
Impact of COVID-19 Pandemic on the Legal Conditions of Safety and Security of Selected Countries

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Wawrzyniec Kowalski¹

Abstract:

Purpose: The aim of the article is to show a kind of reevaluation of international legal regulations on safety and security of contemporary countries. The essence of this process is a visible reversal of the perception of legal regulations contained in legal acts of the universally understood international law as effective. The author's intention is to characterize various models of public safety management in the time of a pandemic. In particular, the author analyzes the effectiveness of the most controversial measures used by state authorities to limit the effects of the COVID-19 virus.

Design/Methodology/Approach: The article refers to both selected solutions functioning in the national law systems of individual countries, as well as acts of international law. The analysis essentially uses the comparative and historical-legal methods. The text is based on the analysis of selected legal acts, positions of representatives of the doctrine, literature, and documents.

Findings: The results showed that despite the continuous process of positivization of threats - both at the level of national and international law and the creation of more and more perfect catalogs of human rights, in the face of the coronavirus pandemic, the current belief in the durability of the developed value system in the field of protection of individual rights becomes seriously threatened. It was emphasized that the pandemic period was a specific test of the mechanisms of democracy. Attention was drawn to the high probability of changes in the content of the international agreements in force so far in the field of international human rights law. Moreover, it was indicated that once the current threat is contained, the necessary redefinition of the material legal and procedural conditions related to the application of disease reduction measures in pandemic states in national legal systems will occur.

Practical Implications: The considerations in the article may be useful in designing national models of public safety management.

Originality/Value: The article extends the available literature in the field of both international security law and legal security conditions of individual countries. The study offers an in-depth insight into activities - often controversial - undertaken by the authorities of selected countries under various models of public safety management and protection of citizens' health.

Keywords: COVID-19, national law, positivisation of law, safety, security, pandemic, WHO.

Paper type: Research in Security Studies.

¹ Faculty of Security, Logistics and Management, Military University of Technology in Warsaw, Poland, e-mail: wawrzyniec.kowalski@wat.edu.pl;

1. Introduction

The COVID-19 virus is a deadly threat to billions of people around the world. There is no doubt that pandemic affects countries' functioning and impacts the effectiveness of both mechanisms of democratic institutions and legal systems. Today, we are witnessing an unprecedented change in national law in most countries of the world, which is intended to guarantee the security of citizens and strengthen economies. There is no doubt that the international community now has faced the greatest challenge in decades to ensure the population's security at the global, regional, and national levels. The author aims to show a re-evaluation of international legal regulations on security and protection of public health and analyze the acts of national law, based on which selected countries try to counteract the effects of the pandemic. The paper will make it possible to point out and discuss the implications of countries' return to the traditional perception of creating legal security regulations as an attribute of the State authorities.

The paper will highlight the clearly noticeable crisis of confidence in the UN's specialized agency, the WHO. The text is intended to analyze how far the transfer of the burden of the fight against COVID-19 to individual countries will be an instrument for creating more effective national legislation on security management. The nature of the new regulations relating to the pandemic that such regulations have appeared in countries' legal systems shall be presented. Finally, the controversy surrounding the application by countries of legal regulations to guarantee the protection of citizens in the pandemic time shall be highlighted. Due to the text's formula and the acceptable volume of the text, the author referred only to legal solutions and aspects of public administration activity in selected countries.

2. Re-Evaluation of International Legal Regulations and Criticism of the World Health Organization (WHO)

The essence of the process - mentioned in the paper's introduction - of re-evaluation of international legal regulations related to the sphere of public security and health protection is a clear reversal of the perception of legal regulations, contained in legal acts of international law in its broadest sense, as effective regulations. The starting point for this consideration must be a reminder that on March 11, 2020, the Director-General of the World Health Organisation (WHO) reported that the threat posed by COVID-19 was classified as a pandemic. It is a common belief that before the outbreak of the coronavirus COVID-19 pandemic, the WHO was perceived as the key and most competent organization of the international community responsible, among others, for the establishment of the Global Outbreak Alert and Response Network.

Lawyers such as Anastasia Telesetsky highlight the WHO's achievements in implementing better international coordination practices around pandemics. She draws attention to the World Health Organisation role in updating the International

Health Regulations and improving the global capacity to prevent, detect, and respond to threats from infectious diseases such as the influenza pandemic (Telesetsky, 2020). Such a positive assessment of the WHO's activities, especially in monitoring the scale of the COVID-19 threat in China, is currently not supported by many of the world's leaders.

The narrative of representatives of countries such as the United States and Japan reveals criticism of the World Health Organisation and confirms the previously formulated thesis. Attention should be drawn to the particular importance of the statements made by the President of the United States, Donald Trump, who clearly pointed out the guilt and negligence of the World Health Organisation, in which such statements were combined with criticism of Chinese policy. In particular, he stressed in his statements that:

“The WHO failed to adequately obtain, vet and share information in a timely and transparent fashion [...] Through the middle of January, it parroted (virus - author's note) ... the idea that there was no human-to-human transmission happening despite... clear evidence to the contrary” [BBC, 2020].

Simultaneously, the organization's criticism was combined with the accusation made against the World Health Organisation regarding the WHO dependency on China. Although these accusations against the WHO has not been supported by the leader's reference to specific facts, the tangible effect of the criticism was the statement made by Donald Trump on May 29, 2020, in which he announced that the funds directed to the WHO so far, would be channelled as contributions to the US global health priorities.

