

Helsinki *bulletin*



HELSINKI COMMITTEE
FOR HUMAN RIGHTS IN SERBIA
address: Kneza Miloša 4,
Belgrade, Serbia
tel/fax. +381-11-3349-170; 3349-167;
e-mail: office@helsinki.org.rs
<http://www.helsinki.org.rs>

NO.144 // OCTOBER 2018



Fighters in Syria and Ukraine

Photos: wikipedia.org; Montage: I. Hrašovec

FIRST JUDGMENTS FOR TERRORISM BEFORE SERBIAN COURTS

About one thousand citizens (men, women and children) from Western Balkan countries¹, according to official estimation, have travelled to Iraq and Syria in connection with the conflict. The majority of them believed they were fighting for a just cause. Only after actual experiences in the war zones did many of them become disillusi-

oned. In time the stories of returnees brought about a drop in the number of combatants departing for the Middle East conflict zones. Nevertheless, this brought international attention to the Balkans and intensified surveillance of departures and returns of combatants to the region. All organizations directly or indirectly involved in enlisting combatants came under increased scrutiny. Anxiety centered on their return and the possibility that they could be used for terrorist activities in the region and beyond. Hence all countries of the Western Balkans

1 "A Waiting Game: Assessing and Responding to the Threat from Returning Foreign Fighters in the Western Balkans", <https://www.rcc.int/pubs/54/a-waiting-game-assessing-and-responding-to-the-threat-from-returning-foreign-fighters-in-the-western-balkans>

adopted legislation criminalizing volunteer fighters heading for foreign war zones. Serbia too passed such legislation but its implementation so far has been selective – for example, volunteer combatants heading to the Ukraine war zone to fight on the side of pro-Russian forces have been treated with much greater leniency than others.

The Serbian police have a good overview of the number of those that have travelled to the Middle East and keep track of their movements.

Seven Serbian citizens accused of financing, recruiting and publicly inciting to terrorist activities were convicted in April 2018 to a total of 69 years in prison. It was the first such case to be conducted before the Serbian judiciary. Three of them have been tried in absentia. The accused in the Podbićanin et alia case were charged with establishing contact, at the beginning of 2013, with terrorist organizations in Syria – the Islamic State of Iraq and the Levant (ISIL) and the Al-Nusra Front. The indictments charge them also with raising funds in Serbia, the Western Balkans and Western Europe, in order to finance the travel of Serbian citizens to war zones in Syria.

Abid Podbićanin, Sead Plojović and Tefik Mujović were sentenced to 11 years, Goran Pavlović to 10, Izudin Crnovršanin to 9 years and six months, and Ferat Kasumović to 7 years and six months in prison.

In the Podbićanin et alia case, all but two of the defendants, had court appointed lawyers – the main reason being that they lacked the material means to hire their own lawyers. The lawyer of choice representing Crnovršanin and Plojović was Mensur Smrković. He requested minimum sentences for his defendants arguing that “such sentences also fulfill the aim of penal policy and act as deterrents in preventing any future criminal acts”. Among extenuating circumstances

he listed that minimum damage was caused, that the defendants had no prior convictions, that they were young and without permanent employment and that they demonstrated good behavior during the proceedings. The lawyer also asked that their religious beliefs (Salafism) be taken into account as “having been under pressure from media and the interests of great powers contributed to the forming of misguided views regarding their specific and wider environments”.

In his defense the accused Ferat Kasumović claimed that he only dealt with food procurement and care of his minor son who was with him the entire time during his stay in the Syrian war zone. His court appointed lawyer Zdenko Koščel argued that Kasumović was innocent, namely, that he was not involved in terrorist fund raising or in recruitment of Serbian citizens on behalf of IDIL.

CHALLENGES FOR THE JUDICIARY

These proceedings were the first such case for the Serbian judiciary. The parties in the trial – the prosecution, the council of judges and the lawyers – were all faced with numerous challenges as to their competencies in cases like these.

Three of the accused (Abid Podbićanin, Sead Plojovic and Goran Pavlovic) were tried in absentia. The assumption was that they were still at large in Syria while other unconfirmed sources claimed that Podbićanin, the main defendant, had been killed there. Tefik Mujović was arrested in Turkey in 2016 and extradited to Serbia.

The proceedings lasted almost four years, the trial was returned to the beginning four times – twice because of procedural fairness issues (changes in the council of judges). Three of the accused – Crnovršanin, Kasumović and Plojović

– spent the entire time in detention. Prolongation of trial is contrary to the constitutional provision of the right to trial within a reasonable time – especially when the accused are spending time in detention. Judicial practice in Serbia demonstrates that sentences are usually not shorter than the time the accused have already spent in detention and therefore the pronounced sentences in this case were expected.

