

Enhanced Surveillance of Citizens During SARS-Cov-2 Coronavirus Pandemic (COVID-19)

Ksenija Butorac^{1*}, Dijana Gracin² and Ivan Dešić³

¹Police University College, Ministry of the Interior, Zagreb, Croatia, European Union

²Assist Prof, University of Zagreb, Military Studies, Zagreb, Croatia, European Union

³Postgraduate at the University of Rijeka, Rijeka, Croatia, European Union

Submission: July 06, 2020; Published: July 20, 2020

*Corresponding author: Ksenija Butorac, Full Prof, Police University College, Ministry of the Interior, Zagreb 10 000 Av. Gojka Šuška, Croatia, European Union

Abstract

The current crisis caused by the new coronavirus SARS-CoV-2 (COVID-19) has started many discussions about the possibilities of applying modern technologies in the control of this disease. The authors of this paper, based on relevant literature, discussed the advantages and disadvantages of modern tracking methods and analyse the key problems that can be caused by tracking of GPS locators on a mobile device, questioning the right to privacy and the right to freedom of movement. The core of this paper is the treatment of the case law of the European Court of Human Rights and Article 8 of the European Convention for the Protection of Human Rights, in addition to the current legislation in the Republic of Croatia regarding authority when fundamental human rights are questioned, especially within criminal law and security services operations. A comparative overview of different approaches to combating the COVID-19 pandemic in the countries of the European and American continents is presented, as well as some legislative and judicial solutions.

Keywords: COVID-19; Electronic surveillance of telecommunications and movement; Human rights; Right to privacy

Abbreviations: COVID-19: Coronavirus, SARS-CoV-2: Severe Acute Respiratory Syndrome Coronavirus 2 of the Genus Beta Coronavirus

Introduction

The first half of 2020 was indeed challenging for the Republic of Croatia. With constant problems in economy and industry and upcoming elections that again divided nation, Croatia has been hit with two major disasters – the world pandemic known as Coronavirus COVID-19 and the earthquake magnitude 5,5 at Richter scale that hit Zagreb, the capital city of Croatia on 22 March. The following events resulted in need to make an alternative approach in the matter of security, health and human rights in the time of similar emergencies. Numerous ideas have come to the mind of authorities, including mobile device tracking, ban of the transport and movement, surveillance of the persons infected with COVID-19 and other possibilities that reduce human rights guaranteed by The Constitution and related international conventions. Measures that caused restrictions of the human rights issued the deep analysis from both a legal standpoint and national security. Since the Republic of Croatia presides over the Council of the European Union in the first half of the 2020, with

reference to the ongoing COVID-19 crisis and the fact that this country take place within the states with the lowest morbidity and mortality rate of coronavirus victims, this paper addresses human rights protection, in particular controversies in tracking of the smartphones, as well as different approach of the countries worldwide within the scope and contents of the rights to the privacy and freedom of movement. In this regard, the recent referent literature and the comparative distinctness between the Republic of Croatia and other states of the American and European continents will be analyzed.

Challenges in the Application of Modern Technologies During the Covid-19 Pandemic and their Impact on the Exercise of Fundamental Human Rights and Freedoms

The criterion which includes the specification of the circle of persons to whom the restrictive measure should apply derives

from the interpretation of Article 8 European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) [1]. the practice of the European Court of Human Rights (hereinafter: ECtHR) and the Criminal Procedure Act of the Republic of Croatia (hereinafter: CPA) [2] in cases of implementing special evidentiary actions, which can be compared by analogy with conducting supervision and tracking the location or contacts of persons during the COVID-19 crisis. The ECHR stipulates that everyone has the right to respect of his/her private and family life, his/her home and his/her correspondence, and the State shall refrain from interfering in those rights unless it is necessary, inter alia, for the interests of national security and for protection of health or morals or the rights and freedoms of others [1]. The countries to which the practice of the ECtHR applies are the countries of the European continent that are signatories to the ECHR. In its practice, the ECtHR referred to a violation of the Article 8 of the ECHR in several European countries. In the case of *Klass and others v. Germany*, the ECtHR found that protection against "imminent dangers" threatening a "free democratic constitutional order" was a legitimate argument of the state conducting secret surveillance in the interest of national security. The ECtHR found that German procedural laws were sufficiently precise regarding determining the scope and frame of actions that affect the human rights and were sufficient to ensure the proportionate implementation of measures with legitimate goals [3]. Therefore, the regulations and the procedure comply with the principle of proportionality. Contrary to the *Klass* case, the ECtHR found a violation of Article 8 in the case of *Malone v. UK*. The ECtHR found that the regulation on secret surveillance and monitoring of telecommunications was too general and too broad to meet the requirements of Article 8 [4]. Namely, recording calls, wiretapping and use of data obtained in this manner, without the existence of sufficient legal regulations governing such conduct or without the consent of the person whose calls are recorded, constitutes an unjustified invasion of privacy and a violation of Article 8 of ECHR [5]. In 2010, the ECtHR the first case involving GPS location tracking, in the case of *Uzun v. Germany* [6] and concluded that there had been no violation in Article 8 Paragraph 2 of the ECHR because the measure of tracking had a legitimate aim of protecting national and public security. The principle of proportionality was met because GPS surveillance started when all alternative possibilities were exhausted, the measure was implemented within the acceptable timeframe of three months and was limited to tracking of car movements only. GPS surveillance was necessary in a democratic society because of the gravity of the offense, and the ECtHR re-established that each State must inform the individual of the infringement of the right to privacy under Article 8 in cases involving infringement of his right to privacy, with setting minimum standards, including for third parties, destruction of collected data and time limits [7]. Roagna points out that discreet surveillance measures are justified only if they provide functional protection for democratic institutions [7].

