



HORIZONTAL FACILITY FOR THE WESTERN BALKANS AND TURKEY 2019-2022

*FOR YOUR RIGHTS:
TOWARDS
EUROPEAN STANDARDS*

Regional online round table “The impact of the COVID-19 pandemic on human rights and the rule of law”

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Funded
by the European Union
and the Council of Europe



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Privacy and coronavirus: personal data, surveillance and geolocation tracking

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What is coronavirus-COVID-19?

- A family of viruses that are zoonotic – transmitted from animals to humans
- Certain types of coronavirus cause minor illnesses similar to the common cold
- Other types have caused pandemics in the past – SARS and MERS
- A new coronavirus, called Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2), broke out in Wuhan, China, in December 2019. It is closely related genetically to the SARS-CoV-1 virus (SARS)
- COVID-19 is the infectious disease caused by this most recently discovered coronavirus
- '19' – as it dates from 31 December 2019

<https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>

<https://www.ecdc.europa.eu/en/covid-19/questions-answers>

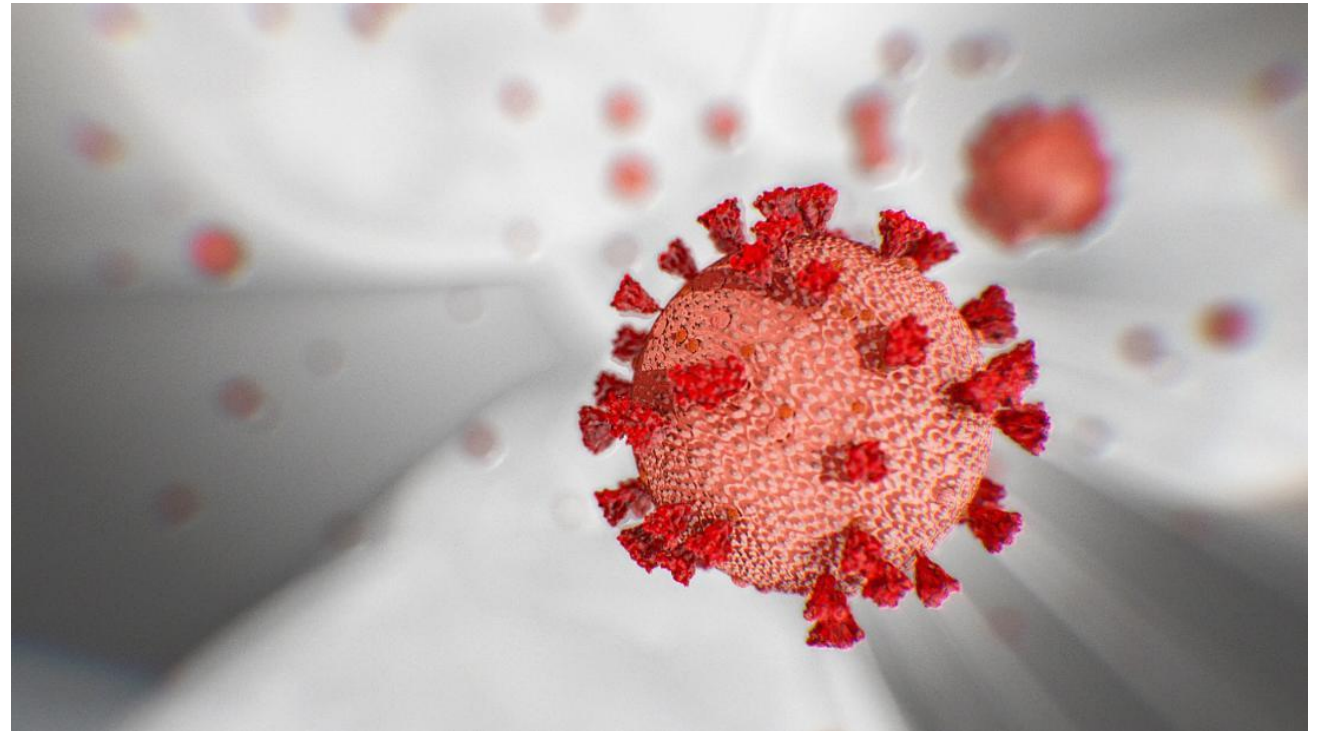
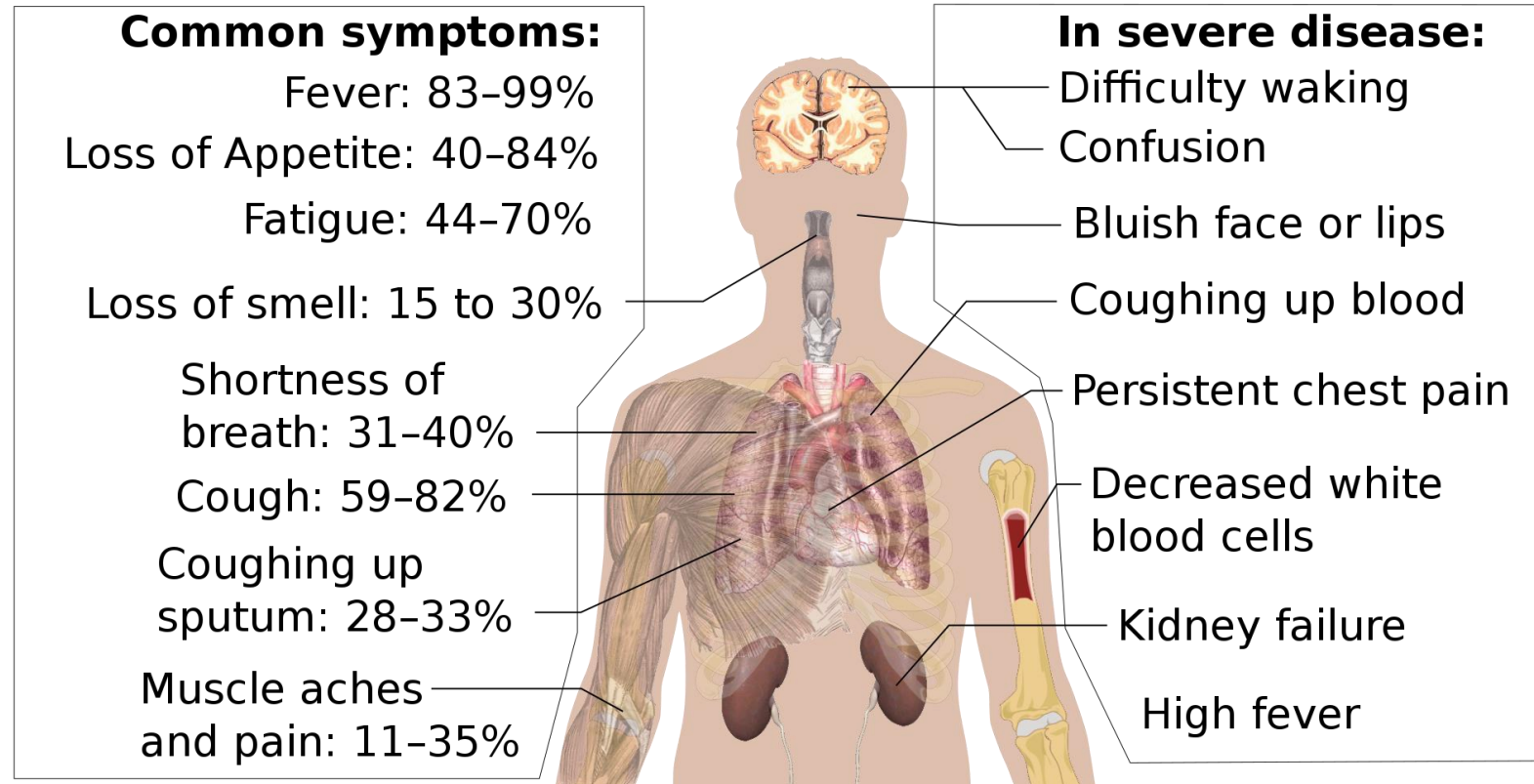


