

CITIZENS’ RIGHTS AND LIBERTIES vs. ANTITERRORIST LEGISLATION

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***Abstract.** The vast and often brutal measures of the US and other Western countries in the present context of the battle against terrorism are just a continuation, a development and a culmination of a tradition already established. During the war and in other moments of major, international crisis, the great Western, liberal democracies didn't hesitate for a moment to defend the national security, inclusively by massive restrain of the citizens' rights and liberties.*

***Keywords:** human rights, terrorism, citizens' rights and liberties, international cooperation, antiterrorism legislation, European Union, security.*

Today, the human rights have become a central problem for the international relations between the states and for the activity of many international, governmental and non-governmental organizations[1]. In 1992, the General Secretary of ONU, Boutros Boutros-Gali, said: “The respect of human rights is, obviously, an important factor in the maintaining of peace and international security and for the socio-economic development”[2].

The fight against the terrorism must take into account the respect of the human rights, aspect underlined by the General Secretary and the High Commissioner for the Human Rights from ONU as well as by other leaders from the international community. Koffi Anan said: “it is obvious the need for vigilance in the attempt to prevent the terrorist acts and for firmness in condemning and punishment of these acts but the sacrifice of other key-priorities, as the human rights would mean a self defeat”[3].

The maintaining of the security instead of respecting the human rights represents a narrow, contradictory vision. In the cases in which the human rights and the democratic values aren't respected there is the risk that some political groups to chose the way of violence, Resolution 54/164 – “The human in rights and the Terrorism” of ONU General Assembly condemning the braking of the right to life, liberty and security, as well the instigation to ethnical violence and terrorism[4].

The human rights and fundamental liberties[5], so challenged in time, are consecrated and granted by a series of international, juridical instruments: The Universal Declaration of Human Rights adopted with obligatory, juridical character in which were inscribed these rights and fundamental liberties more exactly the International Pact with regard to civil and political rights and the International Pact with regard to the economic, social and cultural rights, adopted on the 16th of December 1966, Pacts at which are parts the great majority of the world's states[6].

The article 17 paragraph 1 from the international Pact regarding the civil and political rights, which takes the content of these rights from the Universal Declaration of Human Rights mentions: “Nobody will be submitted to arbitrary or illegal intrusions in his private life, in his family, correspondence or house neither to illegal offences to his pride and reputation”[7]. But the pact also stipulates that the exercise of these rights and fundamental liberties can be limited in exceptional cases: art. 4 par. 1 “in the case in which an exceptional, public danger threatens the existence of the nation and is proclaimed in an official act, the states parts at the present Pact can, in the strict limit of the situation, take derogatory measures from the obligations foreseen in the Pact, on condition that these measures are not incompatible with the other obligations which they have, according to the international law and in the same time not to result any discrimination based on race, color, sex, language, religion or social origin”.

When through the drama from World Trade Center America was the target of an unprecedented violent attack, the first reaction of many annalists from different corners of the world was to suggest to the American authorities to react promptly, taught, against the terrorist organizations identifying and punishing the guilty, those who acted on purpose[8], but without restraining the rights and the liberties of some citizens and without generating acts of repression which had as victims human communities.

Starting from the general, legal frame presented above, which is more or less found in the constitutions of each state Pact, we can state that the terrorist attacks against America from 11th of September 2001 constituted an exceptional public danger which threatened the existence of the nation – if it is not a forced interpretation of the text – and, in consequence can be justified the measures taken immediately after the ending of these terrorist attacks when hundred of people have been detained, questioned, searched without too many formalities, their phone conversations have been listened and their correspondence have been read[9]. But if the elements of an exceptional “public danger” are not met which effectively threaten “the existence of the nation” we might talk about the harming of the man’s rights and fundamental liberties, which belong to the person’s private life[10].

The Pact’s text mentions “the arbitrary and illegal interference” so under the umbrella of the law such interference can happen but this internal law which foreseen such an interference must be correlated with the previsions of the conventions which that state assumed and whose main role is today guaranteed, in general, by the priority of the international law in front of the national law. That is why such internal laws which permit the interference in the private life, stated by each state, especially by the US, to prevent terrorism, must not be so permissive so to cancel the right to a personal life.

By declaring total war to terrorism was abrogated the law edited by president Ford in 1976 which forbade all American governmental agents to participate to any action whose final purpose is the assassination of a person, no matter how unpleasant that would be for the US[11]. The measure was preceded by the statements of the American president George Bush who immediately after the 11th of September 2001 attacks declared that Osama bin Laden will be caught “dead or alive” ignoring in this way the presumption of innocence inscribed as fundamental principle in the Declaration of the Human Rights. Or, the violation of these intangible rights in a democracy means to attack the democracy itself and to consent unwillingly the victory of terrorism.

Of course, the necessity of some measures of limitation of these rights is more acute as lately is discussed the thesis of the preventive war – started already against terrorism – and in war situations when their use cannot be censured. The US will introduce passports with microchip which contains the digital picture of the beholder and they have already

taken measures for taking fingerprints and photographs of million of tourists who enter in US.