On July 6, 2020, the administration officially notified the Secretary-General of the United Nations to leave the WHO (Borger, 2020). Lawrence O. Gostin, Harold Hongju Koh, Michelle Williams, Margaret A. Hamburg, Georges Benjamin, William H. Foege, and other researchers have pointed out that the policy adopted carries significant threats for the United States, including in the research field, see works related to vaccines. Besides, the World Health Organisation has a strategic role in coordinating international efforts to combat infectious diseases. “Withdrawal from WHO would have dire consequences for US security, diplomacy and influence. WHO has unmatched global reach and legitimacy.

The US administration would be hard pressed to disentangle the country from WHO governance and programmes. The Pan American Health Organization (PAHO) is among six WHO regional offices and is headquartered in Washington, DC, USA. The USA is also a state party to two WHO treaties the WHO Constitution, establishing it as the “directing and co-ordinating authority on international health”; and the International Health Regulations (IHR, 2005), the governing framework for epidemic preparedness and response” (Gostin *et al.*, 2020).

Interestingly, the leading politicians in Japan are speaking in a similar tone to the American leader. Although they deny the willingness to stop paying their membership fee to the World Health Organisation, the allegations they make are serious. In their opinion, the most important was the failure of the World Health Organisation to inform countries about the actual scale of the threat posed by the COVID-19 virus, which in turn resulted in other countries being insufficiently prepared for the imminent threat. They stress that the World Health Organisation leaders, in particular the previous Director-General of the organization, Margaret Chan, are not sufficiently responsible for previous negligence. It should be recalled that the Deputy Prime Minister of the Japanese Government of Taro Aso said that the name of the organization should be changed to CHO, which stands for China Health Organisation (sic!) (Hernandez, 2020; Krishnan, 2020).

Similar, although somewhat less robust, allegations are made against the WHO by the Japanese Prime Minister, Shinzo Abe, who believes that the organization requires reform, as there are significant allegations that it was not politically neutral (Kyodonews, 2020). The veiled criticism addressed to the World Health Organisation can also be seen from the G20 countries. At this year's summit, which was held remotely because of the threat of a pandemic, one of the meeting's conclusions was the conviction that the WHO should cooperate with other international organizations to assess gaps in readiness to combat a pandemic (Lee and Nereim, 2020).

The need for reform of the WHO and thus a kind of revision of the international agreements that define the organization's tasks is also recognized by researchers such as Olivier Nay, Marie-Paule Kieny, Lelio Marmora, and Michel Kazatchkine, who believe that the World Health Organisation, despite its shortcomings, has proved its worth - especially the WHO Health Emergencies Programme. This program has managed to control outbreaks of yellow fever, polio, smallpox, Zika virus disease, and Ebola virus disease (Nay *et al.*, 2020, p. 1818-1819). Concerning the current global crisis, cannot be overlooked that some researchers have already highlighted the possible threats of having too much faith in the power of cross-border cooperation, medical development, and the global dimension of vaccine research. As early as 2001, Obijiofor Aginam wrote, referring to reports by the World Health Organization, that:

“The discovery of antibiotics, the feat of worldwide eradication of small-pox, and the progress made in rolling back the morbidity and mortality of poliomy-elitis, leprosy, measles, guinea-worm, and neonatal tetanus slowed global health work with the optimism that the battle between humanity and the microbial world was being won by humans. This cautious optimism turned into a fatal complacency that is costing millions of lives annually. Diseases previously restricted geographically are now striking in regions once thought to be safe. Tuberculosis (TB), for instance, is fighting back with renewed ferocity. In the contest for supremacy, "microbes are sprinting ahead. The gap between their ability to mutate into drug-resistant strains and man's ability to counter them is widening fast" (Aginam, 2001, p. 62).

It should also be remembered that the broadly defined sphere of international law means not only regulations in the field of international security law or regulations governing the creation of international organizations, see World Health Organization, but also legal regulations relating to human rights protection their guarantees. This is also the nature of the current crisis, a health crisis, and an economic and social crisis.

The characteristic features of the reality of the COVID-19 pandemic are the numerous restrictions on the exercise of the fundamental right of free movement of individuals, earning opportunities or, last but not least, the rivalry between countries in terms of access to the medical resources necessary to limit the effects of the virus. The authors of the report prepared under the United Nations' auspices stress that the essence of the extensive blockades assumed by countries is the limitation of opportunities arising from inherent human rights (UN Report, 2020, p. 2). According to the authors of the study, the aim should be to strengthen international cooperation, cooperate within research works on the vaccine, address the issue of intellectual property, and ensure access to treatment for all and an affordable price of the vaccine. These recommendations may seem trivial in the context of previous allegations against the WHO.

At present, to an exceptional degree, only found in times of armed conflict, countries are united in the conviction that their citizens' security should be ensured regardless of the costs, commitments, or rules of the free market. This conviction can exemplify two events that can exemplify this conviction resident Donald Trump's administration, as quoted by the media. The administration stressed its willingness to pay "large sums of money" to the German pharmaceutical company CureVac in exchange for the United States' exclusive access to an effective coronavirus vaccine. The Federal Republic saw this of Germany's government as an attempt at an aggressive takeover (Oltermann, 2020).

