

Cumulative investigation of terrorism crimes and genocide, war crimes and crimes against humanity. Implications on military justice

Rotariu Irinel

Colonel magistrate. Chief military prosecutor, Military Prosecutor's Office
Iași, Romania, Romanian Public Ministry
E-mail: rotariuirinel@yahoo.com

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ABSTRACT: The atrocities committed recently in Ukraine, the participation of European citizens in various conflicts abroad, and the freedom of circulation of persons involved in atrocities as national subjects in their origin countries, in European Union, raised the important problem of prosecuting of crimes committed in an effective manner these crimes. EU judicial bodies and authorities tried to establish the most efficient instruments to assure a real justice when the most important values of life are endangered. Cumulative prosecution of core international crimes and terrorism is an actual tendency of EU top judicial activity.

KEYWORDS: terrorism; genocide; war crimes; crimes against humanity; migration flows; cumulative prosecution of core international crimes; Memorandum on Battlefield Evidence; Genocide Network; The United Nations Special Rapporteur; battlefield or military produced evidence; military justice; integration of criminal investigators in military units; judicial training of military personnel.

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1 INTRODUCTION. MIGRATION FLOWS FROM AND IN THE CONFLICT AREAS

The development of illegal military aggression of Russia against Ukraine but also the evolutions of major breakings against human rights and international law in states like Afghanistan, Syria, Iraq, Rwanda, Congo, Myanmar, determined the intervention community in order to stop the atrocities committed but also for gathering evidences for accountability of the perpetrators.

The development of conflicts in relatively accessible areas and the migration flows generated social evolutions with an evident influence on judicial activity:

- first, people involved in atrocities as perpetrators, victims, witnesses are moving from conflict areas in zones with no conflicts and economic prosperity. The phenomenon is not new, such migration flows developed for example, after the Second World War, when Nazi war criminals refuge in U.S.A.¹ or South America².

- secondly, the citizens of EU or U.S.A. who for various reasons, including ideological, religious, economic or the adventure spirit, moved to the conflict zones where they were involved actively in conflicts. This phenomenon is totally opposite to the one described above, but coexists with it and is favored by the geographical proximity of the conflicts to the European Union states and also by the ease of movement in these areas,

- thirdly, and as a variant of the phenomenon described above, there is a tendency for some citizens of the states where there are conflicts to move from the western states they reside in countries of origin to participate in conflicts on the side of one or the other of the factions. Many times they

¹ <https://www.operationpaperclip.info/>

² <https://www.cia.gov/readingroom/document/cia-rdp90-01208r000100140089-1>



return to the countries they left when the political-military situation becomes difficult or when they have personal reasons that lead them to do so.

- fourthly, there is a trend of foreign legal entities cohabiting with some of the factions in conflict or with the political regimes in the areas where atrocities occur, going as far as acts of support or complicity with the parties in conflict, in order to obtain major economic advantages from collaborating with them.

The judicial bodies of the states where these people are located or return to or have their residence or headquarters have been notified regarding some of the atrocities committed. Originally qualified as terrorist actions-for example murders, public beheadings, abusive arresting.- the perpetrator's activities revealed the violation of fundamental values protected by international law and criminal law and were considered the most serious international crimes: genocide, terrorism, crimes against humanity³. The original accusation on terrorism remained and are cumulate, as the social values endangered by the perpetrators coexists with the core international crimes. The task of the criminal investigation bodies - first of all the military ones - is to master both their investigation methodology and to be aware of the advantages and disadvantages of investigating these facts in the context of crimes.

2 INTERNATIONAL LEGAL FRAMEWORK

International community reacted at the highest level against the international crimes committed in conflict zones, emphasizing and condemning the phenomenon described above in some legal texts, as follows:

³ Core International Crimes.

