

## Judgment in the Savchenko case

A debated judgment by a dubious judicial forum in a murky legal environment. The current analysis tries to shed some light to some of the legal questions, without examining the charges on their merits.

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On 22 March, Nadiya Savchenko, a Ukrainian servicewoman was sentenced to 22 years in prison by a court in the Russian city of Donetsk, after being convicted of directing artillery fire to kill two journalists in eastern Ukraine during the hostilities in June 2014, during the course of the “War in Donbass”. The defendant of the case had earlier been captured by separatist forces and taken over to Russian territory by force.

Not surprisingly, the Ukrainian government [has stated](#) that they would never accept the verdict as legitimate, expressing strong criticism towards the procedure and Russia in general. Other countries have also expressed their disdain, though employing much less harsh wordings. For example the Czech Ministry of Foreign Affairs [has also issued a statement](#) on the situation, demanding the release of Nadiya Savchenko, but it has appealed to humanitarian reasons, and has only carefully mentioned Russia’s „international commitments”, mainly referring to the 2015 Minsk agreement, which had been concluded by the leaders of Ukraine, Russia, France and Germany, assisted by the OSCE to work out and uphold a ceasefire.

### **Applicable law**

First, it is important to examine the legal environment of the current situation. The secession in April 2014 of two regions from Ukraine (the now so-called Donetsk People's Republic and Luhansk People's Republic, two self-proclaimed entities, not recognized as a state by anybody) has mostly been driven from the inside, with signs of strong Russian involvement, though not as clear as in the case of the Crimea. At the same time, Ukraine argues for a Russian “aggression”. The first and the second case may differ in some elements of the applicable legal rules (the same as the qualification of the situation being an international or an internal armed conflict), but the substantial content of the applicable legal norms concerning warfare and protection of civilians are similar in both cases. Additionally, both Ukraine and Russia are members of the Council of Europe and are parties to the [European Convention on Human Rights](#) and subject to the jurisdiction of the Strasbourg-based [European Court of Human Rights](#), which can examine complaints for alleged violations of human rights, even during armed conflicts. The Court already actively deals with situation, there is an inter-state complaint against Russia, initiated by Ukraine (case no. 20958/14), and an individual complaint of Nadiya Savchenko against Russia for the violation of Articles 5 (right to liberty and security) and Article 6 (right to a fair trial

within a reasonable time) of the Convention, is also pending before it, which has been granted priority (case no. 50171/14).

In case of armed conflicts, the relevant provisions of both [the Geneva conventions and their additional protocols](#) require the parties to the conflict to investigate and prosecute violations of the law of war by their own personnel, and at the same time, this is a possibility for the adverse party as well. This obligation and possibility is far more important than the interests of the adversaries: these violations (the so-called „grave breaches” of the conventions, or „war crimes”) constitute one of the most serious categories of international crimes, belonging to universal jurisdiction, meaning that practically any country on the world has the right and the duty to investigate those. This means that the fact of the proceeding in Russia per se is theoretically not a violation of international law.

But all this has to be conducted by an impartial judicial forum, offering all the procedural guarantees. And this is the point, where the whole proceeding seems to lose ground. It has been condemned by many western politicians and intellectuals, while it has also come under strong criticism by human rights NGOs as well, like [Human Rights Watch](#) or [Amnesty International](#). The strongest arguments were those, which have complained about the court had not admitted various defense evidence and defense motions (for example the examination of cellular data which could have proven that Nadiya Savchenko had already been taken out of Ukrainian-controlled territory, when the artillery attack has taken place), putting the procedure far from any fair trial standards. The latter is especially important, as this constitutes a decisive legal argument, rather than near-political ones usually echoed by state governments.

## The situation after the judgment

Right after the judgment was delivered, the defense has reaffirmed what Nadiya Savchenko had stated earlier, namely that they will not appeal against the judgment, referring to as an “illegal verdict”. This is a clear political message, with more possible consequences.

The lack of appeal in the case could lead to turning the Strasbourg-based overview of the case impossible, as the exhaustion of domestic remedies is a condition of taking any case to the European Court of Human Rights. On the other hand, as the complaint had already been filed earlier, it is still arguable that this option remains being opened, if the Court agrees that in this case the appeal would not lead to available and sufficient remedy for the alleged violation. This is yet hard to foresee, but the defence shall see a warning sign in the fact that despite its request, [the Court had earlier not ordered interim measures against Russia](#) on 10 February 2015, it had not ordered the immediate release of Savchenko from the Russian captivity. This may indicate that as the Court has not seen the imminent risk of irreparable harm, it does not consider the Russian judicial system incapable of providing available and sufficient remedy.

Considering the human rights violations, we have no doubt that the case would stand on the merits considering violation of the right to fair trial, regardless of its possible results concerning the criminal liability of Nadiya Savchenko for the crimes she was charged with.

Seemingly politics plays at least as important role in this situation as international law. Currently it seems that the defendant is being used as a bargaining chip in the Ukrainian-Russian dispute, directed towards the possibility of future prisoner exchange deals, possibly also targeted on the United States and Russian citizens in custody there – and in the meantime, for intense political propaganda opportunities for both parties.

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