The second interesting aspect of modern conditions for combating the virus pandemic, to which numerous observers have drawn attention, is China's attempt to use the threat posed by COVID-19 to rebuild its position on the international arena as a reliable and, at the same time, necessary partner to secure huge material needs, mainly in terms of huge supplies of ventilators and hygienic masks. Albin Sybera points out that some Central and Eastern European countries, such as Serbia and the Czech Republic, highlight the close relations between these countries and Beijing ceremonially, and the very reception of paid medical aid transports is of a very high nature. Such activity is seen as a perception by some authoritarian State countries, like China, to be a more valuable and reliable partner than the European Union (Siberia, 2020).

Moreover, the problem is broader than it might seem, given that the much richer European countries decide to use aid from countries against which they had previously imposed sanctions themselves. It should be recalled that the Italian Republic was a beneficiary, in March 2020, of medical aid provided by the Russian Federation. It should be noted, in particular, that this aid was provided in the form of the deployment

of Russian soldiers and military equipment, while the media spread the sight of nine IL-76 transport machines landing at the Italian air force base near Rome.

The fundamental question is how far individual countries will be willing to go in the restrictions and lock-downs they apply to maximize the effectiveness of counteracting the effects of the coronavirus pandemic and, importantly, the effects of the expected next wave of the pandemic? Secondly, whether these countries' societies will accept to be subjected to yet another, increasingly severe restrictions?

3. Public Security Management Models: From Sweden to Israel - one Goal, Different Measures

As pointed out in the sub-chapter title, a general and seemingly quite misleading conclusion can be drawn that individual countries are deliberately adopting different strategies and using different means of action with the single aim to strengthen the protection of their societies against COVID-19 coronavirus. As will be demonstrated, the application of various measures restricting the development of the coronavirus pandemic, on the one hand, is controversial, especially in the light of the protection of human rights, and on the other, seems to be a necessity. After all, during the pandemic, governments often concluded that the prevention and mitigation action programs they had adopted were not effective, which gave impetus to a change in approach to guaranteeing public security. Matilda Hellman's doctrine states that it is necessary to update the measures taken, writing that "The COVID-19 pandemic has exposed a demand for an updated overview of the nature, functions, and limitations of social control policies in the 2020s" (Hellman, 2020, p. 206).

This staying between Scylla of the bacteriological threat and Charybda of the needs of the administrative bodies of individual countries causes an increase of awareness of the reappraisal and inadequacy of legal guarantees of the citizens' security in individual countries, and the COVID-19 virus itself has become a factor initiating a review of the extent of the necessity to subject selected human rights to a partial derogation.

There is no doubt that it is right to state that, regardless of the complexity of the pandemic caused by COVID-19, it is currently the national governments that bear the main burden of counteracting the epidemiological threat, rather than international organizations such as the WHO. It is worth noting that the legal doctrine has not yet outlined the problem of a possible further politicization of the COVID-19 threats in the sphere of public security in terms of national law. It is worth noting that a characteristic feature of the current pandemic is the adoption by individual countries of specific aid packages for economies intended to protect jobs and stop the decline in GDP. The aid measures taken are not surprising given the deadly effect of the pandemic on individual countries' economies.

For example, the US economy is estimated to have suffered a contraction of 32.9% and has recorded its greatest collapse since the 1940s (Kollewe, 2020). In the Federal Republic of Germany, on the other hand, according to data reported by the Federal Statistical Office, gross domestic product in the quarter-to-quarter comparison from April to June decreased by 10.1%, and the recorded decrease was the most serious since the establishment of the Federal Statistical Office (Nienaber, 2020). What seems to be particularly interesting from the author's point of view is the measures that some countries are using to guarantee the effectiveness of the restrictions associated with COVID-19. Some of these measures are controversial, especially in countries implementing the democratic State of law model.

Concerning the various models for managing public security and citizens' health protection, it should be recalled that the tool that characterized the actions of the vast majority of governments in the world was the imposition of numerous restrictions on the population and the use of quarantine. From the beginning, the Swedish Government's behaviour has differed in a controversial way from these countries. This government was strongly believed that the imposition of restrictive limitations and regulations should be minimized, preferring the method of recommendation bans and referring to citizens' responsibility. In particular, the need to slow down the virus was stressed, emphasizing protecting older and more vulnerable citizens. It should be noted that, unlike in other Scandinavian countries, the authorities have not closed primary schools.

They also stressed the negative effects of quarantine on the efficiency of the health protection system. As we remember, the media showed pictures of citizens spending time in restaurants and cafés, while in other countries they remained closed. According to official data from the World Health Organization, this peculiar *laissez-faire* approach to combating the COVID-19 pandemic has so far ended with 86,891 recorded cases and 5814 deaths (WHO, 2020) as of August 27, 2020.

Heba Habib, referring to the effectiveness of the Swedish model, stresses that the authorities have failed to improve herd immunity and that the victims of coronavirus, contrary to the government's expectations, have been older adults in particular. She also shows that: "Sweden has the largest number of cases and fatalities in Scandinavia—around 37,000 confirmed cases at the time of writing, compared with its neighbours Denmark, Norway, and Finland which have 12 000, 8000, and 7000 cases, respectively. All three neighbouring countries adopted a lock-down approach early in the pandemic, which they are now slowly lifting. All three have since reopened their borders, but not to Sweden. Sweden recorded the most coronavirus deaths per capita in Europe in a seven-day average between the 25th of May and the 2nd of June" (Habib, 2020, p.1).

