



Report on THESEUS International Summer School and Simulation Exercise

Justice, Security and Liberty: Conflicting Goals?

22-26 June 2015, Brussels

European security politics are facing complex challenges. On the one hand, the Union is confronted with new security issues and the fear of unmanageable attacks and spying affairs. On the other hand, the population is criticizing a growing surveillance by the state. Discussions on questions such as data retention are heating the political floor.

The THESEUS Summer School 2015 took up this current debate. From 22 to 26 June 2015, 20 international students and PhD candidates discussed the topic "Justice, Security and Liberty: Conflicting Goals?" under the supervision of international experts at the Fondation Universitaire in Brussels.

During the first three days, they got profound knowledge of the many facets of the topic in a series of lectures and discussions. In a final moot court during the last two days, they then could apply their newly gained knowledge by diving into the process of judicial decision-making. THESEUS Resident Researcher Dr Sarah Léonard, University of Dundee, accompanied the group during the whole week. She enriched the discussions with her profound knowledge of the topic on the agenda and assisted the participants in developing their position papers for the final simulation exercise.

Monday, 22 June

Debating security in Europe

Dr Sarah Léonard, *University of Dundee and THESEUS Resident Researcher*

Mrs Léonard opened the summer school with her presentation about general questions of EU security policies. She involved the students by asking them about their opinion on security policies and their importance in EU politics. What is security? Are we secure in Europe? Is the EU a security actor in the international stage? Further questions addressed the relationship between the EU and NATO as well as possibilities for the EU to foster its standing as international security actor. Her questions set the foundation for in depth talks in the course of the summer school.

Security had many dimensions and the perception of being secure was very relative, argued Léonard. This includes that it could mean different things in various countries. Also,

security not only concerned issues related to physical violence, but also those concerning economic opportunities or environmental threats. She thus described security as a very relevant topic for the EU. In her view, the main concerns of the EU and its neighborhood were terrorism, so-called “exists” such as “Brexit” and “Grexit”, economic depression, migration, or environmental degradation.

Léonard also referred to the development of security policy in the EU, namely the European Political Cooperation (1970) and the Trevi Cooperation (1976) as starting points for a more formalized EU cooperation including issues such as terrorism, organized crime, and migration. The Maastricht Treaty (1993), which introduced the three pillar structure, accepted security issues as intergovernmental policies under the Justice and Home Affairs (JHA) Pillar (third Pillar).

She stated that security is an “essentially contested concept”, which led to the formation of the so-called Copenhagen, Welsh and Paris Schools. On EU level, the effectiveness of its institutions and the relation between security and liberty are widely discussed.

**The Challenges of safeguarding privacy rights when setting up schemes of mass collection and processing of personal data
– the cases of telecommunication data retention and of passenger name records**

Clemens Ladenburger, Legal Service of the European Commission

Mr Ladenburger launched his lecture by introducing himself and his work for the Legal Service of the European Commission (EC). First, as part of his department, he gives advice and controls legal proposals, which are drafted by the EC on fundamental human rights, institutional competences, subsidiarity, and other issues. Second, the Legal Service represents the EC in court cases at the European Court of Justice (ECJ) and other courts (e.g. national courts or the European Court of Human Rights).

The main part of his speech concentrated on the 2006 Data Retention Directive and its subsequent failure. According to Mr Ladenburger, the representatives of the EC, the European Council and the European Parliament argued that the Data Retention Directive did not violate human rights. When the EC drafted the Directive’s proposal, human rights sensitivity was much less developed within the EU structures. In addition, the experiences of the terrorist attacks in New York, Madrid and London were vivid, why they were also directly mentioned in the Directive. However, there were reservations against this proposal concerning the choice of the correct legal basis (first vs. second pillar).

After the judgement of the European Court of Justice in 2014 fundamental human rights are of greater concern. After the judgement the Legal Service had to answer two questions: What has changed for national legislations, which are transposed according to the Directive? And are national legislations outcomes directly invalid? The discussion of these questions led to the conclusion that national legislations concerning the Data Retention Directive have to respect the fundamental rights of the EU.

Tuesday, 23 June

Perplexities of Freedom – Problems of “data retention” under EU law and German constitutional law

Carsten Kalla, *Institute for Public Law, Department EU Law, Bonn*

Carsten Kalla depicted the complexity of discussing data retention between EU law and German constitutional law. As introduction, he explained the relationship between EU citizenship and national citizenship: according to Art. 20, sect. 1 TEU, EU citizenship complements national citizenship –automatically for all EU member states’ citizens. Kalla stated the principle that “protection implies allegiance, and allegiance implies protection”, and said that the collection of data was more supported by citizens, if it was to prevent terrorism or crime. In the whole debate the principle of proportionality must be secured. He also said that a duplicity in citizenship and rights existed (“functional duplicity” as defined by Georges Scelle), which was important to keep in mind when dealing with the Data Retention Directive.

