

VI.

BOOK REVIEWS

J. Blahož, V. Baláš, K. Klíma, J. Mrázek, J. Večeř, et al.:

Democracy and Issues of Legal Policy in Fighting Terrorism: A Comparison
Wolters Kluwer. Prague, 2009, pp. 346

It is unusual for the results of Czech legal research to be published as a book in English. It is all the more gratifying, therefore, to read the monograph that resulted from the grant project conducted by the Grant Agency of the Czech Republic as IAA 700680702 and put together by a team of experienced and respected experts, with contributions from promising young researchers from the Institute of State and Law of the Academy of Sciences of the Czech Republic, from the Faculty of Law at the University of West Bohemia, and from the University of Advanced Legal Studies.

This prestigious monograph was published by Wolters Kluwer ČR, a.s., a representative of a prominent international publisher.

The topic of the monograph is of international importance and provokes broader discussion about the issue. It is therefore encouraging that the authors succeeded in avoiding a one-sided perspective and fittingly chose a multidisciplinary investigation into the phenomenon of terrorism and the legal politics of fighting it from the viewpoints of **constitutional, international** and **European** law. Criminal law issues were also considered, as well as basic premises of legal theory and the **economic, political** and **sociological** aspects of the war on terrorism in a globalized world. The monograph is “not just practical research into the best methods of physically annihilating terrorists and their organizations, but primarily looks into how social environments give rise to terrorism, and what social environment we should create or participate in creating in order to prevent the formation of terrorism.” (J. Blahož).

Geographically, the study focuses on the *ratione loci* and social environment of Euro-American civilization, which in this context includes the USA, Canada, the EU, Israel, Australia and New Zealand.

The monograph begins with a study by the leader of the project, the internationally respected expert, **Dr. Josef Blahož** (a longstanding member of the International Academy of Comparative Law). The opening chapter of the monograph, titled “Democracy and Theoretical Issues of Legal Politics in Fighting Terrorism”, sets the tone for the whole volume, posing a series of key questions to grasp the whole field and defining basic terms. In this context, legal politics is conceived as the product of awareness of the politically most influential executor of legislative initiative. Blahož believes that this awareness is the result of an interaction between secondary information symbols derived from primary information. Categories of will and power are especially examined for the highly important role that they play in the creation of legal politics.

In the next part of the chapter, the author turns to the typology of terrorism, examining the current classification used by Czech and international legal scholars, and also offering his own original solution. In terms of political terrorism, this represents the core of the chapter. The author differentiates between the following

types of political terrorism: extreme-right-wing, extreme left-wing, racist, nationalist, ethnic, religious, global, and political. Certain nuances and differences are highlighted, especially with regard to political, nationalist and ethnic terrorism (which are often used to mean the same thing) as well as racist terrorism.

The parts on global political terrorism, which the author qualifies as an independent type, are handled using an excellent approach. The author not only describes this type of terrorism, but also points out its direct goals and indirect goals (p. 24).

Blahož makes a strong argument about the choice of name for this phenomenon: global political terrorism. He tries not to identify this term with those used in international instruments and scientific literature, such as international terrorism or terrorism containing an international element (p. 25).

The parts devoted to the author's reflections on the future development of global political terrorism and on the causes of this serious political phenomenon are especially valuable and exceed the framework of a strictly juristic study. Along these lines, Blahož successfully expands on the theory of renowned comparative researcher and political scientist Johan Galtung and arrives at some convincing conclusions about the reasons for global terrorism (p. 47). Nevertheless, the author believes that there is as yet no generally accepted explanation for the causes of global terrorism. Preventive options based on fundamental political, economic, social and cultural changes within the whole international community are unrealistic.

For now we can only focus on improving the instruments of power and law so as to protect them from causing adverse reactions and consequences. The study calls these instruments first-generation instruments. Second-generation instruments could be seen as future widespread measures of international politics, international and national law, economy, social systems, etc., which would derive from knowledge of the causes of global political terrorism. The author sees third-generation instruments as highly targeted, non-repressive social measures aimed at potential threats.

As for legal tools and procedures in the fight against global terrorism, Blahož differentiates between those adopted and implemented in accordance with the constitution and legal order (without resorting to a declaration of a state of emergency), and those adopted as a result of the declaration of an emergency, under which certain constitutional provisions are suspended.

The author focuses on the relationship between the application of generally binding legal acts of fight against terrorism and the fundamental principles of a democratic state, in particular the principle of human and civil rights. Blahož has been involved with this topic for a long time and is one of the most prominent and respected authors in this field, both in the Czech Republic and abroad.