Taking into consideration that the terrorist attacks from 11th of September 2001 proved the vulnerability of US in the aeronautical field were taken measures for the launching of a computerized program which assures the checking of the passengers. The new system CAPPs collects personal information from the passenger, introduce them in a complex data base to check if the passenger is indeed the person whose identity he assumes and after this check follows another one in a database containing the persons suspected of terrorism and the criminals of war. After the passenger will follow all these steps they will receive a card of a certain color and a score which represents the degree of terrorist threat represented by that person.

The red color indicates the interdiction to embark of that traveler, yellow represents that the traveler will benefit of supplementary check at the check point and the green color offers that person a standard flight from the point of view of the airport's security[12].

European Union too has taken, especially in the context of its enlargement to 27 members, measures to replace the actual system of information SIS with a new system SIS II which will no longer be a simple data base but a multi-operational system of investigation. Among the new functions are the access to biometrical data, as the finger prints or the facial images, as well as different categories of information of Europol – created to improve the cooperation between the police forces from the member states in order to combat terrorism and criminality – and of Eurojust which facilitates the coordination of the legal authorities from the member states.

Unfortunately, the war against terrorism constitutes the pretext for the most serious violations of the human rights from the last 50 years as sustain the conclusions of an annual report of Amnesty International published on the 26th of May 2004. This report sustains that US and his allays from UE, Russia and the governments from the Central Asia, retained thousand of persons arbitrary, without a process and without the right to an attorney, other were tortured, many times because their race and religion all under the pretext of terrorism. The legislation adopted in the field of anti terrorism “constitutes a real progress violating the protection of the refugees and narrowing the freedom of expression and association”[13].

The most criticized states are the US and the Great Britain which detained and closed in centers of maximum security, for a long time, without being convicted and on the bases of some presupposed proves which haven't been made public, hundreds of strangers who have been exposed to numerous restrictions. “Many of the measures adopted after the attacks from 11th of September 2001 subminated the fundamentals of the international law, violating flagrantly international norms and American constitutional principles”[14].

The Amnesty International report indicated some “errors regarding the respect of the human rights” attributed to the United States: the authorization of the military courts to judge pretended terrorists while their legality was questioned; the selective use of the Convention's content regarding the respect of the human rights from Geneva regarding the Taliban prisoners and for Al-Qaeda imprisoned at the American naval base from Guantanamo; the prolonged retaining of the foreign citizens without being accused or their denial of a lawyer.

A report released for publicity at the beginning of June 2003 by the General Attorney of the Department of Justice from US, Glenn A. Fine, speaks about the imprisonment and treatments at least “abusive” of some residents and American citizens, their only guilt being their Muslim religion. Finally, neither of the thousand of suspects haven't been send to justice under the accusation of terrorism most of them being deported.

Till 11th of September 2001, The Immigration and Naturalization Service had the right to retain for maximum of 24 hours an illegal immigrant. After this interval, the suspect had to be officially accused or freed. A week passed from the terrorist attacks and the Department of Justice invoking “extraordinary circumstances” decided that the suspects can be retained indefinitely. According to the report of the Department of Justice the suspects retained in New York had to wait 15 days to know their accusations in most of the cases these referring to the formalities of immigration.

By passing “USA PATRIOT ACT” were introduced numerous legislative modifications which significantly enhanced the capacities to survey of the institutions which fought against terrorism in US without mentioning the way in which the civil liberties will be protected.

“USA PATRIOT ACT” has the role to strengthen the defense of the American soil against terrorism extending significantly the authority of the bodies of investigation as well as of the agencies of security in what regards the possibility to survey the private communications and the access to personal information[15]. Although approved on the 24th of October 2001, this document determined numerous concerns regarding the effects of the immigrants’ civil liberties: “as these new powers given to the Minister of Justice regarding the immigration by this act the subject of an abuse that do you thing will be the ones who will suffer the effects of this abuse? There will not be the immigrants from Ireland, El Salvador or Nicaragua. There will not be the immigrants from Haiti or Africa. There will be, in stead the immigrants from the Muslim, Arabic states as well as the one from the South Asia. To prevent such terrible events our government gained new powers, but these will influence a minority of the population which already experienced the effects of the terrorist disaster”[16].

In the same time the implications in what regards the respect for the privacy, considering information, patrimony[17] and financial data without any legal bases, but only certifying that the obtained data are used for an investigation created concerns.

The provisions regarding the use of the proves with secret character to expel the strangers which are accused of “the implication in terrorist activities – providing material help to any individual, to any society or government with the purpose of organizing terrorist activities” were extended over those suspected of “according material help to any individual, to any society or government about which the involved person knows or should know that he planed terrorist actions” being erased the request of proving the existence of a connection between the material help and the terrorist activity, fact which permitted the expel of any foreign citizen who back up legal activities of some groups who committed terrorist acts.

The questions to which all look for answer, loudly or in their minds, is the manner in which we must fight the terrorism to avoid that the involved parts are similar. Can we punish the terrorists in a different manner than by terror? The preventive actions don’t lead, at their turn, to terror and the terror itself doesn’t generate terrorism? Can we protect ourselves without hearting innocent persons and communities? These are the questions that the Western democracies have the obligation to answer according to the real values they defend[18].

Terrorism must be defeated at any cost. But not with the price of liberty. If the liberty dies, then the terrorism is the winner.

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