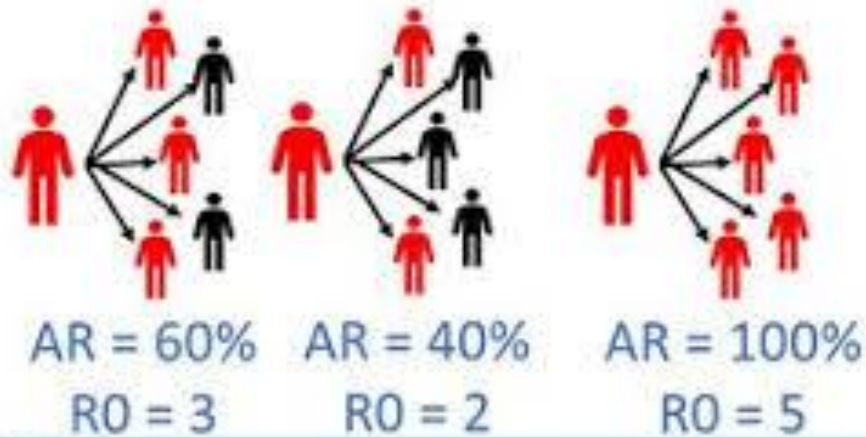
Image Source: <https://edition.cnn.com/world/live-news/coronavirus-pandemic-04-25-20-intl/index.html>

COVID-19 Symptoms



How infectious is COVID-19?

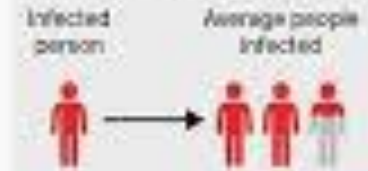
Basic Reproduction Number (R_0) = Attack Rate x Contacts



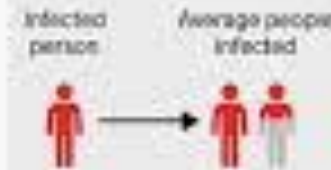
Medscape

The average number of people that one person with a virus infects, based on the R_0 scale

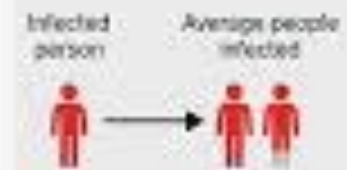
COVID-19: 2–2.5*



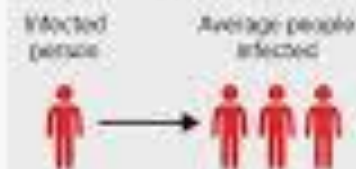
H1N1: 1.2–1.6



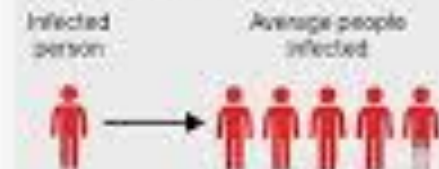
Ebola: 1.6–2



SARS: 2–4



MERS: 2.5–7.2**



*As of February 28, 2020. ** R_0 calculated solely during the 2015 outbreak in South Korea.