The impact of COVID-19 on the economy, socio-economic factors and health indicates a reasonable comparison of the actions of the location monitoring measures taken in exceptional circumstances with the measures taken in serious criminal offenses, which question the right under Article 8 of ECHR.

Electronic Location Tracking of Telecommunication Devices

One of the proposed methods of controlling the coronavirus SARS-CoV-2, with a ban on freedom of movement and strict self-isolation, is electronic tracking of the location of telecommunications devices of infected persons or persons in that were in possible contact with an infected person, as well as the entire population of a country, with the aim of pandemic control and impact analysis of implemented measures. For example, EU countries, including Austria, Germany, Belgium, Italy, France and Spain, in cooperation with the medical professionals and mobile teleoperators, try to analyze and determine the behavior of the target group and the impact of measures to prevent the spread of COVID-19, as well as to anticipate new potential hotspots [8]. In Israel, the Israeli Prime Minister Benjamin Netanyahu has been given the power to track the mobile data of civilians, primarily aimed at their movement, to the Shin Bet secret service (Eng. Israel Security Agency, Hebrew: Sherut ha-Bitahon haKlali), specialized for activities in Israel, i.e.. counter-intelligence activities directed against Arab terrorist groups and the protection of high-ranking officials and facilities. The technology intended for locating and identifying members of terrorist groups will be used for the purpose of locating and monitoring residents suspected or infected with COVID-19 [9]. In the United States, surveillance and analysis officers monitored activities, i.e. the locations of Boston residents, which they selected as a test sample, and tried to determine the exact proportions of the effect of maintaining social distance on a daily basis from data collected from more than 180 applications [10]. Based on the results of the analysis of population activity monitoring, the authors Martin Calvo D et al, [10] indicated a positive impact of social distance if 50% of the population adheres to the measures. By adhering to the measures, the disease rate is smaller, but when the measures are lifted, a new wave of infection occurs (Figure 1). Various countries have already started implementing applications that include mobile device tracking. It should be emphasized that the use of the application is voluntary and depends fully on the mobile device owner. Among the first countries to start using the application for monitoring citizens is Singapore, the so-called Trace Together App [11]. The operation of the application is based on a Bluetooth connection, which transmits a signal from the mobile phone to a limited distance, and if another person who owns the same application enters the field of transmitted Bluetooth signal, the owner of the mobile device will receive feedback from the central server, with the emphasis if he/she has recently been in direct or close contact with a person infected with COVID-19. The identity of the persons

is not known to other users of the application. Simply, the circle of people who have access to information about possible contact with an infected person are person A person B (who was in a direct contact) and vice versa, a central server that stores data on the movement of people who installed the Trace Together application and other persons using the application [11]. The problem with this application is that a person receiving information, in case of data exchange via the application on possible contact with a person infected with COVID-19, if he/she had a minimum number of contacts with the surroundings, can identify the infected person based on independent logical assessment or basic knowledge of the operation of the application algorithm. The revealed identity can lead to unintended consequences, such as stigmatization and public condemnation by his/her surrounding people, and the level

of (mis)understanding depends on the sociological environment of the person, culture [12,13] education upbringing and family background, i.e. negative public opinion about the person may be created, which is described as „social construction“, when each phenomenon can be subject to definition, but only certain patterns of behavior tend to become a fundamental form of a particular behavior, i.e.. a stereotype. A key element of social construction is the “idea of stability” [12]. In order to understand the intrusion into the privacy sphere of the individual and his/her electronic surveillance, after the analysis of available sources, it is necessary to state the basic advantages and disadvantages of measures for electronic surveillance of locations of telecommunications devices.

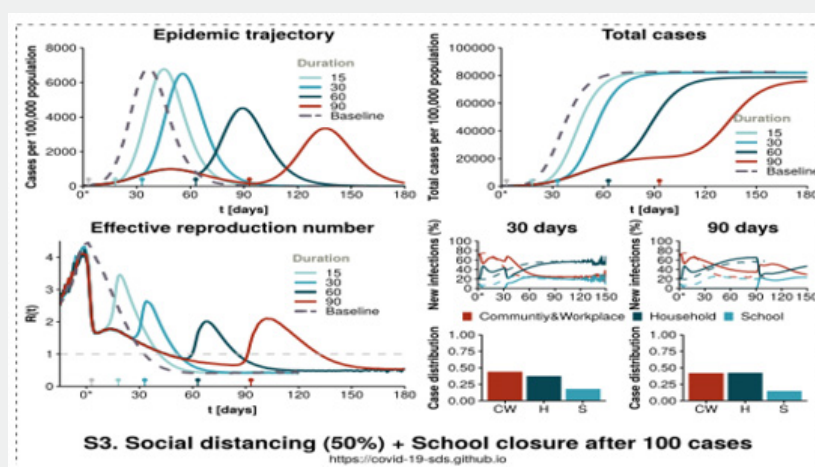


Figure 1: Effectiveness of social distancing strategies in Boston.

