

Civil Liberties and Surveillance in a Time of Coronavirus (5 May 2020) by Dr Vanja Hamzić

The coronavirus pandemic has led to an unprecedented global surge in emergency legislation and in digital surveillance. In combination, these pose an existential threat to civil liberties and are in need of constant and robust parliamentary and judicial scrutiny. The new, often sweeping, legislative and surveillance methods have been adopted by authoritarian states and democracies alike, and without proper safeguards could lead to grave abuses of power. A number of concerned judicial, parliamentary, academic and civil society authorities around the world have suggested a fairly straightforward response: **states should fully roll back the enacted emergency powers as soon as possible and legislate to provide a clear legal basis for the use** (and detailed procedural safeguards against the misuse) **of the new contact-tracing mobile applications and other increasingly invasive and pervasive surveillance technology.**

In the United Kingdom, the Health Protection (Coronavirus, Restrictions) Regulations 2020 and the speedily passed Coronavirus Act 2020 impose the most drastic curtailments on liberty this country has seen in a very long time. Whilst these Regulations, and indeed the Act, have been introduced to address an emergency, it is now likely that the core restrictions, even if 'relaxed' or otherwise revised, will continue for a considerable period of time. It is, therefore, of utmost importance that **Parliament subject these enormous powers to rigorous and repeated scrutiny.** For instance:

- The Regulations and the Act provide parliamentary authority for the Government to act in ways that might otherwise be considered unlawful or draconian; as such, Parliament should closely watch and regularly reassess the balance between liberty and the necessity these legislative measures are designed to achieve, including by demanding a **more frequent parliamentary review** than currently envisaged (six months for both the Regulations and the Act);
- Some of the enacted emergency measures, such as the home confinement provision or the use of force in policing the lockdown, do not have a clear statutory basis or are in need of further clarification and/or limitation; besides, many of them are, by their very nature, in tension with individual liberty and autonomy; Parliament should task the **Joint Committee on Human Rights** or form a **separate coronavirus committee** to urgently address these concerns;
- The new Regulations and the Act cover, *inter alia*, births, deaths, weddings, funerals, healthcare, elections, justice and even intelligence operations, and as such have serious and long-lasting implications for human rights; the Government is reportedly intent to publish its own analysis of these sweeping measures' compatibility with the UK's human rights obligations; before and after this is done, it is necessary for Parliament to **hold the Government accountable** for its assessment and implementation of emergency legislation.

Meanwhile, the Government has just commenced a trial of its new, Bluetooth-based, coronavirus [contact-tracing app on the Isle of Wight](#). Although individual use of this app will be voluntary, **Parliament should legislate on how the app will be allowed to operate**, so that there is a clear and detailed legal framework for such unprecedentedly intrusive data collection and use, which should include comprehensive procedural safeguards against any unwarranted surveillance. Parliament should also ensure a timely 'phasing out' of this app and other emergency data-collection and surveillance measures, including the eventual deletion of sensitive personal data.

Here and around the world, liberties lost in emergency situations are notoriously difficult to restore.

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