

Chapter 36

Hunting HIV–Positive Women in Greece as Parasites

Pitsou Anastasia

The Aristotle University of Thessaloniki, Greece

ABSTRACT

In this chapter, the authors discuss public policies of stigmatization and fascitization. In Greece, HIV-positive women have been imprisoned while their personal data have been published in newspapers and the social media aiming to inform citizens and to protect public health.

INTRODUCTION

The society of risk and the economic crisis induced significant changes in the Greek legal traditions. Particularly, there is an enormous and diffused threat emerging constantly from every dimension of social life. Having realized that social contradictions create more and more dangerous precincts, state authorities have been attempting to ensure a sense of security for the citizens. Thus, under exceptional conditions state authorities subsist enforcing the repressive state apparatus while trying to develop the legal framework of the crisis management. Simultaneously, the constitutional phenomenon is subject to the society of risk.

Following the 9/11 in the United States of America, a new situation has been born for the human rights community. The USA and Europe have introduced measures which restrict civil liberties, while applying policies to prevent and manage the crisis. The measures are justified in terms of the need to combat terrorism. Thus, after September 2001, a series of human rights violations have been noted, for example regarding the rights of detainees and asylum-seekers, or the right to privacy (Contiades, 2002, pp127). In Greece, the revision of the Constitution in 2001 has adjusted to changes with regard to the society of risk. In the postindustrial era, problems and conflicts have been aroused and shifted the focus to questions concerning the development of science and technology, the environmental degradation and bioethics. Hence, the new constitutional rights adapted in the Constitution amended in 2001 adopting the logic of “new terrorism”, citizens seem to have been losing civil liberties (Alivisatos, 2011).

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Subsequent to the revision in 2001 and 2008, the Constitution responds to the financial crisis, while succumbing to the rhythm of the economic cycle and the demands of the markets. Specifically, the problem of the current crisis in Greece also reflects a constitutional crisis. A coordinated attack on the rights of first and second generation changes or inhibits the role of rights. The deregulation of the social structure has the possibility to jeopardize political and social achievements, as well as to weaken the rights, facilitating the action of molecular fascism and enforcing the fascistization of society. There are several examples of human rights violations documented in Greek society: violation of the right to freedom of expression, the right to a fair trial, the freedom of assembly and association, the rights and freedoms without discrimination and the rights of the individual. Either through the abnormal functioning of the system of checks and balances or through an unclear correlation between rights and their limitations, it is reasonable democracy tends to be relativized.

THE PERSECUTION OF HIV-POSITIVE WOMEN

In the framework of an intervention for epidemic surveillance in a prostitution house in Athens, the Hellenic Center of Disease Control and Prevention (HCDCP) has detected HIV-positive sex workers. Thus, the HCDCP announced the results of their investigation in order to inform and to protect people. Prior to the elections, state, physicians and police officers collected prostitutes and forced them to take an HIV test. Having arrested 32 HIV-positive women (28/4/2012), the attorney of the Athens First Instance Court ordered the disclosure of the prosecution as well as of their identities and photos. The HIV-positive women were imprisoned and the last five of them were released in March 2013.

On grounds pertaining to the protection of the community from contagious diseases, the personal data of HIV-positive women have been published in newspapers, the media, social media and the Internet, which is a major violation of the right to protect personal data. According to the Greek Constitution (Art 9(1)), “all persons have the right to be protected from the collection, processing and use, especially by electronic means, of their personal data, as specified by law” (Center for European Constitutional Law, 2001, pp.22). The protection of personal data is ensured by an independent authority, which is established and operates as the law provides (Center for European Constitutional Law, 2001, pp.22). Personal data concerns specific information on an individual such as their name, residence, bank accounts, salary and employment, while sensitive personal data refer to the “*sensu stricto*” of private life. This does not mean that the protection of personal data coincides with the protection of privacy (Mitrou, 2001, pp.143). Particularly, sensitive personal data refer to religious and political beliefs, health and social welfare, sexual orientation, genetic data or past criminal convictions.

The processing of sensitive data is lawful and is permitted on grounds pertaining to public interest. Thus, the attorney ordered to publish the sensitive personal data and the photographs of HIV-positive women in order to safeguard public health. However, sensitive data can only be processed when the individual provides a written and detailed consent and upon approval of the Independent Authority for the Protection of Personal Data (DPA). A disclosure is allowed only through the official website of the Greek police, while any reproduction of these data is illegal according to the European Court of Justice. The European Court of Justice in the Satamedia case (C-73/07, 16.12.2008) ruled allowing the free flow of personal data from public documents. This means that any publication other than on the official police website is considered the processing of personal data. In order to reach a balance between the

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