It is impossible to ignore that other countries also had a flexible approach to forcing their societies to adopt certain behaviors related to the COVID-19 pandemic. The

author specifically refers to the example of the United Kingdom, which, after all, quite quickly chose a restrictive model with partial closure and quarantine.

The pandemic's realities, linked to the speed of coronavirus transfer and the degree of threat it poses to people's lives, have reviewed national strategies. The Russian Federation can be an example. As you know, back in April 2020, Doctor Alexander Myasnikov, who is head of the coronavirus information Center, stressed optimistically that the virus could not spread within the Russian Federation. The restrictive regulations and restrictions implemented in Russia, which closed the country's borders completely on March 15, 2020 (TASS, 2020) or implemented restrictions on traffic over huge stretches of thousands of kilometres - including Finland, Poland, Belarus, Ukraine, and China - ultimately did not stop the spread of coronavirus, according to official WHO data. At present - data as of August 28, 2020, more than 975,000 illness due to COVID-19 and 16,804 deaths (WHO, 2020) have been reported in Russia. In Russia, health care is guaranteed by the State, and health care institutions were regarded as prepared to combat bacteriological threats.

It is not surprising, therefore, that some democratic countries, such as the United Kingdom and Israel, as well as the people' democratic countries, see China, have decided to use much more controversial measures than local closures, restrictions on the number of participants in mass events or a ban on convening them or holding weddings. The aim of using methods, which are considered to be a significant encroachment on citizens' privacy, including violations of medical data protection, was to guarantee the effectiveness of anti-pandemic measures taken. Paradoxically, it would seem that practically all preventive and protective measures should be allowed in the face of the avalanche of COVID-19 cases.

However, the methods described as invigorating and violating the human right to privacy cannot and will not long be accepted by a large proportion of citizens, even though human health and life are at stake, and no one has yet developed an effective and proven COVID-19 vaccine. Of course, international human rights law, and thus the legal systems of countries that have signed and ratified international agreements establishing human rights, allow these rights to be derogated, most often connected with a particularly serious threat to public security and health. This is undoubtedly the coronavirus pandemic. A factor justifying the reference to the derogation clauses by national governments is the declaration of emergency states. It is worth recalling Article 4, section 1 of the International Covenant on Civil and Political Rights of 1966, which contains the grounds for an application by countries of a derogation from human rights.

The precondition for suspending the application of the obligations guaranteed by the Covenant is the official declaration of a public emergency state (ICCPR, 1966). In some countries, the authorities have decided not to proclaim an emergency state; instead of announcing an epidemiological emergency state, see Poland since March

12, 2020 [gov.pl, 2020] or the epidemic state (Poland since March 20, 2020) (Ordinance by the Minister of Health, 2020), which is the legal justification for some of the actions taken.

Looking at the practical dimension of actions by means of which countries try to minimize the effects of COVID-19 infection, the *paremia Mater semper certa est* arises. This is what the ancient Romans used to say when they laid the foundations of family law, while the posteriors, in the broader sense, emphasized the inviolability of the principles and clarity of Roman law. After all, this principle has become obsolete these days, with the discovery of the surrogacy possibility. Illustrated the enormous progress in technology, which has made the aforementioned legal *paremia* obsolete, caused the public administration of modern countries has been able to supervise and invigilate the citizen in an increasingly perfect way, with morals, but not always legal, the justification for such actions. As it were, it is a matter of sadness, in the course of the deliberations, that the law is definitely losing the race against technological developments.

In this regard, it should be recalled that in mid-March 2020, the Prime Minister of the Israeli Government, Benjamin Netanyahu, authorized the Shin Bet secret security service to use mobile phone data to identify citizens who should be quarantined. The measure's essence was to trace with whom people who were found to have coronavirus were meeting. On the 15 of March this year, the Israeli Prime Minister stressed that the government would approve emergency regulations the day after, i.e., on the 16th of March. With the Attorney General's consent, it will be possible to use the data collected for 30 days. It is worth quoting Benjamin Netanyahu, who said on the 15th of March "Israel is a democracy. We have to maintain the balance between the rights of the individual and needs of general society, and we are doing that" (Halbfinger *et al.*, 2020).

As David M. Halbfinger, Isabel Kershner and Ronen Bergman stress, the reference to the public interest in the context of such an important violation of the right to privacy must be controversial, especially among cabinet critics, lawyers and human rights defenders, especially given the fact that the Shin Bet service has been collecting mobile phone user data since 2002 (sic!), many years before the outbreak of the pandemic. "It is the existence of the cellphone metadata trove and its use to track coronavirus patients and carriers that privacy advocates say poses the greatest test of Israeli democracy at an extraordinarily fragile moment" (Halbfinger *et al.*, 2020).

The controversy surrounding the authorization of the government special secret agencies to track citizens based on mobile data is evidenced by the ruling of the Supreme Court of Israel that the tracking of COVID-19 carriers by Shin Bet is admissible, provided, however, that this action is legally formalized in the legislation (Lubell, 2020). A panel of judges with President of Supreme Court Esther Hayut has conditionally extended the government's authorization for the secret government special agencies while obliging the administration to initiate the legislative process.