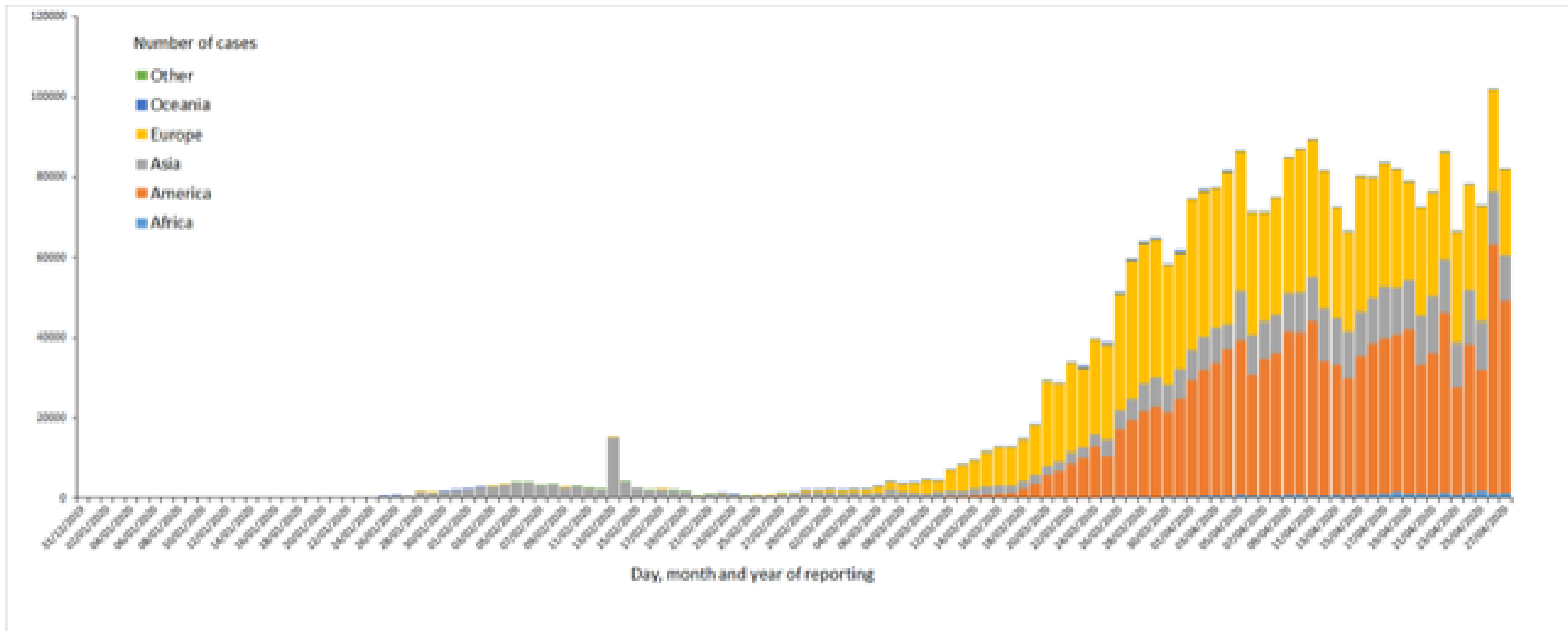
Source: *Emerging Infectious Diseases*, Journal of the CDC.

RAMBLER'S PRESENT

COVID-19 in numbers

Since 31 December 2019, when China notified WHO of the first infected case, until 27 April 2020:

