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The Impact of the COVID-19 Pandemic on the Protection of Personal Data: The Case of an International Traveler Violating National Quarantine Laws

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The Impact of the COVID-19 Pandemic on the Protection of Personal Data: The Case of an International Traveler Violating National Quarantine Laws

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ABSTRACT

The Coronavirus (COVID-19) has caused tremendous amount of challenges all over the world in various areas, particularly the legal area. One of the prominent areas affected by COVID-19 is the protection of personal data of international travelers upon violation of national quarantine laws.

This paper will discuss, through a real-life example, the extent of protection of personal data of international travelers. It will also explain the legal relations between an international traveler and the country in which the violation takes place. Moreover, the paper will compare the stances of three states in terms of protection of personal data of travelers. It will also shed some light on the issue of conflict of laws.

Finally, the paper will tackle the scope of national quarantine laws, the law applicable to international travelers violating these laws, and overriding mandatory rules.

KEYWORDS: COVID-19, international traveler, protection of personal data, national quarantine laws, overriding mandatory rules, conflict of laws, *lex causae*

تأثير جائحة كورونا على حماية البيانات الشخصية: حالة مسافر دولي ينتهك قوانين الحجر الصحي الوطنية

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الملخص:

خلفت جائحة كورونا قدرًا هائلًا من التحديات في جميع أنحاء العالم في مختلف المجالات، وبخاصة في المجال القانوني. ويُعد أحد أبرز المجالات التي تأثرت بجائحة كورونا هو حماية البيانات الشخصية للمسافرين الدوليين عند انتهاك قوانين الحجر الصحي الوطنية.

ولهذا ستناقش هذه الورقة، من خلال مثال واقعي، مدى حماية البيانات الشخصية للمسافرين الدوليين، كما ستوضح العلاقات القانونية بين المسافر الدولي والدولة التي يقع فيها الانتهاك. علاوة على ذلك، ستقارن الورقة مواقف ثلاث دول فيما يتعلق بحماية البيانات الشخصية للمسافرين، كما ستلقي بعض الضوء على قضية تنازع القوانين.

وأخيرًا، ستتناول الورقة نطاق قوانين الحجر الصحي الوطنية، والقانون الواجب التطبيق على المسافرين الدوليين الذين ينتهكون قوانين الحجر الصحي الوطنية والقوانين ذات التطبيق الضروري.

الكلمات المفتاحية: جائحة كورونا، مسافر دولي، حماية البيانات الشخصية، قوانين الحجر الصحي الوطنية، القوانين ذات التطبيق الضروري، تنازع القوانين، القانون الواجب التطبيق على موضوع النزاع.

Introduction

The continuous spread of COVID-19 has created great concerns over the protection of personal data internationally. As expected, these concerns have eventually reached their peak. The virus spread at a tremendous rate due to people travelling between countries. Therefore, it was essential for many States to require international travelers to disclose part of their personal data, such as their name, gender, date of birth, history and purpose of travel, residence, etc. Moreover, they were required to follow quarantine procedures.⁽¹⁾

Although national measures to combat COVID-19 differ from one country to another, they all agree on the need to use personal data as a precautionary measure. Thus, many States, such as South Korea, China, Japan, etc. resorted to the use of personal data obtained from telecommunication companies to track the movement of people infected with the virus using their mobile phones. Some States allowed security agencies to use mobile phone data of infected people, monitored by these agencies, to send short text messages in order to warn those who may have come into contact with the infected people. For instance, China resorted to high-tech to fight COVID-19. It used artificial intelligence technology, such as smart thermal scanning devices and facial recognition technology in public places to track the spread of the virus. These technologies depend on personal health data that assigns each individual a specific health status with a specific color, i.e., green is “safe”, yellow requires a “quarantine for seven days”, and red requires a “quarantine for 14 days”.⁽²⁾

Generally, the spread of COVID-19 accelerated the enforcement of many

(1) Nicole Mills, Coronavirus Quarantine Rules Will Force International Arrivals into Two-Week Quarantine in Hotels and Caravan Parks, (last updated, March 27, 2020), available at: <https://www.abc.net.au/news/2020-03-27/coronavirus-quarantine-laws-force-international-arrivals-hotels/12097312>.