Undoubtedly, the Supreme Court's judgment is a kind of milestone not only for ensuring the legalism of government administration's actions but in a broader sense; it will symbolize the advantage of legalism over short-term effectiveness. In its ruling, the court stressed that the tracking program initiated by Shin Bet “[...] severely violates the constitutional right to privacy and should not be taken lightly. [...] The choice to use the state’s preventive security organization to monitor those who do not seek to harm it, without the consent of the surveillance subjects, poses great difficulty and effort must be made to find another suitable alternative that fulfils the principles of privacy protection” (Winer and Staff, 2020).

The consideration should be supplemented by the observation that researchers have a different perception of the solution adopted. As Glen Segell sceptically points out: “Such phone surveillance, could set a dangerous precedent for civil liberties to monitor citizens’ movements. The consequences are that citizens’ s smartphones could be a tool of mass surveillance and targeted containment. So, such intrusive measures might result in people leaving their phones at home even during emergencies and pandemics” (Segell, 2020, p 3).

Jurists also support similar reservations. For example, the long-standing Deputy Attorney General of Israel, Malkiel Blass, emphasizes the importance of guaranteeing citizens' rights even when compared with the threat posed by COVID-19 (Dobieski, 2020). A more moderate assessment of the Israeli authorities' conduct is made by Tehilla Shwartz Altshuler and Rachel Aridor Hershkowitz, who are optimistic about the responsible attitude of the society towards specific prevention measures in the age of the virus and the acceptance by the people of specific forms of supervision by the secret government special agencies. In their view, this is due to the customer's trust in the Israelis place in the Armed Forces and Security Services (Shwartz and Hershkowitz, 2020a). Simultaneously, according to the same authors, the Israeli model of protection and prevention against the coronavirus pandemic should be seen as less intrusive to the individual's rights than the Chinese one and more ailment than that used in South Korea or Taiwan (Shwartz and Hershkowitz, 2020b).

Analysis of legal regulations contained in one of the most important legal acts related to public security in Israel, i.e., General Security Service Law indicates *expressis verbis* that both the limitation of access to users' data (included in Article 13 of the Act) and the decision which data will be transferred to the secret government special agencies, constitute a prerogative that is at the disposal of the executive authority, i.e., the Prime Minister. Article 11, section B of the Act contains “The Prime Minister may prescribe by rules that categories of information found in the databases of a license holder as specified in the rules are required by the Service for the purpose of fulfilling its functions under this Law and that the license holder must transmit information of these categories to the Service” (General Security Service Law, 2002, Art 11).

With regard to the controversial solution applied in Israel, it should be mentioned that other countries, including the European Union, also apply measures to trace the contacts of infected persons, however in countries such as France, the Federal Republic of Germany or the United Kingdom, the analysis of data takes place in health care institutions or with the consent by the user himself, and not, as in Israel, in the secret government special agencies. Currently, there are two main models for collecting and storing data on users of mobile devices.

The first one relies on centralized acquisition of cell phone location data from cellular providers in a particular country. The information is fed into a data pool and is then processed. The processing can be performed by a civilian government agency — such as the healthcare authorities — or by security agencies that enjoy direct access to the cellular infrastructure in order to protect national security and prevent terrorism and crime — such as the Israeli General Security Service (GSS). The processing can be carried out by creating in-house expertise within these agencies, or by private firms on secured government servers. [...] The second main form of digital contact tracing is based on made-to-order apps. The installation of such contact-tracing apps on individuals' devices may be voluntary or mandatory, and their architecture may be centralized or decentralized (Shwartz and Hershkowitz, 2020b, p. 3-4).

It should be noted that, paradoxically, in the State such as Israel, where the nation and its security are so dependent on efficient secret government special agencies and the army, which have access to specific information for their effectiveness, see the prevention of terrorist attacks or the quarantine of coronavirus vectors, there is noticeable public opposition against the use of these data collection methods. Recently, the popularity of special cases/etuis for mobile phones, bought in Israel to interfere with Shin Bet's monitoring of their location and user data, has been observed. According to the manufacturer, the housing called Silent Pocket Faraday is intended to isolate the device from mobile communications completely, GPS locations, RFID communications, Wi-Fi (Jean, 2020). Interestingly, in other countries that do not apply such restrictive measures for monitoring the COVID-19 virus, there has not been any popularity of this type of device so far.

Finally, it should be noted that efficient institutions of a democratic State, which are key elements of the checks and balances system, such as the Norwegian Data Protection Authority (DPA), can significantly influence the pandemic's development combat system. In June 2020, DPA informed the Norwegian Institute of Public Health that the Smittestopp application for contact tracking to monitor the spread of COVID-19 is a highly intrusive measure regarding data protection cannot be verified that the use of information collected brings measurable benefits. According to the DPA controlling authority, the application can no longer be considered a proportionate interference with users' fundamental rights to data protection (edpb.europa.eu, 2020).