- 185 countries
- 3,041,517 confirmed cases
- 211,159 deaths



The two cornerstones of effective epidemiology - testing and contact tracing



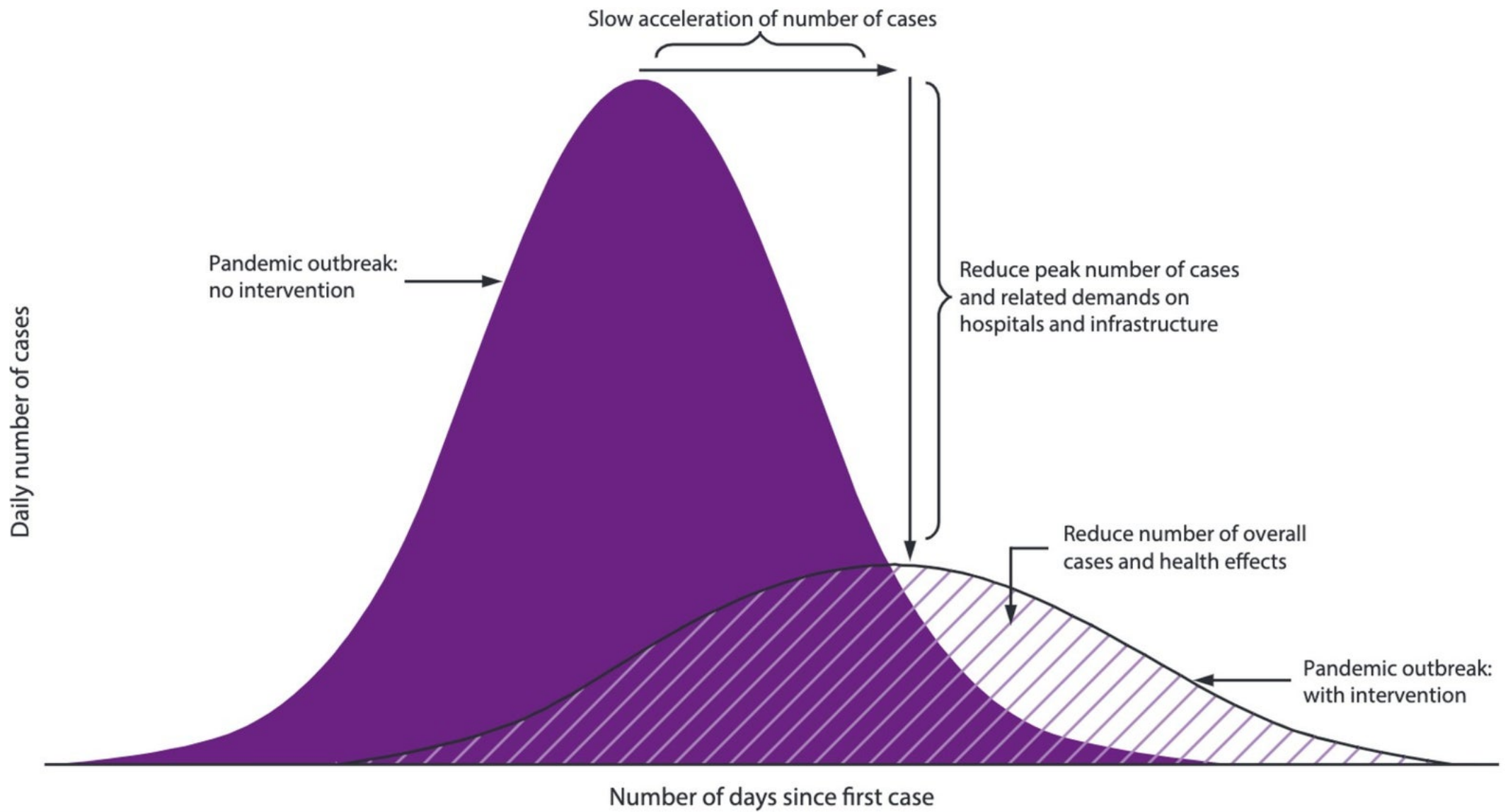
WHO head: 'Our key message is: test, test, test'

