Human Rights vs. National Security

Should Freedom be Restricted to Safeguard Freedom?

Book of Abstracts

International Students Seminar

University of Cologne

Content

Introduction

The Institute of Eastern European Law and Comparative Law of the University of Cologne (Germany) is honored to host the 12th edition of the International Students Seminar from 3rd to 7th of November, 2015.

The Seminar is part of an international joint series consisting of the Universities of Pécs (Hungary), Riga (Latvia), Vilnius (Lithuania), Łódź (Poland), Moscow (Russia), Dar-es-Salaam (Tanzania) and the University of Cologne. With a rotating venue it takes place annually in one of the participating nations.

Since its first event in 2004 the International Students Seminar has had a very fertile development. From a rather small binational seminar between the Universities of Łódź and the University of Cologne the event has made its way to a seven nation conference running three days. While in 2006 the original binational seminar was extended with the participation of the Universities of Pécs and Vilnius, the Higher School of Economics from Moscow joined in 2012. Two years later in 2014 the University of Dar-es-Salaam found its way into the group of regularly participating universities, whereas the University of Riga has its first appearance in this year's meeting. The steadily growing connection between the contributing universities and integration of new participants within this cooperation is a clear expression of the success of former events and the overall seminar series.
The aim of the Internationals Students Seminar is to create a platform for a dialogue between advanced law students and PhD candidates, who are interested in constitutional, international and European law. The involved parties are coming together from countries with diverse historical and political experiences and of different sizes. The participants are to a large extent not only connected by the Central European legal heritage, but also through membership in regional communities (i.e. the European Union, the Eurasian Economic Union and the East African Community). Each seminar is about to focus on the different national perspectives on a current constitutional law or international law topic that is of interest in the participating countries. The conference tries to reflect on whether there are a common values or at least a common sensibility for the specific topics.

The main topic of the 12th International Students Seminar will be the question of:

"Human Rights vs. National Security –
Should Freedom be Restricted to Safeguard Freedom?"

The intention of this year's topic is to take a closer look at the tensions that affect current world events and look especially where the conflict between freedoms of people and the need for public safety and operability of state is emerging. The relationship between people and state jurisdiction encompasses different aspects: the participation in public life, the duties of the individual towards state and society to

which it belongs, the freedoms of the people against infringements by state, but also the right to demand positive benefits from the state.

Strength and power of a state is measured by how effectively it responds to threats and whether it can avert the danger of attacks, but also by how effective it protects citizens' from itself. For states that claim to be obeying the rule of law and are constitutional states in an international community, defensive or offensive measures in the interests of national security, whether in criminal, military, or in the political sphere, must always be carefully balanced against constitutional law, common law and international law. While defending the security interest of the state, the observance of international human rights and constitutional fundamental rights' standards, is a balancing act.

However, using the principle of proportionality to bring balance to these tensions is a difficult case by case assessment and also depends on the "higher good" the state tries to defend. Thus, measures taken by the state might seem unjust to an individual person (subjectively), although the proportionality has been respected in legal terms. Yet on the other hand, protecting a "higher objective" for the community does not always justify an infringement of human rights of the individual. Within the scope of the seminar "Human Rights" (within the title) should be understood as Fundamental Rights arising out of constitutions and International Human Rights arising from international treaties such as the ICCPR and the ECHR. "National Security" (within the title) should include national or public security which ensures the protection of citizens, organizations and institutions against threats, but also public order in a sense of collective unwritten rules, of which the observance is considered an essential requirement for an orderly human coexistence within a given area of the prevailing social and ethical society.

Especially in the field of fundamental rights and human rights in terms of defensive rights against infringements by national states but also from a multi- or international perspective, a diversity of practical and interesting topics arise. As the program of the conference illustrates the topic "Human Rights vs. National Security" offers a high complexity and variety of legal questions. These questions will be discussed in a multinational context, against the background of various legal understandings and cultural groups. The exercise of state interventions will be examined on the basis of international law, the regional community law of Europe and the East African Community as well as the national legal systems of the participating states of the seminar.

The international exchange between the participants will provide new insights and help to understand and distinguish the legal understanding and the interests of the participating states.

The 12th Edition of the International Students Seminar is generously supported by:

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Program / Timetable

	Tuesday 03rd November	
	Arrival of the guest	
20.00 - 22.00	Welcome Reception	

	Wednesday 04th November	
09.00 - 09.30	Registration Introductory Remarks	
09.30 - 09.45	Welcome Speech by the Dean of the Faculty of Law of the University of Cologne	Prof. Ulrich Preis
1st Panel	**Privacy and Data Protection vs. National Security Interests**	**Chair: Prof. Caroline von Gall**
09.45 - 10.45	Restrictions on the Internet vs. National Security	Daria Kotova (Moscow)
	Challenges of JHA databases and smart borders: data protection, privacy, non-discrimination	Krisztina Antal (Pécs)
	Data retention Directive before the Polish Constitutional Court	Piotr Raś (Łódź)
10.45 - 11.00	Discussion	
11.00 - 11.20	*Coffee Break*	
1st Panel		**Chair: Prof. Tomasz Milej**
11.20 - 12.20	Can freedom of Information be restricted by national security or does unlimited freedom threaten the state integrity?	Lisa Schöddert (Cologne)
	Limitations to the Right to Privacy in connection with Investigative Activities	Gulnaz Zhuravleva (Moscow)
	Violation by Germany of privacy rights through mass surveillance	Sophie Dittmeyer (Cologne)
12.20 - 12.40	Discussion	
12.40 - 14.00	*Lunch Break*	

2nd Panel	**Freedom of Expression, Speech and Association vs. National Security Interests**	**Chair: Prof. Tímea Drinóczi**
14.00 - 15.20	National Security as a tool for the limitation of the freedom of expression: A case study of Burund	Gilbert Hagabimana (Dar es Salaam)
	Restrictions on audiovisual media: national security implementation or reduction of freedom of expression?	Gabrielė Monstvilaitė (Vilnius)
	"Gag-Law" or Law for Citizen Security in Spain	Elena Leyva (Cologne)
	Freedom of Association: New Restrictions in the Legislation of the Russian Federation in Response to International Sanctions	Yury Varlamov (Moscow)
15.20 - 15.40	Discussion	
15.40 – 16.00	*Coffee Break*	
3rd Panel	**Religion vs. National Security**	**Chair: Prof. Vaidotas Vaičaitis**
16.00 - 16.40	Religion, Religious Freedom and National Security	Martin Valchanov (Cologne)
	Balance between freedom of religion in public and national security	Kalīne Ozola (Riga)
16.40 - 17.00	Discussion	
19.00	Dinner	

	Thursday 05th November	
4th Panel	**Refugees and the Right of Asylum vs. National Security**	**Chair: Prof. Artūrs Kučs**
09.30 - 10.10	Security, Refugee and Jordan	Mousa Sami Al-Qaaida (Pécs)
	Responsibility of Frontex on Human Rights: especially in the case of Sea Operations and JRO's	Luca Sárai-Szabó (Pécs)
10.10 - 10.30	Discussion	
10.30 - 10.50	*Coffee Break*	
5th Panel	**Human Rights vs. Military Interests**	**Chair: Samir Felich**
10.50 - 12.10	Proportionality test between the use of military force and human rights (in peacetime)	Aušra Vainorienė (Vilnius)
	The use of armed drones in light of International Law and Human Rights	Bence Kis Kelemen (Pécs)
	Shooting down aircrafts. Case law before Polish and German Constitutional Courts	Marcin Kłos (Łódź)
	Shooting down aircraft by states in the light of sovereignty of airspace	Mateusz Osiecki (Łódź)
12.10 - 12.30	Discussion	

12.30 - 14.00	*Lunch Break*	
6th Panel	**Human Rights vs. National Security Interests in Fighting Terrorism**	**Chair: Prof. Ágoston Csanád Mohay**
14.00 - 15.00	Terrorism and Human Rights: Digging Into Securitization and its Impact on the Enjoyment of Human Rights in Uganda	Edrine Wanyama (Dar es Salaam)
	Freedom and security after Kadi – influence of the CJEU's judgment on practice of Polish Administrative Courts	Małgorzata Grobelna (Łódź)
	Deprivation of freedom of movement through confiscation of passports for future possible terrorist.	Saskia Münster (Cologne)
15.00 - 15.20	Discussion	
15.20 - 15.40	*Coffee Break*	
6th Panel		**Chair: Anastasia Timofeeva**
15.40– 16.20	Can freedom of speech be restricted due to security concerns of the state?	Endre Dudás (Pécs)
	Free Speech Considerations in Combating Incitement to Terrorism.	Mārtiņš Birģelis (Riga)
16.20– 16.40	Discussion	
17.00	Dinner	

	Friday 06th November	
7th Panel	**Balancing Fundamental and Human Rights with National Security**	**Chair: Prof. Izabela Skomerska**
09.30 - 10.30	Is there a right to security according to the ECHR?	Marija Daka (Pécs)
	Derogations from Human Rights Treaties in Times of Emergency	Olga Kiseleva (Moscow)
	Lithuanian lustration as national security v. Right to respect for private life (ECtHR case-law)	Aurelija Daubaraitė (Vilnius)
10.30 - 10.50	Discussion	
10.50 - 11.10	*Coffee Break*	
7th Panel		**Chair: Prof. Anita Rodiņa**
11.10 - 12.10	Balance between fundamental rights and national security protection: practice/case law of the Constitutional Court	Dita Amoliņa (Riga)
	Human Rights at the Crossroads: Addressing the Overriding National Security Concerns in Tanzania	Nicolous Praygod Amani (Dar es Salaam)
	Limitations to Citizens' Rights in Connection with the Sochi Winter Olympic Games	Irina Osmankina (Moscow)
12.10 - 12.30	Discussion	

