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# **HUMAN RIGHTS PROTECTION AND TERRORISM – REFLECTIONS IN THE CONTEXT OF STRASBURG JURISPRUDENCE**

**Samanta Kowalska\***

## **ABSTRACT**

The phenomenon of terrorism is one of the most asymmetrical, amorphous and hybrid threats to international security. At the beginning of the 21<sup>st</sup> century, terrorism grew to a pandemic. Ensuring freedom and security of individuals and nations has become one of the priority postulates. Terrorism steps out of all legal and analytic-descriptive standards. An immanent feature of terrorism, e.g. is constant conversion into malicious forms of violence. One of the most alarming changes is a tendency for debasement of essence of law, a state and human rights Assurance of safety in widely accessible public places and in private life forces creation of various institutions, methods and forms of people control. However, one cannot in an arbitrary way limit civil freedom. Presented article stresses the fact that rational and informed approach to human rights should serve as a reference point for legislative and executive bodies. Selected individual applications to the European Court of Human Rights are presented, focusing on those based on which standards regarding protection of human rights in the face of pathological social phenomena, terrorism in particular, could be reconstructed and refined. Strasbourg standards may prove helpful in selecting and constructing new legal and legislative solutions, unifying and correlating prophylactic and preventive actions.

**Key words:** terrorism, terror, human rights, international relations, law, anti-terrorism legislation, prevention and combating of terrorism, international law, judgements of the European Court of Human Rights

## **Introduction – The concept of human rights**

Human rights should play an important role in shaping the modern world. The rule of law is a model of governance designed to balance interests of various groups which constitute the society. However, it often happens that in various regions of the world comprehension of human rights and the incorporation of the notions and values connected with them into the legislative

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framework is not uniform. This may derive from civilisational, geographic, religious and historical conditions. It is often the case that countries belonging to the same civilisational circle have different legislation, traditions and legal culture. The term “law” refers to certain rules, norms and conduct. The concept of human rights is marked by how people comprehend and perceive the world.

There are three generations of human rights. First-generation human rights are personal and political in nature (e.g. the right to life, personal liberty, freedom from torture, freedom of conscience and religion, the right to a trial, the right to petition public authorities). The second-generation involves social, economic and cultural rights (e.g. the right to education, the right to healthcare, the right to work, the right to benefit from cultural goods). Third-generation rights are solidarity rights, also called collective rights (e.g. the right to live in peaceful conditions, the right to benefit from unpolluted natural environment, the right to develop, the right to humanitarian aid). At the moment the fourth generation of human rights is crystallising, which has to do with sexual minorities. There are countries where legal regulations of these matters are already in place; in others, however, the society takes on a sceptical or reserved stance.

Human rights are considered to origin from legal and natural sources, physical and psychical integrity of human beings. The state may only articulate them and express them in norms, which should aim to harmoniously regulate the relations between the state and the individual and other subjects. One should make every effort to ensure their effectiveness and enforceability in individual countries and on the international arena. Human rights are to defend against arbitrariness and lawlessness of public authorities and other individuals. To that end standards of human rights protection are developed. They need to be, however, defined objectively and rationally.

The European Court of Human Rights (hereinafter: “ECHR” or “Strasbourg Court”) is the competent authority in Europe to hear applications as stipulated in the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup> (hereinafter: “European Convention of Human Rights”, “European Convention” or “EC”) . One may lodge individual or inter-state complaints at the ECHR. In accordance with the European Convention, the former may be submitted by persons, non-governmental organisations or groups of individuals, who fell victim to infringement of norms included in the European Convention of

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<sup>1</sup> Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950. Poland ratified this convention in 1993.

Human Rights or Additional Protocols of the EC (Article 34). Inter-state applications, on the other hand, may be lodged by a signatory state, which believes that another state-party breached the above provisions (Article 33).

Further analysis in this article will be based on selected judgements of the European Court of Human Rights, in particular the newest ones regarding individual applications, the analysis of which will allow for the reconstruction and determination of the ruling practice in human rights in the context of pathological social phenomena, terrorism in particular.

## 1 Modern terrorism

One of the important asymmetrical factors of international relations is the phenomenon of terrorism (Čeri – Nečas - Naď, 2000). In the European Security Strategy there is a lot of focus on combating terrorism and coordinating anti-terrorist strategy on EU territory. One of the definitions of terrorism developed in institutional structures of the European Union is the following: *“using or attempting to use violence by an organised group to achieve concrete political goals”* (Duryś - Jasiński, 2000, p. 39). At the moment terrorists are not only motivated by politics and a terrorist attack does not have to be carried out by a group. It may be a single perpetrator, the consequences of whose actions could be no less tragic or brutal. Modern terrorism is marked by ever-increasing complexity. The dangerous connections of some governments with terrorists and terrorists with organised crime sometimes make it hard to distinguish a terrorist act from other forms of violence.

Despite the end of the Cold War, the way terrorism is perceived often depends on political discourse. Attempts to define terrorism often fail, as it is dynamic, not static in its nature. It undergoes constant transformations, both qualitative and quantitative. Scientific and technical progress is another determinant, as is globalisation and changes in mentality and organisation of social life. It often happens that ministries or even governmental institutions representing the same country use different terminologies, methods and research criteria.

