## **Democracy and the Virus: A Series of Reflections**

The Athens Democracy Forum has asked some of our speakers for their thoughts on how the current crisis is impacting democracy, and the lessons to be learned. We will be posting their responses to a series of questions on a rolling basis in coming weeks.

## A Threat to Privacy



By Dan Shefet

These are difficult and testing times.

I'm afraid that the economic fallout will be devastating and that the real challenge to democracy will be deep social unrest, disruption, rising nationalism and xenophobia.

For the time being, however, this article is focused on the current crisis and not on the post-corona world (which will indeed be a different one).

Here are my initial thoughts on the question that relates directly to my work on civil liberties and privacy:

## ADF: Should there be any limitations on the curtailing of civil liberties when citizens' health is at stake?

DS: First of all, there is no doubt that the General Data Protection Regulation in force in Europe and data privacy in general is and may continue to be severely challenged.

Tracking, GPS localization, search history and access to "friends" are increasingly open to government scrutiny.

This may be perfectly legitimate in the current exceptional crisis situation, but how long will that information be retained?

Another question is that of the precedent set for the interpretation of the "national security exemption" which can be found in GDPR <u>Article 23</u>. It stipulates that states may restrict rights when it is a "necessary and proportionate measure" to safeguard national or public security,

defense, the protection of judicial independence, etc. Public health is only mentioned when necessary to protect important economic or financial interests.

In addition, we can find exceptions even to the protection of human rights during times of crisis in Article 15 of the European Convention on Human Rights:

*Derogation in time of emergency* 

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Of course, nobody thought about this coronavirus situation when the GDPR and the Convention went into effect.

The question of national security exemptions has so far mainly attracted attention as a consequence of the Snowden revelations and the Foreign Intelligence Surveillance Act (FISA) court in the United States.

Will democracy have to create a secret FISA-like court for national security risks other than terrorism and war?

How do we ensure oversight by democratically elected institutions and lawmakers?

Among the many questions that the present crisis raises, these are my major concerns.

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