## Practical problems with the concept of 'emergency' in the balance between civil liberties and security

Kasper Mosekjær Ph.D Fellow, Research Group for Criminal Justice Ethics at Research Group for Criminal Justice Ethics

In this paper I analyze the concept of emergency within the debate of "war on terror". In the wake of the terrorist attacks on September 11<sup>th</sup>, 2001, it have often been argued that when emergencies strike the balance between civil liberties on the one hand and security on the other shifts so a decrease in civil liberties can be justified with reference to the increase in the threat against security. I will argue that the argument for a decrease in civil liberties with a reference to emergency constitutes a misleading simplification of what is at stake. My argument is two-fold. Firstly, I will show that it is hard, if not impossible, to come up with a definition of emergency that will capture all of the cases we tend to see as emergencies and, furthermore, that a definition will fail to show what we understand by the essence of emergency. Either it will be too broad and cover too many diverse scenarios or it will be too narrow and be nothing more than a list of specific scenarios. Secondly, it will be argued that even if one could find a definition that would somehow satisfy our requirements, this would at best be practical unimportant in the discussion of the balance between security and civil liberties. I will argue, by referring to how and why it is relevant to balance civil liberties and security against each other, that a mere reference to emergency cannot do the job, when there is an increase in the threat against security. Civil liberties and legal rights are often understood as basic rights that cannot be fortified unless there's something big at stake. When civil liberties are overridden it must be done in proportionality with the threat to security, which means that the threat to security must be as specific as possible. This cannot be done, I will argue, under reference to an overall conception of emergency. In conclusion, measures against emergencies must, in the light of the seriousness of the practical dilemma, be measures taken in accordance to the specific threat against security.

Kasper Mosekjær - phd. fellow Research Group for Criminal Justice Ethics Roskilde University, Denmark.