At the moment there is no one commonly accepted definition of terrorism. Instead, vague terms are used, which make the crux of the issue even more obscure. As a result, the definitions often contain tautology. Therefore, when considering the definitions and typologies of terrorism we cannot limit ourselves to descriptive specifications, conditions or consequences of a given terrorist

attack. It is important to take a multilayered approach to a given attack, to analyse the aims and the motives of the perpetrators, as well as the social, historical, geographical and economic context of a given internal/regional or international situation. Because a given terrorist attack does not necessarily have to be motivated internally, it often is a part of a very complicated network of interests, aims, connections and relations exceeding the state borders.

At the beginning of the 21<sup>st</sup> Century, terrorism disrupts the order of law and threatens the foundations of existence and international security<sup>2</sup>. Modern terrorists use various weapons, e.g. conventional, biological, chemical, or radiological<sup>3</sup>.

A biological attack may manifest itself in various ways, similar to symptoms of a disease. Pathogenic microorganisms spread quickly, invisibly and across borders. This kind of weaponry can consist of various combinations of bacteria, viruses, and toxins. Bioterrorism in collaboration with genetic engineering can make use of the achievements of science and medicine to construct, e.g. binary weapons (synthesis of two biological factors) or genetic weapons (which damage the DNA). Bioterrorism strikes at the heart of the right to life, the right to respect for private and family life, the right to liberty and personal security.

The danger is increased by easy access to biological materials, which may be obtained from hospitals, clinics, laboratories, or microbe banks. Biological materials may be isolated and cultivated or obtained by terrorists from a sponsor or other extra-governmental parties. For example, until this day no one knows the fate of the scientists and pathogens from "Wektor" in Novosibirsk, the biggest manufacturing plant of biological weapons in the USSR, which employed almost 4 thousand people (Gańczak, 2006). Exploiting the pharmaceutical industry is also a threat. Biological weapons may be produced under the pretence of legal manufacturing of medicines/vaccinations.

This opens up the issue of access to science and research procedures. Many specialist prestigious magazines started to introduce a kind of "auto-censorship", especially after the attacks on World Trade Centre on 11 September 2001. The threat of data being obtained by unauthorised persons is very real. The scientists warn that a terrorist who enters into the possession of a biological material and obtains appropriate instructions could "create" various

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<sup>2</sup> See SVIATKO, M.: *Moderné formy globálneho terorizmu*. In: *Politické vedy*. Fakulta politických vied a medzinárodných vzťahov UMB, Banská Bystrica, 2003, No. 1, p. 41-90.

<sup>3</sup> More in KOWALSKA, S.: *Prawa człowieka a terror i terroryzm*, Kalisz 2008, p. 39 and subsequent.

viruses. Of course, one needs appropriate personnel and laboratory resources to do that. It is commonly known, however, that many terrorist organisations possess and develop laboratories and recruit specialists.

Already in January 2001 the United States Department of Defence warned in their “Proliferation. Threat and Response” report against biological weapons being used against agriculture and animal husbandry. They warned against the poisoning of seeds and agricultural crops with bacterial blight of rice, fusarium ear rot of corn, ring rot of potato, *Wirrega* blotch of barley, ergot, soybean rust, etc (Proliferation. Threat and Response, 2001). The reality of the threat of animal fodder poisoning was stressed. Highly pathogenic substances may be used which may cause bluetongue disease, swine vesicular disease, ‘mad cow’ disease, Rift Valley fever, lumpy skin disease, *Gibberella* rinderpest, sheep and goat pox virus, bird flu, foot and mouth disease, etc. (Proliferation. Threat and Response, 2001). The above report cannot be taken lightly, especially that many people may take the first symptoms of plant and animal diseases as a “natural” bout. The threat is real not only in the context of the United States. A bioterrorist attack may shake the foundations of many states and their economies and – as a consequence – personal, social and economic rights of the society.

The “Assessing the Threat” report, prepared under the guidance of an American politician **J.S. Gilmore**, presented the threats connected with chemical terrorism in a broader perspective. The report explained that the chemical weapons pose a huge threat to life and health due to their generally poisonous nature (pernicious substances are spread around the body with blood), as well as burning, chocking, psycho-toxic properties (acting like drugs or psychotropic substances, they damage the central nervous system) and spasm and paralysis inducing properties<sup>4</sup>.

Although chemical weapons are relatively easy to obtain and store, terrorists who want to organise an attack of significant intensity and tragic consequences, would have to have a lot of these substances. For that reason so far they have preferred another type of weapons which are easier to produce and use – the CBRN<sup>5</sup> – radiological weapons. It is enough for the terrorists to get radiological medical isotopes used in healthcare facilities (e.g. caesium, cobalt), and then

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<sup>4</sup> First Annual Report to the President and the Congress of the Advisory Panel to Assess, *Assessing the Threat* of 15 December 1999, p. 26.