Blahož handles these parts of the study masterfully. He emphasizes that even under limited constitutional effectiveness, the principle of human and civil rights or the principle of fundamental rights and their guarantees are different from other constitutional principles. This is due to the variability of the category of human

and civil rights influenced by current threats to civilization. The author believes that the relationship between legal politics of fight against global terrorism and certain individual rights (which form the core of human rights, e.g., the right to life, personal integrity, etc.) requires that the principle of proportionality be upheld. This is linked to the question of what democratic tools of control a democratic constitutional system can use to verify whether state authorities limit specific fundamental rights in this way to protect democratic constitutionality, and whether they do so in a manner adequate to preserve the essence of human rights.

Josef Blahož's work not only presents a series of principal questions, but in many cases also provides well-researched and reasoned answers. Most importantly, it lays a solid foundation for an effective conceptual breakdown of this multidisciplinary study.

The following chapter by **professor Jan Večeř** focuses in a well-researched and in-depth way on the economic and financial aspects of fight against terrorism in a globalized world ("Economic and Financial Aspects of the Fight against Terrorism in a Globalized Society").

The concept of this part of the monograph is extremely interesting and original. It builds on the notion that modern terrorism develops from a particular economic background, while the current scientific and technical revolution is based on booms in the following five sciences:

- particle physics
- chemistry
- biology
- cybernetics
- cosmology

Each of these disciplines brings information which can be used in the fight against terrorism, but many of these technical and technological advances (such as biological weapons, mobile phones, and night vision equipment, etc.) can also be used by terrorists.

Večeř builds an extensive and well-researched analysis around this core, and concludes that "for developed democratic countries which are most frequently targeted by terrorist attacks, to be able to maintain their position in the fight against terrorism, they must, above all, take care to preserve their economic power and international economic positions. Every weakening in this area caused by internal political squabbles worsens the position of the developed states in this small war and encourages the terrorists to engage in new attacks."

I consider as especially groundbreaking the passages devoted to the characteristics of new phenomena in the field of finance as they relate to international terrorism, including the delineation of secondary EU legislation in this area. Freezing the funds of persons suspected of terrorism poses a lot of controversial questions, which are not only restricted to economy and finance, but extend to international and European law, as supported by a series of recent judicial decisions by international courts.

The third chapter titled “Democratic Constitutionality and Anti-Terrorist Measures” is an interesting and consistent text by authors who have focused on a comparative analysis of constitutional law. This part of the monograph opens with an excellent study by an experienced expert in constitutional law, **Dr. Karel Klíma**, who examines the problems of constitutionality in relation to terrorism in his part titled “Constitutionality and Terrorism: A Comparative View”.

It logically follows from the fact that since no constitution includes a definition of terrorism and that “implementing terrorism into a constitution is such an exceptional and rare occurrence that to find constitutional foundations for such activities of the state, one must look into constitutional dispositions of another kind, i.e. those that govern emergencies.”

In this chapter, the author compares the constitutions of several countries (Spain, France, Germany, USA, Italy and Poland) and ends with general conclusions.

This section leads into another contribution by **Josef Blahož** titled “Legal Politics of Fighting Terrorism under Limited Constitutionality: A Comparative View”.

This subchapter analyzes the legal politics of fight against terrorism under exceptional states of constitutionality, i.e., situations which ensue when a democratic state and its constitutional system are disrupted to such a degree that to preserve all constitutional and judicial institutions would threaten the existence of that state. In the case of global political terrorism, when specific attacks take place, the importance of the attacks must be evaluated with respect to their targets and extent.

As for uncovering extensive preparations for and threats of attack, it should always be carefully considered whether emergency measures leading to the suspension of constitutionality are truly necessary. The previous analysis leads Blahož to conclude that the constitutional theory of developed democratic states (both Anglo-American and continental European structures of law) are similar, in that under the declaration of a constitutional emergency leading to the suspension of constitutionality, democratic principles of constitutionality (including the principles of sovereignty of the people, proportionality, separation of powers, consensus, legitimacy, rule of law and the essence of the principle of human rights) must be maintained. The concept of untouchable or unchangeable principles of constitutionality is basically identical among the democratic states of the Euro-American civilization.

This part of the monograph closes with a reference to Israel, where a democratic constitutional system has been functioning for decades under exceptionally intense pressure from political terrorism. Blahož admires the fact that despite this pressure, broad civic consensus with the functioning of democratic processes in Israel has never been disrupted, even though emergencies are frequently declared.