12.30 - 13.45	*Lunch Break*
13.45 - 14.45	Final Remarks
14.45 - 17.30	Sightseeing in Cologne Guided Tour at the Cologne Cathedral
18.30	*Dinner*

	Saturday 07th November
	Departure of the guests

1st Panel – Privacy and Data Protection vs. National Security Interests

Chair: ***Prof. Dr. Caroline von Gall***
Institute of Eastern European Law and Comparative Law
University of Cologne

Chair: ***Prof. Dr. Tomasz Milej***
University of Dar es Salaam

Comments / Notes

Daria Kotova
National Research University – Higher School of Economics

RESTRICTIONS ON THE INTERNET VS. NATIONAL SECURITY

SECTION I

The conditions of the digital age create new requirements and new challenges for both the international community and states in the field of protecting their citizens' security, especially, in cyberspace. However, the same conditions underscore the obligation to protect fundamental rights guaranteed by, first of all, international law. Restrictions inflicted upon peoples' right to Internet access are two-edged, as governments seem to be way too much exceeding threshold that keeps balance between rights of individuals and the matters of security. The aim of the report is to show how the practice of Internet censorship is used in the Russian legislation and what ways out can be found to prevent further toughening of the policy.

SECTION II

It may be now stated that a new policy has been introduced in Russia that puts a great pressure on the freedom of the Internet. Based on the analysis of the recent enacted federal laws and court practice, the report will show that the new policy is incompatible with the human rights standards established by international law. The tools used by the government are grouped into two main forms that include official and non-official censorship. However, the social opinion, reflected in the mass media sources, is divided, and the increasing aspiration of the authorities to limit the users' rights is not unanimously supported by the experts and the society. One part of the report focuses, for the purposes of comparison, on the EU and single EU members practice of evaluating the necessity of Internet censorship. The study of the European models of perception of the problem reveals controversies and differences.

CONCLUSION // ASSUMPTION

Despite the seemingly severe character of the Russian measures, the Russian legislator is anyway in the mainstream of the governmental policy of most states. This policy was brought about by the threats posed to the international community, such as terrorism and extremism, and thus requires collaboration of its members, more than individual restrictions of certain states. International community should admit the possibility of self-regulation and self-control of the Internet and its global, not national nature.

Comments / Notes

Krisztina Antal
University of Pécs

CHALLENGES OF JHA DATABASES AND SMART BORDERS: DATA PROTECTION, PRIVACY, NON-DISCRIMINATION

This presentation concentrates on the questions and concerns arising related to the management of the continuously growing data and information connected to EU Justice and Home Affairs Policy.

The "Smart Borders" Package was proposed by the Commission in 2013, after the European Commission Communication in 2008 which envisaged a new generation of border management tools for use by Member States taking part in the Schengen cooperation and Non-EU Member Countries associated to it. As it suggested, 'Smart borders' would consist of two data and information exchange schemes: the Entry/Exit System (EES) and the Registered Traveller Programme (RTP). The 'smart borders' system is not only about borders, it also involves the surveillance of foreigners travelling to, within and out of the Union. The basic principle behind 'smart borders' is the automation of the processes involved in border controls and immigration checks; in essence the replacement of human checks by computer checks. The planned EES will lead to the fingerprinting of all third-country nationals entering the EU, significantly expanding the EU's biometric information systems and increasing the amount of personal data accessible law enforcement and security agencies. The prospective RTP will institutionalise a two-tier border control system in the EU based on crude indicators such as wealth, nationality, employer and travel history. Usually the aforementioned schemes are considered to be separate, altough the continuous expansion of data and information exchange strategies in the context of the Area of Freedom, Security and Justice calls this separateness into question.

The EES and the RTP will be mostly about what happens before and after the border. In conjunction with the already existing and active/functioning Visa Information System (VIS) and the Schengen Information system (SIS /SIS II), and other data and information systems, they lay down the conditions for the monitoring and sorting of large number of persons. The JHA databases are managed by the EU-LISA agency. The SIS, the first Europe-wide database in the framework of immigration, policing and criminal law for the purpose of law enforcement and immigration control, became operable in 1995 with the entry into force of the Schengen Convention and applies to Member States which fully participate in the Schengen Acquis. Whereas the SIS II processes data from EU and third state nationals, the VIS is principally restricted to third state individuals underlying a visa requirement to enter the EU. It contains information relating to every visa application made in the EU.

'Justice and Home affair databases' - even if there is no clear or commonly shared definition for them, they raise questions of data protection, and also regarding the right to privacy and non-discrimination. The EU JHA database landscape involves distributed systems, which does not mean that there is a structural guarantee that data and information exchanges are compartmentalised. Among these distributed systems, the distinction between personal and non-personal data is increasingly replaced by the distinction between personal and operational data. The differentiation between 'anonymised' and 'depersonalised' data depends on the capacity of law-enforcement agencies to effectively depersonalise data, which again, raises issues related to the aforementioned rights. The first legal challenge posed by JHA databases relates to the principle and fundamental right of privacy. Independently from the personal character of the information collected and processed, databases are in tension with the general EU principal of privacy, which extends beyond data protection to the wider right to private life as envisaged in the Charter. These directories/databases have a very broad personal scope as they cover a wide range of individuals with a variety of legal statuses in accordance with EU law. Also the actual necessity surrounding the establishment of JHA databases is a sensitive question, since it relates to the proportionality principle test. It is not easy to decide to which extent these systems satisfactorily pass the necessity test as applied by the European Court of Human Rights and the Court of Justice of the European Union. These schemes also have to deal with the sensitive question of discrimination from a fundamental rights viewpoint; finding the lines between discrimination based on race and ethnic origin and 'nationality'.

Comments / Notes

Piotr Raś
University of Łódź

DATA RETENTION DIRECTIVE BEFORE THE POLISH CONSTITUTIONAL COURT

Collection and storage of telecommunication and internet data for security reasons is highly controversial question. It interferes with such basic rights as right to respect private life and correspondence and generates high expenses. But it is justified with preventing terrorism and serious crimes. The Court of Justice of the European Un-ion Data Retention Directive 2006/24/WE void due to unproportional interference in rights and freedoms protected by the Charter of Fundamental Rights of the European Union. The main argument of the Court was that insufficient protection against possible misuse of data and maladministration of them especially following questions were missed in the content of the Directive: access to the data to national authorities, supervision by independent body, protection from abuse by authorities, guarantee of destroying data after use as well as imprecise period of storage with objective criteria.

Before Polish act implementing Directive 2006/24/WE is still in place though it was found unconstitutional by Polish Constitutional Tribunal on grounds similar to the Court's. The judgment will become effective on February 6th, 2016 and though opera-tors will still have to retain telecommunication data but accessing it by authorities will become complicated since then.

In my presentation I will consider if nowadays retention of data is necessary in democratic state and useful to increasing national security. Also I will focus on the issue of potential aggregation of existing databases by authorities. Taking into consideration grounds of Court's and Tribunal ruling I will try to answer if there are different than retention efficient tools which interfere less with human rights.

Comments / Notes

Lisa Schöddert
University of Cologne

CAN FREEDOM OF INFORMATION BE RESTRICTED BY NATIONAL SECURITY OR DOES UNLIMITED FREEDOM THREATEN THE STATE INTEGRITY?

SECTION I – FREEDOM OF INFORMATION

Freedom of information is essential in a democratic society and a human right guaranteed by Article 10 of the European Charter of Human Rights. A vivid and working democracy requires that the public permanently scrutinize and deal with the state activity and try to influence and interfere. A wide access to information enables democratic participation and allows the public to have an adequate view to form a critical opinion. The principle of free access to administrative documents has become widespread in Europe and throughout the world since the last 20 years. Transparency guarantees greater legitimacy and accountability of the administration in a democratic system and minors the possibility of corruption. But the levels of protection vary, ranging from constitutional or legislative protection to a simple judicial guarantee. Access to state-held information, a human right?

SECTION II – FREEDOM OF INFORMATION ACT (IFG)

Germany, like a large majority of the Europe member states, has incorporated freedom of information in its constitution. Until the "Freedom of Information Act" entered into force as from 2006, the principle of "file secrecy" and "confidentiality of administration" was taken for granted. Germany thereby reversed the principle of secrecy in favour of disclosure relatively late compared to countries like the UK, France, Italy (2000) or Sweden (1766). The IFG enables access to administrative information generally without preconditions such as a legitimate interest of the applicant. Due to the shift of the rule-exception-ratio, the burden of proof lies with the government authority that the applicant is not entitled to receive the requested information. But "The Right to Information Rating", a program founded by "Access Info Europe" (AIE) and the "Centre for Law and Democracy" (CLD), ranked Germany fourth last out of 135 countries, how come?

SECTION III – RESTRICTION BY NATIONAL SECURITY

Ideally, freedom of access to state-held information is the rule and its restriction the exception. Restrictions to the right of access to information should therefore be set down precisely in law, be necessary in a democratic society and be proportionate to the aim which they intend to protect. National security is not only a legitimate restraint of freedom of information laid down in Article 10 Sec. 2 ECHR, but also prescribed as permissible exception to the right of access to state-held information and consistent with international standards.
But the risk of national security being undermined must be reasonably foreseeable and not purely hypothetical according to case law of the ECtHR, so that this exception cannot be presented wrongful easily. In which cases is "national security" necessary in a democratic society and a legitimate exception to restrict freedom of information? Is it natural in a representative democracy to transfer public authority to administrative bodies with an inherent restriction of people´s rights?