1. Resolution 2178 (2014) adopted by the Security Council of United Nations at its 7272nd meeting, on 24 September 2014⁴. The preamble of the Resolution expresses the “grave concern over the acute and growing threat posed by foreign terrorist fighters, *namely individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts* or the providing or receiving of terrorist training, including in connection with armed conflict, and resolving to address this threat”. It also shows that international community is “concerned that foreign terrorist fighters increase the intensity, duration and intractability of conflicts, and also may pose a serious threat to their States of origin, the States they transit and the States to which they travel, as well as States neighboring zones of armed conflict in which foreign terrorist fighters are active and that are affected by serious security burdens, and noting that the threat of foreign terrorist fighters may affect all regions and Member States, even those far from conflict zones (...)”.

The Resolution urges Member States, in accordance with domestic and international law, to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks, including foreign terrorist fighters, especially with their States of residence or nationality, through bilateral or multilateral mechanisms, in particular the United Nations (article 3). It also calls upon all Member States, *in accordance with their obligations under international law*, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters (article 4).

It decides also that Member States shall, *consistent with international human rights law*, international refugee law, *and international humanitarian law*, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration,

⁴ <https://digitallibrary.un.org/record/780316?ln=en>



planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities (article 5).

It also recalls its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that ***all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize*** in a manner duly reflecting the seriousness of the offense:

(a) ***their nationals*** who travel or attempt to travel to a State other than their States of residence or nationality, ***and other individuals*** who travel or attempt to travel from their territories to a State other than their States of residence or nationality, ***for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts***, or the providing or receiving of terrorist training,

(b) ***the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals*** who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training,

(c) ***the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training*** (article 6).

2. United Nations Security Council Guiding Principles on Foreign Terrorist Fighters: The 2015 Madrid Guiding Principles and 2018 Addendum⁵ stated that foreign terrorist fighters pose an acute and growing threat to international peace and security, emphasizing that “over the past decade, the regions in which foreign terrorist fighters are active have witnessed a significant increase in violence, insecurity and instability. **These fighters may be engaged in terrorism, war crimes, crimes against humanity and gender-related crimes.**”

Concerning the prosecution strategies of member states the guide stated that “*in combating the threat of foreign terrorist fighters, it is important to address the full range of serious crimes committed during travel, in particular war crimes, crimes against humanity and gender-related crimes.*”

From this perspective guiding principle 32 stated that “**member States should ensure that their criminal justice systems are capable of dealing with all serious crimes committed by foreign terrorist fighters, in particular war crimes, crimes against humanity and crimes related to gender.**”

The 2018 Addendum stated that “the prosecution of suspected foreign terrorist fighters continues, at times, to be significantly *challenged by the difficulty of collecting sufficient admissible evidence to secure a conviction.* Generating admissible evidence and converting intelligence into admissible evidence against foreign terrorist fighters are complex and multifaceted tasks. States should consider re-evaluating their methods and best practices, as appropriate, in particular those relating to specialized investigative techniques (including those involving electronic evidence). **Improving the collection, handling, preservation and sharing of relevant information and evidence obtained from conflict zones, in accordance with domestic law and Member States obligations under international law, is of paramount importance.**”

3. The Report for Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences (2020)⁶. The Report was released

⁵ <https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/security-council-guiding-principles-on-foreign-terrorist-fighters.pdf>

⁶ https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.PDF



by The European Network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (the Genocide Network)⁷ and it contain aspects concerning :

- foreign terrorist fighters-brief facts and figures,
- the issue of prosecuting foreign terrorist fighters for genocide, crimes against humanity and war crimes under the rules of international humanitarian law- rules applicable for times of armed conflicts with the objective of protecting persons who are not or are no longer participating in the hostilities and to restrict the means and methods of warfare,
- the concept of organized armed non-state groups: the factors determined in the judicial practice as indicating the basis of which the “organization” criterion may be assessed. According to these criteria, the organizational complexity of a non-state armed group is indicated by the existence of a command structure and disciplinary rules and mechanisms within the armed group, the existence of headquarters, the ability to procure, transport and distribute arms, the group’s ability to plan, coordinate and carry out military operations with examples of terrorist organizations qualifying as organized armed non-state groups.
- EU Member States jurisprudence of the cumulative prosecution of ISIS foreign terrorist fighters or its members.