World Health Organisation head Tedros Adhanom Ghebreyesus says there has not been an urgent enough escalation in testing, isolation and contact tracing, which should be the "backbone" of the global response.

He said it is not possible to "fight a fire blindfolded", and social distancing measures and handwashing will not alone extinguish the epidemic.

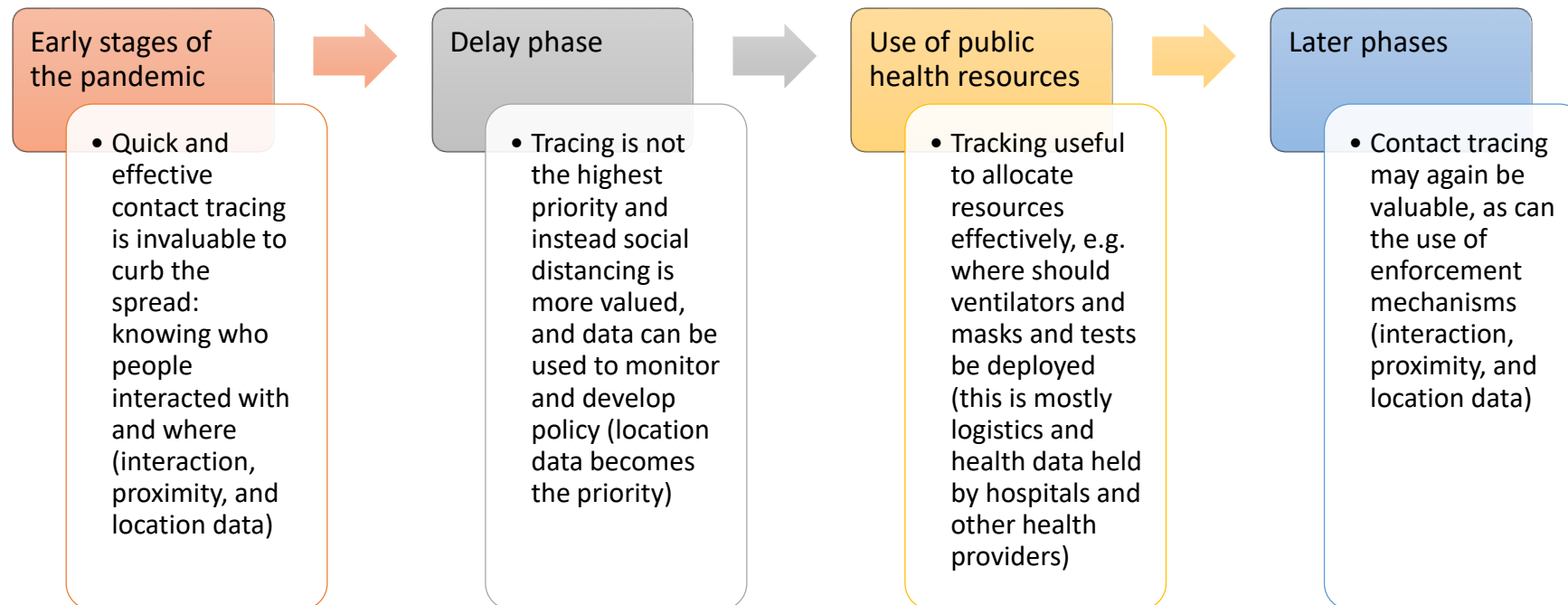
🕒 16 Mar 2020

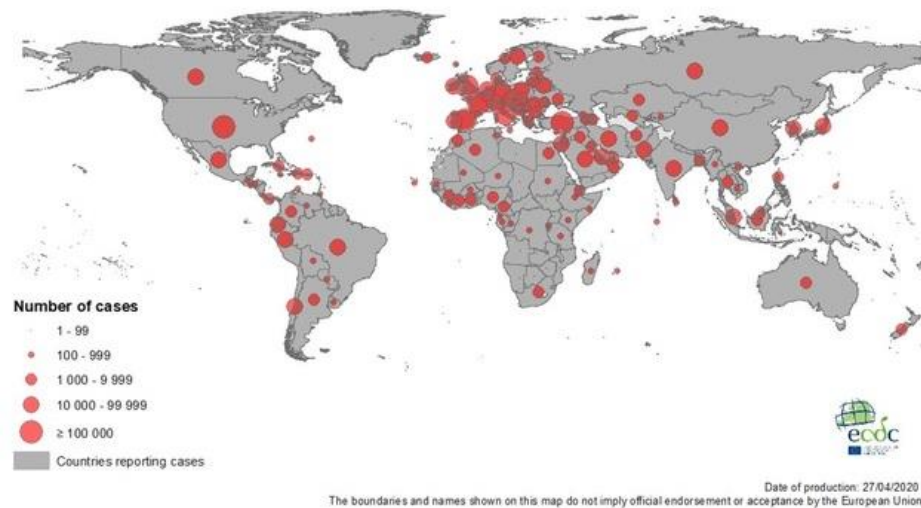
f +🌐🐦✉️🔗 Share



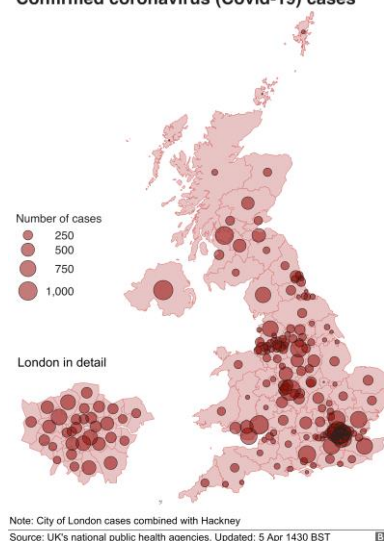
How is data related to coronavirus?

- Data can be essential and useful at various stages of a pandemic and public health emergency
- It can feed intelligence and policing
- It can be valuable for commercial exploitation

