**ON THE TABLE OF THE IEB**

‘Citizen Security versus Human Rights in the 21st Century’:

A critical analysis by PC member Javier Gamero Kinosita

The shocking acts of violence perpetrated on September 11, 2001, will remain engraved in mankind‘s collective memory. They signalled that global terrorism will be humanity’s scourge in the 21st century. Since that moment, the world has no longer been what it used to be. Acute tensions between citizen security and human rights arise from current counterterrorism policies.

**From the Terror Discourse to the Psychology of Fear in the Risk Society**

That day, the dramaturgy of terror was installed. A new political discourse of terrorism gained popularity. It was a massive discourse, propagated by the media, full of metaphors like “Axis of Evil”, “Era of Terror”, “War Against Terror” or the “Existence of Arms of Mass Destruction”, which instilled a psychology of fear among the people, an impulse of traumatic disorder. This, along with postmodern society’s social changes, spawned uncertainty, anxiety, insecurity and collective fear, hightening the sense of vertigo generated by the society of risk described by Ulrich Beck, who maintains that the very progress of technological and social development produces inevitable risks, such as organized crime, nuclear threats, etc.[[1]](#footnote-1)

**Crime Policy and Human Rights: Paradoxes, Ambiguities and Potential**

In the risk society, politicians are pressured by social demand to make concessions and accept that citizens want the most secure rules for communal life, even at the price of compromising fundamental rights and freedoms. Noriyoshi Takemura of the Toin University of Yokohama points out that we are facing a trilemma among “safety, freedom and justice”. In a society with high crime rates, risk and terror, the confrontations and contradictions among those three poles increase. “At the critical point” – Takemura continues – “chaos, complexity, contingency and criticality appear”[[2]](#footnote-2). That is precisely the point at which post 9/11 society encounters itself. Criminal policy is unable to operate outside of this context and confronts the dilemma of whether it should maintain current human rights standards or boost security measures applying tougher prevention and crime control strategies. The past decade saw a gradual replacement of the humane and liberal crime policy by a much more drastic neoliberal policy, at the cost of human rights. This raises concerns about the future orientation of government policies: Will their prevention and crime control strategies safeguard human rights?

**Change of Focus in The Criminal Justice Security Approach after 9/11**

In post 9/11 society’s security logic, the focus of criminal justice has shifted from the traditional post-crime orientation to a pre-crime orientation. This constitutes a new preventive approach in current criminal justice, known as preventive justice, which poses new challenges to human rights. Fundamental rights, such as the presumption of innocence, the principle of proportionality and the right to due process of law, formerly guaranteed the observance of limits in the post-crime security approach of the justice system, but the relevance of these rights has been diminished in the new preventive doctrine. The high degree of insecurity makes the presumption of innocence appear less important.

We also observe gross human rights violations in the context of this new criminal policy, such as restrictions of the freedom of religion, freedom to worship, freedom of association, freedom of speech, personal freedom, freedom of movement, the right to privacy, and the right to property. With deep concern, we see measures of permanent telephone and internet surveillance being taken without judicial approval. The recent years have brought the development of the “surveillance society” with high costs, such as the loss of privacy and the erosion of the individual autonomy, as the surveillance technologies are becoming more widespread, sophisticated and intrusive[[3]](#footnote-3). We are told of arbitrary arrests, people being stripped of their citizenship, arbitrary extraditions, unlawful entries by the police, confiscations, seizures, access to banking and financial information, blocking of accounts, DNA data banks. In some countries, we also witness a weakening of the legislative power in favor of the executive power, an instrumentalization of the judiciary, the creation of super-minstries for internal security, a disproportionate increase in the power of the police, the appointment of special military courts for civil persons suspected of terrorism, as well as deplorable prison conditions. Anna Maria Getos of the University of Zagreb, Croatia, underlines that these counterterrorist measures have a negative impact on human rights[[4]](#footnote-4). Jean-Claude Paye warns us that “democracy is in serious danger”[[5]](#footnote-5).

**The Democratic Concept of the Police and Human Rights**

The police is one of the basic institutions of modern rule-of-law states, where the defense of human rights is a key maxim. However, due to 9/11, we increasingly observe that in certain countries the interior policy is dictated by the military, which takes over tasks that normally correspond to the police. At this point, a clear distinction between the terms “defense” and “security” needs to be made. The defense is the domain of the military, which focuses on combat, external security, uses deadly weapons and is governed by the rule of armed conflict (ius in bello). The police, on the other hand, centers its actions on law enforcement. In democratic states, the police does not have any internal enemies to fight, but citizens to protect. In the context of the battle against global terrorism, many dictatorial or autocratic regimes have imposed old military concepts on the police, using it as a power tool to spy and provide intelligence for the government, thereby converting the police into a source of conflict and social desintegration. For this reason, the doctrine of the police in this day and age must be inspired in the philosophy of democray and human rights. The police must be a civil body and act as a service of a civil nature.

**Human Rights as a Core Element of Citizen Security**

Citizen security plays a key role in the development of human rights. Its goal consists in the protection of the persons on the basis of the constitution and legislation. It is essential to abolish the old concept of public order and national security, which sees the police as a tool of the state whose task lies in maintaining public tranquility, independently of whether the order that is protected is actually a violent or injust one. The concept of citizen security, by contrast, works to the benefit of the individuals. It is not just limited to the fight against delinquency, but goes further aiming to create an environment that fosters social peace and development.

**Final Thoughts**

The 21st century requires a *sustainable security*, i.e. a broad, objective as well as subjective security comprising 4 levels: collective or global security, security of the state, security of the institutions and security of the persons. The culture of human rights does not only constitute one of the philosophical pillars of civilized Western societies, it is also an essential component of security. Currently, stricter laws are very popular as they promise heightened security. However, a battle against terrorism based on the assumption that every person is a potentially dangerous subject undermines the validity of human rights.

The attempt to achieve the desired security by eroding the very values and freedoms that terrorism seeks to destroy is counterproductive. My opinion is that an idea cannot be shot, an idea must be fought with a better idea. In the battle against terrorism, the human rights values preached by the West all over the world must be respected, otherwise the West will lose credibility. Without credibility, there is no legitimacy and without legitimacy, there is no success. The action of the police is a key element for finding the point of equilibrium between security and human rights, provided that it adheres to the principles and rules of the democratic state. Let‘s not forget Benjamin Franklin‘s words: “Those who give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety“.

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2. Takemura, Noriyoshi. “Beyond Criminology: Emerging New Paradigm of Complexity Criminology – Chaos,

   Contingency and Criticality”, in: *The Stockholm Criminology Symposium*. Stockholm, 15 - 17 June, 2006. [↑](#footnote-ref-2)
3. Brown, Ian and Korff, Douwe. “Terrorism and the Proportionality of Internet Surveillance”, in: *European*

   *Journal of Criminology*, vol. 6, no. 2. California: Sage, 2009, pp. 119-134. [↑](#footnote-ref-3)
4. Getos, Anna Maria. “The Missing Dots in Terrorism Research: Violent Radicalisation”, in: *IX. Conference of*

   *the European Society of Criminology: Criminology and Crime Policy Between Human Rights and Effective*

   *Crime Control*. Ljubliana: 9-12 September 2009. [↑](#footnote-ref-4)
5. Paye, Jean-Claude. *Das Ende des Rechtsstaats - Demokratie im Ausnahmezustand*. Zurich: Rotpunkt, 2005, p.

   235. [↑](#footnote-ref-5)