The presiding judge rejected all motions by the defense lawyers for the defendants to be released on their own recognizance. There are certain doubts in this case that these decisions were an example of uneven judicial practices. In comparison, the same court is adjudicating proceedings against eight former members of the Special Brigade of the Ministry of Interior of Republika Srpska (the Serbian entity in Bosnia) who have been indicted for the murder of several hundred Muslim-Bosniaks in Kravice in July 1995. This is participation in a crime against Muslims from Srebrenica that has elsewhere been proclaimed by verdicts of international courts to constitute genocide. In this case the main hearing was postponed because the accused – released on his own recognizance – failed to appear in court. Ten days before the scheduled trial he had slit his wrists and had to be taken to hospital. The hearing had been postponed two months earlier as well because another of the accused also failed to appear in court as he had allegedly fallen ill suddenly.

Changes to the Serbian criminal law sanctioning participation in foreign conflict zones were adopted in October 2014 – when the indictment for terrorism in the Podbićanin et alia case had already been in force and three of the accused already in custody. The said changes referred to individuals who take part in wars in foreign countries or recruit or incite to participation other individuals in such conflicts. The envisaged penalties – from six months to 8 years in prison

– are milder than those in the law on terrorism itself.

One of the, for example, few points the prosecution and the defense could agree upon was that Crnovršanin and Kasumović had actually spent a certain amount of time in Syria: the former about a month and a half and the latter about three and a half months. Serbian authorities made public that, according to RCC report², 37 men and 12 women had travelled to Syria and Iraq; that 10 of them subsequently left Syria, of which 4 returned to Serbia and 11 had been killed. One of the accused – Plojović – never went to Syria.

TREATMENT OF COMBATANTS FROM THE UKRAINE WAR ZONE

Serbia is a Western Balkans country with the greatest number of volunteer combatants fighting in the Ukraine on the pro-Russian side. However, the Serbian authorities and judiciary view them exclusively as foreign mercenaries and thus the judicial penalties for their behavior are much more lenient than those that apply to combatants returning from IDIL controlled war zones – as in the case above – who are judged according to terrorist related legislation.

The general argument for this uneven judicial practice involving returnee combatants from the war zone in Syria on the one hand, and the Ukraine on the other, could be that the first pose a potentially more serious security threat upon their return. However, if some examples of returnees from the Ukraine war zone are examined with greater scrutiny it appears this

2 “A Waiting Game: Assessing and Responding to the Threat from Returning Foreign Fighters in the Western Balkans”, <https://www.rcc.int/pubs/54/a-waiting-game-assessing-and-responding-to-the-threat-from-returning-foreign-fighters-in-the-western-balkans>

argument doesn't really hold water. Namely, they can pose a threat not only to the constitutional order and citizens of the Ukraine but are equally capable of causing harm locally in Serbia. Most of these pro-Russian combatants adhere to extreme right wing views. The best known example illustrating this is the case of Ukraine volunteer fighter Radomir Pocuca, a one-time member of Serbian Interior Ministry's anti-terrorist unit. In 2014, using his Facebook profile, he called on soccer fans in Serbia to "stop fighting amongst each other" and to unite in beating up members of the "Women in Black" NGO who at the time were publicly commemorating in downtown Belgrade the 15th anniversary of crimes committed against Albanian civilians in Kosovo³.

In spite of being on trial in Serbia for publicly threatening "Women in Black" with violence, Pocuca managed to leave the country and join pro-Russian forces fighting in the Ukraine. He bragged about it on Facebook, claiming he did not go to the Ukraine to fight as a mercenary but "out of his personal conviction that evil must be stopped". As he failed to appear in court for the scheduled hearing and failed to notify the court of the reasons for his absence, the court ordered his arrest for the next scheduled hearing.

Pocuca has since published photos from the Ukraine on his Facebook profile where he is shown in a military uniform along with statements that "he will have to shoot at the police if they try to arrest him" and that he will surrender peacefully only after "all the Wahhabis (Muslims) and Shiptars (Albanians) from the Raska region and Kosmet are arrested"⁴. The court issued a warrant for his arrest – but the police was allegedly never able to locate him at his registered address in Serbia. At the same time

he was active on his Facebook profile from the Ukraine. Nevertheless, the court announced that he is to be prosecuted as a foreign mercenary – for participation in a conflict on the territory of another country – and not for terrorism.

The epilogue of the Pocuca case was that in July 2016 he was convicted before the same court that adjudicated in the Podbicanin et alia case and given a conditional one year sentence with probation for a period of four years for the criminal offense of "participation in a conflict in a foreign country".