Kalla specified his lecture by analyzing law cases in individual EU member states (such as in Germany, Ireland, or Slovakia), which often lead to the cancellation of the Data Retention Directive transposition legislation.

Liberty versus security in the European Union

Dr Saskia Hufnagel, *Queen Mary University London*

Dr Saskia Hufnagel started her intervention by stating that the goal of the EU security policies was harmonization, which was extremely important for police investigation in EU member states and in the EU in general. She stressed that harmonization was a necessity in pre-trial detention and that different rules in different countries could destroy the successful investigation. Whereas in some countries some offences were penalized, in several other countries they were not.

Furthermore, Hufnagel presented different cooperative frameworks involved in EU security policies. These are either compensatory (Europol, Eurojust, Schengen Area, Prüm Convention, CEPOL, Joint Investigations Teams), legal (EU legislative interaction), or regional (Benelux Treaty). Also, informal cooperation activities between police forces were very important within the EU (European Police College, common training).

Hufnagel finished her lecture by mentioning relevant cases on “EU Security vs. Justice”, such as the Belgium – Dutch Cross-Border Pursuit Case (2010).

Wednesday, 24 June 2015

Data Retention in Germany

Prof Christian von Coelln, *Public Administrative and Media Law, University of Cologne*

Mr Coelln concentrated on the consequences of the Data Retention Directive on Germany. He opened his lecture by the challenging question: "How much freedom do we have to sacrifice for security"? He showed that in 2006, the European Parliament and the European Council adopted the Data Retention Directive without including the "contents" of the communications affected by the Directive. The Data Retention Directive was then abolished in Germany in 2010. Ireland and Germany went to the European Court of Justice for preliminary ruling. In April 2014, the ECJ declared the Directive as void. The infringement of fundamental rights by the Directive was evident.

The need and effectiveness of counter-terrorism policies

Peter Knoope, *International Center for Counter-Terrorism, The Hague*

Mr Knoope made clear that in current geopolitical situation there was definitely a need to enhance counter-terrorism methods due to new security questions. He offered following possible solutions: political influence/political change, relevance and visibility, support base/sympathy, ideal state (religious, political, social, just), chaos/fitna.

In his work, Knoope tries to not only understand the motives of terrorists, but also their recruitment tactics and narratives. Among these different narratives are the wishes to express or address grievances, humiliation, (collective) exclusion, injustice, occupation, inherited anger, spoiled identities or a lack of perspective.

According to Knoope, individual members of terrorist groups seek a sense of belonging, relevance, reason to live and die for, hope, heroism, masculinity, a just cause or moral high ground. The possible answer to their activities could be military defeat with all means, law enforcement / legal measures, soft measures or political inclusion.

Mr. Knoope summed up the greatest problem of counter-terrorism activities as the following: most of the states which fight terrorism worldwide (mainly the US) knew a single reaction to it: killing terrorists. Though, it was necessary to understand different situations in individual countries and to start using soft measures as well. Knoope concluded that it was essential to find out how the dynamic of terrorist activities work.

EU immigration and asylum policies between human rights and security

Leonard den Hertog, *The Centre for European Policy Studies, Brussels*

Yves Pascouau, *European Policy Centre, Brussels*

Mr Hertog and Mr Pascouau spoke about the development of European migrant and asylum policy and especially about current trends in this field. They outlined possible responses of the European Union to the recent migration crisis. They stressed the difficult task to balance

the need to adopt certain security measures and to show solidarity with refugees and immigrants, coming to Europe. They admitted that EU countries had different attitudes towards migration policy. However, it was necessary to find some compromise and common language especially since migration issues should be shared competence within the EU. Mr Pascouau particularly stated that a more positive approach to migrants and asylum seekers would be salutary for the whole European Union.

The speakers also embedded asylum policies in a wider context and defined policies fields such as trade and agriculture being related to them. The topic of legal ways to immigrate to the EU was a further issue discussed by the experts.

Thursday and Friday, 25-26 June 2015

The Moot Court

Day four and five of the THESEUS Summer School 2015 were dedicated to the simulation of the ECJ upon the question, whether Directive 2006/24/EC on data retention was adopted on an appropriate legal basis and thus is valid or not. On Thursday, representatives of the simulated company Little Sister Ltd, Germany, the European Commission and the European Parliament presented their oral pleadings and answered additional questions asked by judges and Advocate Generals. On Friday, the Advocate Generals gave their opinion about the issue and in the end, the ECJ provided its decision: They declared the directive as invalid.

The whole moot court procedure was supervised by Prof Wolfgang Wessels, *University of Cologne* and Dr Sarah Léonard, *University of Dundee* as well as the THESEUS team.

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