For example, Oliver et al. [14] deal with the positive aspects and advantages of using surveillance applications in their paper and they agree that monitoring the location of telecommunication devices may result in better awareness of the real situation, knowledge of causes and consequences, predicting possible consequences of the disease and assessment of its impact. Awareness of the real situation includes monitoring the location and interaction of the population and the situation on the ground, based of which feedback on the real effects of the pandemic can be obtained, which can assist in further analysis on the introduction of restrictive measures and the effect of those measures. By knowing the causes and consequences, the focal point (zero patient) from which the disease spread may be spotted, as well as the extent of the effect of COVID-19. By monitoring the interaction of infected persons and those who have been in contact with them, the possible consequences of the spread of the disease may be predicted, based on movement and contacts, and the usual pattern of behavior of controlled subjects may be predicted, which in turn can lead to the right analysis and the decision of taking the measures to suppress the spread of disease. Ienca and Vayena agree with this statement, and believe that based on the collected digital data,

a credible analysis can be created, and the spread of the disease predicted [15]. By assessing the impact, it is possible to determine the extent of the spread of the disease to particular areas, the impact of the instructions of the Civil Protection Headquarters on human behavior and the socio-economic impact of the infection. The socioeconomic consequences of COVID-19 were pointed out in their work by Ozili and Arun, as they noted that COVID-19 crisis has affected the stock market, the cancellation of major events, concerts, weddings, conferences and fashion shows where knowledge is exchanged, networking and trade agreements are made, as well as the reduction in supply and demand [16]. On the other hand, the negative consequences of the establishment of electronic monitoring of the location of telecommunications equipment must be also mentioned. Depending on the holder of the rights of an application, the countries that initiated the idea, as well as large private companies such as Apple and Google, can manipulate and influence the settings of applications designed to track potential carriers of infectious diseases. This may result in a situation where private companies, considering their social and financial power [17] may have supranational authority over the countries that initiated the application, since Apple and Google

provide a license to use the application on their operating systems (e.g. information sharing about the citizens of a particular country with private companies that allowed them to work on their own operating systems), as pointed out by Scott et al. [18]. For the purpose of installation of the tracking application on a mobile device, it is possible to request access to contacts, photographs, videos, and other programs, or otherwise the application will not be able to run, which enables manipulation of access to data that do not include strict location tracking. Stigmatization as a social condemnation that can result from monitoring an individual's mobile device can leave strong socioeconomic and psychological consequences to that person. The influence of culture and education in creating stigma was pointed out by Nash & Tait [12, 13].

Data collection authorities may abuse their powers and use information collected during the monitoring of mobile data contrary to their purpose. This applies, for example, to security authorities and intelligence or security and intelligence agencies (as was the case in Israel - Shin BeT) [19], i.e. the application creators and large mobile telecom operators. Finally, what must be pointed out is the problem of restricting fundamental human rights. The introduction of measures and monitoring of mobile devices questions the credibility of democratic principles and the rule of law, as the COVID-19 crisis has shown how easily human rights can be restricted even in undefined of existing emergency situations. The comparative analysis identified a number of advantages and disadvantages in terms of using the application for tracking the locating the persons with the aim of combating the COVID-19 pandemic. As a phenomenon whose final effects on human health cannot yet be fully determined, the disease caused by the new SARS-CoV-2 coronavirus is a real threat to human health, as indicated by the high mortality rate among the elderly and chronically ill patients and the current situation in the world shows 2,696,661 infected individuals. Data as of 20 May 2020 indicated 4,971,691 cases of infection, while the number of deaths was 324,163, representing 6.5% of deaths in the overall sample [20].

Awareness of the scale of the pandemic, knowledge of the causes and consequences, and the ability to predict and assess the impact of a pandemic allow for a timely response by the authorities and the professionals, which greatly contributes towards minimizing the impact of the pandemic. Technology and science, among other things, and applications that contain the option of transmitting the user's location, as well as information about established contacts, have an unquestionable role in that. In this way, a more detailed analysis of the course of the disease [21] the development of a strategy and planning to combat its effect was made possible. On the other hand, it is necessary to take into account the negative consequences that may arise from technical monitoring of the population. Recent cases of privacy breaches have shown how large companies like Facebook easily share information about their users for analysis purposes, e.g. in

the Cambridge Analytica scandal, when a consulting marketing company helped the present US President Donald Trump to run a presidential campaign based on analysis of Facebook user profiles in the US [22]. As a consequence of compromising the right to privacy, there is also a danger of misuse of information. Giving unlimited powers to a certain body, public or private, is gambling with the trust of its own citizens. Activating intelligence and security services for data collection purposes is a questionable method as there are no strong supervisory mechanisms that can set clear boundaries for invading privacy.

The Watergate case, which concerns political scandals and wiretapping of the headquarters of the National Committee of the Democratic Party in the Watergate Hotel and residential complex in Washington by the American secret services from 1972 to 1974, showed how devastating the role of the secret service can be. In the Republic of Croatia, the problem arises from the fact that many telecommunication companies, such as T-com, are foreign-owned, which may represent additional obstacles in the surveillance of the Croatian population, both during the COVID-19 crisis and in peacetime, which will be discussed below. A comparative analysis of these advantages and disadvantages has shown that the use of technology really helps to analyze and combat the spread of the pandemic on a large scale. However, the authors agree that along with the application of modern monitoring methods, monitoring mechanisms need to be developed in order to reduce data misuse and invading fundamental human rights beyond the set limits, as the state government can assess that continuation of electronic monitoring of telecommunications would have a positive preventive impact. At the same time, the USA can justify the lower costs of creating an application as compared to the planned employment of contact tracers who would monitor the movement of the population from the publicly available information and databases, since currently projected costs of investment in health infrastructure are between 3 - 6 trillion dollars [23].