4. The Effectiveness of Measures to Ensure an Effective Halt of the Pandemic. Where is the Borderline?

The already mentioned applying measures that enable the use of modern technologies to track people who are sick or exposed to COVID-19-infected persons, counterpointedly to the reservations indicated earlier, may be useful for managing a pandemic crisis in countries where healthcare is underfunded and at low levels. There is no doubt that mobile communications networks can effectively strengthen the classic and, as we already know, highly inadequate measures to halt the virus's expansion, such as local or regional lock-downs, home quarantine, movement restrictions, isolation of patients, or testing. In the doctrine, Iniobong Ekong, Emeka Chukwu, and Martha Chukwu point out the example of Nigeria: "There is, therefore, a need to develop and adopt new strategies, particularly digitally-enabled strategies, to facilitate a more extensive, accurate, seamless, and timely response in line with the high frequency of new infections among contacts of confirmed cases (ie, the secondary infection rate) [...] Mobile positioning data can significantly improve the capacity and scope of timely outbreak response and will help governments as well as other responders in Nigeria. When implemented early, there are opportunities to leverage positioning data to break the chains of disease transmission in community clusters. It can improve the efficiency of currently used field data collection and outbreak investigation platforms when used in synergy. While mobile positioning data can be used within the current regulation, guidelines for data handlers must include measures to curtail misuse and unauthorized access" (Ekong *et al.*, 2020, p. 6).

The praise given to the effectiveness of mobile networks' use to monitor individuals who are infected or potential carriers of COVID-19 coronavirus must not obscure the fact that individuals' data should be particularly protected and secured against possible misuses.

It is important to emphasize that the scale of measures taken by democratic countries, which are customarily limited not only by international conventions on human rights, but also by constitutional guarantees and the judiciary, on the one hand, and by public opinion and independent media, on the other, has completely been outpaced by the methods used by the authorities of the People's Republic of China. It is now being stressed that mainland China is using artificial intelligence and public surveillance tools in an unprecedented way to reduce the virus, the first appearance of which was reported in Wuhan in eastern China.

As Shawn Yuan points out, in addition to the thermal scanners visible at Chinese main stations in the country's major cities, the government is analyzing the large collection of data on communication passengers at its disposal as a result of the implementation of regulations requiring travellers to use their real names when traveling. Work is currently underway to combine the Chinese facial recognition and identification system with sensors measuring body temperature and cameras operating in the visible

and infrared bands (Yuan, 2020). He emphasizes that: “The Chinese government has arguably set up the most expansive and sophisticated surveillance system in the world. In addition to the real-name system - which requires people to use government-issued ID cards to buy mobile sims, obtain social media accounts, take a train, board a plane, or even buy groceries - authorities also track people using some 200 million security cameras installed nationwide. Some of these cameras are equipped with facial recognition technology, allowing authorities to track criminal acts, including offences as minor as jaywalking. There are reports authorities are using this extensive surveillance system to keep tabs on people amid the coronavirus outbreak” (Yuan, 2020).

When considering the limits seen by States as effective ones, one cannot overlook the use of drones for specific tasks in a pandemic. The particular capabilities of drones, allowing them to reach their intended destination quickly, the universality of their use, and their prevalence, not only in the military sphere (Górnikiewicz, 2019, p. 25), cause that in countries such as India and the People's Republic of China, among others, public administration and secret government special agencies are increasingly using them. The possibilities to use drones and other unmanned aerial vehicles to combat natural disasters and provide humanitarian aid have already been highlighted by Mario Estrada and Abraham Ndoma (2019, p. 378), among others.

However, the scale of drones' involvement in the supervision of compliance with sanitary recommendations by the Chinese authorities makes drones an essential tool for the control of epidemiological injunctions and the supervision of Chinese society during the COVID-19 pandemic. While the authorities in many countries have already used unmanned aerial vehicles for public security tasks, the scale of the use of drones in China is now unprecedented in comparison with any other country. At present, there are several key tasks to be distinguished, which are carried out in the People's Republic of China using unmanned aerial vehicles. Drones control body temperature and recognize citizens' faces and ensure that assembly bans are observed, monitor that citizens obey quarantine, carry out logistical tasks, and carry out aerial spray and disinfection [Yang and Reuter, 2020]. The momentum of Chinese security efforts and containment of the spread of COVID-19 is described by Zak Doffman, who says: “China’s vast surveillance industry fuels the biggest and boldest experiment in population monitoring and control the world has ever seen. Whether it’s trivial deployments of facial recognition to enforce jaywalking, AI-driven citizen scoring based on acceptable behaviours, or the dystopian regime in Xinjiang, China’s security and surveillance giants have a real-world laboratory to conduct their research and hone their technologies that is not available anywhere else” (Doffman, 2020).

Drones flying in China and ordering citizens to wear a mask, disinfect their hands, or go home are now becoming a symbol of our times' security. After all, monitoring of public space and the behavior of the population in terms of compliance with the injunction issued by public health services has also been noted - albeit on a much smaller scale in countries such as among others: France, Italy, Oman, and India. It is

interesting to note that opinions have already been expressed that the use of thermal imaging cameras installed on drones is not entirely effective (Greenwood, 2020).

