
HANDLING OF THE PREPARED TERRORIST ATTACK AGAINST THE LGBTI+ COMMUNITIES BY THE COURT IN KOSOVO



CENTRE FOR EQUALITY AND LIBERTY OF THE LGBT COMMUNITIES IN KOSOVA (CEL)

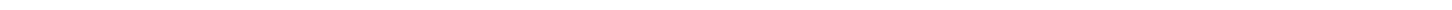
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TABLE OF CONTENTS

Methodology of the report.....	2
Case description.....	3
Legal Framework concerning the case.....	4
Analysis of the judgement.....	5
Conclusions and recommendations	6



METHODOLOGY OF THE REPORT

This report examines an actual court case in which a person planned a terrorist attack against the LGBTI+ communities in Kosovo, during the parade, which is part of the Pride week. This report is based on the proceedings of the case, in particular the Judgment of the case. In addition, the report examines the legal framework which provides for the protection of persons belonging to LGBTI+ communities in Kosovo, in particular the Criminal Code and criminal procedure laws.

CASE DESCRIPTION

The case involves the arrest and subsequent conviction of an individual, identified as B.V., by the Basic Court in Pristina, Kosovo, for planning terrorist attacks targeting the LGBTI+ communities. The arrest occurred on February 21, 2023, following a period of several months during which B.V. meticulously planned and prepared for the execution of the attacks. The specific targets included public spaces in Pristina frequented by members of the LGBTI+ communities, as well as the border crossing point at Merdare.

The investigation revealed that B.V. had been in communication with an individual known as "Al-Muhaxhiri" via the messaging application "Telegram." During these exchanges, B.V. sought guidance and instructions on the construction of improvised explosive devices (IEDs) or other explosive materials intended for use in the planned attacks. The correspondence provided by B.V. to "Al-Muhaxhiri" included detailed plans and maps of the intended target locations, demonstrating a clear intent to cause harm and instill fear within the LGBTI+ communities.

Further scrutiny of B.V.'s activities revealed that he had traveled from Saudi Arabia to Kosovo via the Skopje Airport, carrying materials deemed hazardous and lethal to human life. Upon his arrival at the Merdare border crossing, B.V. was apprehended by the Kosovo Police's Counterterrorism Directorate. Subsequent investigation and interrogation confirmed B.V.'s involvement in the planning and preparation of terrorist acts, leading to his formal arrest and indictment by the Special Prosecutor's Office of the Republic of Kosovo (SPRK) on September 15, 2023.

The charges against B.V. were brought under Article 138 of the Criminal Code of the Republic of Kosovo (CCRK), which addresses the preparation of terrorist offenses or criminal acts against the constitutional order and security. This provision stipulates that individual found guilty of preparing for the commission of criminal offenses enumerated in Articles 128-137 of the CCRK shall face imprisonment ranging from one to five years. Additionally, under Article 129 of the CCRK, individuals convicted of committing a terrorist offense are subject to a minimum prison sentence of five years, with harsher penalties prescribed for offenses resulting in bodily injury or loss of life.[1]

Throughout the legal proceedings, the accused individual notably deviated from his earlier self-incriminating statements, a departure that commenced with his statements subsequent to arrest and initial interrogation by the prosecutor. This shift in stance occurred between January 30, 2024, and February 12, 2024.

1. Criminal Code of the Republic of Kosovo (CCRK) Article 129: Commission of the terrorist offense. Par. 1. Whoever commits a terrorist offense shall be punished by imprisonment of not less than five (5) years.

In light of the severity of the charges and the potential harm posed by B.V.'s actions, the case underscores the importance of robust legal frameworks, effective law enforcement measures, and vigilant monitoring of extremist activities to safeguard the security and well-being of all individuals, particularly vulnerable communities such as the LGBTI+ communities.

LEGAL FRAMEWORK CONCERNING THE CASE

Kosovo's criminal law includes provisions addressing terrorism, hate crimes, and threats to the constitutional order and security. However, the adequacy and effectiveness of these laws in preventing and addressing terrorist acts and hate crimes against the LGBTI+ communities require evaluation. Challenges include gaps in enforcement, inconsistencies in legal interpretation, and limitations in institutional capacity.

The legal provisions outlined in Article 129 and Article 138 of the Penal Code of the Republic of Kosovo are crucial in understanding the legal framework concerning terrorist offenses and the preparation thereof.

Article 129 delineates the penalties for the commission of terrorist offenses. The stipulated punishment of imprisonment for not less than five years underscores the gravity of such offenses and the state's commitment to combatting terrorism. Moreover, the escalations in punishment for cases resulting in grievous bodily injury or death demonstrate the severity with which such acts are treated under the law, aiming to deter individuals from engaging in terrorist activities.

