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A welfare approach to the prohibition of statutes which infringe basic constitutional rights for the purpose of national security in Germany and Israel

In my thesis I plan to analyze a specific deontological argument which is, that the unconstitutional infringement of very basic human right in the purpose of minimizing a terrorist threat cannot be permitted. I will focus my analysis on a very recent decision (2006) of the Federal Constitutional court of Germany (Bundesverfassungsgericht), which annulled a statute that allowed the German minister of defense, in emergency situations, to attack a hijacked airplane, that had a high probability of taking many lives in the case of it being crushed in a populated area. This case has much resemblance to a less recent (1999) Israeli supreme court decision which determined that the Israeli secret service cannot (except in very certain situations, and with the approval of the attorney general) use interrogation techniques which are infringing basic constitutional rights. In both cases the issue was the extent to which a government can infringe a person's constitutional right for the purpose of preventing a potential terrorist act, and in both cases the supreme courts decided to intervene and set a higher standard of protection of the constitutional rights. By analyzing those decisions from an economical perspective, I plan to demonstrate that both decisions are economically efficient due to the fact, that the higher value attached to human life and dignity increases the total social welfare to a greater value, than in their infringement. Even in the purpose of national security.