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Russia: Savchenko found guilty following flawed trial

Nadiya Savchenko was sentenced to 22 years in prison on 22 March by a court consisting of three judges in Donetsk in Southern Russia. She was found guilty of attempted murder, the murder of two Russian journalists, and of illegally crossing the Russian border. The trial was marred by fair trial violations and has failed to deliver justice for Nadiya Savchenko or for the journalists, Igor Kornelyuk and Anton Voloshin, who were killed in eastern Ukraine.

Background

Nadiya Savchenko, a serving Ukrainian officer, took leave from her unit in June 2014 and joined the volunteer battalion Aidar. The prosecution alleged that on 17 June, between 11.30 and 12.00, she was directing artillery fire from a communication tower and deliberately instructed fighters to target the Russian journalists. She denies the charges and insists that by 11.30 on 17 June 2014, the time when the two Russian journalists were killed by a mortar alongside several pro-Russian fighters, she had already been taken captive by pro-Russian forces. The prosecution claimed that Nadiya Savchenko was taken prisoner after the artillery attack, but was subsequently released, and then chose to cross the border into Russia illegally without her passport with the intention of applying for asylum. She alleges that she was handed over to Russian officials by her captors and secretly smuggled into Russia against her will where she was unlawfully detained. Her lawyers maintain that the charges are politically motivated and that the case against her has been fabricated.

Lack of equality of Arms

The trial was marred by flaws that are characteristic of the Russian justice system and which many Russians face when standing trial in Russia. An essential guarantee of a fair trial is the principle of equality of arms between the defence and the prosecution. This includes the right of the defence to present such evidence in court which it deems relevant to the defendant's case and to examine witnesses for the prosecution. Any restrictions on this right must be proportionate and consistent with the rights of the accused and the right to a fair trial.

The prosecution in the trial against Nadiya Savchenko relied extensively on testimonies by undisclosed and disguised witnesses, who were often questioned remotely via a video link only. In at least one instance, the prosecution presented video testimony by a "secret witness", whom Nadiya Savchenko's lawyers were not allowed to cross-examine. In spite of the secrecy, the lawyers believe they had identified the witness in the video – a Ukrainian

citizen who was held captive by the pro-Russian fighters at the time, and who was subsequently exchanged and released. They interviewed him in Ukraine where he stated that he had been interrogated while severely wounded and was speaking under duress. However, the court refused to consider this defence evidence.

Prosecutorial Bias

The prosecutorial bias of the Russian justice system is a widely recognised problem and a study commissioned by the then President Dmitry Medvedev in 2009 found that the main problem of the Russian judiciary is the dependence of judges on the state apparatus. In most cases judges take the side of the state and their decisions protect the interests of officials.¹

When presented with two conflicting accounts of the same set of events, the judge in the trial of Nadiya Savchenko accepted unquestioningly the less plausible claims by the prosecution that she had been set free by the separatist captors and had made her way illegally into Russia after that. Her allegations that she had been abducted to Russia by her captors have never been investigated.

Nadiya Savchenko's defence lawyers presented evidence supporting her alibi that she was already in captivity when the journalists were killed. Defence evidence such as mobile phone billing records which showed she was already in the city of Luhansk, far from the site, at the time the journalists were killed, and an expert who testified that shadows on video footage of the moment when Savchenko was being taken captive indicated that this had happened long before noon, the time when the journalists were killed. The judge dismissed the defence evidence of Nadiya Savchenko's mobile phone billing records relying on contrary evidence from the prosecution.

Furthermore, in an attempt to harass a witness for the defence, the prosecution contacted the research institute that employed the expert who testified about the shadows in the video footage, and requested that disciplinary measures should be taken against her for providing the expertise without an official request and for missing a day at work while she was in court.

Deeply politicised nature of the trial

The investigation against Nadiya Savchenko and her trial took place in a deeply politicised atmosphere. Since the annexation of Crimea by Russia in March 2014, and the outbreak of fighting between Ukrainian forces and armed groups supported by Russia in Donbass, eastern Ukraine, in April 2014, a growing number of individuals have been prosecuted in Russia, usually under anti-extremist laws, for espousing views critical of Russia's policy towards Ukraine and the annexation of Crimea.² The national television and other state-controlled media in Russia have portrayed the conflict in Donbass as an assault by forces under the command of a "junta" government in Kyiv against the peaceful Russian-

¹ *Judicial system of Russia: Present state and problems*, The Centre for political technology, Moscow 2009, http://politcom.ru/tables/otchet_sud.doc

² See the case of Darya Poliudova: <https://www.amnesty.org/en/documents/eur46/3534/2016/en/> and Yekaterina Vologzheninova: <https://www.amnesty.org/en/documents/eur46/3522/2016/en/>

speaking population. At the same time the Russian authorities have consistently denied, in spite of the mounting evidence to the contrary, Russia's direct involvement in the conflict in eastern Ukraine.

The highly politicised nature of the case against Nadiya Savchenko, combined with a flawed justice system, suggests that she never had a hope of fair trial. The Court proceeded with the trial despite the lack of an investigation into Nadiya Savchenko's allegations that she was abducted from Ukraine to Russia and unlawfully detained by Russian security officials. The prosecution's much-disputed version of events was unquestioningly accepted, even when the confirmation of her allegations may have exonerated her.

No trial against Nadiya Savchenko can be fair, or be seen to be fair, unless her allegations are fully, independently and impartially investigated first. Furthermore, evidence that the prosecution attempted to intimidate a defence witness should be investigated.

Justice can only be done in this case through a retrial free of political interference that complies with international fair trial standards. It is highly doubtful whether this can be delivered.

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