Overview of Croatian Legislation and Comparative Analysis of Covid-19 Control Practice in the World

The Constitution of the Republic of Croatia (hereinafter: The Constitution) [24] is the highest act of the Republic of Croatia that guarantees fundamental human rights. It guarantees the right to liberty, equality, national and gender equality, peace, social justice, respect for human rights, inviolability of property, preservation of nature and the human environment, the rule of law and a democratic multi-party system [24]. However, these rights may be limited by law in certain situations where it is necessary to protect public morals, human lives and health, if such restrictions are proportionate to the need for the restriction [24]. They can be also limited in times of war or imminent threat to the independence and unity of the state, and major natural disasters, which the Croatian Parliament must decide by a two-thirds majority of all members, taking into account that the scope of restrictions must be appropriate to the nature of the danger

[24]. Since the Constitution is a foundational act of the Republic of Croatia, its general provisions are stipulated in more detail by national legislation. As a starting point for the selection of priority provisions of The Constitution, which will represent an argument for any further action of authorized state institutions, it is necessary to qualify the situation created by the effect of COVID-19. In order to determine the legal framework for action, it is important to make a distinction between certain terms of Articles 16 and 17 of The Constitution: a) protection of human life and health or b) major natural disaster. Some authors lacked the agreement on the definition of the term state of emergency, i.e. major natural disaster. When the qualification of the state of emergency doesn't exist, taking into account the fact that the Parliament, at the proposal of the Government of the Republic of Croatia, adopts amendments to the law for the purpose of combating the pandemic proportional to the actual situation, a position is taken in accordance with the Article 16 of The Constitution, i.e. acting within the limits of the regular conditions [25]. The Article 16 of The Constitution is supported by the fact that no parliamentary procedure for acquiring a 2/3 majority has been initiated with the aim of restricting certain fundamental human rights, in accordance with Article 17 of The Constitution. Mr. Abramović, the judge of the Constitutional Court of the Republic of Croatia, takes the position that fulfilling the principle of adequacy of the nature of danger from Article 17 of The Constitution is easier to adhere to than the principle of proportionality, claiming that the situation is "more a factual than a legal category", arguing that the a global pandemic, halt of human movement and commodity circulation, quarantine and isolation are obvious signs of a state of emergency [26].

This is also supported by the fact of the unknown nature of the SARS-CoV-2 virus, which in part makes it impossible to conduct a proportionality test [26]. Due to the lack of legal understanding of the scope of the notion of state of emergency, by the amendment to the Law on Civil Protection System [27] the SARS-CoV-2, which can serve as a precedent for future situations, is defined as a circumstance involving an event or a situation that could not have been predicted and which could not be affected, and which endangers the life and health of citizens, property of greater value, significantly impairs the environment, economic activity or causes significant economic damage. Furthermore, the legal problem are the decisions of the Civil Protection Headquarters of the Republic of Croatia, which did not have legal authority in the positive regulations of the Republic of Croatia, and on the basis of which the Headquarters adopted measures that significantly limited fundamental human rights, such as freedom of movement [28]. Decisions made until 17 April 2020, when the amendment to the Law on Protection of the Population from Infectious Diseases (hereinafter: the ALPPID) [29] entered into force, were not in accordance with the then valid Law on Protection of the Population from Infectious Diseases (hereinafter: LPPID) [30]. The amendment to the LPPID in the transitional and final

provisions, with the aim of retroactive action for the purpose of obtaining an appropriate legal base, stipulates that the decisions of the Civil Protection Headquarters of the Republic of Croatia adopted for the immediate protection of life and health of the population from 11 March 2020 until the entry into force of the amendments to the LPPID should be considered as general measures for the prevention and control of infectious diseases provided for in Article 10 of the LPPID. The above stated is contrary to The Constitution, which stipulates that laws and other regulations of state bodies and bodies with public authority cannot have retroactive effect, except when, for specially justified reasons, only certain provisions of the law may have retroactive effect [24]. "Certain provisions" in the sense of Article 90 of The Constitution imply a certain legal obligation from the normative part, and not a provision which seeks to subsequently create a legal basis for other decisions or acts. Possibilities for retroactive effect of the decisions of the Headquarters could arise if the provisions of individual decisions are incorporated into the articles of the LPPID, which would meet certain nomotechnical standards. It must also be pointed out that the Minister of Health is not a member of the Civil Protection Headquarters of the Republic of Croatia, as indicated by the adopted ordinances i.e. decisions. [31-33] Without the Minister's co-signature whereby the decisions of the headquarters would receive a certain legal basis provided by the LPPID, the doubt in the legitimacy of the decisions of the Civil Protection Headquarters was confirmed. For the purposes of a comparative presentation in the further text of the paper, it is necessary to define the legal basis and scope of powers of domestic competent institutions regarding the invading fundamental human rights during the COVID-19 crisis and the conditions for implementing measures. In the Republic of Croatia, operational methods that include discreet surveillance, monitoring and communication, or in some way lead to or may lead to restrictions on certain constitutionally guaranteed rights, are regulated by a) general regulations (Criminal Procedure Act) and b) special regulations (Police Duties and Powers Act (hereinafter: PDPA) [34].

