

Public health or digital liberties?

The impact of covid tracing apps and
other digital measures to curb COVID-19
in EaP countries on democracy
and human rights

Report on the situation
in the Republic of Azerbaijan



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Project Information:

Social-strategic Researches and Analytical Investigations Public Union , in cooperation with the Institute of Innovative Governance from Ukraine, performed the study on application of digital tracking tools for managing epidemic situation during Covid19 pandemic in Azerbaijan. The study was prepared under the framework of the project-“Public health or digital liberties? The impact of Covid tracing apps and other digital measures to curb COVID-19 in EaP countries on democracy and human rights”. The research aims to explore the responsive measures for dealing with challenges related to the Covid-19 pandemic situation in Azerbaijan, evaluate state regulations and restrictions applied to mitigate virus spread, including application of digital tracking tools for controlling and revealing the incidence of disease, and their implications for democracy and human rights in the country. The research investigates regulatory framework and personal data protection mechanisms in Azerbaijan and their compatibility on mobile application system (E-Tabib mainly). The study is conducted during the period of February-August 2021. This document describes the preliminary findings of the research and further steps for the analysis.

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Introduction and methodology

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Introduction

Azerbaijan is one of the countries which tried to respond to the pandemic as soon as the first case was found. On 30 January 2020, as the situation with the spreading pandemic got worse around the world, the Cabinet of Ministers of the Republic of Azerbaijan announced that it adopted the 'Action Plan to prevent the spreading of a new corona disease in the Republic of Azerbaijan'. On 27 February 2020, Operational Headquarter under the Cabinet of Ministers, which consists of top officials of relevant state agencies and institutions, was established to monitor the situation and counteract the danger of coronavirus in the territory of Azerbaijan through preventive and immediate measures, and a revised action plan was approved¹. On the following day, the Cabinet of Ministers issued a decision No. 73-1 "On The Rules for quarantine-organization, prevention and other necessary measures in case of a threat of emergence or spread of infectious, parasitic and mass non-communicable diseases"². These two executive decrees formed the normative basis for the Government's response to the pandemic.

The first COVID-19 case in Azerbaijan was diagnosed on 28 February 2020. As of 17 August 2021, over 373.175 COVID-19 cases were confirmed as positive, with 5188 deaths, more than 340.174 recoveries, and 27.813 active cases³. The Government adopted a 'special quarantine regime' on 24 March 2020 and imposed multiple severe measures on the population, harshly restricting their freedom of movement and raising questions of possible privacy violations following the application of obligatory SMS approval system for residents willing to leave their homes. To cope with the outbreak, at different periods of time, the Government has also imposed short-term 'tightened quarantine regime', that prevented the population from leaving their home in major cities unless there was 'immediate danger to life and health'. Special laws establishing administrative and criminal liability for violations of quarantine rules or for spreading false information causing threat to harming human life have been adopted.

That 'special quarantine regime' was later extended until May 31, June 15, 5 July, 20 July and 31 August 2020, and then again between mid-December and mid-January 2020-2021⁴. This regime was put in place in accordance with the Law on Sanitary and Epidemiological Safety, which allows

the Government to apply special labour, education, movement, transportation conditions and regimes in the event of a threat of the emergence or spread of infectious, parasitic, mass non-communicable diseases⁵.

On 12 June 2020, further regulation was introduced requiring those tested positive for the virus displaying mild symptoms to self-isolate at home and commit to being tracked through a mobile tracking application, which enables authorities to verify his/her location at the place of residence⁶. The situation became more intense when the clashes started between Armenia and Azerbaijan over the Nagorno Karabakh region (internationally recognized as a part of the Republic of Azerbaijan) towards the end of September. With the case numbers rising, the general population almost forgot about the pandemic and focused on the ongoing war which continued till the early November 2020.⁷

The government created two applications as a way of preventing the spread of the virus. One of them, which was called "Protect yourself against the Coronavirus", was developed with the UNDP Baku Office which collected basic personal information and provided first medical advice if a person asked specific questions concerning the symptoms⁸.