⁷ The Genocide Network facilitates the exchange of information among practitioners, encourages cooperation between national authorities in different Member States and provides a forum for sharing knowledge and best practice. It was established by the Council of the EU in 2002 to ensure close cooperation between national authorities in investigating and prosecuting the crime of genocide, crimes against humanity and war crimes and is based at Eurojust in The Hague. Romanian Public Ministry is represented at the Network by the author of this article since 2018. See: <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>

3 SPECIAL PROBLEMS ON THE INVESTIGATION ON INTERNATIONAL CRIMES IN EU AND ABROAD. IMPLICATIONS ON MILITARY JUSTICE

1. In many situations the nature of crimes committed makes the first contact with evidences or core international crimes is made by the military involved in operations for peace keeping or protection of civilians against parties in conflict, or NGO's that are in the conflict area even before the army or the investigators. From the perspective of the professional investigators but also from the perpetrator's this peculiarity makes more difficult the task of the judicial.

The reason is the evolution of conflicts and crimes in the same time as the evidences are discovered.

This has some important consequences on any investigation:

- a) it makes difficult any crime scene investigation, the simple access to the crime scene could endanger the investigation team, the physical integrity of the evidences, and often raises the difficulty of the interpretation of the evidences.
- b) the activity of the army or NGO's, at least at the beginning of the investigation, requests the gathering of evidences in a manner able not only to prove the situations on the field, but also the possibility of legal using of the evidences during the criminal process (chain of custody, the methodological approach of collection, the proper evaluation of the electronic collected evidences),
- c) an important task of the investigators –both military and civilian- is the development of an arsenal of legal tools and methods for gathering the evidences on the battlefield. It is important in this respect to emphasize the military must become



more familiar with the action from this judicial perspective but also the investigators must be aware on the advantages and disadvantages of this specific approach of the core international crimes/terrorism investigations. The experience of military prosecutors and judges, who are familiar with the military crime and military culture, is essential for carrying one these investigations.

d) some steps in this direction were made as follows:

-in 2018, as Eurojust released the first instrument on this perspective, *The Memorandum on Battlefield Evidence*⁸. The practical situations analyzed here revealed that both prosecutors – through police investigators- and military personnel from different branches of the army collected evidences and even military testified as witnesses of the crimes they discovered.

From the perspective of the Report a good approach of the battlefield could be *the integration of criminal investigators in military units on the field, an specific judicial training of military personnel in recognizing and collecting evidences, establishing an efficient custody of the evidences (a clear chain of custody, an appropriate level of classification), a good communication between the army and judicial authorities, etc.*

We believe also *the establishing and using on the field units of military prosecutors or military police (investigators) could be an exceptional efficient measure to gather evidences in an efficient manner*, especially in the countries that already have this particular branches of the army/justice, special trained in law and criminal procedure in order to ensure the rule of law.

⁸ <https://www.eurojust.europa.eu/publication/eurojust-memorandum-battlefield-evidence>

We think *the training of judges on specific aspects of atrocities phenomenology, prevention and criminal investigations* could be also very useful on this particular matter, *as creation at national or international level of a specific framework of this particular type of investigations.*

The improvement of the level of international judicial cooperation between national judicial authorities and between the authorities and NGO's involved in action is also a pre-condition of an efficient prosecution and investigation of these crimes. Joint Investigation Teams, various judicial networks, international and bilateral treaties are necessary instruments for an efficient complex investigation.

- *Synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters:* from the above perspective, in 2019 at the request of the Romanian Presidency of the Council of the EU, the European Judicial Network (EJN), the European Network for investigation and prosecution of genocide, crimes judicial networks against humanity and war crimes (the Genocide Network), the Joint Investigation Teams Network (JIT's Network), the European Judicial Cybercrime Network (EJCN) and Eurojust provided a joint paper adopted as an annex expressing their views on the existing synergies between these networks and between these networks and Eurojust, and on potential areas to further develop such synergies in order to rise the level of cooperation against crime in EU. It was adopted and included in Council conclusions on the synergies between Eurojust and the networks established by



the Council in the area of judicial cooperation in criminal matters in 27.05.2019⁹.

