

Helsinki bulletin



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TEMERIN: ADMINISTRATION OF JUSTICE NOVI SAD COURTS – DOUBLE STANDARDS

Interethnic incidents in Temerin have been attracting the attention of domestic and international factors alike for several years now. Though some representatives of local and central government have been strongly condemning these incidents courts of law have not always been up to the task when it came to fair trials and impartial administration of justice.

In some cases that are now before the Basic and the Higher Court in Novi Sad criminal charges have been raised against ethnic Hungarians for spreading national, racial and religious hatred and intolerance (Article 317 of the Criminal Code providing punishment with one to eight years in prison) whereas the accused from the ranks of ethnic Serbs have been charged with violent behavior, including participation in a fist fight, punishable under Article 123 of the same law (either by fines or up to three year imprisonment). For the same offenses some perpetrators of the Serb origin have been tried in misdemeanor proceedings only and mildly fined.

CASE I

In the night of January 27, 2013, two Hungarians spoke in their mother tongue on their way home from a party. As they told the police later, six young men attacked them all of a sudden. One of the two was hit on his head with a bottle (suffering *laesio traumatica capitis, superficialis*) while the other was thrown on the ground and kicked mercilessly. While beating them the assaulters were cursing their Hungarian mothers in Serbian. The assaulters stood trial before the Basic Court in Novi Sad. The two Hungarians – though they had nothing to do with the assault in the first place – were also charged for the crime stipulated under Article 123 of the Criminal Code. All the accused were released a day later.¹

CASE II

On February 3, 2013 in downtown Becej, a group of Serbian-speaking youngsters physically assaulted a group of young men and women of Hungarian origin, cursing them on ethnic

¹ Dnevnik, February 12, 2013.

basis. One of the assaulted was badly cut on his head and suffered a concussion, while another had his left eye injured. The police promptly arrested the assaulters. Strange enough, they were charged with misdemeanor only.²

CASE III

In the night of February 9, 2013 in Temerin, a “group of Serb young men threw bottles at three Hungarian minors” following a dispute. They “cursed their Hungarian mothers” and smashed shades and windows of the houses the assaulted Hungarians took refuge in. Perpetrators are charged with “violent behavior.” Bojan Pajtic, Vojvodina prime minister (holding a PhD in law), said it was “an ethnically motivated incident.”³

CASE IV

On June 7, 2009 in Novi Sad citizens Sabo Robert and Horvat Caba were brutally beaten in a city bus because they spoke in Hungarian. Sabo’s head was smashed, several teeth broken and one eye damaged. The Higher Public Prosecution (a district prosecution at the time) rejected the charge of “ethnically motivated incident” and pressed charges for “participation in a fist fight” against the assaulters and the victims alike. This is yet another illustration of double standards in the Vojvodina judiciary.⁴

The recent “Temerin case” of February 9 raised a hue and cry in Vojvodina and abroad. A petition signed by 1,217 persons so far, people of different ethnic origin, indicates that the functioning of courts of law in Novi Sad has to be seriously analyzed. Petitioners expressed

dissatisfaction with the work of the law enforcement and the judiciary, underlying that these bodies were using double standards for perpetrators of same or similar crimes, depending on their ethnic origin.

After an incident in Temerin on October 21, 2012 – a restaurant fist fight between local Serbs and Hungarians – the Higher Court in Novi Sad pressed charges against seven Hungarian from Ada, Becej and Temerin for the crime of inciting religious, racial and ethnic hatred, stipulated under Article 317, para 2, of the Criminal Code, and against one Serb for the crime of violent behavior regulated under Article 344 (10-15 Serbs participating in the fist fight were not even taken into custody). The Article 344 provides punishment with 6-month to 5-year imprisonment.

The shortcomings noted during the investigation – of the police, the investigating judge and the Higher Public Prosecution in Novi Sad – question their impartiality and indicate ethnically motivated discrimination against the accused.

So, for instance, the police memo of October 23, 2012 quotes that witness C.N. “said he was one hundred percent sure about the identity of the person who committed the crime of inciting ethnic, racial and religious hatred and intolerance, stipulated under Article 317 of the Criminal Code of the Republic of Serbia.” The memo bears the stamp of the Police Department in Novi Sad and signatures of the eyewitness, the Deputy Public Prosecutor and an authorized public servant, but not of a defense lawyer. In other words, a suspect was identified as a person who “committed a crime as charged with” though he has not been put on trial yet.