In the following subchapter titled “Constitutional Regulation of Security Arrangements in the Czech Republic”, **Karel Klíma** addresses the efficiency of the constitutional regulation of emergencies in the Czech Republic. He concludes, reasonably, that “the phenomenon of constitutionality consists in the equilibrium

of codification of two global legal values: the constitutional power system which is actively functional while being controllable on the one hand, and the definition of the position of man who is vulnerable by dangerous situations and may be even the author and originator of negative phenomena on the other hand (Let us assume that in case of terrorism the negligence cannot be admitted). The scope of state and mostly executive protection measures is in the interest of the prevailing majority of the population; however, they are of restrictive character in the prevailing majority of cases." One can definitely agree with this.

The last subchapter titled "Democratic Constitutionality and Anti-Terrorist Measures in Israel and Great Britain" was written by two young researchers. **Dr. Tomáš Pezl's** contribution, "Anti-Terrorist Measures and Democratic Constitutionality in Israel", offers valuable insight into that country's democratic institutions as well as legislative measures necessary for an effective fight against terrorism. He also offers general conclusions which are beneficial for other countries. Most importantly, Pezl states that "the example of Israel conclusively proves that it is always and under any circumstances necessary to restrict an overuse of executive power, no matter how much this use may be shrouded in a noble guise of an ideal of national security or fight against terrorism. It is inadmissible for a democratic system to allow the application of undemocratic methods to protect itself." This study offers an intriguing view of the problem, using the knowledge and experience of a country that is among the most practised in combating terrorism.

In her contribution titled "Anti-Terrorism Measures and Democratic Constitutionality in Great Britain", **Mgr. Renata Vokrojová** concludes after thorough analysis that "when searching for the answer to the question as to what extent is Great Britain succeeding in her efforts to create effective legal protection against the dangers of further terrorist attacks while maintaining democracy, constitutional rights and freedoms, moral, social and cultural values, it is impossible not to notice what difficulties the counter-terrorism measures are up against. Democratic society is facing a serious decision about which rights and freedoms should outweigh others when faced with terrorism."

The next chapter abandons constitutional law to examine the politics of the fight against terrorism through the prism of international and European law.

In the first subchapter titled "Universal Standard of International Law and Legal Politics of the Fight against Terrorism", **Dr. Josef Mrázek** discusses the instruments of international law for combating international terrorism. His study focuses on the tools for fighting terrorism adopted at the international (mostly by the UN) and regional levels (e.g. within the framework of the Organization for Security and Co-operation in Europe – OSCE, the Council of Europe and the EU). The author concludes with some justification that the events of September 11, 2001 led to more and more frequent deliberations on the relationship between terrorism and war. "It is not only about a declared war on terrorism, but also the conception of terrorism as a form of war." Mrázek further points out the necessity of resolving certain problems *de lege ferenda*: "Terrorist attacks on the World Trade Center and the Pentagon on

September 11, 2001 led, in connection to the retaliatory actions of the USA and the UK, to a whole array of questions on possible reinterpretation of jus ad bellum and jus in bello. The possible new content of the right to self-defence, military or martial reprisals, the concept of humanitarian or other intervention, issues of military necessity and proportionality are being discussed. The key question is whether this will in the future be considered an exceptional situation, or whether the use of armed force will make its way into international law as a precedent.”

Dr. Vladimír Balaš contributed the next subchapter titled “International Criminal Court and Prosecution of Crimes of Terrorism”. This well-known author addresses the key question of whether the attacks of September 11, 2001 can still be considered simply as terrorism or whether they constitute an act of war. Balaš concludes unequivocally that “a terrorist act or, more accurately, the terrorist acts which we have, particularly during the last decade, witnessed, may be without hesitation considered armed conflict on an international scale. This only differs from the generally accepted view on war by the fact that one of the belligerents does not follow any rules, including rules of a mandatory nature.”

Based on the above premise, the author concludes that the “jurisdiction of the International Criminal Court should complement, in accordance with the principle on which the jurisdiction of this court is based, the jurisdiction of national courts also in matters of prosecution of those international crimes which accomplish the elements of crime and bear the defining features of terrorist attack. We do not need to add new bodies of crime to such an ‘extension’ of the powers of the International Criminal Court and seek a complicated definition of terrorism. It is enough to simply reach a consensus on the fact that conceptual features of the committed crimes are now already an integral part of general international law. Furthermore, in the present case it is not even necessary to resort to extensive interpretation of the Rome Statute.”

The author further discusses the possibilities of introducing relevant legal regulations with regard to the Rome Statute.

In her part titled “Regional Level of International Law and Legal Politics of Fight against Terrorism”, **Dr. Zdeňka Všelichová** focuses on selected international and European legal instruments relevant to the topic of this monograph.

Všelichová summarizes key EU instruments which regulate the fight against terrorism. She concludes that the EU currently possesses the basic prerequisites for a coordinated procedure, both to prevent and repel a threat, and to remove the adverse consequences of an attack.