- in 2022 Eurojust and The Office of The Prosecutor of ICC launched a guide entitled “Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organizations”¹⁰, as a specific tool for the NGO’s located in areas where atrocities occurred and *The Atlas of NGO’s*¹¹, compiled by the Genocide Network Secretariat, document that provides a practical description of activities undertaken by the listed Non-Governmental Organizations as well as their contact details. The objective of the Atlas are: (i) to establish contact and build an overview of NGOs pursuing accountability for core international crimes committed in Ukraine and their various activities, and (ii) to provide useful contact points to national authorities (EU Member States and Genocide Network Observers) investigating such crimes.

2. A balanced approach of the criminal phenomenon and the judicial ethics determine us to emphasize “the dark side” of the approach of the criminal investigation and of the penal process under the special circumstances: we must say we the particular approach of the criminal investigation is sometimes in a grey and smoky area, with high risks for the legality of the trial.

The importance of the crimes, the need of rapid justice and reparations are real needs of the particular societies and international community. People are demanding a faster justice, a fast investigation and an appropriate punishment of the perpetrators, as faster and faster is their access

⁹ <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX%3A52019XG0618%2801%29>

¹⁰ <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-icc-csos-guidelines.pdf>

¹¹ First version launched in 2022.

at the information on atrocities committed. Unfortunately the level of justice demanding is not accompanied with an increased level of judicial education: we may say the need of justice is natural but not very refined. The judicial authorities, on the other side, are in the situation to accord this natural need of justice with the need of an equal justice, with the principles of a fair trial, equality and effective justice.

From this perspective The United Nations Special Rapporteur on Human Rights emphasized in a document entitled “The position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the use of “battlefield” or military produced evidence in the context of investigations or trials involving terrorism offences”¹² (April 2021), **the necessary equilibrium between the necessary accountability for serious violations of international law and the compliance with international law.**

The United Nations Special Rapporteur underlined the risks of using the “battlefield” evidence arguing it contains defined and well-trodden risks to fair trial: “(...) *These include ensuring the extra-territorial application of the human rights regime to military actions and intelligence actors operating abroad. Reliance on military actors, whose training and experience is inconsistent with law enforcement training and whose knowledge and methods in bringing complex criminal cases through criminal justice systems is generally nil; or on intelligence actors whose methods of evidence and information gathering is regulated by specific rules, often lacking independent oversight and deficient in human rights adherence can also be particularly problematic.*

¹² https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_Battlefield-evidence-2021.pdf



Collection of evidence often engages the arrest, detention and interrogation of suspects which, in turn, engages questions related to the right to detain, the length of detention and the review of detention, as well as to the treatment of individuals during detention. Any lowering of the guarantees regarding these requirements can lead to evidence collected in violation of basic human rights. When this is combined with the lowering of standards relating to chain of custody, it can eventually lead to its use as evidence in trials, violating the principle of exclusion. Other risks include the reliance on information collected by other partners through information-sharing agreements lacking in oversight and control, the abandonment of specific requirements such as prohibitions on hearsay, or the use of classified information, all of which violate the principle of equality of arms (...).” He emphasized also “the proliferation of various recommendations and guidelines on evidence gathering do not advance that objective “and are regrettably likely to undermine human rights and the rule of law”.

In the conclusions of the Position The Special Rapporteur “urges States to pay close attention to these developments and engage proactively to protect and support the rule of law and human rights. She raises her singular concerns about the encroachments on State consent and the principles of full engagement in the legal processes that affect all states that follow from the production methods used for some of these documents. She urges regional and UN human rights entities to engage fully on the further use or development of these documents, and for civil society and human rights organizations to be fully aware of the menace to the protection of fair trial embedded in these exceptional approaches to counter-terrorism.”