When at a hearing of December 4, 2012, an investigating judge reminded a Serb taking the stand, B.M., that he had “differently described

2 Newscaster in Hungarian, Internet Portal Vajdaság Ma (Vojvodina Today), February 4 and 9, 2013.

3 Dnevnik, February 12, 2013.

4 *Magyar Szó*, January 16, 2010.

the events in the police memo,” the witness replied, “Policemen didn’t let us finish a sentence, they finished it instead of us. I didn’t want to protest against the memo, just put me signature under it because they kept in the custody the whole night.” The eyewitness also told the judge that the police threatened with pressing charges against him for participating in the fist fight.

The statement by this witness – who was not charged himself although directly involved – questions the police procedure and calls for proceedings against law enforcement officers for misconduct and ethnically based discrimination.

Besides, while identifying persons involved in the fight the same witness said officers in the police station had asked him if he recognized anyone present in the restaurant at the time, which he did, but nobody specifically asked him to identify suspects in the crime. Following the identification the police entered on the record that the “witness B.M. identified perpetrators of the crime of inciting ethnic, racial and religious hatred and intolerance.” This also questions legal functioning of the law enforcement and the prosecution.

The very proceedings, including questions to persons bearing evidence, the manner in which their statements were recorded, and the evidence presented so as to provide alibis to some of the suspects who claimed they had not been in the restaurant that night also brims with shortcomings.

All the seven Hungarians have been kept in custody since October 26, 2012. The only Serb against whom charges have been pressed was released in January 2013.

Provisions on detention have been breached. Namely, Article 141 of the Criminal Code

provides that a person shall be detained “if measures against that person cannot be realized by other means,” that a person shall be not be kept in custody longer than necessary and that the police and the prosecution “shall act without undue delay if a person is detained.” Besides, nowadays detention is optional rather than mandatory as it used to be. However, the law enforcement behaves as if this provision has never been changed. The law specifically quotes, “A person shall be released as soon as the reasons for which he/she has been detained are no longer valid” (Article 14, para 3). And this provision was bypassed in this specific case.

All these provisions have been violated in this specific case. The investigation was closed on December 21, 2012 and indictment was raised on January 9, 2013. As all the evidence by the prosecution have been presented there is neither a threat (Article 142) nor a reason (Article 14, para 3) for which two of the accused, Koperec Congor and Smit Tomas, should be kept in custody. This is the more so since no explanation has been given for “specially aggravating circumstances in which a crime was committed” (punishable with five years or more of imprisonment) on the one hand, while, on the other several similar crimes have been committed in Temerin and Becej in the meantime – and no suspect has been detained. By the way, two investigating judges have opposed the prolongation of detention pending trial (as provided by Article 142, para).

One can hardly speak of aggravating circumstances in the case of Smit Tomas. While deciding on his detention law enforcement officers seemed to ignore the fact that he was a resident of Ada rather than Temerin. Because of prolonged detention Smit Tomas will lose an entire school year.

The Hungarian minority community was especially irritated when Justice Zdenka Stakic was named a presiding judge in the case. This is probably best illustrated by a large number of signatories of the petition to the Higher Court in Novi Sad – the petition calling for her exemption or replacement.

In 2005 Justice Stakic presided the trial against five accused persons from Temerin – all of whom were eventually punished with the total of 61 years in prison. People from Vojvodina and abroad protested against such a decision. Her appointment in this specific case indicates the Novi Sad-based Higher Court's insensitivity to social response.

This and similar cases made the Hungarian community believe that their compatriots are being exposed to ethnically motivated discrimination – which is in stark contradiction to constitutional provisions on human and minority rights and freedoms and international conventions. Besides the Vojvodina judiciary is not impartial when it comes to such or similar incidents: as the prosecution qualifies crimes differently, depending on ethnic origin of suspects, different punishments are ruled for same crimes. Indicatively, the Higher Court much too often nods to the decisions by lower courts thus questioning not only its controlling function but also the very procedures.

CONCLUSION

In order to lessen interethnic tensions and restore the Hungarian community's trust in the judiciary, the Helsinki Committee suggests:

1. Justice Zdenka Stakic's exclusion as the presiding judge and appointment of a judge of another court capable of presiding the trial in Hungarian;
2. Prompt consideration of the appeal against detention Koporec Congor and Smit Tomas submitted on February 28, 2013, and their immediate release as regulated under Article 31, para 3, of the Constitution of the Republic of Serbia;
3. Prevention of misconduct among law enforcement officers and the judiciary and due implementation of constitutional guarantees for all citizens' equality before the law, regardless of their ethnic origin, religious or other affiliation (ban on discrimination, Article 21 of the Constitution), and for the right to fair trial (Article 32 of the Constitution);
4. Restoration of basic courts in the municipalities of Ada, Bačka Topola, Bečej, Čoka, Kanjiža, Senta and Temerin – as expected by the Hungarian community on the basis of their acquired rights – publication of the data about ethnic structure of courts and prosecution offices and proportional recruitment of the staffs in these bodies.