(2) Aditya Chaturvedi, The China Way: Use of Technology to Combat Covid-19, (last updated, November 5, 2020), available at, <https://www.vifindia.org/article/2020/march/19/china-marshals-4ir-technologies-to-contains-covid-19>.

precautionary measures taken by many states around the world after the high rate of global deaths and infections. Accordingly, states of emergency and quarantine laws were imposed to preserve public health. Air, land and sea borders were closed, and security barriers were put in place to limit the movement of individuals. Recently, an online application was launched to track infected people to prevent the virus from spreading.⁽¹⁾ These are the abstract facts; they normally have a practical impact, which will be discussed below.

Real-life Example

On March 30, 2020, the Chinese media published, on a large scale, the news of an Australian citizen of Chinese origin who had arrived in China one day before the occurrence of the incident that will be explained below. According to CNN, this woman violated the requirements of home quarantine as she was running without wearing a facemask inside the apartment complex in which she lived in the Chinese capital, Beijing. A Chinese police officer asked the woman to return home but she refused and claimed that he mistreated her⁽²⁾.

The personal data of the woman was disclosed to the Chinese media, which published a photo of the woman, her name, age⁽³⁾, nationality, flight information, temporary place of residence in Beijing, the Chinese and Australian universities from which she graduated, and the years of her graduation. The media did not stop at that; it published her career history: previous positions, current position, salary, and current employer. Obviously,

(1) Paul Bischoff, Covid-19 App Tracker: Is Privacy Being Sacrificed in a Bid to Combat the Virus? (last updated, April 20, 2020), Available at, <https://www.comparitech.com/blog/vpn-privacy/coronavirus-apps/>.

(2) Nectar Gan, A Chinese Australian Woman Breached Coronavirus Quarantine in Beijing to Go for a Jog and Lost her Job (last updated on, March 20, 2020), Available at, <https://edition.cnn.com/2020/03/20/asia/beijing-coronavirus-woman-fired-intl-hnk/index.html>.

Jeanne, Huang, Covid-19 and Applicable Law to Transnational Personal Data: Trends and Dynamics, University of Sydney Law School Legal Studies Research Paper Series No. 20/23 (2020).

(3) *Id.*, fn. 7.

the media published privacy-invading personal information for no good reason.

The most astonishing part was the reaction of the company in which the woman was working (the Chinese branch of a giant German pharmaceutical company), which quickly announced that the woman violated the Chinese quarantine laws and thus terminated her employment contract. Hence, the Chinese authorities cancelled her visa and she was deported.⁽¹⁾

No doubt the woman violated the national Chinese health laws, which should have been respected and applied; her behavior could have threatened public health and it is worth condemnation. However, does this warrant the disclosure of her detailed personal information on the Internet in the above manner? If yes, to what extent? It is noteworthy that the published information could easily disclose her identity.

The aforementioned example reveals a number of foreign elements relating to legal relations: the woman is an Australian citizen of Chinese origin working as a manager in the Chinese branch of a major German pharmaceutical company, and China is the country in which the violation of the quarantine laws occurred and the place of residence of the woman in question. So, which law is most relevant to the legal relationships?

The answer to this question requires consideration of the following key concept:

1- The law applicable to international travelers who violate national quarantine laws

The previous example raises the issue of the law applicable to the personal data of an international traveler who violates a national quarantine law.

(1) Id.

In the absence of an international treaty or a model law regulating the mechanisms for selection of the law applicable to personal data internationally; in addition to long international coordination efforts to reconcile the interests of some states⁽¹⁾, which may be difficult if not impossible; lack of knowledge of the possibility of retroactive application, and the need to find a solution for most issues relating to the status quo, it is arduous to find an answer to the above question.

Nevertheless, before answering the previous question, it is important to highlight the implications of different national laws relating to the protection of personal data. A brief comparison of the stances of three States will illustrate this difference.

- 1. China's stance:** The example revealed that the Chinese media published personal data of an international traveler who violated quarantine laws. This stance differs from that in force in the EU.
- 2. The EU stance:** Personal data is protected under the General Data Protection Regulation (GDPR)⁽²⁾, which was adopted by the European Data Protection Council (EDPC). The overall view of the GDPR shows that the endeavor to protect personal data is in line with the precautionary measures to fight COVID-19.