SECTION IV – THREAT TO STATE INTEGRITY

Recent history and the collapse of the GDR showed that freedom of information and access to state-held information threaten the integrity of states with information monopoles. Generally assuming unlimited freedom of information to every state-held document (including documents clearly touching sensitive matters of national security), would intimidate the function of every state.
Does Immanuel Kant´s idea of a state´s purpose to safeguard freedom still apply?

CONCLUSION // ASSUMPTION

The right of freedom of information in sense of the right of access to state-held information should be restricted by reasons due to nation security to safeguard freedom, state integrity and democracy. But what is a legitimate national security interest?

Comments / Notes

Gulnaz Zhuravleva
National Research University – Higher School of Economics

LIMITATIONS TO THE RIGHT TO PRIVACY IN CONNECTION WITH INVESTIGATIVE ACTIVITIES

This paper demonstrates the discrepancy between the Russian Federal Law on Investigative activities and provisions of international human rights treaties on privacy. The author uses two-fold structure of the paper to elaborate on the issue more sequentially.

SECTION I: INTERNATIONAL HUMAN RIGHTS STANDARTS ON LIMITATIONS
Analyzing relevant provisions of the ICCPR, ECHR, General Comments issued by the UNHRC and Inter-American Court of Human Rights case-law, the author scrutinizes the definition of "privacy". Furthermore, the paper elaborates on the generally recognized requirements of legality and proportionality that must be met for a governmental interferences to the right to privacy to be legitimate.

SECTION II: RUSSIAN LAW IN THE LIGHT OF RELEVANT HUMAN RIGHTS LAW
The paper then goes to the review of the Russian Federal legislation in conjunction with the aforesaid requirements. First of all, the paper touches upon the issue of the general non-accessibility of the legal provisions restricting people` enjoyment of the rights and freedoms in question, since these provisions have not undergone constitutionally set up procedure to reach the status of "law" in the sence of both Russian Constitution and international law standarts.. Secondly, the author scrutinizes the procedure of obtaining judicial order for the wiretapping at issue. The paper shows that, as the judges shall not familiarize themselves with all the relevant materials of the case for the reasons of preservation "national security", this procedure cannot comply with the "legality" principle requirement. Being inaccessible and unpredictable, the analyzed Russian law contravenes this principle as well, similarly as it was held by the ECtHR in *Klass v. Germany*. Finally, the paper reveals the ambiguity and discrepancy between two Russian federal laws that regulates the wiretapped data storage issue. Provided one of the laws is not amended, the existing order of things is most likely to breach necessity and proportionality principle, since one law omits the requirement of the data destruction.

CONCLUSION
The conclusion, reached by the author, reveals the explicit lack of correspondence not only between the law discussed and international human rights treaties, but the Constitution of Russian Federation itself and the professional negligence of the Russian Constitutional Court, which consequently leads to the violation of the Russian citizens` right to privacy.

Comments / Notes

Sophie Dittmeyer
University of Cologne

VIOLATION BY GERMANY OF PRIVACY RIGHTS THROUGH MASS SURVEILLANCE

In summer 2013, Edward Snowden, published several secret documents of the US-American National Security Agency (NSA) which proved, that the NSA has been keeping citizens, firms and politicians, even in high positions, from many European countries under massive surveillance in cooperation with different secret services for many years. The German secret service, the BND (Bundesnachrichtendienst) was one of them.

Mass surveillance - a violation of privacy rights

By cooperating with the NSA, the BND participated to the mass surveillance of millions of individuals living in Germany and all over the world. By programs like PRISM specialized on the collection and analysis of data, the BND collected, saved and analyzed with the help of so called sectors millions of data from telecommunications. Afterwards data were transmitted to the NSA. These proceedings violate individual national and international privacy rights in two ways, at least for people living in Germany: on the one hand the mass surveillance and the transmission of data by the BND represents a direct intrusion in the scope of Article 8 of the European Convention on Human Rights (ECHR), Articles 7 and 8 of the Charta of Fundamental Rights of the European Union, Article 17 of the International Covenant on Civil and Political Rights from the 12th. December 1966 and Article 2 I, in connection with Article 1 I, 10 and 13 III, IV of the German Basic Law (Grundgesetz GG) and on the other hand Germany sees its responsibility engaged for nonfulfillment of its positive obligations deducted from some of these articles.

Violations justified by the national security of Germany and other States

The most common argument brought up by supporters of mass surveillance leading to violations of privacy rights is the protection of national security by fighting against international terrorism. In fact, several privacy rights, national or international, contain the possibility of limitation and restriction for reasons of national security and the protection of a liberal and democratic society. These limitations usually have to be based on a law. In German national law, the G10-law is such a restrictive law, which limits the Article 10 of the GG, the confidentiality of telecommunications. On this law the BND based its surveillance of personal data and the data transmission. But it appeared that the German intelligence service did not always respect the G10-law, so that the intrusion in privacy rights, especially Article 10 of the GG can no longer be justified. Furthermore, because of denying mass surveillance by the NSA in cooperation with the BND at first and the lack of interest in clearing up the scandal and not adopting restrictive measures to protect the privacy rights, the German government has violated its positive obligations deducted from the different fundamental privacy rights.

The need of an international legal reaction

The mass surveillance scandal in Germany proves that the safeguard of freedom, of a liberal and democratic society is sometimes abused to restrict and violate officially and secretly fundamental privacy rights. This is a phenomenon that is increased by the complexity of the today's global information technology. Therefore, on the national and international level, states should take their responsibility and (re)establish a legal system which is able to protect individuals and their personal data from this kind of abuse.

2nd Panel – Freedom of Expression, Speech and Association vs. National Security Interests

Chair: ***Associate Prof. Dr. habil. Tímea Drinóczi***
Department of Constitutional Law
University of Pécs

Comments / Notes

Gilbert Hagabimana
University of Dar es Salaam

NATIONAL SECURITY AS A TOOL FOR THE LIMITATION OF THE FREEDOM OF EXPRESSION: A CASE STUDY OF BURUNDI

This study aims at analyzing if the restrictions of the freedom of expression on the basis of the national security are used properly, specifically in the Burundian perspective. To enable the realization of this study, the paper starts by highlighting different instruments, international or national, that guarantee the freedom of expression and which Burundi has ratified. Most importantly, the paper identifies how those instruments define the concept of freedom of expression and in which circumstances this freedom can be limited

In order to have a practical view on how National Security is applied to restrict the freedom of expression in the Burundian perspective, two facts are analyzed:
Firstly, the Law N°1/11 of 4th June 2013 amending Law N°1/025 of 27th November 2003 regarding the press in Burundi. The paper demonstrates how this law established restrictions on the freedom of the press compared to the previous one. The main raison for the elaboration of this law as explained by the Government was the security of the general elections which were being prepared for the first part of the year 2015. This study tries also to identify what other human rights were victimized by the elaboration of this restrictive law and analyses if the restrictions were meeting the international standards on limitations of human rights. The study found that the restrictions established by the law were not necessary in a democratic society considering the fact that the press is one of the milestones for a democratic society.

Secondly, this paper also analyses whether the prohibitions which were done by the government to some private radio stations to broadcast in some areas of Burundi since 26th April 2015 were in respect of international standards the limitations of human rights. Indeed, while they were broadcasting live information regarding public demonstrations which were going on; some radios were forced not to broadcast out of Bujumbura (the capital city) by the government accusing them of inciting the population for insurrection. This paper tries to analyze if this prohibition was necessary, done by the competent authority and in respect of the conditions internationally recognized for a limitation to be applied. It finally tries to give recommendations on what should have been done by the government to regulate the media.

A general conclusion follows noting that national security is misused to restrict the freedom of expression in Burundi.

Comments / Notes

Gabrielė Monstvilaitė
Vilnius University

RESTRICTIONS ON AUDIOVISUAL MEDIA: NATIONAL SECURITY IMPLEMENTATION OR REDUCTION OF FREEDOM OF EXPRESSION?

European Convention on Human Rights Article 10 indicates that „everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". Furthermore, European Charter of fundamental rights Article 11(2) provides that „the freedom and pluralism of the media shall be respected". Finally, Directive[1] provides and obligation for the Member States „to ensure the freedom of reception and prohibition do not restrict retransmissions on their territory of audiovisual media services from other Member States". Even though freedom of expression and freedom and pluralism of the media can be implemented under the above mentioned legislation, those rights are not absolute and can be restricted in order to save national security.

It has to be mentioned that Article 52(1) of the European Charter of fundamental rights stipulates that „any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms". Furthermore, Article 6 of the Directive provides that „Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationaly". It has to be noted, that, according to Article 3(2) of the Directive, limitation of freedom of reception can be implemented only if the following conditions are met: 1) television broadcast infringed Article 6 of the Directive; 2) provisions set in the Article 6 of the Directive were infringed at least two times during 12 month period; 3) the Member State concerned has notify the European Commission and the televisin broadcaster about the alleged infringement; 4) amicable settlement was not reached.

