on the phone about the problems that citizens faced under the state of emergency, fails due to overload of the hotline. As a result, the problem remains unexplained or the citizen tries to get clarification on the problem in another way.

The above-mentioned issues allow us to state that the targeting of social assistance programs is not fully ensured within the framework of the Government's anti-crisis programs.

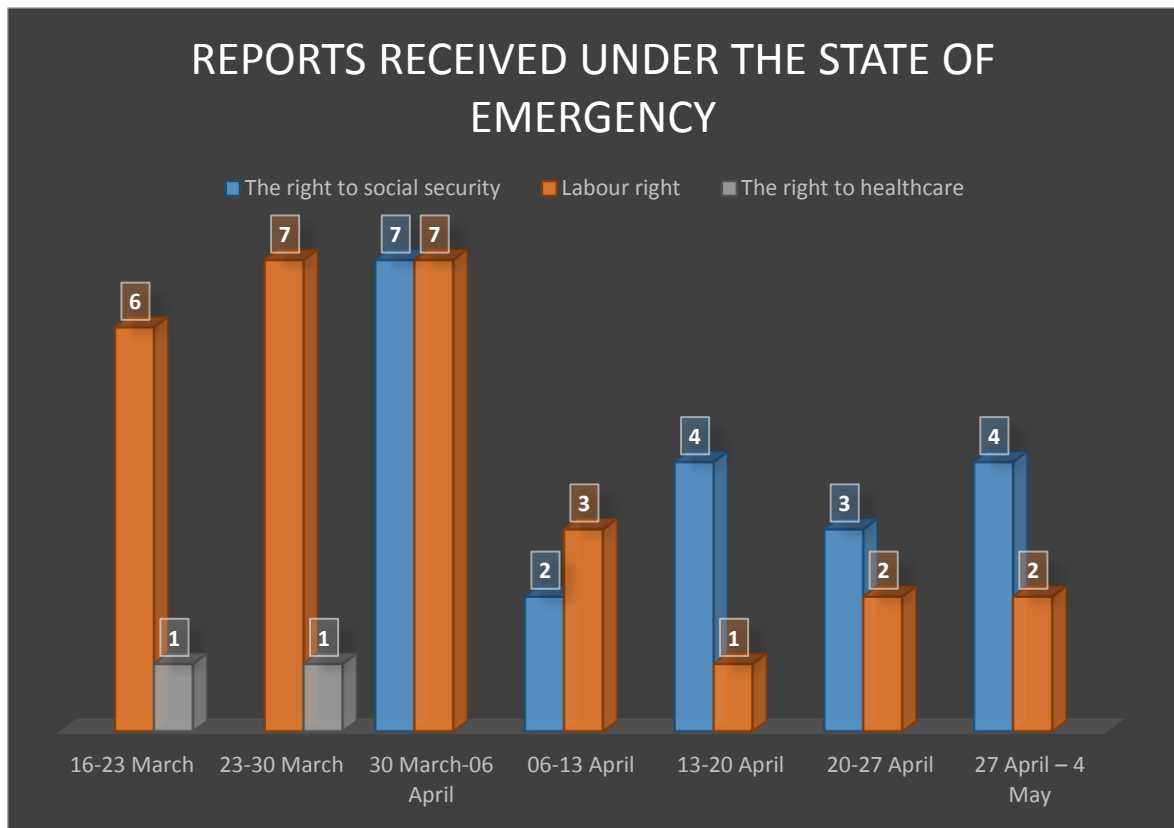
## 5. Recommendations

*HCA Vanadzor office presents recommendations on the basis of the problems identified as a result of the reports received by the citizens under the state of emergency:*

- *to expand the scope of state social assistance programs and include all persons facing social problems as a result of the spread of coronavirus, including the following:*
  - *to change the condition of the sixth anti-crisis program relating to dismissal from work in the period from 13 March to 30 March, 2020 and extend that period until the end of the state of emergency;*
  - *to expand the list of areas and individual entrepreneurs affected by the spread of coronavirus within the framework of the eighth anti-crisis program;*
  - *to develop mechanisms for assessing the consequences of the coronavirus aiming to assess the impact of the coronavirus in the labour market and implement targeted measures;*
  - *to develop legal mechanisms in order to identify unregistered employees, to control the process of registration of employees by employers and conclusion of employment contracts with the aim of reducing hidden employment and protecting the labour rights of unregistered employees.*
- *to restore the unemployment benefit provided by the state to the unemployed as a guarantee for protection from poverty and social injustice.*



# Appendix 1



# Appendix 2

## Issues Relating to the Labour Rights under the State of Emergency

