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## WORKSHOP: “HUMAN RIGHTS AND SECURITY”

**Kristína Janková – Lenka Kissová\***

The Human Rights Day is traditionally honoured by the scholars at the UNESCO Chair for Human Rights Education and Institute of European Studies and International Relations, established at the Faculty of Social and Economic Sciences of Comenius University in Bratislava by organising workshop on current issues in the area of human rights. After 2013's topic on citizenship, the 2014 workshop focused on the two closely connected fields – human rights and security. The aim of the workshop was not only to analyse the two concepts from different points of view, but also to provide space for doctoral students to present their research.

The workshop took place at the Faculty of Social and Economic Sciences on 10 December as usual. After the foreword of the Dean of the Faculty, doc. **Lucia Mokrá** encouraging all to engage in fruitful discussion, **Petr Agha** from Center for Law and Public Affairs operating under the Czech Academy of Science presented a paper on the margin of appreciation doctrine entitled “Human Rights in Pluralistic Society”. The article makes case for more open manner of adjudication and demonstrates the importance of the margin of appreciation doctrine for fulfilling the aims of the European Convention on Human Rights, as well as for keeping the human rights therein relevant and potent tools in building a truly democratic public sphere. He argues that what is necessary for the existence of rights and the rule of law, are not correct answers (absolute truth) and super-judges who reveal truths, but the possibility of the subjects of law to influence the content of human rights and the ability to reflect the lives of humans. The rule of law cannot be written or adjudicated from the *punctum archimedis* - the rule of law arises only in the

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public space and the interaction of bodies of law.

After philosophical introduction, three papers were presented related to the area of terrorism and the human rights violations and protection within the framework of international security agreements. **Nikoleta Bitterová** from Faculty of Law, Masaryk University in Brno analysed the conflict of personal and national security in the case **Mustafa Labsi** vs. Slovak Republic dealing with extradition of Mustafa Labsi, an Algerian citizen back to his homeland, potentially endangering his personal security. The extradition was based on the argument that Labsi constitutes a risk for Slovakia and its population. The European Court of Human Rights (ECtHR) concluded that the Slovak Republic has violated three articles of the European Convention on Human Rights (ECHR), in particular Article 3, which provides for the prohibition of torture, Article 13, which guarantees the right to an effective remedy composition and Article 34, which declares the right of individual petition. The conflict also gets the principle of non-refoulement as a fundamental principle of refugee protection and safeguards the interests of the state in the international war against terrorism. ECtHR condemned the extradition because all available remedies were not exhausted. In conclusion, the author emphasizes that in the ongoing war against terrorism and the adoption of security measures it is essential to respect human rights. In her view, the decision of Slovak authorities to expel Labsi constitutes a dangerous precedent. She argues that this procedure may compromise the credibility of the Slovak Republic and send a signal that this country does not hesitate to expose a person to torture in order to ensure its own security. Slovakia in this case failed to comply with binding decisions of international bodies and held contrary to settled case-law of the ECtHR. The author suggests that it would be appropriate and desirable if the Slovak Republic admitted the error and regretted its actions.

Afterwards, the relationship between human rights and terrorism was further explored by **Peter Matuška**, PhD student at the Faculty of Law, Comenius University in Bratislava, who addressed anti-terrorism legislation, which often does not reflect fully the fundamental human rights and freedoms. His presentation also aimed to limit the absolute rights and legitimate interests of security. He underlined the insufficient and incomprehensive definition of terrorism in international law documents and not unified legislation at the supranational level. He pointed out that in past terrorist groups focused on decolonisation and dissemination of ideology, whereas today religious fundamentalism is gaining the prominence. Terrorism is no longer limited only