Lithuanian authorities chose to implement above mentioned limitation of freedom of reception in order to save the national security. Radio and Television Commission of Lithuania (hereinafter – „LRTK") on 8 April 2015 adopted a decision to temporarily (for three monts) suspend whole TV chanell called „RTR Planeta". It has to be noted, that TV channel „RTR Planeta" is registered in Sweden and translating broadcasts which are made in russian language, therefore, provisions set in the Directive are aplicable. „RTR Planeta" rebroadcast in Lithuania was suspended quoting the Republic of Lithuania Law on Information Provision to the Public which, among other things, prohibits inciting war, national enmities and making calls against state sovereignty.

Lithuanian authorites have fulfilled above mentioned conditions set in the Article 3(2) of the Directive by: *firstly*, TV chanell called „RTR Planeta" translated a TV broadcast in which the information inciting war was spread; *secondly*, the LRTK determined that in 12 months period TV chanell „RTR Planeta" had repeatedly incited discord and war, justified military intervention in a sovereign country and published biased information; Therefore, *thirdly*, LRTK has notified the Swedish authorities and European Commission about the alleged infringement; *fourtly*, broadcaster did not agree to settle by underlying the importance of freedom of expression.

Even though it is the first time in the history of the European Union that a decision to take the whole channel completely off-air has been taken, the European Comission decided that "the measures taken my Lithuania are not discriminatory and are proportionate to the objective of ensuring that media service providers comply with the rules of Article 6 of the Directive". As a result, the limitation of freedom of reception for national security purposes is deemed to be compatible with European Union law and neccesary in order to implement the provisions of the Directive.

[1] Directive 2010/13/EU of the European Parliament and of the Council of 10 March on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

Comments / Notes

Elena Leyva
University of Cologne

"GAG-LAW" OR LAW FOR CITIZEN SECURITY IN SPAIN

The "Law for Citizens Security" was introduced on the 30th March 2015 as a response to social changes in Spain. The law's stated intent is to eliminate new threats to the peace and security of citizens, as well as to remedy deficiencies in pre-existing juridical norms.

Yet this law, dubbed "gag-law" by a vast part of the population, has been widely criticised on both national and international level for allegedly violating personal liberties and constitutional values.
The purpose of this work is to analyse this claim in a legal context: to understand the legal framework in which this law takes effect; to check whether the law is contrary to the Spanish Constitution; and finally, to test this legal body against European and International legal standards.

First, a review of the socio-economic context in Spain is given. This context gave rise to the M15 movement,(an organized movement, which aims to promote a more participative democracy through pacific protests) in response to which the bill was passed. Avowedly, the law was introduced as a necessity to promote citizen and public security.

The next step is to reveal the link with and highlight the importance of a reform of the penal code, undertaken simultaneously, whereby "offences" were eliminated from the penal code and replaced by "infractions".

Thus an inherent paradox is created: citizens, for whom the law was meant to ensure security and a normal exercise of their liberties, feel oppressed in their personal rights.

A clear analysis of some of the clauses of the aforementioned law is necessary in order to understand later in which ways it's maiming some fundamental liberties and rights, foreseen in the Spanish Constitution. Similarly, the analysis will be extended to the international ambit.

In accordance with the conclusions, it is therefore to expect that the Spanish Constitutional Court, which is currently examining the bill, should declare it unconstitutional and revoke it. The Spanish example is hoped to set a precedent for similar cases around the world, in which the reprobation of individual liberties is more severe.

Comments / Notes

Yury Varlamov
National Research University – Higher School of Economics

FREEDOM OF ASSOCIATION: NEW RESTRICTIONS IN THE LEGISLATION OF THE RUSSIAN FEDERATION IN RESPONSE TO INTERNATIONAL SANCTIONS

In recent years, due to well-known world events, the relationship between Russia and European countries and United States seriously aggravated. On this basis, Russian leadership embarked on the improvement of security system in the country in all directions. Therefore, it provoked some changes in the Russian legislation governing freedom of association. Some of those federal laws are of a particular interest. The first one is the federal law of July 20, 2012 №121 "On Introducing Amendments to Certain Legislative Acts of the Russian Federation in regulating non-profit organizations performing the functions of a foreign agent" (hereinafter - The Law on Foreign Agents). The second one is the federal law of May 23, 2015 №129 "On Introducing Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter - The Law on Undesirable Organizations).

The Law on Foreign Agents was adopted in 2012, though it really became applicable only in 2014 onwards. This law defines non-profit organizations acting as a foreign agent. It identifies the main criteria: funding from foreign sources and political activity in order to influence decision-making by bodies of state, aimed at changing state police pursued by them. Organizations being recognized as foreign agents should comply with a series of toughen regulative rules. As of today, 96 organizations were included into the register of foreign agents and only 11 non-profit organizations were excluded. None of the 96 organizations declared as a foreign agent on their own initiative. Furthermore, 6 out of 11 companies were excluded due to the process of liquidation. The most interesting cases related to The Law on Foreign Agents concern non-profit organizations International Memorial, The Foundation "Dynasty".

In contrast to The Law on Foreign Agents, The Law on Undesirable Organizations focuses on a total ban on the activities of certain entities within the Russian Federation. It is established that the activities of such foreign or international non-governmental organization should be considered as a threat to the foundations of the constitutional system of the Russian Federation, the country's defense or the security of the State. Moreover, there is criminal liability for those violations. As for now, the only organization included into the register of undesirable organizations is «The National Endowment for Democracy».

The main victims of these new amendments being discussed are human rights organizations working in the field of justice and ecology, educational societies and foundations. Not only legal liability for infringement of the legislation is rather strict, but also terminology used in the law is a great source for providing an unlawful pressure on nonprofit organizations. The rules of the law seem to be disproportional, violating the principles of fairness and reasonableness, and creating excessively repressive tool in the hands of government. In this case, the balance of human rights and national security has been completely tilted towards the latter.

3rd Panel – Religion vs. National Security

Chair: ***Prof. Dr. Vaidotas A. Vaičaitis***
Department of Public Law
Vilnius University

Comments / Notes

Martin Valchanov
University of Cologne

RELIGION, RELIGIOUS FREEDOM AND NATIONAL SECURITY

Religion has been quick to reemerge not only since 9/11, surfing in the latest waves of migration and globalization issues. It is back on the agenda of national policies and international politics. Religion can, on the one hand, deploy peacemaking potential; on the other hand, it can be a source and instrument of serious conflicts. Religious actors are on both sides – religious minorities are often being a target of religious persecutions; religious hatred and religious fundamentalism are even actually being the basis of "holy wars" against infidels and apostates.

Western societies, that have enshrined in their post-world-war-II-constitutions the high human rights standards of the religious freedoms of the individual, are facing enormous challenges. For example, article 4 of the German Basic Law provides the inviolability of the personal freedom to profess a religious creed and the right to practice religion undisturbed. Due to the intergovernmental structure of the European Union religious issues and regulation of religion remain national as do values and ethics. It does not mean that the fight against religious fundamentalism and Islamic terrorism, which is a key national and international security problem of the modern world should be carried out single-handedly.

CONCLUSION // ASSUMPTION

The new situation of religious pluralism requires both from the legislative and judicative branches of state power heightened sensitivity and competences in religious matters. The judicature reacts to the tension between civil liberties and increased security risks differently. The traditional and proven regulation of religion in the national states – even in modern western democracies with a rule of law must be adapted and developed.

Comments / Notes

Kalīne Ozola
University of Latvia

BALANCE BETWEEN FREEDOM OF RELIGION IN PUBLIC AND NATIONAL SECURITY

Under the topic of "Balance between freedom of religion in public and national security" the author will discuss problematic aspects of rights of an individual to manifest religion in public and the possible ways it can influence national security.

Main questions of this subject are:

- Does the prohibition of wearing face-covering headwear, including niqabs and other veils covering the face, in public places is violation of freedom of religion?
- How does wearing head scarfs can impact national security and public order?

The author will look at this topic from various aspects of the European Convention on Human Rights (Article 9), answering following questions:

- Does banning head scarfs in public places is necessary in a democratic society?
- Does wearing niqabs violates interests of public safety, protection of public order, health or morals?
- How does the prohibition to wear niqabs protect the rights and freedoms of others?

Answering to questions issued above the author will perform proportionality test, which states the following:

- There must be a legitimate aim for a measure.
- The measure must be suitable to achieve the aim (potentially with a requirement of evidence to show it will have that effect).
- The measure must be necessary to achieve the aim. There cannot be any less onerous way of doing it.
- The measure must be reasonable, considering the competing interests of different groups.

The author will look through the arguments of a European Court of Human Rights case SAS v. France (and others):

- Why does France felt the need to ban face covering veils?
- Why does the French law that prohibits concealment of the face in public space is considered to be unlawful?

The author will compare the content of French "Act prohibiting concealment of the face in public space" and legal draft "About persons face covering regulation in public space" submitted to the government of Latvia. In connection to these two legal documents the author will also compare the Constitution of France and Constitution of Latvia.

At the end of the presentation the author will provide conclusions about the ways to keep in balance the right to manifest religion in public by wearing head scarfs and states obligation to guarantee public order and national security.

4th Panel – Refugees and the Right of Asylum vs. National Security

Chair: ***Prof. Dr. Artūrs Kučs***
University of Latvia

Comments / Notes

Mousa Sami Al-Qaaida
University of Pécs

SECURITY, REFUGEE AND JORDAN

SECTION I

According to all standards almost, Jordan succeeded so far in overcoming the Arab uprisings. In spite of public protests witnessed by Jordan throughout 2011, Royal Hashemite regime in fact maintained the status quo of government and avoids providing too many concessions to the establishment of democracy. Despite widespread popular discontent from rising prices, unemployment and government corruption, the protests failed to mobilize large numbers of Jordanians in the streets. In this chilly environment, King Abdullah II easily undermined popular reform program for the protest movement by means of traditional Jordanian political truce, and thus the protests gradually faded in the second half of 2011.