Vaishnavi and other researchers stress the importance of the massive use of drones in India for decontamination and disinfection of densely populated areas, making it possible to protect sanitary workers previously exposed to the infection. If it had not been for drones and automatic disinfection, the time needed for this work would have been three times longer (Vaishnavi *et al.*, 2020, p. 10). Currently - August 2020, the use of drones in Ghana and the United States has also been reported as couriers delivering test samples and medical supplies from a local hospital to a nearby disease control center, while in Ireland, the use of drones is used to deliver medicines and essential supplies to a group of closed households (ITF-OECD, 2020; Shell and Haaland, 2020).

The exceptional use of drones in health management tasks also deserves attention because it is combined - especially in China - with artificial intelligence (AI) mechanisms. The latter is supplemented by access to CCTV systems that track infected persons. It may seem a truism to say that artificial intelligence and modern technology have become an integral part of our lives today. However, it seems that by using such advanced mechanisms of constant supervision of the citizens, the worrying vision of the Leviathan State, which absorbs everything, which has been mentioned by Tomasz Hobbes in 1651, is being fulfilled. It referred to the exercise of strong power by a sovereign. It is puzzling whether and when the aforementioned Leviathan, who is the personification of an all-powerful administration in the area of health and security, will halt.

However, the answer to this question is not possible until an effective vaccine has been invented, or the expected second wave of the coronavirus pandemic proves to be milder than scientists expect. Otherwise, we are in danger of functioning in a world in which ordinary air travel will involve not only measuring body temperature before departure but also biometric scanning to check people's identity, checks on isolation after the journey, using the "digital ankle bracelet" tracking apps for travelers (Frost, 2020).

It should be noted that Amnesty International has been involved in the debate on legal solutions adopted by many countries and the controversial nature of these methods. Interestingly, this fact has not yet been more widely recognized by many representatives of the doctrine and the public. At present, and this seems perfectly understandable, the citizens of most countries are concentrating on taking measures to prevent infection rather than on the possible threats that may arise from inadequate supervision of the data collected by public government agencies. According to Amnesty International, the enhanced supervisory measures must, for their legality, be secured by strict criteria, among which the fact that public authorities must be able to demonstrate that the implemented measures provided for by law are necessary,

proportionate, defined as regards time period and implemented with transparency and appropriate supervision [amnesty.org, 2020], is particularly important.

The countries that apply extensive disease monitoring measures but are less severe than those adopted by the People's Republic of China and Israel include Taiwan, Singapore, and South Korea. Moran Amit, Heli Kimhi, Tarif Bader, and other researchers stress that Taiwan and Singapore have authorized law enforcement authorities to monitor quarantine injunctions remotely issued (Amit *et al.*, 2020, p. 1167).

Finally, the key question is whether the actions characterized by significant interference in citizens' rights by countries such as South Korea, Taiwan, the People's Republic of China, and Israel are effective. The World Health Organisation's data provide surprising results in this area. The median incidence rate in Israel between the 30th of June and the end of August 2020 is a steadily increasing curve (sic!) [WHO, 2020]. On the other hand, in South Korea, the number of infections remained stable between the end of June and the 13th of August, followed by an increase in the number of infections as Taiwan is not a member of the WHO, the data collected by WHO do not cover this country. According to information made available by the World Health Organization, the number of cases in the People's Republic of China has remained stable over the period analyzed. Assuming the complementarity of data on China, the Chinese authorities have managed almost completely to flatten the number of cases.

As has already been pointed out, when we bring the extreme models for monitoring the spread of COVID-19, counterpointed to the countries authorizing the use of more or less intrusive means of identifying and tracing infected people's rights, the Swedish Government's specific free policy must be distinguished. The latter policy, paradoxically, has proved no less effective than the countries mentioned earlier. Currently, the disease curve in Sweden (as of August 31, 2020) is close to flattening.

While it may seem a high-profile statement that it is the crises that most force changes and amendments to the content of legislation, there is no doubt that the current pandemic will, like no other, become an impetus for enforcement of changes in the application of the emergency provisions for the protection of public health and safety in general. An example is South Korea, which faced a crisis caused by the MERS virus in 2015. Thirty-six people died as a result, and more than one hundred and eighty were infected. The South Korean authorities then amended the Infectious Disease Control and Prevention Act (IDPCA).

As part of the amendment of the Act, in order to prevent infectious diseases and halt the spread of infection, the Minister of Health and Welfare of South Korea has been equipped with an effective tool (Article 76 section 2 of the Act) that empowers to request, from the directors of the competent central administrative bodies and public institutions, information concerning both patients with infectious diseases and persons who may be infected with such diseases. The Act lays down, *inter alia*, the right to

collect information such as personal data, including names, resident registration numbers, addresses, and mobile phone numbers, prescription data, records of immigration control during the period determined by the Minister of Health and Welfare, and finally other pieces of information prescribed by Presidential Decree for monitoring the movement paths of patients with infectious diseases. The Minister for Health and Social Welfare also has the right to contact the Police authorities to obtain information on the location of patients with infectious diseases and people suspected of being infected (IDPCA, 2016, 76(2); Kim and Tak, 2020).

Some of the mechanisms for restricting COVID-19, mentioned above, appear to be close to the authoritarian countries see carrying out surveillance of citizens by means of drones, while other mechanisms, such as the collection of mobile phone data, are seen by human rights organizations as highly worrying. It is important that, once the COVID-19 coronavirus threat has been contained, governments should as soon as possible give up the maintenance of the emergency powers of the government agencies and the secret government special agencies, the use of general bailiffs in security regulations, the continued use of extended executive powers and, finally, the reduction in transparency of the protective measures taken. For example, the European Journal of International Law links the COVID-19 pandemic's use to monopolize its power, referring to the example of Hungary.