The Croatian Security and Intelligence System Act (hereinafter: CSISA) [35] primarily in the scope of criminal procedural, police and security-intelligence area. The Security Intelligence Agency (hereinafter: SOA) has the power or authority to take measures to monitor the location of a certain person pursuant to Article 33, paragraph 3, item 1 of CSISA, which is related to the secret surveillance of the telecommunication services, more precisely in sub-item c) which stipulates secret surveillance of the user's location, and which is approved by the director of the SOA by a written and reasoned order [35]. It is important to point out that the Council for Civilian Supervision of Security Intelligence Agencies participates in supervision of such activities in order to exercise civilian supervision over the work of security intelligence agencies. For the purposes of security intelligence agencies and police bodies, the Operational

Technical Centre activates and manages the measure of secret surveillance of telecommunications services, activities and traffic, as well as operational-technical coordination [36] including sending requests to the public communications service operator to check and determine the position of communication device and establish places where persons are located [37]. PDPA stipulates the possibility that the police requests from communication service providers, based on the written approval of the Chief of the Criminal Police Directorate or the Chief of the National Police Office for the Suppression of Corruption and Organized Crime or the Chief of Police Administration, the establishment the position of the communication device, as well as determining the location of persons who establish electronic communication, to prevent danger and to search for persons and objects [34]. The approval is based on the facts from which it is evident that other actions could not or will not lead to results in the police work or the achievement of that goal would be associated with disproportionate difficulties [34]. The police perform special evidentiary actions in cases of exhaustively listed criminal offenses and in cases when the stipulated prison sentence is longer than 5 years [2] if the criminal investigations could not be performed in another way or if it would be possible only with disproportionate difficulties, upon the written request of the State Attorney [2]. Since this is a serious and invasive procedure that questions the fundamental human rights to privacy and free correspondence, it can only be initiated in cases of reasonable doubt. The grounded suspicion is a higher degree of probability, however, the level of grounded suspicion cannot be clearly defined and determined in percentages, as it depends on a free assessment of the circumstances involved [38].

Regarding special evidentiary actions, the CPA stipulates verification of the establishment of telecommunication contact [2] only for the purpose of collecting evidence for criminal offenses for which it is possible to order special evidentiary actions and other criminal offenses with the stipulated prison sentence longer than five years. Verification of the establishment of a telecommunication contact includes determining the position of the device and the location of the persons making the telecommunication contact. The ECtHR established a violation of fundamental human rights under Article 8 of ECHR in the case of Dragojević vs. Croatia [39] noticing the same infringement as in case Malone. The ECtHR considers that domestic law did not sufficiently clearly and precisely regulate the discretion of the competent authorities in determining the implementation of supervisory measures and that in practice it did not provide adequate safeguards against possible abuses, whereby the discretion given to the executive authorities would be expressed as unlimited power. Uncertainty and mistrust in the activities of national institutions and the already existing distrust in the justice system of the Republic of Croatia regarding the invading of fundamental human rights during COVID-19 are further encouraged by the fact that procedures and data involving the protection of national security (and COVID-19 really is that) may be thus classified considering the degree of threat to the protected, if the data represent the security interest to the Republic of Croatia [40]. The institutions can thus justify location surveillance and the practice of the ECtHR has already identified the unsafe practice of judicial and security institutions regarding human rights to privacy, which follow a “pattern”, using the usual reasoning form for each individual case.

Analysis of Different Approaches to Combating the COVID-19 Pandemic

Reporting Country/ Territory/Area	Total confirmed cases	Total confirmed new cases	Total deaths	Total new deaths	Transmission classification ¹	Days since last reported case
United States of America	1 525 186	23 310	91 527	1 324	Community transmission	0
Russian Federation	326 448	8 894	3 249	150	Clusters of cases	0
The United Kingdom	250 912	2 615	36 042	338	Community transmission	0
Spain	233 037	482	27 940	52	Community transmission	0
Italy	228 006	642	32 486	156	Community transmission	0
Germany	177 212	460	8 174	27	Community transmission	0
Turkey	153 548	961	4 249	27	Community transmission	0
France	141 590	278	28 164	83	Community transmission	0
China	84 520	13	4 645	0	Clusters of cases	0
Sweden	32 172	649	3 871	40	Community transmission	0
Israel	16 690	31	279	1	Pending	0
Croatia	2 237	3	97	1	Community transmission	0

Figure 2: COVID-19 situation report in selected states on 22 May 2020.

The practice of the Croatian institutions really showed an enviable result during the first wave of the COVID-19 crisis, as

indicated by the statistics of patients and deaths of the World Health Organization (WHO), and the low mortality rate (Table

1 & Figure 2) [41] in comparison to more advanced countries. Analyzing the WHO report (Table 1) the conclusion is that the general morbidity of the Republic of Croatia (0.05%) is far below, for example, the USA (0.46%), the UK (0.37%), Spain (0.49%), France (0.21%), Sweden (0.31%) and Israel (0.18%), indicating an effective and timely approach to the pandemic. The used methodological data processing did not include the age of the examined samples nor the population density. However, although the Republic of Croatia has reacted well regarding the control of the virus itself, numerous problems and omissions have been noticed in legal and moral terms. With a number of alternative approaches to surveillance and restriction of movement, e.g. traditional electronic surveillance with a miniature modified device (bracelet) that transmits a GPS signal about the movement

of a person in the house arrest, incidences and interventions on the infected person's mobile device would be avoided and thus the access to private data at the mobile device would be disabled. The pilot project, implemented from 17 February to 28 May 2017 at the territory of the city of Zagreb, included monitoring four people on parole and one person in pre-trial custody at home. The pilot project proved to be effective, followed by a recommendation for its implementation, as well as a recommendation to expand the circle of persons to whom the measure would be applied. The cost analysis of the measures proved it to be economical, taking into account the fact that one day of imprisonment amounts to approximately HRK 400.00, one day of probation amounts to HRK 10.00 and one day of electronic surveillance equals HRK 100.00 [42].