However, it appears that the balance of this delicate political balance began to capsize. With prospects for a solution to the Syrian conflict becomes more and more elusive, and swell the number of Syrian refugees in Jordan, bounced public discontent on the Jordanian government. This has revealed a sharp increase in population caused by the arrival of refugees, deep cracks and long-standing infrastructure in the political, economic and social infrastructure in Jordan.

SECTION II

As the massive population growth is exhausting the capacity of the host community, the presence of Syrian refugees has highlighted some of the biggest contemporary challenges in Jordan. As a large number of reports refers to the impact of Syrian refugees to Jordan depleting resources, and increased competition for jobs, and this would takes toll on social services such as health care and education. It should be noted that all the challenges highlighted by the refugees have deep roots in the social, economic and political fabric in Jordan. In fact, the number of Syrian refugees not only contribute to worsening of chronic challenges were already present; it may be harbingers of instability in the future.

CONCLUSION

Jordan deserves to get the support of donor countries to meet the challenges of the most prevalent in terms of resources, the economy and governance, while at the same time on the scope of basic humanitarian protection for Syrian refugees. The international community must work closely with Jordan to ensure that the national challenges endemic in the Kingdom of Jordan, and continued to maintain the scope of the protection of refugees in a single frame. The humanitarian community continues to encourage Jordan to keep its borders open, international donors must also continue to assist Jordan in dealing with the Syrian people and the provision of assistances to the host communities of Jordan.

Comments / Notes

Luca Sárai-Szabó
University of Pécs

RESPONSIBILITY OF FRONTEX ON HUMAN RIGHTS: ESPECIALLY IN THE CASE OF SEA OPERATIONS AND JRO'S

My presentation deals with the issues connected to Frontex respecting Human Rights during Joint Operations and JROs.

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, known as Frontex, was established in 2004 by Council Regulation 2007/2004. It is tasked with co-ordinating Member States' actions relating to the management and control of the EU's external borders. So when it was established, its role was seen primarily in terms of border control and migration management. However it became clear that there were many human rights implications attached to its work. Frontex have been criticised for not carrying out their joint border surveillance operations and JROs in full compliance with human rights standards.

I will address the main concerns and how Frontex is facing them especially during Sea Operations and Joint Return Operations (JROs), as these are the operations where human rights concerns are most obvious. Sea Operations and JROs are performed under the authority of the host state. Every year thousands of migrants and asylum seekers attempt to reach the EU by sea under terrible conditions. 90% of interceptions in recent years occurred during joint sea operations co-ordinated by Frontex. In my presentation I would like to show the responsibility of Frontex in human rights through cases like Hirsi Jamaa and Others v. Italy, because the conduct of these sea operations poses a range of problems. The question of responsibility on the high seas is quite complex. In connection with these problems I will address the principle of non-refoulement, which is a ius cogens principle that forbids states to expel or return refugees and asylum seekers to places where their lives or freedom would be threatened. It is also important in connection with JROs. The Agency's policy on not assessing the reasons for the return decision contradicts the principle of non-refoulement. JROs concern third country nationals who receive a return decision from a respective court or an administrative body forcing them to return to their country of origin. Member States have the legal obligation to provide a monitoring system in line with the EU Return Directive to ensure that the EU Charter of Fundamental Rights is respected. Therefore, the Agency should only carry out JROs from member states that have established an effective monitoring system.

According to my research the main problem with Frontex Joint Operations is the lack of transparency and the lack of clarity in terms of responsibility. The ECtHR has found that it is required to guarantee the human rights obligations under the European Convention on Human Rights in the case of Member States who participate in Joint Operations co-ordinated by Frontex inside their own territory and at high seas. These include both non-refoulement, and the right to an effective remedy before the removal measure is enforced. It is also important that the European Parliament exercises its power of control over Frontex and calls on Member States to work with the Agency to ensure that fundamental rights are protected. That is why Frontex endorsed a Fundamental Rights Strategy and a Code of Conduct in the interest of respecting Human Rights. These new fundamental rights safeguarding mechanism now need to be effectively used.

5th Panel – Human Rights vs. Military Interests

Chair: ***Samir Felich***
Institute of Eastern European Law and Comparative Law
University of Cologne

Comments / Notes

Aušra Vainorienė
Vilnius University

PROPORTIONALITY TEST BETWEEN THE USE OF MILITARY FORCE AND HUMAN RIGHTS (IN PEACETIME)

Lithuania's parliament adopted the Statute on the use of military force in peacetime (effective from 01-01-2015). It provides legal grounds for the use of military force to react to local armed incidents and violations of the state border, which are not acts of aggression. It is stated in the Statute that proportionality principle should be applied. However, what kind of use of military force is proportionate, when a number of unarmed migrants appear at a state border trying to enter unauthorised, for instance, disobeying legitimate orders of state officials and causing disturbance?

The notion of proportionality is an inherent part of human rights law. Interferences with rights protected by the ECHR can only be accepted if there is a proportionate relationship between the interference and its legitimate objectives, that is, if they are "necessary in a democratic society." The ECtHR has a part of case law regarding the authorities' use of force in general and the need to protect individuals from harm, and has established standards such as the existence of a "pressing social need" and "relevant and sufficient" reasons. Some of general principles may be apply evaluating the proportionality of military force in preventing unauthorised entry.

The interpretation of the classic three-part test of proportionality in the ECtHR's case law is presented. The focus is on the proportionality stricto sensu, i. e. balance of interests of the national security and protection borders v. the fundamental rights of migrants (possibly persons in need of protection). The protection of borders for purposes of national security is necessary in a democratic society. However, the coercive measures of military raise issues under Art. 2, 3, 8 of ECHR in situations where the individual may be harmed, injured or killed through excessive use of force.

The military use of force in protecting the state border from unauthorized entry (as well as national security) might be considered as an effective measure, but is it absolutely necessary? Is it the least intrusive? What about the correct balance of interests from the perspective of the human rights? As ECtHR has noted: "the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country."

Comments / Notes

Bence Kis Kelemen
University of Pécs

THE USE OF ARMED DRONES IN LIGHT OF INTERNATIONAL LAW AND HUMAN RIGHTS

The use of armed drones for counter-terrorism and military purposes is becoming a more and more serious issue. The use of drones in combating organized crime and internal terrorism is a law enforcement issue, but using the same drones for the same purposes abroad raises various questions of International Law, specifically the law of war or international humanitarian law and human rights. The presentation will deal with these specific questions in four sections.

In the first section I will draw a picture of drones in general: what exactly drones are, what they are used for, and which good things can result from such a technological innovation.

In the second section I will talk about drone attacks and International law and point out the difference between using drones in international armed conflicts – such as between the USA and Afghanistan, where using drones in general is legal and allowed under the terms of the law of war (in particular, they have to be precise, proportional, distinct, and necessary) – and in non-international armed conflicts such as between the USA and Pakistan, Oman, or Yemen. In these fields the question of the legality of targeted killings or drone strikes has to be decided individually, on a case by case basis. The legality stands on two main pillars, which are consent of the concerned country and the case of self-defense (Art. 51 UN Charter).

The most common reference when the topic of targeted killings comes up is the self-defense article of the UN Charter (Art. 51), which recognizes the inherent right to self-defense of any member state in case of an armed attack. There are a couple of serious legal questions, i.e. whether a state can be in an armed conflict with a terrorist group (a non-state actor) or not, or under which exact condition terrorist attack triggers the level of an armed attack. Consent is another interesting question concerning cross-border drone strikes. According to Art. 4 (1) UN Charter, every member of the UN must accept the integrity or political independence of any state, as long as the state is not somehow responsible for the attack. However the presentation will show that some scholars suggest that preventive or even preemptive measures are accepted in contrast to the text of Art. 51 UN Charter which says "if an armed attack *occurs*".

The third section will deal with the human rights aspects of the topic. The two relevant fundamental rights in this context are the right to life and human dignity. In case of armed conflicts killing can be acceptable if it abides to the criteria described in international humanitarian law and human rights *lex specialis*. In case we do not or cannot accept the existence of an armed conflict, the governing rules are only human rights [i.e. the conventions to which the drone using states are parties, such as the UDHR (only a declaration, thus unenforceable), the ICCPR, or the ECHR, and the aspects of human rights are more important i.e. prohibition of arbitrarily killing (Art. 6 (1) ICCPR). The application of these treaties must be extraterritorial if we are talking about an international conflict, where the interesting question of "effective control" comes in. This concept can decide whether a targeted killing was lawful or not. The presentation will also bring to light questions concerning constitutional issues i.e. the problem of the victim being the citizen of the "perpetrator country".

The last part of the presentation looks into the near future, and tries to open a discussion on the usage of armed drones in the EU, for example in Germany, France or Hungary.

Comments / Notes

Marcin Kłos
University of Łódź

SHOOTING DOWN AIRCRAFTS. CASE LAW BEFORE POLISH AND GERMAN CONSTITUTIONAL COURTS

After terrorist attack of September 11th states around the world decided to adopt laws limiting human rights in many fields. Interference with right to life and right to dignity in the name of "war with terrorism" seems to be extreme example of that practice. In this context it is not surprising that the laws permitting shouting down kidnaped aircraft with civilians on board adopted in some states became subject of constitutional review.