<sup>5</sup> CBRN (*Chemical, Biological, Radiological, Nuclear*).

combine them with equally commonly accessible conventional explosives for them to obtain the so called “dirty bombs”. Contamination with radioactive substances may take place actively (explosion) or passively (aerosol form) (Wasilewska, 2006). For example, in 1994 there was an attempt to poison the water supply system of two American metropolises – Washington and Chicago with radioactive substances was thwarted (Jałoszyński, 2001). The explosion of a “suitcase atomic bomb” may cause significant radioactive radiation. There is a well-known case of a Russian businessman, who offered a certain crime organisation 2, 5 kg of HEU (Marcinko, 2007) in exchange for settling his debts. One of the generals during the term of Boris Yeltsin (Борис Николаевич Ельцин) admitted that several of the “suitcase bombs” disappeared under unaccountable circumstances (Marcinko, 2007).

When constructing the atomic bomb which was used during World War II, the scientists were aware that the process of splitting the atomic nucleus may also be used for peaceful applications<sup>6</sup>. New branches of science and industry emerged. Small doses of radiation were used, for example, in cancer treatment. In many countries atomic power plants became an alternative for traditional power supply industry. Atomic energy also involves certain threats, which came to light after the explosion of the overheated reactor in Chernobyl (Чорнобиль) in April 1986, and as a result of an earthquake and a tsunami, in Fukushima (福島第一原子力発電所事故) in 2011. Terrorists aim not only to weaken or exterminate people, but also structures and facilities supporting the state, e.g. a while ago an atomic power plant in France was threatened with an air strike. It is estimated that a successful airstrike on the power plant could have consequences similar to Chernobyl (1986).

Undoubtedly, atomic power brought profit to people in many areas. One should, however, be weary of the way we use the energy, which, as history shows us, may have “double application”. At the moment the scientists continue to look for new sources of energy.

Cyber-terrorism, on the other hand, takes on an invisible form of e.g. electromagnetic impulse, which may disturb or destroy vital state structures, including alarm, communication and management systems (e.g. the police, the army, healthcare, banks, research and education institutions, land, water and air

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<sup>6</sup> See TEREM, P.: Mierové využívanie jadrovej energie a riziko šírenia jadrových zbraní. In: Politické vedy. Fakulta politických vied a medzinárodných vzťahov UMB, Banská Bystrica, 2003, No. 3, p. 74-103.

transport). For example, on 14 August 2003, there was a simultaneous “malfunction” in 22 atomic power plants. The reason has not been established. According to one hypothesis this might have been a sabotage of the network. As a result, the power in North-Eastern USA and Canada has been cut off for some time. The threat of cyber-terrorism became a subject of discussion again. Causing the dysfunction of the power plants via a computer network may not only threaten the natural environment, but also paralyse entire towns. Manipulating IT systems may also cause a serious international conflict (the so-called “IT weapons”).

Terrorism challenges almost all human rights and liberties. It aims to disrupt the essence of human rights and the foundations of the democratic state. Therefore, satisfying the needs of citizens and ensuring their safety and freedom became one of the key priorities. Especially due to the fact that one of terrorism’s immanent traits is its amorphism, hybridism and constant transformations into vicious forms of violence.

## **2 Human rights and terrorism. Analysis of selected Strasburg jurisprudence**

The authorities of democratic states should ensure protection against terrorism, which, at the moment, poses one of the biggest threats to freedom and safety of individuals. The signatory states of the European Convention of Human Rights have a duty to introduce effective legal mechanisms protecting life and deterring potential criminals. In *Cemil Kiliç versus Turkey*, 2000 (application no. 22492/93), a journalist of “Özgür Gündem” describing the conflict between the Turks and Kurds asked governor Şanlıurfa for protection, as many people identified the journalists of this paper with “Partiya Karkerên Kurdistan”. He was denied. Several days later he was killed. This case was analysed by the court in Strasburg in the context of Article 2 (right to life) of the European Convention. Although Article 2 of EC pertains mainly to the negative duties of the state, the state authority should not default also on its positive duties (Jankowska - Gilberg, 2009). We should bear in mind, however, that the scope of the positive duties should not be interpreted in a way that makes them “*an impossible or disproportionate burden for the authorities*” (Nowicki, 2005, p. 78).

The respect of dignity and autonomy of an individual prevents interference and invigilation in every sphere of human life (Kowalska, 2014). It is not possible

to eliminate every situation threatening human life (e.g. Akkoç v. Turkey, 2000, application No. 22947/93, 22948/93<sup>7</sup>; Mastromatteo v. Italy, 2002, application No. 37703/97; Tomašić v. Croatia, 2009, application No. 46598/06; Robineau v. France, 2013, application No. 58497/11). The officials and public functionaries should not wait until a family member or a proxy submits a formal motion or application in the face of danger (Öneryildiz v. Turkey, 2004 application No. 48939/99).

In accordance with Strasburg standards of human rights protection, public authorities should use incapacitating agents, e.g. streams of water, nets, tear gas, blinding flares or rubber bullets in situations of social unrest or demonstrations<sup>8</sup>. In the Abdullah Yaşa v. Turkey sentence of 16 July 2013 (application No. 44827/08), European Court of Human Rights pointed out that the use of tear gas to disperse a demonstration – also an illegal one – will not be compliant with the analysed convention role, if the gas is directed at the crowd, causing injury or death. The Strasburg Court stressed that national legal systems should not only have clearly determined and respected legal grounds for the employment of live bullets, but also for incapacitating agents.