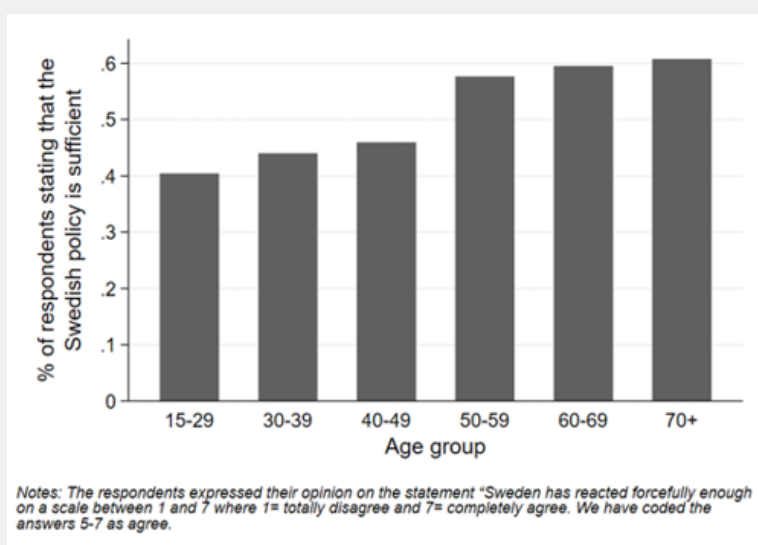


Figure 3: Response on the Sweden's policy during COVID-19 outbreak.

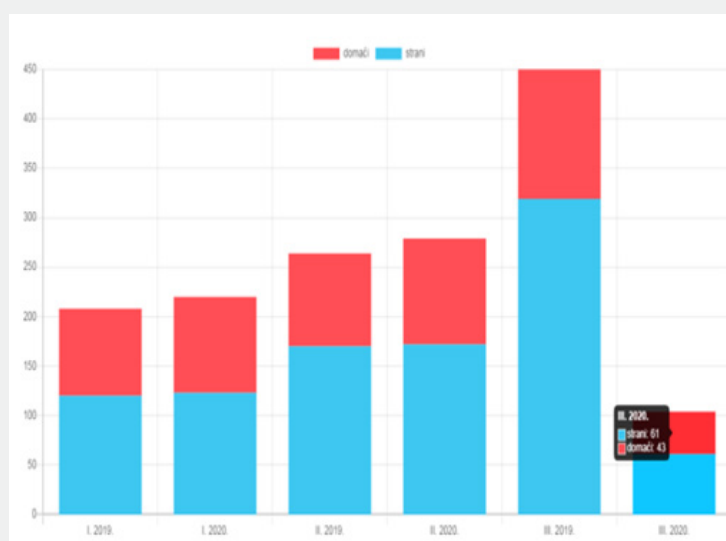


Figure 4: Impact of COVID-19 on the tourist visits and rents in March 2020.

Table 1: Rate of affected and deaths in American and European states.

Country	Cases	Death	Mortality Rate
USA	1525186	91527	5,98%
RUSSIA	326448	3249	0,99%
UK	250912	36042	14,40%
SPAIN	233037	27940	11,98%
ITALY	228006	32486	14,24%
GERMANY	177212	8174	4,61%
TURKEY	153548	4249	2,76%
FRANCE	141590	28164	19,89%
SWEDEN	32172	3871	12,03%
IZRAEL	16690	279	1,67%
CROATIA	2237	97	4,33%

Croatian officials have trivialized the right to privacy, justifying state intervention by the fact that citizens have already given access to certain private data to large companies such as Facebook, Microsoft and Google [43]. While almost the whole world has initiated the fight against COVID-19 through invasive measures such as isolation, restricted movement, temporary suspension of business operations of companies, quarantine, social distance [44] mobile device monitoring (Israel, UK, etc.), Sweden has chosen a more relaxed approach, applying restrictive measures only to risk groups, the elderly people and higher education institutions. With this approach, the business and the economy have maintained their pace of work, without stopping production, and children under the age of 16 continue to pursue their programs [45]. The Swedish approach is special because of the mutual trust of citizens and the government, the voluntary approach to adherence to the measures, discipline and pattern of behavior that the Scandinavian peoples strictly adhere to, and the social security provided by the authorities. Compared to other countries, Sweden had a lower mortality rate (UK, Italy, Spain, France) and general morbidity (UK, USA, Spain) (Table 1 & Figure 2). Therefore, it can be concluded that the reaction to COVID-19 was excessive in some cases, and it is necessary to reconsider whether the same results could have been achieved with a somewhat more permissive approach. Many countries do not enjoy trust in institutions and the justice system, which needs to be taken into account when analyzing the so-called Swedish approach, because the key is self-discipline and a voluntary approach [46] (Figure 3), which certain Mediterranean countries, the states of the American continents and Asian countries do not possess or do not actively practice. The approach of certain states, which present themselves as “advanced democracies”, while under the guise of democracy they control the deepest facets of society and its population (for example, the American Patriot Act of 26 October 2001, as a result of the destruction of the World Trade Centres in New York on 11 September 2001 [48]. Which during the COVID-19 crisis use the pandemic as an excuse to invade fundamental human rights and freedoms, such

as the use of intelligence for the purpose of monitoring citizens. For the comparison purposes, authors of this article also point out the example of Montenegro, a country that like Croatia had a low rate of mortality (324 cases of COVID-19 and 9 deaths on 30th May 2020 [49] which is 2,7% of mortality rate), but also acted within legal framework of domestic legislation. Montenegro officially declared COVID-19 on 26th March, in accordance with the Law on Protection of the Population from Infectious Disease, and despite the fact that state hasn't formally declared the state of emergency, many adopted measures were within the framework of the existing domestic legislation and constitution [50].