The presentation is devoted to judicial dialogue seen as a tool in hands of judged used for shaping limits of human rights. The main subject of analysis is the judgement of the Polish Constitutional Court concerning constitutionality of the Areal Law provisions permitting shouting down civil aircraft kidnaped for use for terrorist purpose. The Court applied comparative analysis to resolve the question and to find proper balance between security of the society and individual fundamental human rights. The Court referred to case law of several states (including US, Israel, Great Britain and Germany). In regard to Germany the Court invoked not only to the decision of the Federal Constitutional Court of Germany in similar case but also the public discussion concerning the judgement in Germany to highlight sensitivity of case in hands.

The Polish Constitutional Court employed main findings of the German Federal Constitutional Court, mainly without any direct references. It shows that at least limits of limits are in some cases determined not by legislators but by courts and that judicial dialogue plays important role in creation of common standards in that regard.

Comments / Notes

Mateusz Osiecki
University of Łódź

SHOOTING DOWN AIRCRAFT BY STATES IN THE LIGHT OF SOVEREIGNTY OF AIRSPACE

Despite the generally true conviction that aerial transport is one the safest means of mass transportation, the airliners are sometimes targets of attacks of external entities. And not only terrorists and aerial pirates are threat to modern aircraft and airlines' passengers. Also states, that by signing the Charter of United Nations have declared respecting the rule of non-use of force in international relations were responsible for shooting down civil planes from the skies.

The report has in aim discussion of the problem of shooting down aircraft from the perspective of the rule established by Chicago Convention – the air sovereignty. It constitutes an analysis of rights and obligations assigned thereby upon the states and their influence on phenomenon of (relatively often in the past) cases of aircraft shoot down. Following aspects shall be discussed:

- The principle of air sovereignty as a fundamental rule of international air law
- The limits of air sovereignty and possibilities of intervention of states in case of its breach
- Analysis of cases demonstrating the shot down acts performed by states in the conditions of both war-time and peace: Korean Air 007, Arab Libyan Airlines 114, Iran Air 655
- Consequences arising from aforementioned acts; potential delegation of right of air navigation – ICAO working paper "Airspace Sovereignty" drafted on Worldwide Air Transport Conference, March 2013
- Conclusions in the light of thought: "Freedom or Security" - should the basic principle of international air law be that strict, even for the price of security?

Taking into account all the cases of aircraft shot down from the past and much respected principle of airspace sovereignty justified it seems to discuss if the freedom does not compromise security.

6th Panel – Human Rights vs. National Security Interests in Fighting Terrorism

Chair: ***Prof. Ágoston Csanád Mohay***
Department of International and European Law
University of Pécs

Chair: ***Anastasia Timofeeva***
Konrad-Adenauer-Stiftung e.V.
Moscow Higher School of Economics

Comments / Notes

Edrine Wanyama
University of Dar es Salaam

TERRORISM AND HUMAN RIGHTS: DIGGING INTO SECURITIZATION AND ITS IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS IN UGANDA

The presentation is based on the relationship between terrorism and human rights. It underscores the fact that terrorism has far reaching impacts on human rights protection, promotion and enjoyment. Specifically, Uganda is taken on as a case study. Thus far, the presentation delves into securitization as an immediate result of terror attacks and threats on Uganda. Thus far, the presentation seeks to explain the concept of securitization from a Uganda perspective as a strategy adopted by security agencies, especially the police to clamp down human rights enjoyment, especially, human rights freedoms including; freedom of assembly and demonstration, freedom of speech and expression, personal liberty, protection from any form of torture or cruel, inhuman or degrading treatment or punishment as well as the right to a fair trial.

The presentation underscores the genesis of terrorism and the associated attacks in Uganda, delves into the general public responses at the dawn of terrorism. To a larger extent, the presentation fronts bigger bias towards government on its response to terrorism attacks. Focus on government is mainly on the different legislative measures adopted by the government either in singular or together with other State governments to counter terrorism. The presentation to the extend highlights the Constitution of the Republic of Uganda, 1995, the Amnesty Act Cap 294, the Anti-Terrorism Act 2002, the Anti-Money Laundering Act, 2013, the Public Order Management Act, 2013 and other regional intervention measures at the East African Community and African Union level, hence the Protocol on Peace and Security and the Protocol relating to the Establishment of the Peace and Security Council of the African Union respectively.

Away from the legislative measures, the presentation highlights non legislative measures such as holding and participating in joint conferences and signing agreements on peace and security and counter terrorism. Additionally, the presentation highlights cross border efforts by States to fight terrorism such as the Stretching of peace keeping and army control into other States for territorial protection. For instance, AMISON in Somalia which is a joint force by a number of African States for peace keeping in Somalia.

A bigger percentage of the presentation highlights the fact that in the wake of terrorism, governments in their response have widely violated the rights of citizens. It shows that advantage has been taken in the name of terrorism and the eminent counter terrorism. Resultantly the space of human rights enjoyment has been narrowed in favour of securitization. Even in areas where security is not warranted, terrorism has been used as a justification. The people's space of operation is no longer about rights but State protection, which in turn impacts human rights enjoyment.

The presentation therefrom concludes that terrorism is a tool for grave fear, limiting personal rights and freedom and an opportunity for governments to use to suppress people's rights. The presentation recommends joint State efforts such as information sharing, adoption of sophisticated strategies, people consciousness and professional trainings aimed building capacity to counter terrorism. Security is security and security should not be used to suppress rights.

Comments / Notes

Małgorzata Grobelna
University of Łódź

FREEDOM AND SECURITY AFTER KADI – INFLUENCE OF THE CJEU'S JUDGMENT ON PRACTICE OF POLISH ADMINISTRATIVE COURTS

The judgement of the Court of Justice of the European Union in joined cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission, also known simply as 'Kadi I' and the judgment in joined cases C-548/10 P, C-593/10 P and C-595/10 P European Commission, Council of the European Union, United Kingdom of Great Britain and Northern Ireland v Yassin Abdullah Kadi known as 'Kadi II' gave preference to the protection of fundamental rights in the European Union over the United Nations Security Council's instruments of dealing with terrorism, stemming from the Resolution 1267. The aim of the presentation is to analyze the importance the decisions had for maintaining a fair balance between international security and judicial protection of individuals and also to examine how polish administrative courts handle the issue. Three examples of judgments: IV SA/Wa 655/14, IV SA/Wa 1074/14 and IV SA/Wa 2521/12 show that the courts do not permit disclosure of confidential evidence used to substantiate allegations to the concerned party when the national security is at stake. The courts agree that if the evidence is sufficiently detailed and specific, even if it is confidential, it can be used as the basis of a decision. While using similar reasoning the Court of Justice and the polish administrative courts reach different results.

Comments / Notes

Saskia Münster
University of Cologne

DEPRIVATION OF FREEDOM OF MOVEMENT THROUGH CONFISCATION OF PASSPORTS FOR FUTURE POSSIBLE TERRORIST.

With an uprising of armed conflicts throughout the world, but especially in the Middle East more people are traveling to these areas to (temporarily) take part in the hostilities in the respective region, or learn and gain terrorist capabilities. These so called "Jihad-Tourists", whether their destination aims for Iraq, Afghanistan or the current conflict in Syria are creating a threat to National Security and the internal politics and foreign and security policy of a state.
This includes individuals who seek to engage in fighting, extremist activity or terrorist training outside the German territory, for example, and then return to Germany with enhanced capabilities that they then even use to conduct an attack on German soil.

Passport Act
Germany is taking various actions against such citizens. While ordering a prohibition on leaving the territory, Germany is also enforcing a restriction of movement through the confiscation/ withdrawal of passports. The leading "Elfes-decision" from the German Constitutional Court (1957) well-defined that the freedom to travel and to leave the German territory can be subject to a statutory reservation by a parliament act. While an official order of not leaving the territory of Germany might easily be bypassed the confiscation of travel documents seems a more effective measure to enforce the order. The respective legislation (Section 7 Passport Act) used for restrictions on "Jihad-Tourists" is therefore generally an appropriate limitation of the personal freedom (Art.2 of the German Basic Law). The Passport Act allows a deprivation on various reasons: "When there are reasonable grounds to believe that the passport [owner], 1.) constitutes a threat to the internal or external security or to other significant interests of the Federal Republic of Germany […], 6.) intends to commit him-/herself to military service outside the Bundeswehr without authorization[…], 10.) commits an act described in Section 89a of the Criminal Code [seditious act of violence]." All of these reasons are considerable in cases of "Jihad-Tourists". However, recent case-law of the lower administrative courts shows a tendency to concentrate its jurisprudence through a broad interpretation of the requirement that the affected person „constitutes a threat to the internal or external security or to other significant interests of the Federal Republic of Germany" (Section 7, No. 1 Passport Act) in cases of "Jihad-Tourists". Nevertheless, the decision to confiscate or withdraw a passport must always be necessary and proportionate. The decision to withdraw a passport and the reason for that decision has to be conveyed to the applicant or passport holder and is open to judicial review. Yet the disclosure of (classified) information used to determine such a decision will be subject to the individual circumstances of the case and if not presented in court might compromise an appropriate confiscation.

Act on Identity Cards and Electronic Identification
On the other hand, a lot of "Jihad-Tourists" are not in a need of a passport to travel to the conflict areas. The Schengen Area allows EU-citizens to travel within the EU without border controls and also enter Turkey, for example from Greece, without a passport, but only with an identification card. Hence, as of this summer, by a new legislative act (Amendment to the Act on Identity Cards and Electronic Identification), Germany is now extending its fight against "Jihad-Tourists" while issuing substitute identification cards for persons that got their passports withdrawn for reasons aforementioned.