to violent crimes committed by firearms or explosives, but encompasses also cyberterrorism, bio-terrorism, or hijacking. In connection with the concept of human rights, there is no single "red line" that would clearly identify to what extent it is possible to restrict human rights and freedoms. Among the most affected by human rights include the right to privacy and the prohibition of torture and inhuman treatment. The need for the definition of the right to privacy, or private life is revealed in the case *Niemietz vs. Germany*, where the European Court of Human Rights (ECtHR) ruled that the search of employment agencies by public authorities is in breach of Article 8 of the European Convention on Human Rights (ECHR). Court strengthened the right to privacy by inclusion of labour issues to privacy. The right to human dignity is reinforced by the prohibition of torture and inhuman treatment (Art. 3), which is among the absolute rights. No one shall be subjected to torture and thus subjected to inhumane treatment; moreover, such an offense cannot be justified under any circumstances, including even exceptional circumstances such as war. Matuška states that public authorities are facing the difficulty in combating terrorism or organised crime, but even in such cases the absolute nature of Article 3 of the ECHR cannot be questioned. He provided another case - *Gäfgen vs. Germany* - that opened the moral and ethical question in the concept of human rights. Violation of human dignity cannot be legitimised by "weighing of interests", thus comparing which right stands above - right of the victim or the right of the offender. The difference between torture and inhuman treatment, however, was clearly defined on the basis of "the level of cruelty." In conclusion, the author notes that terrorism belongs among the greatest threats of modern society; nevertheless, it is necessary to place particular emphasis on the respect for fundamental human rights in the anti-terrorist legislation of states.

This panel concluded with the contribution of **Lucia Mokrá**, who concentrated on the human rights clauses in the international security agreements including NATO, the EU or OSCE. She proved that human rights are still long way to go till they find their place in the area of international security, with the exception of the European Union. This statement clearly follows the previous topics and their conclusions.

Next panel was devoted to topics of human security and securitisation of migration. **Kristína Janková**, PhD student from hosting institution focused on human security as a justification for humanitarian intervention, considering especially the Responsibility to Protect doctrine. She argues that it is

necessary to distinguish between two dimensions of human security – freedom from want and freedom from fear. These two dimensions divided the concept of human security into two areas – security and development. Each dimension demands different strategies; however, both concern human rights violations. If these violations are exercised in large numbers they may fit into the R2P doctrine. However, even though human security may provide a moral or ethical legitimacy, it requires a legal approval from the UN SC to undertake a legal intervention. Therefore human security represents a complex concept applicable in the field of security as well as development. The possible way of human security to influence legal scope of humanitarian intervention is to incorporation into foreign policies of nation states and international (supranational) organisations, such as the EU, who truly operationalise the concept into its missions within Common Security and Defence Policy.

This platform of Common Foreign and Security Policy covers also migrations, which is now considered one of the major threats not only in the EU, but worldwide. **Lenka Kissová**, PhD student from Faculty of Social Studies, Masaryk University in Brno, focuses on the precise definition of securitisation, which is often confused with ensuring security. In fact, securitisation refers to the addition of the security characteristics to a particular phenomenon or people, or in other words, framing security issues. The securitisation process is constructed discourse which is based on the presence of existential threats in society. In connection with the migration, securitisation has a negative undertone and results in severe violations of fundamental human rights, i.e. while security borders. The author emphasized the socio-constructivist nature of securitisation, which means that the threat formed around a particular topic or group of people, is a subjective phenomenon and not objectively existing threat. She focused on the genesis of framing the issue of migration in Europe. Securitisation of migration in the Member States of the European Union, according to Professor **Huysmans**, was developed on the basis of internal security, cultural security and crisis of the welfare state. The security discourse gradually institutionalised into migration policy. Kissová also describes migration as a modern security phenomenon of non-military character, where the fears of threatening the cultural homogeneity of society are coming to the fore in particular. Another negative consequence of the securitisation of migration is stereotyping and criminalisation of immigrant groups that resulted in the spread of fear and amplification of theft. The author illustrates this phenomenon in connection