The chapter ends with an interesting and valuable contribution by **Dr. Magdalena Ličková**, “Articulation of Legal Mechanism in the Fight against Terrorism as Developed within the United Nations Organization and the European Union.” The author focuses on the theoretical premises pertaining to the legal force of international treaties in the legal framework of the European Community. She further points out the legal consequences of discord between UN Security Council resolutions and their

implementation through EU acts. Ličková's commentary is abundantly illustrated with practical examples, including the most current judicature of the European Court of Justice and the Court of First Instance. She poses key questions, most importantly that "the resolutions [of the Security Council] and the implementing acts ... fundamentally affect the lives of individuals to an extent which the modern world would not accept in any other context than the fight against terrorism. In view of this development, the question of whether a review is at all necessary brings us to the question of which authority is the most competent to execute the review."

The fifth chapter titled "Human Rights and the Fight Against Terrorism" is crucial for the purposes of this study and examines the topic in terms of the balance between the measures of politics of fight against terrorism and maintaining the principles and norms of human rights. The study opens with an inspiring subchapter by **Josef Blahož** titled "Security – Human Rights Principle and Legal Politics of Fight Against Terrorism". The author builds on the premise proposed by notable American theoreticians that "human rights must be integrated into the legal politics of the state [fight] against terrorism ... the price of violation of human rights is too high for democratic states in that by such violation they would actually aid the indirect goal of the terrorists – to destroy human rights." Resorting to his 40 years of experience, Blahož successfully expands on this idea, most importantly by providing an in-depth analysis of the generations of human rights and current instruments regulating human rights (with a special emphasis on the European Convention on Human Rights of the EU) and stresses the importance of security, proportionality and justice as the crucial principles of human rights.

The next subchapter titled "Non-Derogable Human Rights and Terrorism" by **Vladimír Baláš** offers interesting insights into the subject. The author considers the legal, ethical and philosophical ramifications of the problem. He interprets Christopher Blakeley's statement of "whether we let our fear of terrorism corrupt our sense of lawfulness and morality" from a broader point of view. Together with other authors, he views the state-sanctioned torture of suspected terrorists as moral nihilism leading to the abandonment of the fundamental principles of democracy. It therefore constitutes a capitulation to the goals of terrorism. The next parts of this subchapter focus on states' legal obligations in the area of human rights.

In the third subchapter, **Josef Mrázek** contributes to the topic by providing a comprehensive overview of regulations in the field of human rights relevant to international instruments of the fight against terrorism.

This chapter devoted to aspects of human rights is effectively concluded with a treatise by **Karel Klíma** titled "Human Rights in Emergency Situations and Circumstances Caused by Terrorism", in which he focuses on the legal issues of limiting human rights during emergencies from the point of view of Czech law.

The closing chapter, "Politics of Criminal Law in Fight against Terrorism" is devoted to the aspect of criminal law. In his subchapter "Criminal Law in a State

Observing the Rule of Law and Terrorism”, **Dr. Jiří Pipek** examines criminal law as a tool for combating terrorism. He makes a highly interesting discursion into the doctrine of so-called “enemy” criminal law (*Feindstrafrecht*) represented predominantly by the philosophic deliberations of Professor G. Jacobs. According to this noted figure in the science of criminal law, *Feindstrafrecht* is a method by which legislators in both substantive law and criminal procedure deny dangerous criminals the status of citizens and refuse to treat them as citizens since they are to be fought as “enemies.”

Pipek offers a critical evaluation of this doctrine. He contrasts it with criminal law as practiced in a state observing the rule of law and compares the fundamental characteristics of “enemy” and “civil” criminal law.

The author’s speculations about the future development of the fight against terrorism within the newly forming European criminal law are highly valuable. Pipek concludes that “the advantages of the European unification process in terms of criminal law are the indisputable traditions of enlightenment which provide a shared European foundation upon which the common Union procedure for criminal law against terrorism should be based.”

In the following part titled “The Fight against Terrorism on the Level of Criminal Law within the Law of the European Union”, **Dr. Simona Stočesová** follows up on the preceding part of the monograph and analyzes one of the legal instruments of the fight against terrorism drawn up in the EU. She focuses in particular on the Council Framework decision of June 13, 2002 on the fight against terrorism and its implementation into Czech law.

Conclusions

Overall, the authors have created an important monograph which examines the phenomenon of terrorism and the policies of the battle against it using a multidisciplinary approach that enables them to tackle the problem as a complex whole. The concept, thoughtful analyses, logical reasoning and comparative method, as well as the fact that the monograph is published in English, makes it attractive not just for readers in the Czech Republic, but for readers all around the world. I believe that this monograph will become a sought-after source of information for scientific and teaching purposes and will serve to promote Czech legal science around the world.

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