3. We must emphasize the advantages of an cumulative prosecution of the terrorism and international crimes:

- a) it offers an more appropriate punishment to the perpetrators, tailored to the extreme gravity of the values endangered,
- b) it offers an increased level of social security: making justice in some difficult cases rises the trust in justice, other victims are encouraged to fill complaints, chances to identify other perpetrators raises,
- c) when the legal framework on the terrorism is missing or incomplete¹³ the core international crimes are a good way to ensure the prosecution of perpetrators,
- d) the cumulative investigation and prosecution brings together different branches of investigators and prosecutors, stimulating the cooperation and an increased level of quality of judicial activity.

4. We must emphasize also the disadvantages of an cumulative prosecution of the terrorism and international crimes:

- a) this particular approach requests many times the analysis of a huge quantity of data-images, videos, audio, or documents, often an complicated process requesting spending lots of resources,
- b) the impossibility of crime scene investigation is an important handicap of the investigation of international crimes. Sometimes the prosecutors have no clues of the localization of victim's bodies and is far more difficult to prove the facts.
- c) the prosecution of core international crimes is far more difficult than the terrorism as prosecution must prove the existence of an non international armed conflict.

¹³ For example, membership in a terrorist organisation is not a criminal offence in Sweden.



d) the cumulative investigation could be far more longer than the terrorism: as terrorism have usually a limited number of participants, the core international crimes investigation involves often a large groups of victims, sometimes whole communities, and a bigger volume of investigation is often necessary.

e) the gathering of evidences for both crimes by non-judicial institutions and actors raises serious questions about the effectiveness of the investigation and fair trial. Any investigation carried out by the military justice fulfills those standards of quality, as military prosecutors are independent criminal investigators and in the same time officers of the army who could be deployed on the field, and military judges are far more familiar with the aspects of military activities than their civilian colleagues.

5. Judicial practice on cumulative prosecution of core international crimes and terrorism¹⁴:

- Germany: German national convicted for posing with the body parts of a dead soldier, amounting to the war crime of inhumane and degrading treatment¹⁵:

Facts – While in Syria after joining armed jihad, a German national posed in 3 photographs with the severed heads of enemy combatants impaled on metal rods, which were uploaded to Facebook.

Legal procedure and crimes: appeal decision of the Federal Court of Justice on points of law. The perpetrator was charged for war crimes - the demeaning and degrading treatment of dead persons, under the *Volkerstrafgesetzbuch* (VStGB) penalising core international crimes and

¹⁴ Cases extracted from The Report for Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences and author's notes on cases presented at the Genocide Network meetings.

¹⁵ Federal Court of Justice, 27 July 2017, reference BGH 3 StR 57/17

applicable regardless of the place of offence or the nationality of the offender (universal jurisdiction). The Court's ruling made a distinction between NIAC and IAC¹⁶ and analyzed the intensity and organization criteria to determine if a group can be considered as an armed group. Additionally, the judgment clarified the inhumane treatment of a dead person as a war crime.

Sentence: 2 years' imprisonment for a war crime of outrage upon personal dignity

-The Netherlands: Dutch national convicted for posing with a crucified enemy soldier and sharing the photo on Facebook¹⁷

Facts – Law enforcement authorities found photos of the suspect, a Dutch foreign terrorist fighter, showing him armed and in combat clothes. During his stay in Syria, he posed laughing next to a deceased man hanging on a cross. This photo was later shared publicly and disseminated on Facebook.

Legal procedure and crimes – prosecuted and convicted for membership in a terrorist organization and the war crime of outrage upon personal dignity (inhumane and degrading treatment of dead bodies)

Sentence – 7.5 years' imprisonment -5 years for membership in a terrorist organization and 2.5 years for the war crime.

-France: company accused for complicity in crimes against humanity, financing of terrorist activities and endangering the lives of others¹⁸.

*Facts:*L. owned and ran a cement factory in Jalabiya, Syria. From 2012 on, several armed groups operated in the factory's vicinity. The company allegedly entered into negotiations with ISIS to purchase oil and pozzolan (a material used to make concrete) from them, as well as to obtain official ISIS passes for crossing checkpoints in order to maintain its production in the area. Testimonies also point to Lafarge risking the lives of its employees, who suffered kidnappings and extortion, and violating a number of basic labor rights. The company worked out "arrangements" with armed groups, including ISIS and the

¹⁶ Non international armed conflict/ international armed conflict.