Electroshock weapons are considered “light” in many countries. However, their employment by law enforcement is not always proportionate to needs, as was proven by a tragic death of a Polish citizen on Vancouver International Airport in October 2007, who died as a result of several taser shocks dealt by the RCMP (Royal Canadian Mounted Police).

The European Court of Justice in Strasburg noted that combating organised crime and terrorism may require the use of weapons in some situations (e.g. McCann, Farrell and Savage v. United Kingdom, 1995, application No. 18984/91; Ribitsch v. Austria, 1995, application No. 18896/91; Dikme v. Turkey, 2000, application No. 20869/92), but it cannot overstep the boundaries set up by the European Human Rights Convention.

Operations of security services should be well planned conducted and controlled, even if they take place in difficult social settings or unfavourable terrain or weather conditions. In Vincent Kelly et al. v. United Kingdom of 2001

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<sup>7</sup> The brackets include selected judgments of the European Court of Human Rights in Strasburg. The abbreviation „v.” means „versus“, e.g. individual application of Mr/Mrs XY lodged against a given signatory state of the European Convention.

<sup>8</sup> See § 1 clause 1 item 2-3 of the regulation of the Polish Minister of Internal Affairs and Administration of 19 July 2005 amending the regulation on police arms (Journal of Laws of 2005, No. 135, item 1142 as amended ).

(application No. 30054/96), the army and the functionaries of RUC (Royal Ulster Constabulary) prepared an action aimed at the members of the terrorist organisation IRA (Óglaigh na hÉirean). However, apart from the 8 terrorists, one random person was shot during the operation. The security services did not maintain appropriate control, which led to the breaching of Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Each use of force by public functionaries requires analysis whether it was unconditionally necessary and adequate to the goal (the rule of proportionality) (Kelly, 2005). For example, in *Hugh Jordan v. United Kingdom*, 2001 (application No. 24746/94), an unarmed man was shot by the RUC functionaries. The European Court of Human Rights stated in their judgement that the use of live ammunition must be „absolutely necessary” and undertaken only to an end stipulated in Article 2 clause 2 of the European Convention of Human Rights<sup>9</sup>. The court also stressed that if Article 15 of ECHR is applied (repeal of convention obligations in a situation of a threat to public security) one cannot derogate obligations stipulated in Article 2 of ECHR.

According to Strasbourg standards, an investigation should be launched not only in case of improper conduct of public functionaries or officials, but also of private persons remaining under state jurisdiction. The state is held responsible in particular if a person who is taken in healthy to a police station/detention/jail and comes out battered, tortured or – worse still – dead. The state is under obligation to conduct an efficient, effective and independent investigation (e.g. *Kiliç v. Turkey*, 2000, application No. 22492/93; *Velikova v. Bulgaria*, 2000, application No. 41488/98; *Valasinas v. Lithuania*, 2001, application No. 44558/98; *Shchokin v. Ukraine*, 2013, application No. 4299/03).

The prohibition of torture is one of key values in the service of human rights<sup>10</sup>. No threats or even armed conflicts constitute an exception to the prohibition of torture. Guantanamo jail still remains the synonym of a place where interrogation methods considered to be tortures are still used on persons suspected of terrorism (e.g. beating, hitting against the wall, forcing to wear hoods over heads, forced nudity, being subjected to extremely low temperatures, being attacked by dogs, waterboarding). Although the President

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<sup>9</sup> Compare DOSWALD-BECK, L.: *The right to life in armed conflict: does international humanitarian law provide all the answers?*. In: *International Review of the Red Cross*, 2006, Vol. 88, No. 864, p. 881-904.

<sup>10</sup> In the Polish law, this stipulation constitutes Articles 30 and 40 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483).

of the USA ordered to close the prison in 2009, it operates to this day.

In accordance with the standards of human rights protection, the administration should pay attention to the condition of health of a detainee/prisoner irrespectively of the gravity/seriousness of the crime he or she is suspected or convicted of (e.g. *Dybeku v. Albania*, 2007, application no. 41153/06; *Vinter et al. v. United Kingdom*, 2013, application no. 66069/09, 130/10, 3896/10).

One should not use the term “threat to public security” to deport someone to a country where there is an actual threat to his or her life or health. The matter of state authorities’ responsibility for the protection of persons remaining under its jurisdiction must be prioritised over the threat which this person might allegedly cause (Redelbach, 2001).

The signatory states of the European Convention of Human Rights have the right to impose rules and conditions on the comings and goings of foreigners on their territories, but it cannot be arbitrary. In *Savridin Dzhurayev v. Russia*, 2013 (application No. 71386/10), the applicant who was Islamic by religion, escaped from Tajikistan due to religious persecution and accusations of being a member of para-terrorist organisation. He was granted temporary asylum in Russia. However, the authorities of Tajikistan applied for his deportation. Russia used the enigmatic term of “national security” and consented to the deportation. The applicant was abducted and taken away in Moscow. In Tajikistan he was handed over to the police who tortured him. He was battered and forced to admit to actions he had nothing to do with. He was sentenced to twenty six years in prison. The Court in Strasburg stated that Article 3 (prohibition of torture) of the Convention for the Protection of Human Rights and Fundamental Freedoms was breached. In the reasons for the judgement it was stated that the authorities in Russia did not keep to the legal procedures, did not consider the refugee status and the situation in Tajikistan.