“Data protection rules (such as GDPR) do not hinder measures taken in the fight against the coronavirus pandemic. However, I would like to underline that, even in these exceptional times, the data controller must ensure the protection of the personal data of the data subjects. Therefore, a number of considerations should be taken into account to guarantee the lawful processing of personal data,”⁽³⁾ Andrea Jelinek, President of the EDPC states.

(1) *Id.*, fn. 4, 45, 46.

(2) General Data Protection Regulation, 2016/679, art. 6 & 9 (EU), Available at, <https://gdpr-info.eu/>.

(3) Statement by the EDPB Chair on the Processing of Personal Data in the Context of the COVID-19 Outbreak, (last updated, March 16, 2020), Available at, https://edpb.europa.eu/news/news/2020/statement-edpb-chair-processing-personal-data-context-covid-19-outbreak_en.

3. Australia's stance: The Australian government may publish certain personal data so that the public can keep a distance from homes of the infected people and to be aware of the places they visited.

However, their full name, position, salary, academic qualifications, and other information unrelated to the main goal, namely, to protect public health considering the precautionary measures required by the COVID-19, may not be disclosed unless such disclosure is necessary to reduce or prevent a serious and imminent threat to public health.⁽¹⁾

It could be said that Australia's stance is in middle ground between China's stance and that of the European Union. Hence, the previous part highlights the different stances of States with regard to the protection of COVID-19-related personal data.

Following examination of the various stances of States, it is time to go back to main question: which law is applicable to the personal data of an international traveler who violates a national quarantine law? Due to the heterogeneous stances of States in terms of national responses to the combating of the COVID-19, we must define the law applicable to international personal data in light of the present conflict of laws.

In order to determine the applicable law to transnational personal data, we will discuss the principle of the conflict of laws. In order to identify the *lex causae*, there are three stages:

1. place the issue under one of the established choice of law classifications by determining the nature of the subject matter,
2. select the rule of conflict of laws which lays down a connecting factor for the issue in question, and

(1) Supra note 5, fn. 23.

3. identify the system of law tied by the connecting factor found in stage two to the issue classified in stage one. ⁽¹⁾

In view of China's stance on this issue, it should be noted that it adopted the rules of attribution depending on the law of the forum. Furthermore, China considers the laws of personal data protection as an overriding mandatory rule. Thus, it often applies the *Lex fori* ⁽²⁾ on personal data disputes, whether in tort or contractual liability.⁽³⁾

It is possible to consider personal data protection laws as an overriding mandatory rule directly applicable to civil relations related to one or more foreign elements irrespective of what is stipulated in the conflict of laws rules. In China, for instance, the choice of law rule that specifies the law applicable to the right of personality is the law of a person's habitual residence⁽⁴⁾, according to Article 15 of the Chinese Civil Relations Application Law.⁽⁵⁾

In 2012, the Chinese International Commercial Court (CICC) issued a judicial interpretation defining what is meant by overriding mandatory rules. On its third session, the Judicial Committee of the Supreme People's Court commented on Article 10 of the interpretation⁽⁶⁾:

“Under any of the following circumstances, the provisions of the laws and administrative regulations in connection with the social public interests of

(1) Supra note 5, fn. 24.

(2) To eliminate the multiple case law in this regard, see Supra, fn. 5, 32-33.

(3) Id., 24.

(4) Id. 27, fn. 128; Yan Luo, Zhijing Yu et al, China Seeks Public Comments On Draft Measures Related to The Cross-Border Transfer of Personal Information, (last updated, June 13, 2019), available at <https://iapp.org/news/a/the-future-of-data-localization-and-cross-border-transfer-in-china-a-unified-framework-or-a-patchwork-of-requirements/>.

(5) Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships, art. 15, (I), (Adopted at the 17th session of the Standing Committee of the 11th National People's Congress on October 28, 2010), available at, <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cn/cn173en.html> , (last visited, February 25, 2023); See, Decree of the President of the People's Republic of China, art 4; and See also, <https://conflictoflaws.net/News/2011/01/PIL-China.pdf> .