¹⁷ <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHDHA:2021:2130>

¹⁸ https://www.courdecassation.fr/decision/6137092ff585960512dfe635?search_api_fulltext=lafarge&sort&items_per_page&judilibre_chambre



Al Nusra Front, around the factory from 2012-2015 amounting to at least EUR 13'000'000, according to the judicial inquiry.

Legal procedure and crimes: Proceedings against the cement company L. SA for complicity in crimes against humanity committed by armed groups in Syria, financing terrorism, deliberate endangerment of people's lives and violation of an embargo The French company L. prior to its 2015 merger with Swiss-based H.; E. O., former deputy director; seven top executives of the French-Swiss H. group and of its subsidiary L. C. Syria; one Syrian-Canadian intermediary between L. and ISIS. The primary suspects are French and Norwegian nationals.

Charges: complicity in crimes against humanity; financing of a terrorist enterprise; deliberate endangerment of people's lives and violation of the European Union embargo on oil purchases In September 2016, the French minister of finance filed a complaint before the Paris prosecutor against L.H. for its alleged illegal purchase of oil in Syria, despite the EU embargo issued in 2012. The Paris prosecutor opened an investigation in October 2016. On 15 November 2016, 11 former L. Syrian employees and the human rights groups Sherpa and the European Center for Constitutional and Human Rights (ECCHR) filed a criminal complaint as civil parties in Paris against L., L. C. Syria and their current and former top executives for financing of terrorism, complicity in crimes against humanity committed in Syria, endangerment of people's lives and for a series of labor rights violations.

On 9 June 2017, three investigative judges of the Paris Tribunal opened an investigation into the crimes alleged by the plaintiffs. In September 2017, three of the victims were heard by one of the investigative judges. Between December 2017 and May 2018, eight former executives, including former CEOs of the H. group, were charged while under investigation (mis en examen) with financing terrorism and endangerment of people's lives amongst other charges, and were requested to provide the courts with a deposit of several million euros. In September 2019, a Syrian-Canadian alleged former intermediary between the company and ISIS suppliers was also charged.

On 28 June 2018, three investigative judges of the Paris Tribunal charged while under investigation (mis en examen) the legal entity L. SA with complicity in crimes against humanity, financing a terrorist enterprise, endangerment of

people's lives and violation of an embargo. The investigative judges ordered the company to hand over EUR 30'000'000 to the judicial authorities as a security deposit ahead of a possible trial.

On 24 October 2019, the Investigation Chamber of the Paris Court of Appeals rejected the admissibility of Sherpa and the ECCHR as civil parties.

On 7 November 2019, the Paris Court of Appeals confirmed the indictments of the L. executives and of the Lafarge company itself for financing a terrorist enterprise, endangerment of people's lives and violation of an EU embargo. However, it dismissed the charges of complicity in crimes against humanity for the company.

In November 2019, Sherpa and the ECCHR appealed the rejection of their civil party applications and the dismissal of the complicity in crimes against humanity charges to the French Supreme Court. Defense lawyers also appealed the 7 November confirmation of indictments.

On 7 September 2021, the French Supreme Court ruled that L.'s indictment for complicity in crimes against humanity was wrongly dismissed by the Paris Court of Appeals, finding that knowingly transferring millions of dollars to an organization whose sole purpose is criminal is sufficient to characterize complicity in crimes against humanity. The court also ruled that L.'s indictment for endangerment of peoples' lives was wrongly confirmed by the Paris Court of Appeals, finding that it had not sufficiently justified the application of French law to the case of Syrian workers. The Supreme Court therefore referred the case back to the Paris Court of Appeals for a new decision on both charges. In addition, it confirmed the inadmissibility of Sherpa as a civil party on all charges and ECCHR's inadmissibility for almost all charges, with the exception of the complicity in crimes against humanity charge. The Supreme Court sent the legal challenges against the various indictments back to a newly composed Court of Appeal.