It came as no big surprise that Orbán has used COVID-19 to dismantle further the checks and balances that are an integral part of any functioning democracy. On March 30, 2020, with the authorization of the Hungarian Parliament (in which the government has a large majority), an Act was passed, which effectively gave the government sweeping powers to rule by decree. It is not unusual in times of emergency for the executive branch to revert to extraordinary measures, though in this case they have a Hungarian twist the new law is of indeterminate duration (though Parliament can end it when it sees fit – in the case of Hungary de facto when the Executive sees fit) and the powers granted exceed those necessary to deal with COVID.

More ominously, alongside that enabling law, the Penal Code was amended, permanently, to introduce two new crimes – punishable by up to five years' imprisonment for any activity that interferes with the government in the discharge of its emergency responsibility and for any publication 'distorting the truth' that might alarm a large number of persons – which I imagine could mean any publication that contradicts the government narrative (EJIL, 2020, p. 3).

In the context of the above, it is legitimate to conclude that the longer the public administration and government agencies rely on the rules typical of emergencies, the more likely human rights are violated. In their rhetoric and conduct, the citizens of countries whose authorities are approaching the thin line between democracy and authoritarianism are at particular risk of such actions.

5. Conclusions

Ultimately, it is necessary to make a bitter finding that, despite the constant politicization of human rights, the creation of ever more perfect and complete catalogues of individual rights, or the emphasis placed by representatives of the doctrine of law on successive generations of human rights, in the face of the COVID-19 coronavirus pandemic, the current belief in the sustainability of the system of values, developed since the adoption of the Universal Declaration of Human Rights in the field of the protection of individual rights, is under threat. For completeness, it should be noted that the last such dangerous pandemic of an influenza virus called the Spanish were between 1918 and 1920. It should be stressed that the scale of the losses caused by the current threat posed by COVID-19 is not limited to more than 24 million infected and more than 827,000 dead. The terrifying balance sheet of a pandemic also has an economic, social, or, importantly, legal dimension.

It seems justified to conclude that the period of a pandemic is a kind of test for democratic mechanisms because often State bodies, motivated by their intentions to ensure the effectiveness of the protective measures taken to protect the safety and security of citizens, will continue to take both *praeter legem* and *contra legem* actions. As has been pointed out, in the case of Israel, it is the Supreme Court that has proved to be the institution that upholds the mechanisms of a democratic State, in particular, in the scope of the judicial control of public administration activities. The importance of independent and sovereign courts in this area is all the more important because the public often learns about actions taken that violate the citizen's right to privacy *post factum*. In such cases, the courts' guarantee, and stabilizing role as bodies responsible for protecting the foundations of democratic order and the legal order is crucial.

There is now a clear shift away from the belief that international management of health and its protection globally is effective. There is no doubt that in the short term, it will be essential to rebuild confidence in the World Health Organisation on the part of some countries, especially given the expected second wave of the disease, projected by some specialists for autumn 2020 [Maragakis, 2020]. This statement should be supplemented by the conclusion that there is a high probability of changes in the content of the existing international agreements in the sphere of international human rights law.

The current pandemic may also be an opportunity for the international community to adopt further specialized international agreements, in which norm-setters shall make detailed reference to the most modern technologies used by some countries today. It is reasonable to conclude that the essence of these changes and the speed they will adopt, both in international and national law, being elaborated by legislators and legal doctrine, will depend on the actual impacts, especially on the second wave of the pandemic. As the author pointed out earlier, stressing the importance of international conventions on the protection of human rights for the legal systems of individual countries: “[...] Today, a significant proportion of the legal norms which constitute the legal standards of international human rights protection stem directly from

international conventions, and not from the standards of protection in force in the national legal systems of individual countries. An example of this phenomenon is the increasingly widespread creation of human rights catalogues by means of international agreements, the creation and functioning of bodies of transit judiciary, or *last but not least* the process of securing and guaranteeing human rights by means of continuous development of the system of international humanitarian law [...]” (Kowalski, 2019, p. 115).

Irrespective of the further evolution of the pandemic and the effectiveness of individual countries' actions, there is no doubt that the application of the exceptional and specific measures identified, based on the use of tools to track and monitor citizens, should be temporary, necessary, and proportionate to the scale of the threat.

Although the scale of the threat posed by the COVID-19 coronavirus pandemic, since the Spanish flu pandemic at the beginning of the 20th century, is unparalleled and it is also difficult from a legal point of view to nuance this requirement of a proportionality rule, there is no doubt, however, that once the current threat is contained, there will be a necessary redefinition of the material, legal and procedural conditions associated with the application of disease control measures during pandemic conditions in national legal systems.

This process will be of particular importance in the democratic States of law, where it is customary for societies to consider the application of restrictive regulations to be acceptable only in states of emergency. In conclusion, it can be said that the real test of the effectiveness of the legal solutions used by States to combat the pandemic will be an assessment of the effects of the expected second wave of COVID-19. The more serious its balance sheet will be, the more we can be sure that the technological measures harnessed to provide security will become increasingly sophisticated and will increasingly have to infringe our privacy.

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