1. <https://nk.gov.az/az/article/680/>

2. <https://nk.gov.az/az/document/4363/>

3. <https://koronavirusinfo.az/az/page/statistika/azerbaycanda-cari-veziyyet>

4. <http://e-qanun.az/framework/45155> <http://e-qanun.az/framework/45337> <https://nk.gov.az/az/article/942/> <https://nk.gov.az/az/document/4987/>

5. <http://www.e-qanun.az/framework/7916>

6. <http://e-qanun.az/framework/45178>

7. <https://www.bbc.com/news/world-europe-54324772> <https://www.bbc.com/news/world-europe-54882564>

8. <https://isim.az/az/news-view/1286>

Introduction

The second one, E-Tabib, notified people whether they were around the persons who are potential carriers of the virus based on the previous information provided to the app by those people who contacted the virus. If a person accidentally came in contact with a carrier of the infection (for example, in a queue, in a store, etc.), s\he would be notified and invited to a laboratory test. The only personal information provided was the mobile number and tracking was conducted with the Bluetooth⁹. However, it should not be forgotten that the mobile number operators already have information concerning one's identity (name, place of residence, etc.) and can easily pass that information to government bodies¹⁰. Within the framework of the current project, various methods were used in order to obtain thorough information concerning

the digital approach of the government to the pandemic. The target groups are general population, civil society and government bodies. While survey questionnaire was prepared and disseminated among the public, with civil society members interviews with specific set of questions were conducted. Two ministries were also contacted in order to obtain statistical information concerning the protection of personal data collected in relation to the usage of the tracking application. While 80 people among the population took part in the simple 10-question survey, interviews were conducted with 5 members of Azerbaijani civil society. According to the survey conducted among the members of the public and civil society not so many used the application.

The questions employed in the survey can be divided into groups as:

1. Gender and age in order to have full picture and broader representation;
2. Whether they used the application, if not why;
3. What kind of personal information was provided for the application;
4. What they would do if their personal information was leaked.

Interviews that were conducted with heads or members of the non-governmental organisations included:

1. How the government's response was to the pandemic;
2. Do you believe that the COVID-19 application was a threat to democracy and human rights;
3. How the usage of personal information by the application is regulated;
4. Do you know any case where there has been a breach by the application;
5. How do you see the cooperation with the European Union on this matter.

Two letters were sent to the Ministry of Health as it created the application and the Ministry of Transport, Communication and High Technologies as it is the responsible body in order to have full picture and all sides to be heard for the comprehensiveness of the research.

9. <https://koronavirusinfo.az/az/page/haqqimizda/e-tebib-mobil-tetbiqini-yukleyin>

10. In fact, the Government already have that information, but those operators can help to track with the Bluetooth making it more exact

**About the mobile applications:
“Protect yourself against Coronavirus”
and “E-Tabib”**

2



About the mobile applications: “Protect yourself against Coronavirus” and “E-Tabib”

As mentioned above, two mobile applications were developed in Azerbaijan in order to combat the spread of the COVID-19 virus. However, they are not popular among public.

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The first mobile application that can be only shortly mentioned is “Protect yourself against coronavirus” that was developed by the Ministry of Health in cooperation with the Baku Office of UNDP. This application rather than having tracking character was created as a tool to inform public. The programme is available on the website of the Centre for Public Health and Reforms of the Ministry of Health. As mentioned in the website, the goal of the program is to help people decide whether to seek appropriate medical care. This self-examination program is not intended to diagnose or treat any disease (including COVID-19) or other medical conditions. After each person's consent to use, the program asks a number of questions to determine the level of care required, and based on these answers, the necessary recommendations are provided. The program is intended only for people living in Azerbaijan. The programme is not famous at all and as will be shown below none of the people involved in the survey has used it so far.

The second application that needs to be more focused on is “E-Tabib” which has a tracking character. It is developed by the Data Processing Centre of the Ministry of Communications, Transport and Higher Technologies (“the Centre”). According to the official website, with this application, the person is notified when people around them in public places are potential carriers of the virus. If the person accidentally comes in contact with a carrier of the infection (for example, in a queue, in a store, etc.), s/he is notified and invited to a laboratory test¹¹.