In *Mo. M. v. France*, 2013 (application No. 18372/10), a citizen of Chad had to escape from his country as, according to his country authorities, he collaborated with the rebels. He was tortured by the police. When he left Chad, he went to France and asked for asylum. His application was rejected. The applicant claimed that his deportation to Chad would have been in compliance with Article 3 of ECHR, as he would be tortured there again. The Strasburg Court analysed the conflict-prone situation in the region and the reports of human rights organisations and considered that the fears of the applicant were grounded and the threat real. At the moment Chad belongs to countries where

human rights are breached.

The European Court of Human Rights took a diffident stance in the cases *H. and B. v. United Kingdom*, 2013 (application No. 70073/10, 44539/11). The applicants, an Afghan translator and a driver, applied for asylum in the United Kingdom. Their argument followed that if they would be deported to their homeland, they would risk persecution or even death at the hands of Taliban militants. The men cooperated with the US and British army, but it pertained to a situation from years before. Moreover, they did not hold senior positions then. The Court decided that in case of these applicants there was no risk that their rights would be breached in current conditions.

The standards of human rights protection require careful consideration of the situation before taking the decision about deportation. A decision about expelling a given person to their homeland cannot be taken, if their life or health could be in danger. The person who is to be deported should have effective means of appeal.

Even if someone is suspected of terrorist actions, the state authorities cannot default on the duties stipulated in European Human Rights Convention. In *Haroon Aswat v. Great Britain*, 2013 (application No. 17299/12), the USA applied for the deportation of a man suspected of collaboration with terrorists from Great Britain. The man lodged an appeal against the decision about the extradition. When considering this case, the Strasburg Court decided that USA did not present sufficient evidence for the cooperation of the applicant with a criminal organisation. Moreover, the man was found to be sick and deportation might deteriorate his health and subject him to inhuman treatment. This judgement shows that preventing and combating terrorism should be executed with respect to human rights, and not by torture and irreverence to human dignity.

Moreover, we should bear in mind that not all Islamists are terrorists. The “suspicion” powered by hate and prejudice, while abstracted from real facts, poses a threat of pathology also in the state apparatus.

Article 5 of the ECHR guarantees protection against arbitrary deprivation of freedom. The legal systems of signatory states should include precise and detailed legal grounds, based on which deprivation of freedoms is allowed. An arrest should be compliant with the national substantive and procedural law (e.g. *Varbanov v. Bulgaria*, 2000, application No. 31365/96; *Jėčius v. Lithuania*, 2000, application No. 34578/97). National law should be of appropriate quality, accessibility and predictability for the society (e.g. *Gusinskiy v. Russia*, 2004,

application No. 70276/01).

The Court in Strasburg presented that the “suspicion” mentioned in article 5 clause 1 letter c of the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be based on general, subjective and unconvincing premises, or suspicions, even if they seem plausible at first (*Labita v. Italy*, 2000, application No. 26772/95). A “grounded” suspicion should be made with such subjectivity, reliability and “force” of arguments, that not only the investigators, but also the observers could accept that a given person has truly committed a crime.

In *Gerard Patrick O’Hara v. Great Britain*, 2001 (application No. 37555/97), the applicant, a member of Sinn Féin, was held by the police for six days and thirteen hours. The detention was implemented based on the British anti-terrorist act. The man was suspected of murder. The case involved the breach of Strasburg standards, as the applicant was arrested based on information obtained from anonymous informants. In effect the detention turned out to be arbitrary.

In case of terrorist activity it is sometimes allowed to introduce a limited denotation of “reasonable suspicion”. This does not mean, however, that the functionaries have unlimited playground here, as even in case of a terrorist threat, one has to have facts and arguments to support the suspicion enough for it to be considered “reasonable” (*Fox, Campbell and Hartley v. Great Britain*, 1994).

Signals or warnings about a planned terrorist attack should not be ignored, as there is no telling which ones may be real. Let’s consider the bomb attacks which went down in history as the “European Apocalypse” and took place on 11 March 2004, in commuter trains to Madrid. 191 persons were killed then and over 1800 were injured. To the surprise of many, it was not the Basque organisation ETA who was responsible, but Al-Qaida, said to have been warning about this since 2003. Since the attacks in Spain, terrorism became known as the “crawling world war” (*Jordán*, 2007). Once again the definition of terrorism had to be revised.

Without legal grounds and an appropriate warrant, law enforcement authorities cannot invade a private house, apartment or office and use thus obtained documents to charge someone without sufficient proof (e.g. *Miailhe v. France*, 1993, application No. 12661/87).

However, law enforcement authorities can use evidence which came forward independently of the suspect, e.g. organic substances, bodily fluids provided

that they have not been collected under pressure or with the use of force (Ortiz and Martin v. Spain, 1999, application No 43486/98).