It is evident that the Republic of Croatia has regulations governing certain measures of telecommunications tracking, location surveillance and restrictions on movement, but these are regulations used as ultima ratio societies, in cases where there are no other possibilities, for criminal offenses and threats to national security. Such measures must be individualized, because otherwise it puts a stigma on citizens, restricts the freedom of those who do not deserve such restrictions, and sends the message that citizens are a threat, which affects the degree of mutual trust between institutions and the population. Ultimately, it should be taken into account that drastic isolation measures are consequently disastrous in the long run for Croatian sensitive economy and tourism [47] (Figure 4). In addition to violations of law and decision-making without legal authority by the competent institutions, which deepens the gap between citizens and authorities and undermines already fragile trust in the justice system, the statistics of the Ministry of the Interior are particularly worrying, pointing out to the increase in criminal offenses of rape, the misdemeanors of alcohol and drug use in public and domestic violence [51] that were manifested under the influence of COVID-19, which in turn indicates the growth of psychological factors of stress, aggression and depression as a consequence of social distance and isolation.

Conclusion

Fundamental human rights were severely restricted during the COVID 19 pandemic in most countries in the world, including the Republic of Croatia. While not every intervention that affects human rights is necessarily inadmissible, it is the subject of critical consideration. There is no doubt that any invading on human rights should be a last resort measure, and the authors of this paper have a position that the proportionality test in relation to the protection of public health should be taken into account, with focus on the protection of high-risk and vulnerable groups of population (selective quarantine), and unfortunately that was not evident from the activities of Croatian institutions or the states of the American and European continents. It can be concluded that measures of isolation, monitoring and restriction of movement should remain in the sphere of criminal legislation, and the circle of persons should not be wider than persons for whom there are reasonable suspicions that they have committed serious crimes,

and only in cases where there is no alternative access to evidence and prevention. The above stated electronic monitoring measures, as well as social distance, bans on leaving the place of residence and self-isolation, should apply only to persons for whom the infection has been confirmed or who have been in close contact with an infected person. The purpose of the measures was also made questionable by exit from absolute isolation, which happened in three phases, when citizens returned to old habits and socializing in larger groups, without following the epidemiologists' advice on social distance, which may affect the progressive growth of the number of infected people. As a possible solution of the barrier to invading human rights, it would be advisable to consider establishing an independent state or international body to control institutions, the new entity of ombudsman, which would represent and protect the interests of citizens from arbitrariness and abuse of foreign international organizations and encroachment of state into the privacy of the citizens [52]. In doing so, it is important to take into account the principle of proportionality [53] in order to keep the scope of measures in the minimum necessary to achieve the fastest possible results in combating the COVID-19 pandemic and returning to normal daily life. The problem is the establishment of international cooperation, which is much needed since the countries are in a situation where they exchange sensitive data on their citizens, while being careful not to provide those data that could affect national security. The question of the priority of human health over the sovereignty of states is raised, since the disease knows no international borders, and everyone is involved in solving the problem [54]. International assistance, exchange of resources and mutual understanding of the problem are important not only for disease control, but also for the improvement of international relations, the development of sound diplomacy and better future cooperation.