Civil proceedings in the United States Of America

On 18 October 2022, in a separate proceeding in the United States, L. SA and L. C. Syria pleaded guilty before a federal court to conspiring to provide material support to foreign terrorist organizations and agreed to pay USD 778'000'000 in fines and forfeiture. It is the first time in the US that a company was prosecuted on this charge. The media reported that in



court, the L. chair said the former company executives knowingly and willfully agreed to participate in a conspiracy to make and authorize payments intended for the benefit of various armed groups in Syria. The plea agreement is distinct from the French criminal proceedings and does not address the central question of corporate complicity in international crimes and reparations for those affected.

Sentence: on 18 May 2022, the Paris Court of Appeals upheld all charges against the parent company Lafarge. In confirming the charge of complicity in crimes against humanity, the Court of Appeals reiterated the legal findings of the Supreme Court that there was serious or corroborating evidence that Lafarge knowingly chose to maintain its activities in the region by financing these groups. With regard to the charge of deliberately endangering the lives of its subsidiary's employees in Syria, the Court of Appeals further found that French law was applicable as there was a closer connection between the workers and the French parent company. The Court relied on the permanent interference of Lafarge in the management of its subsidiary, as had been highlighted by the Supreme Court. The Court thus found that there was serious or corroborating evidence that Lafarge may have been complicit in crimes against humanity and may have endangered the lives of its Syrian workers and upheld the charges.

4 CONCLUSIONS

Cumulative investigation of terrorism and genocide, war crimes and crimes against humanity is an actual dimension of the judicial activity in European Union. It is not a universal solution for any conflict: crimes committed by Russia in Ukraine since 2022 could not be treated without a careful analysis as subject of the cumulative prosecution. The war in Ukraine raises different problems and requests different solutions.

The intensity and magnitude of crimes raised the subject of cumulative prosecution, makes clearly visible the problems of keeping the fair trial principle alive and in the same time the need of an effective justice

and determined the judicial community to find the appropriate solutions and tools.

Military justice could be an excellent instrument in investigating these crimes as the military prosecutors, military police and military judges are also professional military personnel who combine in an efficient manner the magistrate's status –with guarantees of independence and impartiality and the military status with a deep understanding of military universe. Involved as professional investigators on the field or as trainers, people in the military justice could be an option in any part of the world where atrocities occur. But it could be a solution for states that have military justice systems, and it must be tailored for the specific topic of cumulative investigation for core international crimes and terrorist offences in accordance with the specific jurisdiction of military courts.

Another solution could be the creation of special investigation units composed of professional investigators or prosecutors for these crimes. The Genocide Network Strategy¹⁹, stated in Chapter III, Measure 1, that “specialized units include officers trained in the field of identification, investigation or prosecution of the crime of genocide, crimes against humanity, war crimes, the crime of torture and enforced disappearance. A multidisciplinary approach would also involve experts from other fields, such as historians, sociologists, diplomats, anthropologists, specialists in financial investigations and asset recovery, as well as specialists in military matters. They possess specialized knowledge of international and national law and can handle the specific challenges in the investigation and prosecution of core international crimes. Results achieved in Member States with specialized units prove that structured cooperation and the creation of dedicated units with no additional tasks immensely facilitate the

¹⁹ <https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/Strategy-Genocide-Network-2014-11-EN.pdf>



identification, investigation and prosecution of alleged perpetrators of core international crimes who are present on EU territory.” It could be better tailored for the specific approach of cumulative prosecution of terrorism and core international crimes²⁰ and more flexible from the perspective of jurisdiction.

²⁰ The topics of possibilities and opportunities for prosecuting foreign fighters for war crimes, crimes against humanity and genocide to combat impunity, cumulative prosecution for counter terrorism offences and war crimes in jurisprudence and practice of EU national authorities, challenges and advantages in prosecuting foreign fighters for core international crimes and terrorism offences on national level were discussed at the Twenty-seventh meeting of the Genocide Network, 6-7 November 2019. See conclusions of the meeting: <https://www.eurojust.europa.eu/publication/conclusions-27th-meeting-genocide-network-6-7-november-2019>

