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Ecuador: Personal data protection during the Coronavirus pandemic

The situation with the COVID-19 ('Coronavirus') pandemic has raised several red flags regarding data privacy around the world, especially within the EU and its rigorous General Data Protection Regulation (Regulation (EU) 2016/679) ('GDPR'). Jaime Mantilla Compte, Partner at Falconi Puig Abogados, discusses the Ecuadorian response to Coronavirus in relation to data protection and, in particular, with a national data protection bill ('the Data Protection Bill') still pending, how the absence of general data protection legislation has affected the regulation of privacy measures during the pandemic.

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In Italy, one of the countries severely affected by Coronavirus, the Government has implemented several decrees which aim to balance confronting the outbreak with preexisting data protection regulation. One of those measures contemplates that employers must notify the Health Authority of any data or information they have become aware of in relation to persons possibly infected, whilst if an employee is infected with Coronavirus, the employer must furthermore contact the Health Authority.

In Norway, which is not part of the EU, the Institute of Public Health decided on 15 June 2020 to halt a Coronavirus tracking and tracing app introduced to reduce the transmission of Coronavirus after the Norwegian data protection authority ('Datatilsynet') opposed it. What is more, a decision to delete all the data collected by the app was made.

Meanwhile, in Ecuador, another country gravely affected by the pandemic due to a poor public health system, scandalous corruption cases in the purchase of medical supplies and equipment, and a severe economic crisis, data privacy has been a secondary issue.

Nevertheless, governmental authorities have been careful enough to keep the information of patients private, respecting their constitutional right to such condition and only publishing general information of the number of confirmed cases, suspicious cases, and deaths, as well as their location within the territory of Ecuador.

Additionally, since the Data Protection Bill is still pending approval by the National Assembly ('the Assembly') and there is no secondary regulation on the matter, no specific provisions or decrees addressing data privacy have been issued during the health emergency.

Employers are obliged to implement health and security protocols in order to return to work in cities where the alert has changed to 'yellow;' however, there is no provision regarding collection of employees' data or a notification to health authorities in case of positive or suspicious Coronavirus cases.

For the most part, these protocols contain preventive measures to avoid the spread of Coronavirus such as wearing masks or respirators, implementing sanitising measures within the office, ensuring that no more than 50% of staff are present in the office at any given time, and applying differentiated schedules. There is no provision regarding the keeping of a log on the temperature of employees or their possible contact with infected people, which is essentially optional for the employer but would require consent from the employee in accordance with the constitutional mandate.

Therefore, one may consider that data privacy measures have generally been observed in Ecuador during the Coronavirus pandemic, since the Government has not issued any dispositions ordering the collection or use of personal data for the fight for the pandemic. Sign up for the trial that has been collected by the Health Ministry during the treatment of the virus has been kept confidential in most cases.

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In addition, since data privacy is not a significant area within Ecuadoran society yet, there has not been much discussion around this subject, so it would be difficult to judge if people are more receptive to their data being used without consent during a national emergency. Moreover, it is difficult to speculate on the issue of data privacy in the context of Coronavirus, since the two main and opposing stances adopted by individuals on social networks seem to be either:

- making every possible effort to combat the virus together as a society; or
- hiding the fact of being infected with the disease in order to avoid possible social rejection.

Similarly, the population is currently focusing more on the enormous economic impact the pandemic has had, concentrating on credit renegotiation, layoffs, and new working conditions, which unfortunately have caused many to stop respecting the rules of confinement and social distancing in order to try to generate income to sustain their living.

On a more positive note, the Assembly has resumed discussions of the Data Protection Bill and formed work groups to share suggestions from various sectors of society regarding its articles, which allows us to glimpse into the possibility that by the end of the year a law may be approved; although it is uncertain on what terms, specifically regarding the possibility of the creation of a new independent data protection authority considering the economic crisis and the attempt by the Government to reduce its budget.

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