CONCLUSION
The need to stop people who travel and seek to engage in fighting, extremist activity or terrorist training outside the German territory has become increasingly apparent with developments in various parts of the world. Nevertheless, the decision to refuse or to withdraw a passport under the public interest or national security criteria has to be used carefully. The exercise of this measure has to be subject to careful consideration of a person's past, present or proposed activities.

Comments / Notes

Endre Dudás
University of Pécs

CAN FREEDOM OF SPEECH BE RESTRICTED DUE TO SECURITY CONCERNS OF THE STATE?

The information flow, the ability to speak what is on the mind of people is one of the most powerful weapons of humanity. Words can start wars, and also can end them; they can harm individuals, groups of people associated by some common characteristics, but even an entire state. The concept of freedom of speech may seem very simple at a first glance, and we can rephrase it as 'Everybody is entitled to say whatever they want'. This fundamental freedom however cannot be perceived as lightly as this. It may take a different approach to understand that even though this is a freedom granted by the highest international documents, it still has its limits, and like every right and every freedom granted to human beings will not be considered as an ultimate limitless right.

Fundamental freedoms exist, but they are not endless. We, as responsible individuals should be aware that our rights are limited by other people's rights and freedoms, and where our right 'stops', somebody else's 'begins'. The freedom of speech is one of the most valuable rights. Being able to express ourselves, to contribute to the society with our opinion is one of the greatest achievements of a man. Can this freedom be limited, and in what cases should the state impose boundaries on this freedom is an ambiguous question.

Freedom of expression should be limited only where there is a real need. However, before the state impose any restrictions, it should try to educate the individuals providing a better understanding of other cultures, an insight that might change the way we perceive others. If this attempt would not be successful, the state will be still able to impose limitations based on the constitutional and international agreements. But if the limitation is not necessary, the state should not interfere with freedoms granted by the international norms. Therefore, freedom of speech can be limited, but only in the cases where the law allows the state to act upon. While the state is entitled to impose limitations, on the other hand, it should be forced upon only if it is necessary and to an extent which is proportionate. The question raised here is what can be considered as necessary limitation in the case of freedom of speech?

Before any restrictions are applied, education shall be provided, on both sides, providing a better insight in understanding the problem, and trying to resolve the matter in a peaceful way, without any imposed interference, if this attempt would not result in problem solving, the state will be still able to limit the freedom by applying state measures. One of the reasons of imposed limitations can be maintaining state security. The question if limitations can be imposed on freedom of speech in order to maintain this order is hard to define. When will a free flow of opinion represent a valid threat to the state order? Can the state act on regulating this matter even though, it will not represent a threat directly, but only indirectly causing a sequence of events resulting in physical violence. The state needs to identify the source of threat that endanger the of the current order and act in order to prevent the possible harm.

In this paper I will explore the concept of the right of freedom of speech, taking into account its evolution during history, commenting on the institution of censorship as well, reaching its full potential in our most valuable international documents. Furthermore, I will examine the possibilities of state limitation of this freedom in order to maintain state security. All this will be examined in perspective of the Croatian national legislation, reflecting to international documents implemented into the Croatian legal system.

Comments / Notes

Mārtiņš Birģelis
University of Latvia

FREE SPEECH CONSIDERATIONS IN COMBATING INCITEMENT TO TERRORISM

The paper will provide a brief overview of international efforts to combat terrorism and under what specific circumstances freedom of speech may be lawfully restricted in pursuit of this goal. It will look at which opinions are still allowed to be voiced in the public debate on the grievances within society and which opinions are out of line to the extent that they can be considered a severe danger to society deserving prosecution. Article will look on the elements that have to be taken into consideration when deciding on limiting someone's free speech. It also will analyse the particular role played by the Internet in this process as it often is described as crucial platform for terrorist organizations.

It will then outline the major international instruments concerned with the issue of incitement to terrorism, including the international framework governing the freedom of expression. Taking into account international human rights standards, decisions of the UN Human Rights Committee, of the European Court and Commission of Human Rights as well as decisions from outside the European Convention system such as those of the US Supreme Court, the paper will outline basic principles that apply to the restriction of freedom of speech in the context of combating incitement to terrorism.

Special attention will be attributed for meeting the requirement of legal certainty because the definition of the offence may often be too broad or insufficiently clear. Despite the fact that several international legal documents have been adopted that deal with the criminalisation of incitement to terrorism there is still a widespread uncertainty about what constitutes the incitement of terrorism as States have provided little guidance on how to determine those terms. Article looks on defining terrorism as well as incitement and concluding on elements that constitutes such offence.

The Article will compare the European approach, which focuses on whether the content of the speech tends to support terrorism, with the U.S. approach, which focuses on criminalizing speakers who have links to terrorist organizations. More specifically, research paper will touch upon American resistance to direct prohibitions of incitement that fail to meet the standard set by the Brandenburg v. Ohio precedent and European legislation that is open to such limitations subject to proportionality test.

7th Panel – Balancing Fundamental and Human Rights with National Security

Chair: ***Prof. Dr. Izabela Skomerska***
University of Łódź

Chair: ***Prof. Dr. Anita Rodiņa***
University of Latvia

Comments / Notes

Marija Daka
University of Pécs

IS THERE A RIGHT TO SECURITY UNDER THE ECHR?

Liberty and security – "One right calls for protection from the state, while the other calls for the state protection."

The presentation is going to examine the ECtHR's assessment of the right to security and liberty, furthermore to analyse the scope and the procedural and substantive interpretation of Article 5. Bearing in mind that the ECtHR over the last 30 years slightly separates the right to security from the right to liberty the presentation primarily deals with the question of security.The aim of the presentation is to explain the definition of the security itself, the question which was addressed since Hobbes and Locke..

Furthermore having regard to the different concepts of security developed by the ECtHR and other court's practices so as the complexity of the case law on Article 8. Onwards the presentation is going to examine the applicability of the Article above mentioned in the light of the doctrine of positive obligations.

In order to refer to some actual issues the presentation raises the question whether the detention of people for immigration reasons is compatible with the Article 5.

The presentation also deals with the references made by the ECtHR to other Articles of the Convention, like Article 3, 4, 6, etc., when interpreting Article 5. This leads us to pose the question whether we actually need Article 5.

The aim of the presentation is also to demonstrate the broadening of the rights guaranteed under the Article 5 by the ECtHR by giving possible alternatives for the future tendencies of interpretation of the right to security and liberty.

So as to address the question whether there is a real right for security and what is its content, having considered the different constitutions, declarations and conventions we can allege that the core legal meaning of the right to security is still unsettled.

Comments / Notes

Olga Kiseleva
National Research University – Higher School of Economics

DEROGATIONS FROM HUMAN RIGHTS TREATIES IN TIMES OF EMERGENCY

International law envisages a possibility for states to derogate from their human rights obligations in exceptional circumstances – in situations of public emergency that threaten the independence, security of the state or a life of a nation in general. Such legal provisions are contained in the international human rights treaties such as International Covenant on Civil and Political Rights (Art.4), European Convention of Human Rights (Art. 15), Inter-American Convention of Human Rights (Art. 27). The specificity and debatableness of the institute of derogations during times of emergency consists in its legalization of what would normally be unlawful under a human rights treaty. In such conditions the probability of human rights abuses by the state authorities is much higher, that is why international community has created a complex system of making derogations introducing a list of non-derogable rights that vary from treaty to treaty and including the condition that such measures must be of a temporal, proportionate and non-discriminate character, must be proclaimed and notified in accordance with the special procedures established by the international human rights norms. What is important, texts of international treaties refer only to general wordings such as 'measures…to the extent strictly required by the exigencies of the situation', while a sufficient and detailed explanation of how derogations may or may not be undertaken is provided in the case law and interpretations (e.g. General Comments of the Human Rights Committee) of the international human rights treaty bodies.

In this research it is suggested to analyze different approaches and logic of international organizations to the regulation of the institute of derogations during situations of public emergency as well as its absence – like in the African Charter on Human and Peoples' Rights, containing no derogation provision.

Also it seems important to throw light on the historical background and to undertake a general overview of the legal regulations on lawful human rights restrictions during declared state of emergency and martial law, according to the Constitutional law of the Russian Federation.

CONCLUSION
This research is aimed at defining the criteria of a lawful derogation from a human rights treaty by a state, and is based on the practice of international judicial and quasi judicial bodies (including recent cases).

Comments / Notes

Aurelija Daubaraitė
Vilnius University

LITHUANIAN LUSTRATION AS NATIONAL SECURITY V. RIGHT TO RESPECT FOR PRIVATE LIFE (ECTHR CASE-LAW)

In this presentation the balance between Lithuanian lustration as national security and right to respect for private life will be analyzed. Regardless the fact that lustration itself is well-known measure aimed at decommunisation, the relevance of issues caused by lustration is freshly apparent in the case-law of ECtHR. The presentation will cover three main decisions (1999, 2004, and 2015) of national and European courts under which the lawfulness of the restrictions set by the Law on Lustration was challenged.

The factual situation of the cases is as follows. Applicants have worked for the Lithuanian branch of the Soviet Security Service (KGB) before 1990 independence. On 1998 the Law on Lustration has been adopted limiting the right of the former regular employees of KGB to freely choose an occupation in public and private sector, including to work as lawyer, employee of credit institutions, to work for strategic economic projects, education, military and national security. The applicants were found to have the status of "former KGB officers" and subject to employment restrictions. The applicants claimed that their dismissals were unlawful based on discriminatory grounds. The Law on Lustration was tried by the Constitutional Court of the Republic of Lithuania and no sufficient substance to question the restrictions was found.

