

National security is more important than human rights

[Law](#), [Security](#)



The conception of human rights and freedoms is the cornerstone of American traditions, law and the indicator of democracy. The approach of prevailing interest in personal privacy, property privacy and non-interference of state authorities in private affairs is the basic ground for modern organization of American society. For centuries the courts have been standing safeguards of protection of persons against unreasonable intrusion of the State, generally interpreting the Constitution and the Bill of Rights with preference of personal human rights protection.

Nonetheless in the end of the 21st century there appeared several factors which so much influenced our society that the matters of homeland security and protection raised with extraordinary emphasis and the thesis that the national security is more important than human rights causes no surprise. This research is focused on this controversial issue and contains the analysis of the reasons which changed the scale; the overview of national security vs. human rights from the points of view of internal and external national policy; the argumentation pro and contra preponderance of national security over personal human rights with the examples of concrete rights and evidence; the conclusion.

So why the validity of what was right earlier should be now the subject of reconsideration? Among the reasons which preconditioned giving more political and legal importance to the national security over protection of individual rights and freedoms the general reason is the need to prevent U. S. citizens, infrastructures and lands from the increased threat of terrorist attacks, the protection of U. S. borders from potential foreign invasion.

Another important factor which influenced the change in traditional legal and political doctrine is the globalization.

Once, the rights of U. S. citizens guaranteed by the Bill of Rights have been expanded and extrapolated around the world. Close political, economical and cultural communications of the U. S. A. with all countries of the world and the U. S. hegemonic influence as of the world leading power have another side of the movement. The amount, the value and the accessibility of international communication on any level: governmental, regional, local or private, has risen extraordinary in comparison to earlier times due to technological revolution. Our state and people have been under the influence of other cultures and societies, as this exchange is bilateral.

For instance, this led to increasing role of statutory law in the U. S. system of law which has been traditionally case-law system of law. So, many of our partner-countries have different traditions and regulations and many of them place national security and social interests prior to personal rights, justifying this with weighty arguments which in any case should be taken into consideration. The U. S. Patriot Act and the Homeland Security Act are bright evidence for the two previous arguments, the public support and the reasonability of the change of emphasized values.

Particularly the U. S. Patriot Act of 2001 was passed nearly unanimously by the Senate 98-1, and 357-66 in the House, with the support of members from across the political spectrum, which underlines public appreciation of placing more emphasis to national security prior to protection of individual interests

of privacy. Improving the counter-terrorist protection, the Act proscribes profound changes in investigating procedures and contains numerous provisions far from democratic traditions and waiving protection of certain constitutional rights of almost any U. S. citizen (for instance, the Act expands the reasons for warrantless searches, simplifies the conditions of obtaining search and seizure warrants, expands the reasons for obtaining business records in criminal investigations etc) (The U. S. Department of Justice). Other national security questions which have evidently increased its importance over human rights protection in recent years are the illegal immigration, the development of international organized crime, the accessibility of public and private information on Internet etc.

In most of the cases opposing the concept of human rights to national security is erroneous and unreasonable construction because the national security is the concept which precludes the physical and mental security of all members of the society, and therefore includes and predetermines the possibility of exercising human rights and freedoms. Without security the well-being is impossible. Looking at the national security vs. human rights question from the points of view of internal and external national security, one should first examine what concrete human rights may be waived or limited for the homeland security and protection purposes.

Natural human rights like the right for life are not the subject to address in this essay. The rights addressed in this essay are defined primarily in the U. S. Bill of Rights. These are civil right for privacy, the right of peaceful protest, the right to personal freedom, the right to a fair trial and the right of equal

protection, usually in the list of the rights which under certain conditions may be waived for the efficiency of homeland security and protection. The first argument supporting the statement that national security is more important than protection of individual rights is the increased threat of terroristic attacks, which are very dangerous, carefully planned, locally targeted and generously funded organized crimes.

This threat requires adequate actions. For instance, the problem of efficiency of security measures in the airports is one of the most important challenges in homeland security and protection policy, and the example that despite all actions taken the threat remains very realistic is the recent terrorist attempt of the Al-Qaeda bomber to blow-up plane while landing in Detroit, MI. on December 26, 2009. The second argument is the international experience and need to unity the efforts of international community in struggle with terrorism, nuclear threat and organized crime.

Kumar, C. Raj (2005) writes “ The September 11, 2001 attacks in New York and Washington D. C. , and the December 13, 2001 attack on the Indian Parliament have intensified the debate regarding the necessity of formulating national security laws in India and the laws' potentially serious impact on human rights and civil liberties. The strengthening of national security laws worldwide is apparently pursued with the objective of combating terrorism and other forms of internal and external threats to the States and the societies in which people live”.