References

- European Convention for Protection of Human Rights and Fundamental Freedoms, Official Gazette, International Treaty, No. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06 and 2/10.
- Criminal Procedure Act, Official Gazette Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17 and 126/19.
- (1978) The case of Klass and others vs Germany 71: 5029.
- (1985) The case of Malone vs the United Kingdom 79: 86979.
- Sound Recording and Wiretapping and Unauthorized Video. Recording with a Review of the Practice of the European Court of Human Rights and the Elaboration of the Concepts of Privacy and Lack of Authority. Annual of the Croatian Academy of Legal Sciences 5(1): 164-199.
- (2010) The case of Uzun vs Germany 5: 35623.
- Roagna I (2012) Protecting the right to respect for private and family life under the European Convention on Human Rights, Council of Europe, Strassbourg, France, pp. 1-104.
- Lyons K (2020) Governments around the world are increasingly using location data to manage the coronavirus, The Verge.
- Halbfinger DM, Kershner I, Bergman R (2020) To Track Coronavirus, Israel Moves to Tap Secret Trove of Cellphone Data, The NY Times.
- Martin Calvo D, Aleta A, Pentland A, Moreno Y, Moro E (2020) Effectiveness of social distancing strategies for protecting a community from a pandemic with a data driven contact network based on census and real-world mobility data. Technical Report. p. 1-13.
- Cho H, Ippolito D, William Yu Y (2020) Contact Tracing Mobile Apps for COVID-19: Privacy Considerations and Related Trade-offs. p. 1-12.
- Nash K (2015) The social construction of human rights, (In:) Nash K, The political sociology of human rights, Cambridge University Press, Cambridge, UK, p. 1-18.
- Tait G (2017) Chapter 3 - Race/Ethnicity, (In:) Tait G, Making sense of Mass Education. (3rd Edn.), Cambridge University Press, Cambridge, UK, p. 51-72.
- Oliver N (2020) Mobile phone data and COVID-19: Missing an opportunity. p. 1-16.
- Ienca M, Vayena E (2020) On the responsible use of digital data to tackle the COVID-19 pandemic. Nature Medicine 26(4): 463-464.
- Ozili PK, Arun T (2020) Spillover of COVID-19: Impact on the Global Economy. p. 1-27.
- Kolakowski M (2020) \$1.3 Trillion, Apple Is Bigger Than These Things, Investopedia.
- Scott M, Braun E, Delcker J, Manancourt V (2020) How Google and Apple outflanked governments in the race to build coronavirus apps Politico.
- Barbieri C, Darnis JP (2020) Technology: An Exit Strategy for COVID-19? Istituto Affari Internazionali p. 1-6.
- (2020) World omeeter, Coronavirus cases and death, situation.
- Klein B (2020) Assessing changes in commuting and individual mobility in major metropolitan areas in the United States during the COVID-19 outbreak. p. 1-29.
- Venturini T, Rogers R (2019) API-Based Research or How can Digital Sociology and Journalism Studies Learn from the Facebook and Cambridge Analytica Data Breach, Digital Journalism 7(4): 532-540.
- Samuels B (2020) CDC director says US ready to reopen, predicts thousands more contact tracers, The Hill.
- The Constitution of the Republic of Croatia, Official Gazette, Nos. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 and 05/14.
- Gardašević "Đ (2020) Pandemic and the Constitution of the Republic of Croatia, Informator, Zagreb, Croatia 6623: 1-4.
- Abramović A (2020) Constitutionality in the Time of Viruses, Ius-info.
- Act on amendments of the Law on civil protection system, Official Gazette, No. 31/2020.
- Decision about prohibition to leave the place of residence and permanent residence in the Republic of Croatia, Official Gazette, No. 35/2020.
- Act on Amendments of Law on the Protection of the Population from Infectious Diseases, Official Gazette, No. 47/2020.
- Law on the Protection of the Population from Infectious Diseases, Official Gazette, No. 79/07, 113/08, 43/09 and 130/17.
- Appointment Decision on the member of the Civil Protection Headquarters of the Republic of Croatia, Official Gazette No. 37/2020.
- Decision on dismissal of the Chief, Deputy Chief and members of the Civil Protection Headquarters of the Republic of Croatia, Official Gazette No. 20/2020;

33. Appointment Decision on Chief, Deputy Chief and members of the Civil Protection Headquarters of the Republic of Croatia, Official Gazette No. 20/2020.
34. Police Duties and Powers Act, Official Gazette, Nos. 76/09, 92/14 and 70/19.
35. The Security and Intelligence System Act, Official Gazette, Nos. 79/06 and 105/06.
36. (2020) Security-Intelligence System of the Republic of Croatia, About us, official site of the Croatian Security-Intelligence Agency, on 21st May 2020.
37. Juras D, Vulas A (2016) Legal framework for verifying the establishment of telecommunications contact. *Policija i sigurnost* 25(1): 69-82.
38. Karas Ž (2011) Judicial practice on police conduct: basics of suspicion and reasonable suspicion; closed circle of clues. *Policija i sigurnost* 20(4): 617-624.
39. (2015) *Dragojević vs Croatia* 1: 68955
40. Data Secrecy Act, Official Gazette Nos. 79/07 and 86/12.
41. (2020) World Health Organization Coronavirus disease (COVID-19): Situation Report-123. WHO, p.1-18.
42. Špero J, Rosandić P (2017) Electronic surveillance pilot project in the Republic of Croatia. *Croatian Annual of Criminal Sciences and Practice* 24(2): 671-692.
43. R I (2020) Prime Minister on mobile phone tracking: All smartphone owners provided all the data to Google, Index.
44. Cohen J, Kupferschmidt K (2020) Countries test tactics in war against COVID-19. *Science* 367(6484): 1287-1288.
45. The Local (2020) How Sweden's schools are adapting to the coronavirus outbreak, The Local.
46. Wengström E (2020) Coronavirus: survey reveals what Swedish people really think of country's relaxed approach, The Conversation.
47. Croatian Bureau of Statistics (2020) Effects of the COVID-19 disease epidemic on socio-economic indicators.
48. (2001) *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Public Law*, 107-156.
49. (2020) Worldometer, Coronavirus cases and death, Country: Montenegro, situation on 30th May 2020.
50. Injac O (2020) COVID-19 Crisis Management: Case Study of Montenegro, (In:) Čičak MM, Iveković V (Eds.), *COVID-19 pandemic-crisis management newsletter* (Edt.), RACVIAC SE Europe, Rakitje, Croatia, p. 22-24.
51. Ministry of Interior (2020) Overview of the basic safety indicators from January to April of 2020 in the Republic of Croatia.
52. (2020) COVID-19: NGOs emphasize role of independent UN human rights experts. *International Commission of Jurists*.
53. Arai Takahashi Y (2002) *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Intersentia, Antwerpen, Oxford, New York, USA, pp. 1-300.
54. Engel U (2020) *Public health policies beyond the state: A socio-spatial analysis of early responses to Covid-19 in Africa*.



This work is licensed under Creative Commons Attribution 4.0 License
DOI: [10.19080/JFSCI.2020.14.555888](https://doi.org/10.19080/JFSCI.2020.14.555888)

Your next submission with Juniper Publishers will reach you the below assets

- Quality Editorial service
- Swift Peer Review
- Reprints availability
- E-prints Service
- Manuscript Podcast for convenient understanding
- Global attainment for your research
- Manuscript accessibility in different formats
(Pdf, E-pub, Full Text, Audio)
- Unceasing customer service

Track the below URL for one-step submission
<https://juniperpublishers.com/online-submission.php>