

Terrorism and human rights

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Abstract:

Terrorism is not a recent problem nor it is a novelty for governments to intervene in people's everyday life due to the possible threats that terrorism signifies. As opposed to this, it is only as of late that safety has come into focus on a worldwide level, which can be explained by the ever-growing ubiquitous presence of modern terrorism.

Keywords: *terrorism, human rights, possible threats, governments.*

Terrorism definition/s?

Terror¹ (*formidilosus*, *terror* = fright, horror, fear, *lat.*) is the application of open violence to trigger fear, *terrorism*, based on this term, (according to the most generally accepted definition) is the series of politically motivated violent and threatening actions.

According to the authors Harmat-Bukva², terrorism is the application of violence or such strategy of threatening, the primary objective of which is fear, disturbance and hence, the achievement of a given political aim, or maintaining the power. The generation of fear is a supplement and a possible supporter of every form of violence – from pub brawls to traditional warfare –, but in case of terrorism this relation is oppositional, the immediate victims and sufferers of violence are at most only in a symbolic relationship with the actual operation, their selection is often secondary, mostly random.

Many have attempted to define the term *terrorism*. Fletcher³ claims that it is impossible to define the exact definition of terrorism, in his view, only the existence of the predefined conditions and criteria allow us to be able to talk about terrorism.

Ben Saul, also shares this standpoint though, according to him, there is no difference between terrorism and inner political violence.

László Korinek also agrees that when defining terrorism, there is a need for certain predefined notions. He states that one strait of terrorism is the illegal violence, following political (religious, ideological) aims, finding publicity and a propaganda. Korinek also claims that it is indispensable to see that terrorists do not consider themselves as criminals.

¹ Wikipedia, <https://hu.wikipedia.org/wiki/Terror> (March 3. 2016.)

² Harmat, Árpád Péter; Bukva, Kármén: A terrorizmus története. <http://tortenelemcikkek.hu/node/185> (March 3, 2016.)

³ Fletcher, George P.: The Indefinable Concept of Terrorism, Abstract <http://jicj.oxfordjournals.org/content/4/5/894.abstract> (March 3, 2016.)

Besides these approaches above, many experts – both from Hungary and abroad – have tried to clarify the definition of terrorism – few have been lucky to do so. It can clearly be stated that the definition of terrorism is very difficult and complex. If we accept that we need to analyze several aspects and different conditions to define terrorism, we must also accept that all of these factors need to be met.

Even if there has been no common understanding with the definition, it can be stated that there is an agreement in its judgment among the international community members.

Global security policy vs. Individual rights

In several states the coming to light of a new and global security policy has brought about significant normative changes, but we can claim in every change that these threaten the already-existent human rights. Governments are taking such measures in the name of antiterrorism that offends fundamental legal human rights. The international organizations, like the UN, kind of motivate these trends; they do not make efforts to step up against these measures.

The most distressing part of this issue is that not only the dictatorial states but also the Western states oppose the defense of human rights – and it is more alarming that it used to be.

With the leading of the United States, these countries mean harm to the prevailing state of the fundamental human rights and nullify the achievements of the human rights movements from the past decade. Bárándy raises this dilemma in two of his works. He explains that the difficulty to define the right proportion between efficiency and legal certainty is not a recent problem. He points out that in criminal actions – or other state acts, as a matter of fact – in recent times rights-limited steps, measures have been made in the name of efficiency, both inland and abroad. In addition to this, the boundaries of legislative acts that were not to overpass have also been created.

With the escalation of terrorism these boundaries have been blurred. This problem is not to be handled only as a question of law.⁴As Bárándy explains: *„There has to be a very serious reason that the derogation of the pillars of a constitutional state crystallized during not only decades, but centuries, could be taken into consideration, or at least this change would not be ignored plainly. It can be accepted as an axiom that the relativization and weakening of these rights mean way more than a question of law. The approach of the state and, stemming from this, the operational model of the governing body lacking of these rights result in a whole new world, a whole new society, and the transformed relationship between the citizens and state.”*⁵ Bárándy is obviously right that the challenges of today's security policy is the reason why we can't automatically deny every

⁴ Bárándy Gergely: Kriminálpolitikai Paradigmaváltás? A védői jogok csorbitásának és az ügyészi jogok növelésének okairól. In: Kontroll és Jogkövetés (Kriminológiai Közlemények). Magyar Kriminológiai Társaság. Budapest, 2012. 130. o. Bárándy Gergely: Centralizált Magyarország – megtépázott jogvédelem. A hatalommegosztás rendszerének változásairól (2010-2014). Scolar Press, 2014.