In 2004, the case was brought against the ECtHR. The ECtHR has analyzed imposed restrictions in the light of Article 8 of ECHR. It is important to emphasize, that the absence of economic, social and cultural rights in the text of ECHR has not prevented the ECtHR from protecting social rights through expansive interpretation of ECHR rights. The ECtHR come up with the conclusion that far reaching ban on private sector employment does affect private life. Further, the ECtHR has assessed the case on the basis of so-called standard approach test including four criteria: (1) law; (2) legitimate aim; (3) necessity; and (4) proportionality. National security is one of the legitimate aims spelled out by the ECHR. Even though the ECtHR does not provide with the clear definition of national security, the context in which this notion is used suggests that the ECtHR chooses the mixed approach to the notion of national security defined by the source and type of the threat: foreign and internal influence. The national security was contrasted with the right to respect for private life, specifically – right to work. The ECtHR recognized that restriction on right to work set by the Law on Lustration served as national security ensuring measure and a possibility for democracy to be capable of defending itself having regard in this connection to Lithuania's experience under Soviet rule. Finally, the ECtHR accepted that the restriction of employment pursued the legitimate aims such as protection of national security; however, ECtHR concluded that the ban on employment in various private sector spheres constituted a disproportionate measure.

In 2015 the ECtHR has ruled again in the same story. This time, the applicants (the former tax inspector and the former prosecutor) claimed that the actions of discrimination due to restrictions caused by the Law on Lustration were not prevented by the State. Purely theoretically the applicants were right, because the Law on Lustration was not annulled due to the lack of political will. However, the ECtHR analyzed specific circumstances which proved the fact of discrimination. Finally, the mentioned two applicants have failed to prove the fact of discrimination for they have been offered other similar jobs. On the contrary, the third applicant has suffered the actions discrimination.

CONCLUSION

The analyzed decisions of national and European courts show that employment loyalty restrictions in private field intervenes with right to respect for private life. Also it indicates that the State has some discretion to establish special employment loyalty requirements in the most important spheres of private sector based on national security, including safeguard from former KGB officers; however, the restriction for special professions as a lawyer stays questionable.

Comments / Notes

Dita Amoliņa
University of Latvia

BALANCE BETWEEN FUNDAMENTAL RIGHTS AND NATIONAL SECURITY PROTECTION: PRACTICE/CASE LAW OF THE CONSTITUTIONAL COURT.

Terminology

The Constitution of the Republic of Latvia (Satversme) does not protect "national security" as a constitutional value – it is not a legitimate aim, for the sake of which restrictions upon human rights could be established. However, Article 116 of the Constitution provides that human rights may be restricted to protect the democratic structure of the State and public safety. The legitimate aim of "protecting the democratic structure of the State" and "public safety" comprises elements of "national security", and yet the Constitutional Court has granted a broader content to this concept.

Legitimate aim

Public safety as the legitimate aim of the regulation is to be linked with the protection of the democratic structure of the State and is recognised as being admissible mainly in those cases that pertain to issues of threats to the safety of the State or society.

The legitimate aim "public safety" is ensuring and protection of public interests. In a democratic state this concept means the protection of human life, liberty, health, dignity, and property. The Constitutional Court has recognised that also the territorial unity of Latvia is an issue of "public safety".

In order to use the legitimate aim of public safety, for the sake of which a restriction upon human rights has been established, the legislator needs to substantiate the objectively existing or a potential link between the adoption of the particular legal regulation and the reinforcing of public safety, eliminating or decreasing a threat upon safety.

Judicial review

The "national security" as the aim cannot be the basis for restricting a person's rights in all cases. This fact can be subject to a review by a court of administrative jurisdiction or the Constitutional Court. Allowing a situation where, if only the case under review pertained to the security of the state, the judicial review would be totally excluded, would significantly restrict the possibility for protecting human rights, and institutions of public administration would be released from responsibility without grounds.

Interpretation

The Constitutional Court emphasizes the aim of reaching harmony between the norms of human rights included in the Constitution with the international human rights provisions. This means that the Constitutional Court, in assessing the legality of a restriction upon human rights, takes into consideration Latvia's commitments in the field of human rights. I.e., on the level of constitutional law the norms of international human rights is a means for determining the content and the scope of fundamental human rights and at the same are directly applicable in Latvia, insofar they are legally binding.

CONCLUSION

The Constitutional Court has underscored the need to achieve a balance in the protection of constitutional values. I.e., a balance must be achieved between the rights of a democratic society to national security and a person's human rights. This means that security services must have the authorisation to perform their task – to protect national security; however, they cannot be granted uncontrolled possibility to violate fundamental rights and freedoms.

Comments / Notes

Nicolous Praygod Amani
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HUMAN RIGHTS AT THE CROSSROADS: ADDRESSING THE OVERRIDING NATIONAL SECURITY CONCERNS IN TANZANIA

Considered as basic rights inherent to all human beings, human rights constitute legitimate claims or demands that individuals or group of individuals assert against the State in order that such claims may be recognized and effectively protected. The term national security, on the other hand, has undergone substantial metamorphosis over the years such that the dictates of time have determined its scope. Prior to the thawing of Cold War tensions, national security was largely perceived to represent the ability of the State to protect its territory from any potential external threats or rather the freedom from fear of military threats from other States as the State was regarded as the only referent object of security. In that regard, accumulation of military hardware and forging of military associations for purposes of ensuring national security was a pure characteristic of the time. The post-Cold War era has witnessed a change in paradigms as human security which incorporates protection of human rights is inevitably seen as a necessary and integral part of national security. It is thus clear that national security may only be attained if the wellbeing of the people and that of the nation is attained.

Despite that shift, human rights and national security have always been perceived to be in contention. The emergence of newly security threats such as organized crime and terrorism has seen stringent measures being imposed to limit human rights and freedoms. This has been evident in countries like Tanzania where enjoyment and protection of human rights is seen as a mountain too high to climb, especially when national security concerns are involved. History indicates that the State in Tanzania has, since independence, regarded national security or public interest as superior to human rights, the fact which has caused recurrent instances of human rights violations in the name of national security.

It is evident, however, that the perceived human rights and security contention depicts a wrong picture of their true relationship. When closely examined, the intercourse between them suggests that the two are rather complimentary than mutually exclusive. In other words, promotion of human rights enhances national security and vice versa. In some few cases, though, limitations of human rights may be necessary for broad national security measures to be adopted. That is why under the Tanzanian human rights jurisprudence, limitations of human rights may only be allowed if enjoyment of such rights may curtail the rights and freedoms of others or public interest and any action intended to limit or take away such rights must be proved to be necessary, fair and reasonable.

It is in this regard that this paper investigates the State perception of human rights and security right from independence and notes that while some developments have been registered in respect of promotion and protection of human rights, the inherent imbalance between the two continues to dominate state practice in Tanzania as human rights are often being sacrificed in the name of national security. However, since the two are complimentary, it is therefore argued that the right balance should be struck between them.

Comments / Notes

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LIMITATIONS TO CITIZENS' RIGHTS IN CONNECTION WITH THE SOCHI WINTER OLYMPIC GAMES

An international event of the size and notoriety as Olympic Games doesn't pass by undetected and without controversy. The Sochi Winter Olympics is no exception. This report will focus on human rights issues and security measures during the 2014 Sochi Winter Olympics. In particular, by analyzing the factual circumstances around Sochi and comparing with experience of other host countries of international sporting events, the speaker is trying to find answer to the main question: whether the limitations of human rights during Olympic Games in Sochi were proportionate and justified?

SECTION 1
Ensuring the security of the Sochi Winter Olympic Games has been a paramount consideration since Sochi was chosen in 2007. Indeed, the threat of terrorism has been the main concern. Since the breakup of the Soviet Union and the formation of Russia, ethnic conflict has been most intensive in the North Caucasus area, the site of the Sochi Olympics. Sochi was not a battleground during the Chechnya conflicts, but has suffered from some terrorist attacks. Thus, an effective plan of enhanced security measures was necessary condition for success of the Olympic Games.

The legislation had authorized extra inspections and restrictions on individuals and transport vehicles entering and leaving zone, including air traffic. Along with the Olympics facilities, enhanced security measures were put in place at bridges, railway tunnels, power facilities and grids, schools, hospitals, hotels, restaurants and stores. Vehicles without special registration were not permitted to enter the zone, and local car owners generally were asked not to drive and to take their cars to parking lots 50 miles from Sochi. Even tighter security pertains for screening Olympic visitors and support personnel at Olympic venues. Moreover, President's decree in August 2013 banned protests and demonstrations in the Sochi Area for the duration of the Games and Paralympics.

SECTION 2
However, human rights activists expressed concerns about this legislation adopted by Russia's parliament and president. The measures affect mainly on Sochi residents, limiting the scope of their everyday activities. August Decree of the President "On peculiarities of application of enhanced security measures during the XXII Olympic Winter Games and XI Paralympic Winter Games 2014 in Sochi" significantly limited constitutional rights such as freedom of movement, rights to protests and demonstrations, and in fact established a state of emergency in the region without any references to the law on emergencies. This fact called into question the validity of the hierarchy of legal acts set in Russia and made to rethink the legal nature of such decrees.