E-Tabib works on the basis of Bluetooth technology, communicates with other users of the application nearby. With the help of the application it is possible to contact the Anti-Coronavirus Hotline with one touch, get statistics and relevant assistance, as well as receive various notifications and news.

The instructions provided at the website in order to download the application to the phone are: 1) Depending on the system you use, download the application to your smartphone via “Play Market” or “AppStore” by typing “E-Tabib”; 2) Launch the application and enter your mobile phone number; 3) Enter the confirmation code to be sent via SMS in the appropriate fields; 4) Turn on the Bluetooth device¹². As can be seen from the steps, it needs a mobile number to be activated and main tracking tool is the Bluetooth which requests the person to automatically activate and give permission to link the app with the Bluetooth. Although it is not mentioned in the instructions, the person using the application is automatically asked to give permission to the app to access GPS data which is clearly used for the purposes of tracking.

Researching deep down in the application, it becomes clear that it is not that easy as it is enshrined in the instructions. Once the person inserts mobile phone number and types the code received, s/he is presented with “Terms of Use” which consists of 10 Articles¹³. In the Preamble the person agrees and consents to abide by all the rules of the Terms. While the first three Articles talk about intellectual Property rights of the developer, Articles 6-10 provide standard contractual terms such as guarantees, termination of a contract (both user and developer being provided with the right to unilateral right termination), severability of the contract, applicable law (the Laws of the Republic of Azerbaijan), etc.

Articles 4 and 5 specifically talk about the users' rights and obligations. Article 4 expressly provides that the Centre bears no responsibility for the damage caused by the usage of the application, and like “Protect yourself against coronavirus” application it is stressed that it is not intended to diagnose or treat any disease. It needs to be stressed that here no liability clause is about material damage, as for the violation

11. <https://koronavirusinfo.az/az/page/haqqimizda/e-tebib-mobil-tetbiqini-yukleyin>

12. <https://koronavirusinfo.az/az/page/haqqimizda/e-tebib-mobil-tetbiqini-yukleyin>

13. <https://etabib.az/qaydalar.html>

About the mobile applications: “Protect yourself against Coronavirus” and “E-Tabib”

of privacy rights the Centre bears full responsibility under Article 5.12.

Article 5 is more of focus of interest as it talks about confidentiality and collection of personal information. In the website it is expressly provided and assured that the “E-Tabib application does not collect any personal information other than your mobile phone number”¹⁴. Nevertheless, the Terms says otherwise, as Article 5.1 clearly says that the Centre collects personal information and can share it only in accordance with legislative norms.

The personal information collected include:

1. Name, surname and mobile phone number;
2. In case person does not provide phone number, then the social network account or e-mail address;
3. ID number for the purposes of (1) Study of Covid-19 laboratory and other test results by the user, and (2) if necessary, to provide access to leave the place of residence or location;
4. Information about Location (subject to additional consent of the user)- used to obtain information about the User’s location, date and time within 14 days prior to the date of diagnosis and to inform the persons with whom the User has been in contact during these days.

The Centre saves the right to disclose personal information on the conditions of: a) lawful request of a government body or representative, court order, any legal process, including the Centre’s obligations under the law; b) determine, exercise or protect the Centre’s legal rights, if necessary; c) protect the vital interests of another person; d) the sale, transfer or reorganization of all or part of our activities; e) in other ways in accordance with applicable law, including in cases where we have obtained your consent. It needs to be underlined that Point d is a clear violation of a right to privacy as the user has no say in this, and her/his personal information end up in an organisation which s/he wouldn’t like to.

Additionally, the Terms rule that in the above cases, your personal data may be transferred outside the Republic of Azerbaijan to third parties located in countries with legislation that provides different levels of legal protection of personal data. It is also another worrisome point as it lays down “different levels of legal protection” rather than “the same or better”. Under Article 5.10, the Centre holds the right to keep personal information for the duration of 1 month even after the termination of the contract and deletion of the application.

Article 5.11 emphasizes different rights of the user such as get acquainted with your personal data, demand correction of inaccurate information, request to delete your personal information, require restrictions on the processing of your personal information, object to the processing of your personal data and other rights which are laid down in the Law on Personal Information¹⁵.