⁵ Bárándy Gergely – Bárándy Aliz: Büntetőpolitikai paradigmaváltás? A védői jogok csorbitásának és az ügyészi jogok növelésének okairól. In: Tanulmányok Tóth Mihály professzor 60. születésnapjának tiszteletére. Pécsi Tudományegyetem Állam- és Jogtudományi Kar. Pécs, 2011. 34. o. Bárándy Gergely: Centralizált Magyarország – megtépázott jogvédelem. A hatalommegosztás rendszerének változásairól (2010-2014). Scolar Press, 2014.

rights-limiting acts, but it is worth taking the proposal into consideration, that is approaching Professor Korinek's standpoint. According to this, it should extraordinarily be observed that, which rights-limitation is the one that need to be introduced for the sake of security policy and when a government abuses it for the extension of its own space. It is also worth examining whether we will not unintentionally shape our society during these rights-limitations into a society, which its citizens would not want. To put it more simply: where is the boundary in the lives of the citizens, in which the government should interfere because of the antiterrorism. And we haven't even asked the theoretical question, „is it allowed and if so to what measures to yield the demands of the terrorists, and to change something because of the terrorism, or, by doing so we will only let terrorism escalate, as we will give a positive feedback on its success.”⁶ How the human rights movements react to this challenge will probably define the boundaries of the emergence of human rights in the forthcoming years.

Illegal restraint, torture and other ways of abuse

In the past decades – even in recent years – the United States criticized the dictatorial states because they tried those accused of terrorism in military courts and sentenced. Nowadays the United States does the same – though often they only restrain those, who can be linked to terrorism, without any procedures. Currently ca. 100-150 persons are held illegally in Guantanamo. After the 9/11 terror attacks the Bush administration created a detention center for people that had been accused of terrorism. The detainees were – in the order of their national distribution: Saudi Arabian, Yemenite, Pakistani, Afghanistan, and Syrian citizens, most of whom had been accused of being related to Al-Kaida and of operating the late Afghani-Taliban system – without indictments.

It is made possible due to the fact that being a Cuban territory, American laws are not valid in Guantanamo, the American Constitution is only indirectly in effect, through military rules.

Theoretically, because of this last part, one can be sentenced to death under the Martial Law, though it has not happened yet. However, reports are regular about tortures and different kinds of abuse, which are told by those few freed inmates (who are solely the citizens of some European countries or maybe of Canada). Others might be captured similarly in some other hidden parts of the world. This kind of illegal restraint violates the person's right to fair trial and their right to freedom.⁷

Regarding the Daschner-trial the Strasbourg Court on June 30th, 2008 stated that the circumstances couldn't legitimate the violent acts of the members of the procedure. The applied methods (such as the threat of constraint) cannot be accepted even if it aims to saving a child's life.⁸

In some member states of the European Union this example, applied in the United States is acceptable.

⁶ Bárándy Gergely: Hová vezethet a tolerált gyűlöletbeszéd? Gondolatok a parlamenti gyűlöletbeszéd szankcionálhatóságáról, s a nagy nyilvánosság előtt elkövetett gyalázkodás egyes társadalmi hatásairól. In: Kriminológiai Közlemények, 75. Magyar Kriminológiai Társaság. Budapest, 2016.

⁷ Elek Balázs: Habeas Corpus a magyar büntetőeljárásban. Európai Jog, 2015/6.

⁸ Piti Sándor: A pszichikai kényszer. Rendészeti Szemle, 2010/3. Cit. Elek Balázs: A jogerő a büntető eljárásban. DE AJK, Debrecen, 2012.

In Spain the physical abuse is common for the criminals suspected of terrorism. In England, the House of Lords openly disapproves of this policy, however, numerous immigrants, suspected of terrorism are in illegal captivity. Sweden and France expel those persons, suspected of terrorism to other countries, where they are tortured.

And it can be anticipated that if new terror attacks happen, these abuses will become more usual.

From the experiences of the past, we can conclude that if the governments are faced with serious terrorist threats, they will react to these rather aggressively.

The global effect of the United States?

The ever-growing terror threats have significant aftermaths.

As the United States has significant power and influence on the improvement of the global structure – because the US, if it wants to demonstrate its power, can sabotage the decisions of the UN or the International Criminal Court, if they oppose the aims of the US – in this case the attitude shift of the US would have a benign effect on the whole world.

The question is this: can a new global security policy on the agenda, led by the US, mean a threat to the existing system of human rights?

Conclusion: human rights and safety

Recent examples have shown how vulnerable the states are to terrorist attacks. The organizations responsible for the safety of nations and people could only react retroactively.

Sometimes the governments combat terrorism in a way that triggers further questions concerning the existent politics and security. The Bush-administration used the issue of the terrorist threat to attack Iraq.

Barack Obama⁹, the president of the United States in 2011, after the death of Osama bin Laden declared the same thing as in 2001 George W. Bush¹⁰ after the terror attacks of September: „The United States is at war and this is a war against terrorists.”

This approach of war on terrorism – namely the war against terrorists – denies the humanitarian rules, which ignores the whole system of law, states Korinek, as the basis of the modern political systems is the respect of human rights.¹¹

Therefore, joining the standpoint of László Korinek, the human rights organizations have to realize that numerous safety measures, introduced by governments, are sometimes misleading and very dangerous. The main aim of the human rights movements is to convince the governments to balance human rights and security policy.

The best and the most constructive solution would be if the decision-makers considered those plans that maximize the probability of reaching both aims, as the protection of human rights increases the safety of people, which shall never be undermined.

⁹ Obama, Barack: Osama Bin-Laden-dead. <https://www.whitehouse.gov/blog/2011/05/02/osama-bin-laden-dead> (March 3, 2016.)

¹⁰ President's Address to a joint session of Congress and the American People, <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html> (March 3, 2016.)

¹¹ Korinek im. 6.