JUDICIAL PRACTICE IN WESTERN BALKAN COUNTRIES

According to recent research published by the mentioned Regional Council for Cooperation (RCC)⁵, courts in four Western Balkan countries (Albania, Bosnia, Kosovo and Macedonia) have, since 2016, pronounced scores of individuals guilty of crimes of participation in foreign conflict zones and terrorism. Thus some 70 individuals received all together more than 380 years in prison throughout the Western Balkans. However, according to the same source, the region's judicial practices are uneven and haven't been standardized. Plea bargains are sometimes given in exchange for reduced prison sentences (typically by up to one year). However, in the RCC report this is viewed as damaging to the overall aims of P/CVE because short sentences can undermine the deterrent effect of criminalizing terrorist related activities.

In 2017 the Government of Serbia adopted a strategy on preventing and fighting terrorism,

3 "Women in Black" is one of the better known peace activist NGOs in Serbia and southeast Europe.

4 <http://www.blic.rs/Vesti/Hronika/500970/Radomir-Pocuca-Ako-probaju-da-me-uhapse-pucacu>

5 "A Waiting Game: Assessing and Responding to the Threat from Returning Foreign Fighters in the Western Balkans", <https://www.rcc.int/pubs/54/a-waiting-game-assessing-and-responding-to-the-threat-from-returning-foreign-fighters-in-the-western-balkans>

including an Implementation Action Plan. Even though this strategy also envisages a de-radicalization and re-integration program for war zone returnees, in practice the main focus is on restrictive measures, that is, on sanctions. Member of the parliamentary coalition majority in the Serbian parliament and one of the initiators of a more stringent penal policy for combatants in foreign war zones Meho Omerović emphasizes (in a statement for Radio Free Europe) precisely the fact that the sentences in the Podbićanin et alia case should, above all, be a warning to others of what not to do. According to Omerović, since the adoption of these measures the numbers of “foreign combatants” have been reduced. “We’ll see how this plays out in future since this is the first conviction of its kind. And since it is still pending appeal, let’s wait and see.”⁶

According to the RCC report, some courts are more open to accepting soft evidence (photos, postings on social media and the Internet etc.).

In some cases – for example, in the Serbian trial – this evidence was used as crucial. In that case the presiding judge even rejected motions by the defense for forensic analysis of certain YouTube footage and Facebook pages which the prosecution used as key evidence. It is also an open question whether the Serbian judiciary even has the capacity for forensic analysis of such evidence. In order to demonstrate the involvement of an organized group even eavesdropped Skype conversations were used as evidence in court. In these conversations the interlocutors mainly speak of participating in joint celebrations and other similar private matters – but the prosecution interpreted them as coded messages. Instead of calling independent expert witnesses to interpret for the court the meaning of certain phrases listed in the indictment, the presiding judge asked the defendants themselves to interpret Arabic and Islamic expressions and concepts.

6 Radio Free Europe, “Višegodišnje kazne građanima Srbije zbog ratovanja u Siriji”, 4. April 2018, <https://www.slobodnaevropa.org/a/srbija-sirija-presuda/29142854.html>

CONCLUSIONS

The only experience Serbia has had with terrorism related trials was with the politically motivated sham trials of the 1990s against Albanians for alleged terrorist acts in Kosovo. At the moment of democratic changes in the year 2000 there were about 2000 Albanians in Serbian jails which the new government amnestied.

Both local and international human rights NGOs have assessed that these trials were staged and in essence of a political nature bearing in mind the atmosphere in which these trials unfolded.

According to the ECRI Report on Serbia, islamophobia is on the rise: "Respondents in the survey (...) believe that political parties, the government, the parliament, media and the judiciary are the main sources of this kind of intolerance and discrimination. The government is considered to be both the most discriminatory institution and the key to resolving this issue"¹. Most of the defendants in the Podbićanin et alia case hail from Novi Pazar, the central town in the Sandzak region which has a majority Muslim population.

There was hardly any public interest in the Podbićanin et alia trial. It was sporadically followed by a few human rights organizations but without any public comments during the proceedings.

The proceedings against Podbićanin et alia point to a number of professional shortcomings in the Serbian judiciary concerning trials against combatant returnees from foreign conflict zones. These have to do with insufficiently trained judicial staff for this unique brand of trial, forensics and gathering of evidence, and uneven judicial practices. This in turn casts a shadow on the legitimacy of the court decisions. Independent and professional trials are of key significance in winning over public support for the prevention of terrorism and violent extremism.

1 ECRI REPORT ON SERBIA, Published on 16 May 2017, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Serbia/SRB-CbC-V-2017-021-ENG.pdf