Last but not least, another important point is that although in the website it is said that the user agrees to share personal information voluntarily, it is not so as in case of declining the Terms, s/he is not allowed to use the application.

Consequently, the analysis of the applications, especially E-Tabib, shows that there are major inconsistencies between what the public basically presented with and the realities of the Terms of Use, and there is tracking of people via the application via Bluetooth and GPS data.

14. <https://koronavirusinfo.az/az/page/haqqimizda/e-tebib-mobil-tetbiqini-yukleyin>

15. <http://www.e-qanun.az/framework/19675>

**Results
of the public survey
and Interviews with
civil society members
and response from
state bodies**

3



Results of the public survey, Interviews with civil society members and response from state bodies

a) Public opinion about the Covid-19 applications

During the research survey among the public and Interviews with civil society members conducted in order to obtain their opinions on the Covid-19 applications developed by the Azerbaijani government and in general how the state responded to the pandemic. A specific set of questions as shown above agreed within the framework of the project was translated into Azerbaijani and shared for the respective target groups.

As a result of the public survey, interesting analysis was made. 80 people participated in the survey. The proportion of male and female participants were even which means that the views are presented gender equally. Age groups are more diverse. 18-25 years old and 50+ age groups were represented evenly with 20 people (25%) in each, in total making 50% of the participants. The biggest group was 25-35 year-old young generation which consisted of 37,5 % that made 30 participants in total. The smallest group was 35-50 year-old people with 12,5% (10 people).

After these background questions, participants were asked more specific questions about the mobile applications. Interestingly none of them used or were aware of the “Protect yourself against Coronavirus” programme developed by the Ministry of Health and UNDP. However, 20 people (25%) which represented young generation of 25-35 year-old group used the “E-Tabib” application. The reasons that they provided for the usage were different. While some downloaded and used solely for travel purposes, others made so for work-related issues. According to respondents, the application provides the user with the Covid-19 test results quicker and more easily than any other means (SMS or contacting the testing centre). With the help of application, they can swiftly show the test results at the airport before leaving the country¹⁶. For those who work at different private and public entities where they are sent to get tested regularly, the application is useful for the same reasons as mentioned in the travel purposes (easy and fast access to the results). Interestingly, they indicated that when not needed they turned off the Bluetooth and GPS tracking of the application. Obviously, it indicates that users were not happy with tracking and trust to the government that much.

The reasons for not using the applications were very diverse too. While 30 participants (37,5%) said that they deemed

the app not so useful, were quite aware of the pandemic and didn't see any reason to use it as they quarantined themselves anyways, 25% of people said that because of the negative public opinion and distrust to the government and application decided not to benefit from the application. The remaining 12,5% of the participants provided various reasons such as being not aware of the existence of the apps, outside the country, etc.

Those who used the “E-Tabib” application said that the only personal information provided to the application was their phone and ID number which the government is already in possession of. Concerning whether they felt them secure while providing any other information to the government, only 6.25% of participants- 5 people (25% of users) reacted positively.

As an answer to the last question about what measures they would take if their privacy was violated, 62,5% (50 people) stressed that they would apply to the court for the breaches and demand compensation. While 10 people (12,5%) said they would demand statement from the government, and another 10 people (12,5%) emphasized that they would go public on social network and media protesting. Remaining 10 people said they would do nothing as it would not be effective anyways.

In general, the results of this small public survey show that the applications are not popular in the society and people do not tend to use them for various purposes, but more often for the fear of violation of privacy by the government.

b) Civil Society on government's digital response to the pandemic

For the purposes of the research and having views of different parties, 5 members of the civil society members were also interviewed. The responses to the questions presented above were different too.

While two of the respondents said that the Azerbaijani government provided on time and proper response to the pandemic. While two others expressed clear dissatisfaction especially as the digital response for government services was adapted late, the other expert said that it can be deemed good at some points, but bad at others.

16. It is the requirement established by the government of the Republic of Azerbaijan to get tested before flying from and to Azerbaijan.