The development of modern technologies gives rise to another dilemma connected with human rights protection. The signatory states of the European Convention of Human Rights should prevent crimes in cyberspace. Public functionaries who execute their duties with the employment of the Internet and specialist computer programmes should not overstep their authority or the stipulations of law. In *Youth Initiative for Human Rights v. Serbia*, 2013 (application No. 48135/06), a NGO dealing with human rights turned to the intelligence services of Serbia - BIA (Bezbednosno-Informativna Agencija) for information about how many people were included in secret Internet surveillance in a given period. The applicants were denied and informed that this data is protected state secret. Therefore, the organisation turned to the national inspector for personal data protection, according to whom the decision of the intelligence agency was illegal. At which point the intelligence services stated that they do not possess the requested data. The European Court of Human Rights judged it a breach of Article 10 of ECHR. The Court stated that in this case, the requested information was very important, not only for the social debate, but also for the protection of human rights.

Another matter: monitoring systems aim to ensure citizen safety, but on the other hand, a question arises whether they are not connected with excessive intrusion into private lives of individuals. The scope of authorities should be clearly and meticulously defined, in particular in connection with gathering data about citizens.<sup>11</sup>

Strasbourg standards state clearly that if public functionaries and politicians act in their official capacity circumventing or breaching the stipulations of law, they have to face public criticism in a much more severe form than in other circumstances (e.g. *Nilsen and Johnsen v. Norway*, 1999, application No. 23118/93; *Tuşalp v. Turkey*, 2012, application No. 32131/08)<sup>12</sup>. One has to bear in mind, however, that although public criticism is acceptable, it cannot take on such “verbal intensity” as to politicians and officials from executing their duties set out by law (*Janowski v. Poland*, 1999, application No. 25716/94) (Kowalska,

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<sup>11</sup> See also e.g. *Friedl v. Austria*, 1995, application No. 15225/89; *Perry v. Great Britain*, 2003, application No. 63737/00; *Kennedy v. Great Britain*, 2010, application No. 26839/05.

<sup>12</sup> Compare RADWAŃSKI, Z.: *Odpowiedzialność Skarbu Państwa i samorządu terytorialnego za funkcjonariuszy*. In: RADWAŃSKI, Z.: *Zobowiązania - część ogólna*, Warszawa 2001, p. 186-194.

2009).

Freedom of speech does not encompass, however, illegal utterances: anti-Semitic, racist, xenophobic utterances or propagation of any totalitarian systems or terror (e.g. Kühnen v. Germany, 1988, application No 12194/86; Witzsch v. Germany, 2005, application No. 7485/03).

In the light of the above, neither the judge, nor the representatives of the media should pass judgement before the issuance of a final and binding sentence, in a way that could undermine the rule of presumption of innocence (Article 6 clause 2 ECHR). A person with executive judicial power should be characterised by impartiality and independence (e.g. Kampanis v. Greece, 1995, application No. 17977/91; Nikołowa v. Bulgaria, 1999, application No. 31195/96; Graužinis v. Lithuania, 2000, application No. 37975/97).

One of the key human rights is the right to property. The Strasbourg Court stressed that there can be no arbitrariness or disproportionate actions in this scope. One should balance public interests with individual interests. However, the state may take property for disproportionate and preventive measures. For example the British police took over a plane on which 300 kg of narcotics were discovered. The seizure was executed in accordance with the procedures. After the appropriate amount was paid, the plane was returned to the airlines. The court did not see it as a breach of property rights. These actions were considered complaint and adequate to the implemented goal – combating international crime. (Air Canada v. Great Britain, 1995, application No. 18465/91). Contemporary terrorism does not shy away from cooperation with common criminals and organised criminal groups, including drug cartels.

Combating terrorism also includes liquidating sources of financing terrorist activity (International Convention for the Suppression..., 1999). Murray v. Great Britain is an example, 1994 (application No. 14310/88). The army entered private premises without a warrant in Belfast (Northern Ireland). The house was searched, photographs were taken, information about the family gathered. The brothers of the applicant have left for the United States. American authorities accused the men of cooperating with the IRA. The suspicion was that their sister is collaborating with them, collecting and transferring money to buy guns to the United States. The applicant claimed that the search was a breach of private life. The European Court of Human Rights decided that there was no breach of Article 8 of ECHR (right to respect for private and family life and secrecy of correspondence), because British authorities took sufficient measures proportionate to the existing danger and had a lawful aim –

combating terrorism.

On the other hand, the case of *Abdurrahman Akdivar et al. v. Turkey*, 1996 (application No. 21893/93) was a drastic breach of the law of respect for family and private life. A Kurdish family was ordered to immediately leave their home. The inhabitants of the Kelekçi village run terrified to their families in surrounding villages, many lost the roof over their heads. Soldiers looted and burned down Kelekçi. This was a flagrant breach of Article 8 of the European Convention of Human Rights, a revenge of Turkish law enforcement for of the Kurdish people's striving for independence. The European Court of Human Rights ruled that there was a breach of Article 8 of ECHR. It was an evident act of political terror, unlawful not only from the point of view of the European Human Rights Convention, but also international law.

## **Final conclusions and implications**

Contemporary terrorists set themselves not only political, but also economic or even cultural aims – for example by destroying and looting monuments, using slogans connected with the protection of heritage. In this aspect human rights such as, e.g. the right for the respect of common cultural heritage of humanity, access to culture, freedom of thought, conscience and religion, as well as the right for development, may be breached. The European Unions' real riches are not monolithic, but derived from cultural diversity<sup>13</sup>.