Article 138 focuses on the preparation of terrorist offenses or criminal acts against the constitutional order and security of Kosovo. It broadens the scope of criminal liability to encompass preparatory actions, including supplying materials, planning, or organizing with others to commit criminal offenses. By criminalizing preparatory acts, the law aims to prevent terrorist acts before they occur, thereby enhancing national security and public safety. The prescribed penalties range from one to five years of imprisonment, reflecting the seriousness of preparatory actions in facilitating criminal activities.[2]

Provisions within the Penal Code authorize the imposition of the most severe penalties for crimes committed with prejudiced motives. Specifically, Article 70 - General rules for mitigating or aggravating punishment, par. 2 - In determining the sentence, the court takes into account, but is not limited to, the following aggravating circumstances: 2.12. if the criminal act is an act of hate, which implies any criminal act committed against a person, group of persons, or property, motivated based on race, color, gender, gender identity, language, religion, national or social origin, affiliation with any community, property, economic status, sexual orientation, birth, disability, or any other

2. Criminal Code of the Republic of Kosovo (CCRK) Article 138: Preparation of terrorist offenses or criminal offenses against the constitutional order and security of the Republic of Kosovo.

personal status, or because of association with persons with the aforementioned characteristics, unless any of these characteristics constitute an element of the criminal act.[3]

Overall, these legal provisions underscore Kosovo's commitment to combatting terrorism and safeguarding its constitutional order and security. However, the efficacy of these laws' hinges on their enforcement and implementation, as well as the judicial interpretation thereof in specific cases such as the one under examination. Moreover, questions may arise regarding the adequacy of the prescribed penalties in deterring individuals from engaging in terrorist activities, particularly in cases where lives are endangered or lost.

ANALYSIS OF THE JUDGEMENT

The judgment handed down by the Basic Court in Prishtina against the accused individual, represents a significant milestone in Kosovo's legal response to terrorism and hate crimes targeting the LGBTI+ communities. The court found B.V. guilty of planning and preparing terrorist attacks against members of the LGBTI+ communities in Kosovo, as well as at the border crossing point in Merdare. The evidence presented during the trial, including communications via the Telegram application with an individual named Al-Muhaxhiri, revealed B.V.'s intent to carry out these attacks using explosive materials.

The court's efficient handling of this case is commendable. The court's decision to convict B.V. and sentence him to three years and six months of imprisonment underscores the seriousness with which Kosovo's legal system treats acts of terrorism and threats to public safety. However, some may question whether this sentence adequately reflects the gravity of B.V.'s actions and the potential harm he intended to inflict on innocent individuals, especially since provisions within the Penal Code authorize the imposition of the most severe penalties for crimes committed with prejudiced motives. Given the potential consequences of terrorist attacks, including loss of life and widespread fear and disruption, there may be concerns about the leniency of the sentence imposed.

Furthermore, the judgment highlights the critical role of law enforcement agencies and border control authorities in preventing and detecting terrorist activities. B.V.'s arrest at the border crossing in Merdare by the Kosovo Police serves as a testament to the effectiveness of proactive measures in thwarting terrorist plots before they can be executed. It also underscores the importance of international cooperation and information sharing in identifying and apprehending individuals involved in terrorist networks.

3. Criminal Code of the Republic of Kosovo (CCRK) Article 70, par. 2: General rules on mitigation or aggravation of punishment.

Overall, while the judgment represents a significant victory in the fight against terrorism and hate crimes in Kosovo, it also raises important questions about the adequacy of legal responses and the need for continued vigilance in addressing emerging threats to public safety and security, while also raising questions regarding the adequacy of the sentencing. While the court sentenced B.V. to three years and six months of imprisonment, it is arguable that this sentence appears lenient given the severity of the charges and the potential harm posed by the planned terrorist acts, also it is to be noted that the court failed to take into account the aggravating circumstances, as foreseen by article 70 of the CCRK.

In light of these factors, it remains questionable whether the sentence imposed adequately reflects the gravity of the offenses and the potential risk posed by individuals involved in terrorist activities. While the court considered various factors in determining the sentence, also there are concerns about the deterrent effect of the sentencing decision.

CONCLUSIONS AND RECOMMENDATIONS

The examination of this court case involving the planning of a terrorist attack against the LGBTI+ communities in Kosovo underscores the critical importance of robust legal frameworks and effective law enforcement measures in safeguarding public safety and security. The conviction of the perpetrator, B.V., highlights the seriousness with which Kosovo's legal system addresses acts of terrorism and threats against vulnerable communities. However, questions arise regarding the adequacy of the sentencing in reflecting the gravity of B.V.'s actions and deterring future terrorist activities, especially keeping in mind that the court in this case did not take into account the provisions of Article 70 of the KPRK, which would authorize the imposition of the most severe punishment, considering that the attack that was being planned was based on a biased motive.

Moreover, the analysis of the legal framework reveals both strengths and shortcomings in addressing terrorism and hate crimes. While existing laws provide a foundation for combating such offenses, challenges persist in enforcement, interpretation, and sentencing. Therefore, there is a pressing need for continuous evaluation and enhancement of legal provisions to ensure their effectiveness in preventing and addressing terrorist acts and hate crimes against the LGBTI+ communities. Ultimately, concerted efforts are required from legal authorities, law enforcement agencies, and civil society to uphold the rule of law, protect human rights, and promote a safe and inclusive society for all individuals in Kosovo.

This case underscores the importance of reassessing and potentially strengthening the legal framework to ensure adequate sentencing for individuals involved in planning and preparing for terrorist acts. While the Penal Code of the Republic of Kosovo includes provisions related to the commission and preparation of terrorist offenses, there may be a need for legislative amendments to provide for more stringent penalties in cases where individuals actively engage in planning and preparation for terrorist activities, even in the absence of actual commission. Specifically, the legislature could consider revising Article 138 of the Penal Code to include provisions for more severe penalties for individuals found guilty of preparing for terrorist offenses, particularly in cases involving the procurement or possession of materials intended for use in terrorist acts. By enhancing the deterrent effect of the law through tougher sentencing provisions, Kosovo can send a clear message that terrorism-related activities will not be tolerated, thereby safeguarding public safety and security while upholding the rule of law.