Results of the public survey, Interviews with civil society members and response from state bodies

Concerning the question whether they think that the Covid-19 applications developed by the government presents a danger to democracy and human rights or not, 4 out of 5 civil society members said that they believe so. However, going into the details they said that the legitimate aim of public health followed by the government can be a balancing element here for the intervention to privacy rights. They drew attention to the proportionality between the digital measures implemented in order to address the pandemic and violation of right to privacy. According to them, the government should be very informative and open about the applications and their impact. Only one interviewee said that the applications present no danger to human rights and democracy, and are proper responses adopted by the government to tackle the global issue.

Regarding the question how the usage of personal information by the application is regulated, majority of the civil society members said that they do not know and have no information on the subject. Another one talked about the SMS approval applied for some time in order to limit movement of people outside their place of residence and said that it is done by the decree of the government. The last interviewee provided more comprehensive question highlighting that it is done under the Law and the authorities bear responsibility to protect personal information under that Law.

As a response to the question whether they know any case where there has been a breach by the application, two of them indicated no breach so far, while another two emphasised that sometimes the application works or responds very slowly, and it can cause delay in the movement of people which is a violation of their rights. The other one mentioned that he never faced any problem, but have heard colleagues and the society discussing the issue and having some minor issues.

Lastly, all of the respondents reacted very positively to the cooperation with the European Union. While most of them

stated the need for help from the EU not only on human rights, democracy and digital response matters, but also in order to combat the virus itself, one underlined the need to learn the EU experience on the applications and how the privacy rights dilemmas were solved in the context of tracking applications.

Overall, it can be said that the Azerbaijani civil society members also expressed their concerns on the digital responses and applications, how the public do not trust to provide their personal information to the government, and therefore, strengthening of protection of human rights is needed for the establishment of strong bonds between the society and the authorities.

c) Response from state bodies

As mentioned above two letters containing specific set of questions were sent to the Ministry of Health and Ministry of Transport, Communication and High Technologies. In the request first talking about the general background of the project, a question about the applications, their characteristics and statistics were referred. The measures taken for the protection of the personal information provided through the applications and their regulation by laws were asked as the second set of questions

The researchers received no response from neither of the Ministries. Following it as a next step in order to use all possible means, phone calls were made to both of the Ministries, however, again with no luck.

Such a disregard of citizen request is a clear violation of the Law on Obtaining Information of the Republic of Azerbaijan,¹⁷ which explicitly established that a request by the citizen of the Republic of Azerbaijan to the state bodies that holds information should be responded in a timely manner.

17. <http://www.e-qanun.az/framework/11142>

Conclusion and recommendations

4



Conclusion and recommendations

The research comes to the conclusion that there are serious flaws in the digital response of Azerbaijani government to the Covid-19 pandemic. While some measures such as SMS permissions in times of severe quarantine regime implemented in order to combat fast spread of the virus, most of the actions taken were not proportional from human rights perspective. Those means were alleged abused for tracking political opposition too.

Regarding the applications developed for the specific purpose of helping people to stay safe and see if they have been in contact with the Covid-19 positive person, there are some important inconsistencies as well. The basic information with which the public was shared and the detailed Terms of Use speaks in very different languages. Rules on disclosure of personal information, issuing data to the third parties, rights and obligations of the user and developer are among the other worrisome points.

On this background, it is not surprising that general public does not tend to use the applications. Statistics show that very few people use it, and most of them because of the work-related compulsion. Civil society is not happy with how the applications are used either.

The first and foremost solution to the problem is abiding by its own laws and international standards on human rights. Right to private and family life come first because of the digital tracking. Additionally as a form of cooperation, Azerbaijan should learn the best practices from the EU countries, incorporate essential GDPR rules and share its good cases with other EaP countries and also implement their helpful experiences.

Based on these issues and taking into consideration the whole research following recommendations can be made:

- The government should not abuse its powers and respect the rights and freedoms of all citizens, including political opposition;
- Terms of Use of the applications needs to be immediately considered and resolved in favour of the users' right to privacy;
- The public should be provided with the consistent information concerning applications by all government-owned sources;
- Usage of applications should be made on purely voluntary basis;
- The state bodies should be more transparent and responsive regarding Covid-19 statistics, use of applications and requests of the public.
- Successful experiences of other countries on digital response to the pandemic needs to be learned and cooperation should be established as the civil society is also in favour of it.