The opening of EU borders makes it easy not only to travel, but also to proliferate criminal organisations and terrorism, weapons of mass destruction, human trafficking, money laundering , international fraud and the generation many pathological phenomena.

Depending on the culture, the evaluation of terrorism may differ substantially. Therefore, while analysing it caution is advised. Terrorists strive to eradicate the pejorative connotations of this phenomenon, wishing to find moral or ideological justifications for it. They wreak physical and psychological havoc, but also interpretative confusion, in order to modify how people think. For that reason they introduce semantic chaos in the names of their organisations, which at a first glance might be associated with freedom, peace, safety, e.g. Palestinian Hamas (acronym of *Harakat Al-Muqawama Al-Islamija* – enthusiasm, zeal); Sunni „Jundullah” (جند الله; Soldiers of God); Lebanese Hezbollah (The Party

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<sup>13</sup> See TÖKÖLYOVÁ, T.: *Quo vadis, európska kultúra?*. In: *Politické vedy*. Fakulta politických vied a medzinárodných vzťahov UMB, Banská Bystrica, 2011, No. 3, p. 79-86.

of God); Basque ETA (Euskadi Ta Askatasuna – Basque Country and Freedom). The above may affect not only citizens, but also those in power and in the media world, which could lead to unprecedented events and amorphousness of many forms of covert and overt violence. For terrorism undergoes constant changes and transformations there is a constant need to supplement and revise knowledge and opinions about this phenomenon.

At the end of the 20<sup>th</sup> Century, terrorism started to function in many regions of the world as means of combating poverty, unemployment, decreasing living standards, corruption, unfulfilled promises made during elections, etc. One must bear in mind, however, that the terrorists who determine at present the direction which the phenomenon of terrorism is taking, do not come from the poorest countries.

Some countries resort to slogans of human rights protection (e.g. the imperative of safety, enforcement of peace processes<sup>14</sup>) to reach their own imperialistic goals of, for instance, broadening their spheres of influence, obtaining new energy resources, natural resources (e.g. oil, natural gas). This gives rise to issues of “double standards” for human rights.

The international community strives to prepare new strategic programs for combating terrorism. Too often, however, it refers to actions undertaken after the terrorist attack has occurred (post factum). It is desirable, however, to introduce appropriate actions before the occurrence of the attacks. Moreover, many declarative documents should be substituted with binding normative acts. Binding information policy of the state administration is also vital, as is the coordination of international cooperation. This should not take place, however, through “selling out” human rights or using them lightly for reaching individual goals. Being able to solve conflicts and social antagonisms is important in this context.

Many countries’ medical resources, services and other institutions are still unprepared for a terrorist attack. They suffer from infrastructural and organisational deficiencies. There is a need to introduce effective education programs, trainings, additional equipment, qualified intelligence personnel and special units.

Rational and informed approach to human rights should serve as a reference point for legislative and executive bodies. In the context of terrorism,

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<sup>14</sup> The international legal regulation binding at the moment gives rise to many legal, political and ethical dilemmas.

legal, legislative, prophylactic and preventive actions are a must. Authorities should bear in mind, however, that while acting in this capacity, they cannot limit civic liberties, nor can they legitimise actions of those who breach them. While analysing and employing human rights, one should not adopt excessively extensive terminology and interpretation, as this could lead to depreciation of the law, the state and the human rights.

### References:

- ČERI, L., NEČAS, P., NAĎ. 2011. Terorizmus – asymetrická hrozba. In *Politické vedy*. [online]. Vol. 14, 2011, no. 3. ISSN 1335-2741, pp. 87-97. Available at: <[http://www.politickevedy.fpvmv.umb.sk/userfiles/file/3\\_2011/CERI\\_NECAS\\_NAD.pdf](http://www.politickevedy.fpvmv.umb.sk/userfiles/file/3_2011/CERI_NECAS_NAD.pdf)>.
- DOSWALD-BECK, L. 2006. The right to life in armed conflict: does international humanitarian law provide all the answers?. In *International Review of the Red Cross*. [online]. 2006, No. 864. ISSN 1607-5889, pp. 881-904. Available at: <[http://www.icrc.org/eng/assets/files/other/irrc\\_864\\_doswald-beck.pdf](http://www.icrc.org/eng/assets/files/other/irrc_864_doswald-beck.pdf)>.
- DURYS, P., JASIŃSKI, P. 2000. Zwalczenie terroryzmu w ramach Unii Europejskiej. In *Wspólnoty Europejskie*, 2000, No. 6. ISSN 1426-2568, p. 39.
- Fox, Campbell and Hartley v. Great Britain, 1990, application No. 12244/86, 12245/86, 12383/86; Murray v. Great Britain, 1994, application No. 14310/88.
- GANCZAK, M. 2006. Bioterroryzm zagrożeniem dla zdrowia publicznego. In KOWALCZYK, K., WRÓBLEWSKI, W. (eds.) 2006. *Oblicza współczesnego terroryzmu*, Toruń: Wydawnictwo Adam Marszałek, 2006. ISBN 83-7441-395-6, ISBN 978-83-7441-395-4, p. 183.
- International Convention for the Suppression of the Financing of Terrorism*. 1999. The General Assembly of the United Nations, Resolution 54/109 of 9 December 1999.
- JAŁOZYŃSKI, K. 2001. Zagrożenie terroryzmem w wybranych krajach Europy Zachodniej oraz w Stanach Zjednoczonych. Warszawa: Akademia Obrony Narodowej, 2001. 104 p. ISBN 83-88062-22-0, p. 13.
- JANKOWSKA-GILBERG, M. 2009. Zakres obowiązków pozytywnych państwa na tle aktualnego orzecznictwa Europejskiego Trybunału Praw Człowieka. In *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego*, 2009, No. II. ISSN 1730-4504, pp. 35-48.
- JORDÁN, J. 2007. Evolution of Jihadism in Spain Following the 3/11 Madrid Terrorists Attacks. In *Perspectives on Terrorism*. [online]. 2007, No. 3. ISSN 2334-3745, pp. 1-3. Available at: <<http://www.terrorismanalysts.com/pt/index.php/pot/article/view/11/25>>.
- KELLY, M. 2005. *The Right to Life. A Practical Guide to the European Convention on Human Rights*, Belfast: Northern Ireland Human Rights Commission, 2005. 32 p. ISBN 1 903681 51 0, p. 8.