(6) For more details, Interpretation of the Supreme People's Court, art. 10 (China), Fashi (2012) No. 24, adopted at the third Session of the Judicial Committee of the Supreme People's Court on December 10, 2012, issued on December 28, 2012, entered into force on January 7, 2013, <https://hk.lexisn.com/law/content.php?lawid=2533770&eng=0> .

the People's Republic of China (RPC), which application the parties cannot preclude by agreement and can be directly applicable to the foreign-related civil relation without guidelines on the conflict rules, may be determined by the people's courts as the mandatory provisions set forth in Article 4 of the Law of the PRC concerning the Law Applicable to Foreign-Related Civil Relations.”

The following areas are subject to overriding mandatory rules:

1. protection of the rights and interests of laborers;
2. food or public health safety;
3. environmental safety;
4. foreign exchange control and other financial safety;
5. anti-monopoly and anti-dumping;
6. or other circumstances under which they shall be determined as mandatory provisions”.

Furthermore, in the context of COVID-19, if a law for public health safety requires disclosure of personal data, this law must be one of the overriding mandatory rules, and therefore it must exclude the application of foreign laws.

Applying the aforementioned to the Australian woman mentioned above, it will become evident that although the permanent residence of the woman is in Australia, Australian laws may not be applied to her because the Chinese law relating to COVID-19 is considered one of the overriding mandatory rules⁽¹⁾.

(1) Id.

2- Grounds for application of the Chinese law to the case of the Australian woman

The above grounds are not the only grounds supporting the application of Chinese laws to the case of the Australian woman. On February 4, 2020, the Chinese Central Information Security and Information Commission (CISIC) issued a notice on the protection of personal data and the use of big data to support joint prevention and control of the disease⁽¹⁾.

The CISIC notice specifies the relevant agencies qualified to collect personal data during the pandemic. It also highlights the relevant principles and regulations to be followed in the collection and processing of personal data, e.g., the principles of necessity and minimization in the area of Information Security Technology – i.e. Personal Information Security Specification. Accordingly, personal data collected for the purpose of the prevention and control of the pandemic may not be used for any other purpose, So, “no personal information that has been collected for such use can be made public without the consent of the data subjects, unless this is necessary for the prevention of an epidemic and the information is redacted or anonymized”.⁽²⁾

Thus, the context of the notice must be applied to international travelers whose permanent place of residence is not in China. To determine whether this law is one of the overriding mandatory rules, this depends on whether this law is related to or (affects) the social public interest of China according to Article 10 of the aforementioned judicial interpretation.

Conclusion

- The COVID-19 has created great concerns over the international protection of personal data since the virus has spread at a tremendous rate due to

(1) Id., 34-36.

(2) Barbara Li , Bohua Yao , Personal data protection in the time of coronavirus (Covid-19) , Available at, <https://www.dataprotectionreport.com/2020/02/personal-data-protection-in-the-time-of-coronavirus-covid-19/> .

people travelling all over the world. Accordingly, it has become essential for many States to require international travelers to disclose part of their personal data, such as their name, gender, date of birth, history and purpose of travel, residence, quarantine procedures, etc.

- The study discussed in detail a real-life example of an Australian citizen of Chinese origin. That example revealed a number of foreign elements relating to legal relations: the Australian woman of Chinese origin working as a manager of the Chinese branch of a major German pharmaceutical company and China, the country in which the violation of the quarantine laws occurred and the place of residence of the woman in question. So which law is most relevant to legal relations, especially in the absence of an international treaty or a model law regulating the mechanisms for selection of the law applicable to personal data?
- The answer to this question requires consideration of the law applicable to international travelers who violate national quarantine laws. In the real-life example, although the State of permanent residency was Australia, Australian laws were inapplicable to the woman because the Chinese law relating to COVID-19 is considered an overriding mandatory rule.
- Therefore, a brief comparison of three States, China, the EU and Australia, was conducted in order to highlight the different stances of these States on the protection of COVID-19-related personal data.
- To sum up, the study concludes that the law applicable to an international traveler who violates national quarantine laws is the *lex fori*, particularly if the laws related to COVID-19 are considered overriding mandatory rules.