with the securitisation of migration to the case of Italy in the form of the 2009 Act under which illegal and irregular migration is considered official crime punishable by imprisonment. By signing a bilateral agreement with Libya on return of refugees to their country of origin, Italy infringes a series of international commitments on human rights. As a signatory of the Universal Declaration of Human Rights and other international instruments, Italy has faced criticism from the international community for the refoulement of refugees, which are exposed to poverty, conflict and the threat of death and, therefore, where they are deprived of basic human rights. In conclusion, the author emphasized human rights dimension of securitisation and highlighted the human rights violations through taking restriction and control measures to ensure the external borders of the state. She also notes the need for ongoing reflection of security discourse and subsequent analysis and mediation.

The last part of workshop was dedicated to rather national issues. Starting with right to resistance, **Ján Šurkala** presented a very interesting point of view and provided several examples that demonstrate positive as well as negative aspects and risks that could threaten the rule of law and democracy - the values on which this right is merely focused. The right to resistance is seen as the last legal option of civil society to defend their rights. The aim of the paper was to provide an overview of the historical development of the law in the context of Western countries, to analyse Article 32 of the Constitution of Slovak Republic, the Constitutional Court case law and the applicable law dealing with the right to resistance. The adjustment of the right is compared with the Constitution of the Czech Republic and other countries. Šurkala also offered a critical look at what could jeopardise the right of resistance. The Constitution guarantees the right to resist to all citizens (it is, however, not applicable to foreign nationals or legal persons) and thus significantly narrows the right compared to other documents. Author concludes that the right of resistance ensures that no dictatorship or an enemy of freedom can violate fundamental human rights and freedoms and defend his/her actions by positive law. This right, however, remains perceived as a last resort and ultimate means to assert own rights and can be applied only when all other means have been exhausted or have failed. If the right of resistance is used in other circumstances, it would represent a breach of the very foundations of the rule of law and the undermined authority of the state would lead to anarchy. The author points out the security risks of this right, especially the possibility of undermining legal certainty and inciting conflict situations, which could result in

the civil war. The application of the right of resistance itself will be justified only in case of the greatest oppression and if the national regime consciously disregards democratic mechanisms and violates the rights of its citizens.

After extremely interesting presentation on right to resistance, the workshop shifted to the issue of anti-Semitic policy in Germany. **Matej Beránek**, PhD student from University of Constantine the Philosopher in Nitra reflected in his presentation concrete steps in anti-Jewish policy undertaken by the Nazi Party (NSDAP) between 1933 and 1945. Starting with manifestations and expressions during Weimar Republic, finishing with the relocation of the Jews to the concentration camps, Beránek deeply analysed the steps of Nazi Party that were after the outbreak of the Second World War applied also to other Jews in Europe (in the territory occupied by Nazi Germany). He underlines that horrible effects of Second World War and Hitler's policy are the result of systematic anti-Jewish policy and constitutes the largest genocide in history.

The last contribution brought different perspectives on the disclosure of secret cooperation of Czechoslovak citizens with the communist State Security Service by **Michal Miklovič**, PhD student from hosting institution who worked more than 10 years at the Institute of National Remembrance of the Slovak Republic. It is an increasingly relevant issue, connected with a legal task of the Institute to publish step by step the registration protocols of the former State Security including also the secret list of collaborators from the communist era in Czechoslovakia. Miklovič analysed the impact of this legal issue on two specific rights – the rights of people to full and accurate knowledge of their own past, which gave rise to the Nation's Memory Act, closely related to the right to identify people (co)responsible for human rights violations committed during the communist regime condemned by Slovak legislation as immoral, illegal and deliberately violating human rights and freedoms. On the opposite side, we encounter the right to human dignity and protection of one's reputation exercised by those who feel harmed by publishing information about their collaboration with the secret police. They try to achieve the status of their non-cooperation with the secret police through judicial process. The paper is based on the legal premise that the mentioned legal act deemed the cooperation with totalitarian secret policy as a security risk for a democratic political system.