- KOWALSKA, S. 2008. *Prawa człowieka a terror i terroryzm*, Kalisz: Uniwersytet im. Adama Mickiewicza w Poznaniu, Kaliskie Towarzystwo Przyjaciół Nauk, 2008. 267 p. ISBN 978-83-85638-87-3, p. 39.
- KOWALSKA, S. 2009. Wolność słowa w kontekście dziennikarzy i polityków. In SOKOŁOWSKI, M. (ed.): *Za kulisami spektaklu. Medialne wizerunki polityki*, Toruń: Wydawnictwo Adam Marszałek, 2009. ISBN 978-83-7611-374-6, p. 229-240.
- KOWALSKA, S. 2014. *W poszukiwaniu ochrony przed bezprawnością i arbitralnością. Strasburskie standardy praw człowieka*, Poznań: Wydawnictwo „K&HP”, 2014. 249 p. ISBN 978-83-937600-0-8, p. 32.
- MARCINKO, M. 2007. Terroryzm nuklearny. In *Pro Memoria. Biuletyn Informacyjny Państwowego Muzeum Auschwitz-Birkenau*, 2007, No. 26. ISSN 1232-8324, p. 43.
- NOWICKI, M.A. 2005. *Nowy Europejski Trybunał Praw Człowieka*, Kraków: Kantor Wydawniczy „Zakamycze”, 2005. ISBN 83-7444-018-X, 2005, p. 78, 80.
- Proliferation. Threat and Response*. 2001. U.S. Office of the Secretary of Defense, Washington 2001, p. 66.
- RADWANSKI, Z. 2001. Odpowiedzialność Skarbu Państwa i samorządu terytorialnego za funkcjonariuszy. In RADWANSKI, Z.: *Zobowiązania - część ogólna*, Warszawa: Wydawnictwo „C.H. Beck”, 2001. 324 p. ISBN 83-7110-340-9, p. 186-194.
- REDELBACH, A. 2001. *Natura praw człowieka*, Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, 2001. 399 p. ISBN 83-7285-059-3, p. 179.
- SVIATKO, M. 2003. Moderné formy globálneho terorizmu. In *Politické vedy*. [online]. Vol. 6, 2003, No. 1. ISSN 1338-5623, pp. 41-90. Available at: <[http://www.politickevedy.fpvmv.umb.sk/userfiles/file/1\\_2003/SVIATKO.pdf](http://www.politickevedy.fpvmv.umb.sk/userfiles/file/1_2003/SVIATKO.pdf)>.
- TEREM, P. 2003. Mierové využívanie jadrovej energie a riziko šírenia jadrových zbraní. In *Politické vedy*. [online]. Vol. 6, 2003, No. 3. ISSN 1335-2741, p. 74-103. Available at: <[http://www.politickevedy.fpvmv.umb.sk/userfiles/file/3\\_2003/TEREM.pdf](http://www.politickevedy.fpvmv.umb.sk/userfiles/file/3_2003/TEREM.pdf)>.
- TÖKÖLYOVÁ, T. 2011. Quo vadis, európska kultúra? In *Politické vedy*. [online]. Vol. 14, 2011, No. 3. ISSN 1335-2741, pp. 79-86. Available at: <[http://www.politickevedy.fpvmv.umb.sk/userfiles/file/3\\_2011/TOKOLYOVA.pdf](http://www.politickevedy.fpvmv.umb.sk/userfiles/file/3_2011/TOKOLYOVA.pdf)>.
- WASILEWSKA, M.A. 2006. Terroryzm CBRN a terroryzm biologiczny. Współczesne zagrożenie. In KOWALCZYK, K., WRÓBLEWSKI, W. (eds.) *Oblicza współczesnego terroryzmu*, Toruń: Wydawnictwo Adam Marszałek, 2006. ISBN 83-7441-395-6, ISBN 978-83-7441-395-4, s. 196.