Several security laws have been passed in India in response to the challenge of preventing terrorism and preserving national security. The laws are being criticized for violation of human rights, though the Supreme Court upheld their constitutional validity. This example illustrates that not only in the USA, but worldwide, there is a tendency of giving more importance to national security and international cooperation for this purpose. The third argument supporting the thesis is that the modern American law de facto prefers public interests to the interests of individual member of the society.

Numerous exceptions are legalized to justify deviation of constitutional rights, particularly in investigating procedures – the procedures which predetermine the following stages of criminal process. On the example of airport security, more attention of transportation security officers is currently devoted to passengers' searches and seizures. A review of landmark cases related to airport searches illustrates that the private person rarely wins and that searches are almost always found to be reasonable and constitutional (Kornblatt, 2007).

In recent landmark case *United States v. Hartwell*, 436 F. 3d 174, 175 (3rd Cir. 006), the Supreme Court has acknowledged a few circumstances in which a search is reasonable in absence of wrongdoing, which typically involve administrative searches of 'closely regulated' businesses, other so-called 'special needs' cases, and suspicionless 'checkpoint' searches. The Court stated that suspicionless searches at checkpoints "are permissible under the Fourth Amendment when a court finds a favorable balance between 'the gravity of the public concerns served by the seizure, the

degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.

Particularly the Supreme Court emphasized the importance of preventing terrorist attacks against airplanes, the prevailing of public interest in security checkpoints at airports. Under the “ special needs” doctrine the government authorities are allowed to conduct searches in the absence of any suspicion of criminality in limited circumstances where the search is aimed not to gather evidence for the investigation of crime. These circumstances include: whether the government interest for the search program is immediate and substantial, whether the search program effectively advances the government interest, states Konblatt (2007).

In *United States v. Skipwith*, 482 F. 2d 1272 (5th Cir. 1973) the Fifth Circuit decided that some situations present a level of danger such that the reasonableness test is per se satisfied. The Court found that a balance must be struck between the harm and the need to determine what is reasonable: “ When the risk is the jeopardy to hundreds of human lives and millions of dollars of property inherent in the pirating or blowing up of a large airplane, the danger alone meets the test of reasonableness. Therefore the case law suggests that in the case of conflict between private rights and public interests, generally protected by government, the latter prevail. The fourth argument supporting the thesis is that the most of American leaders and majority in American society, de-facto, support the governmental actions on improving public safety, therefore consenting with correspondent limitation of personal rights and freedoms.

It's natural that almost any citizen wishes to reduce crime rates and will willingly temporarily waive some civil rights like the freedom of movement for the purpose of protection of his life, health and private property. The idea of potential terrorist attack remains in the minds of our citizens and enriches the soil for reasonable and unreasonable expansion of state authorities' powers. Hillary Clinton once stated unequivocally that national security is not only more important than human rights on the international stage, but that it takes domestic supremacy as well (Snedeker, 2007).

Barack Obama demonstrates balanced and reasonable national security policy, much less aggressive than previous President, but still attempts to save and multiply the best of recent achievements in homeland security and protection. Speaking on the other side, many intelligent people, social leaders and human rights activists strongly oppose the statement that national security is more important than personal human rights.

Jane Smiley, Pulitzer-Prize winning novelist and essayist defends the human rights priority with the popular historical argument: "The Founding Fathers understood the temptation on the part of governments to give and remove human rights arbitrarily, because they had experienced such things before the Revolutionary War, (...) recognized that although British Law customarily acknowledged various human rights, it was essential to name, codify, and write them down to make it less likely that they could be taken away".

Nonetheless earlier in this essay it is proved that the historical experience of the U. S. is irrelevant for this situation, as there have been profound changes

in international relations, technological abilities and domestic challenges in the U. S. policy which it never addressed earlier. Also, Smiley claims rolling back human rights, “ even for some individuals, is to return to a more primitive, hierarchical, and un-American theory of human relations”. But what actually constitutes “ the American theory of human relations” and why the proposed approach is more primitive?

Such claims seem to be more emotional than rational. On emotional level, no one likes limitation of his personal freedom and waiver of his personal benefits. Logical ratio easily proves that the individual benefits depend largely on the benefits available in the society, and in the society where access to information, persons and property can be easily gained with high-tech equipment the complex measures should be taken on the very high level to guarantee the security and wellness of all its members. National security strategies should take into consideration the relevance of human rights and development. The goal of protecting human security will supplement the existing strategies for protecting national security” states Kumar, C. Raj (2005). Searching for the balance between security and freedom we need to defend our nation, and each of us is its priceless part.

Works Cited

<http://www.justice.gov/archive/ll/highlights.htm>