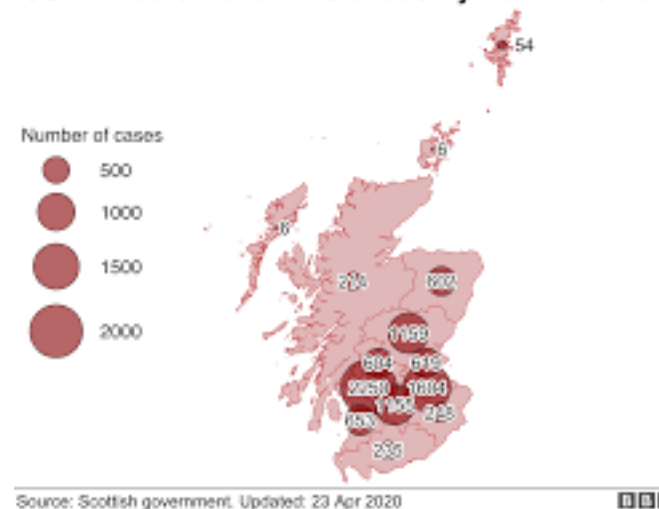




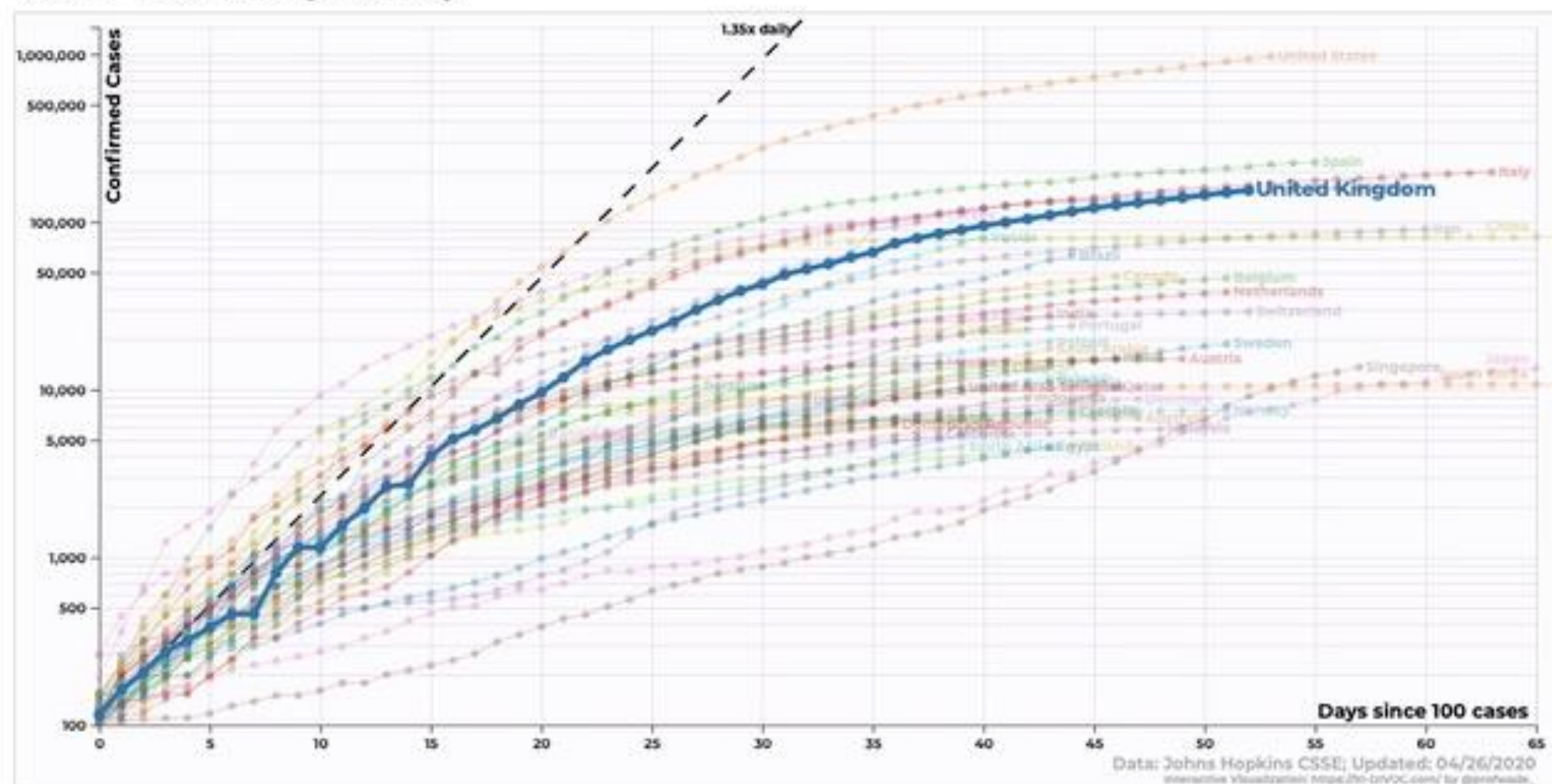
Confirmed coronavirus (Covid-19) cases



Confirmed coronavirus cases by health board



COVID-19 Cases by Country



Digital tools for coronavirus:

- On-line registration of symptoms
- Immunity passports
- Contact-tracing apps





Use of apps

- Telecom companies provide geolocation mobile telephone data to authorities (generally, does not involve consent by individuals, it might or might not be anonymous)
 - Armenia (including calls), Russia (not anonymous), Norway, Germany, Austria, Italy, Israel
- Applications based on GPS location data, Bluetooth technology, QR (quick response) codes
 - South Korea, China, Hong Kong, Taiwan, Singapore, Israel, Spain, Romania, Slovakia, Poland, UK (still in planning phase)
- Facial recognition systems/surveillance footage
 - Russia, South Korea
- Social network/credit card data
 - Russia, South Korea, US, China
- EU's recommendations – Bluetooth logs in the phone's movements; apps must be anonymous and voluntary

Problems of contact-tracing apps

- Around 60% of population need to download it (most downloading is voluntary and will be people who want to avoid infection rather than those at particular risk)
- Lack of take-up: 20% rate Singapore (75% rate required)
- % population with smartphones: UK 82.9%, Italy 60.8%, Australia 69.3%
- Mass-testing (100,000+ tests per day; Taiwan or South Korea) or self-reporting
- Without mass-testing, contact will require re-isolation (and re-isolation, and re-isolation)
- Errors – Bluetooth switched off or neighbours
- It is an early-stage measure; many European countries may be too far along curve



But why is this a human-rights problem?

- If the system is not effective, then the interference (taking of data) is not necessary for the pursuit of the legitimate aim (protection of health), and the interference cannot be proportionate.

Council of Europe standards

- Data Protection Convention 108+
- Article 8 ECHR

The Chair of the Committee of Convention 108 and the Data Protection Commissioner of the Council of Europe recall the principles of data protection in these times of fight against the COVID-19 pandemic.



ALESSANDRA PIERUCCI

Chair of the Committee of Convention 108



JEAN-PHILIPPE WALTER

**Data Protection Commissioner of the Council of
Europe**

Convention 108

- Data subjects aware of processing and can exercise their rights
- Principle of lawfulness – consent or legitimate basis laid down by law
- Processing of personal data only if necessary and proportionate to the explicit, specified and legitimate purpose pursued
- Impact assessment is carried out before the processing is started
- Privacy by design (taken into account through whole process)
- Protect the security of data, in particular, when related to special categories of data such as health-related data

- <https://www.coe.int/en/web/data-protection/statement-by-alessandra-pierucci-and-jean-philippe-walter>

Convention 108

- Large-scale personal data processing can only be performed when, on the basis of scientific evidence, the potential public health benefits of such digital epidemic surveillance (e.g. contact tracking), including their accuracy, override the benefits of other alternative solutions which would be less intrusive.

Article 8 ECHR

(right to respect for private and family life)c

- (i) In accordance with law
- (ii) Pursue a legitimate aim
- (iii) Necessary/proportionate



Article 8 ECHR

(right to respect for private and family life)c

(i) “in accordance with the law”

The measure in question should have a basis in domestic law.

The law should be accessible to the person concerned and foreseeable as to its effects.

For storage of personal information, it is essential to have clear, detailed rules governing minimum safeguards concerning, amongst other things: duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data, and procedures for its destruction (*Breyer v Germany*, no. 50001/12, 30 January 2020 at paragraph 83).

(ii) “Legitimate aim”: protection of health

(iii) “Proportionality”: closely related to foreseeability and safeguards.



Article 8 ECHR

(right to respect for private and family life)c

Level/degree of interference

Duration: fixed period? renewal period? during pandemic, or for how long after?

Storage: by whom? limited data or more personal information, allowing for creating of profiles?

Usage: creation of profiles, tracking movements, frequent checks or collection of further information?

Access of third parties: all public authorities? private sector? or just health ministries and hospitals? additional justifications to access?

Procedures for preserving the integrity and confidentiality of data, and procedures for its destruction: effective control and review? oversight of independent authority?





Supreme Court of Israel

26 April 2020:

- Cabinet regulation granting intelligence services authority to track all mobile telephones, and warn people that they have been in contact with someone with virus
- Authority for 14 days
- All data save calls
- Health Ministry holds information for 60 days
- No penalty for abuse.

Such an interference with private life needed legislation.

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