



European Union: double standards in criminal justice?

**The European-Libyan controversy over of the handling of the case of Pan Am flight 103 by the Scottish and the Benghazi HIV case by the Libyan judiciary:
Clash between legal cultures or political power game?**

Statement by Dr. Hans Koechler

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In his capacity as observer of the Lockerbie Trial in the Netherlands, Dr. Hans Koechler was recently contacted by representatives of the Bulgarian media concerning the death sentences confirmed by a Libyan appeal court against five Bulgarian nurses in connection with the infection of over 400 Libyan children in the El-Fateh hospital of Benghazi with HIV.

In view of the political dispute involving Libya, the African Union, the League of Arab States and the Non-aligned Movement on the one hand, and Bulgaria, the European Union and the United States on the other, over the handling of both criminal cases by the judiciaries of Libya and Scotland (United Kingdom) respectively, Dr. Koechler has deemed it appropriate to clarify matters and clearly distinguish between the legal and political dimensions of both cases in the statement reproduced below. Such clarification has become even more urgent in view of both cases still being under judicial review, whereby the Scottish Criminal Cases Review Commission (SCCRC) two days ago announced its intention to make a decision on a possible new appeal in the case of the Libyan citizen Al-Megrahi by the end of June 2007, and the Supreme Court of Libya, it was learned, will eventually hold new appeal hearings within about two months.

1. It is obvious that the criminal proceedings under the judicial systems of Libya and Scotland have no factual connection in any way.
2. However, in regard to the rule of law, which is the fundament of every legitimate political system, the handling of any criminal case by the judiciary of whichever country can be legitimately scrutinized according to universal legal principles that are

enshrined, *inter alia*, in the International Covenant on Civil and Political Rights of which both states, Libya and the UK (Scotland), are parties.

3. In both cases, the indicted persons have been sentenced to the maximum punishment provided for by the respective legal system – decisions that have, again in both cases, been upheld by appeal courts.
4. In both cases, however, the judicial means are not exhausted yet. While in the case of *Abdel Basset Ali Mohamed Al-Megrahi*, the judgment is under review by the Scottish Criminal Cases Review Commission (SCCRC) – which may order new appeal proceedings – and may eventually be brought before the European Court of Human Rights (Strasbourg), in the case of the Bulgarian nurses – *Valya Cherveniyashka, Snezhana Dimitrova, Nasya Nenova, Valentina Siropulo, and Kristiyana Vulcheva* –, the verdict has been appealed before the Supreme Court of Libya and may, after that court's ruling, still finally be confirmed or rejected by that country's High Judicial Council.
5. Declaring that the proceedings before Libyan courts were not fair and transparent and demanding that the verdict against the Bulgarian nurses be quashed before all judicial means within the Libyan system have been exhausted is inconsistent with the simultaneous demand that the Lockerbie verdict should be respected as outcome of supposedly fair and transparent judicial proceedings and the sentenced Libyan citizen should not be set free. The European Union, including Bulgaria and the United Kingdom, and the United States simply cannot, as a matter of principle, in one case reject “political interference” and, in another case, engage exactly in that condemned practice.
6. Because the maximum penalty in Libya is death, the case of the Bulgarian nurses (and the Palestinian doctor *Ashraf Ahmad Jum'a Al-Hajouj*) has a serious humanitarian dimension under United Nations covenants and policies. It is obvious to all independent observers that their case is not helped in any way if the European position is perceived as arrogant interference in the internal affairs of an Arab and African country – and as being dictated by a policy of double standards according to which everything belonging to the judiciary of an EU country is automatically considered as in conformity with international legal principles, while judicial proceedings in countries formerly under European colonial rule are summarily dismissed as deficient or deemed as not meeting commonly recognized international standards.

7. Although the criminal proceedings in Libya do not have the quasi-international dimension which characterized the proceedings before the Scottish Court in the Netherlands (which were triggered by a series of Chapter VII resolutions of the UN Security Council and the modalities of which were regulated by intergovernmental agreement), both proceedings, those in Libya as well as those before the Scottish Court, have, in technical terms, an international element insofar as (a) alleged crimes by foreign citizens are prosecuted by the court of the country in which the alleged atrocity occurred (jurisdiction according to the territoriality principle) and (b) the crimes cited in the indictments were allegedly carried out on behalf of (in one case yet unnamed, in the other case only partly identified) foreign powers or agencies.
8. While the case of the Bulgarian nurses was not monitored by independent international observers (something which neither Bulgaria nor the EU appear to have ever contemplated or requested from Libya), the Libyan case before the Scottish Court was closely followed by international observers appointed by the United Nations Organization. The many procedural flaws, lack of transparency, political interference – even on the part of foreign intelligence services – have been comprehensively documented in the undersigned's trial and appeal reports of 2001 and 2002 respectively, and have been confirmed by many unofficial observers. In the course of last year, several of the leading protagonists and officials involved in the handling of the Lockerbie trial have come forward with admissions and affidavits confirming those irregularities.
9. As long as Europe and the United States are not prepared in any way to acknowledge the serious flaws in the Lockerbie case – while insisting that the Benghazi HIV case be subjected to comprehensive legal scrutiny at the international level –, the position adopted by the Bulgarian and British governments and the European Union in the case of the Bulgarian nurses in Libya is not credible. The bias in that regard is also obvious from the Western, particularly some British, media addressing the convicted Libyan citizen, in spite of the ongoing judicial review of his case, as “the Lockerbie bomber” – instead of correctly referring to him as the person who has been convicted of a certain crime and whose verdict is now under scrutiny by the SCCRC –, while in the case of the convicted Bulgarian citizens the media use a much more careful terminology.

10. Due to the controversies and in view of the heated political climate between the two regions – Europe versus Africa, the “West” versus the developing world –, the parties to this essentially political dispute over fundamental issues of the judiciary may benefit from the presence of independent international observers to monitor the forthcoming appeal proceedings in both countries. This could, it is to be hoped, defuse the political tensions and introduce an element of confidence-building. (It is to be noted that, in the case of the criminal proceedings in Libya, this would have to be achieved by free consent of that country’s government since, unlike in the case of the Scottish Court, there exists no UN resolution obliging it to accept such observers.)
11. In the undersigned’s humble view, both cases, the one in Libya and that in Scotland (UK), have to be settled according to the same universal legal principles that characterize what the United Nations Organization has identified as the “international rule of law.” Neither domestic political interference (in contravention of the separation of powers) nor international power politics – nor bilateral or trilateral political deals (such as those that may have determined the outcome, so far, of the Lockerbie proceedings) – are conducive to a just settlement. Whether the politicians accept it or not, justice must be based on truth – and the revelation of the truth alone can be the basis of a decision of the judiciary that is perceived as legitimate by the citizens of whichever country. The nexus between truth and justice is at the roots of every genuine democracy and is an intrinsic element of the separation of powers that must not be sacrificed on the altar of “power politics.”
12. Whatever the merits of each case finally will be proven to be, the sentenced citizens on both sides of the political divide possess inalienable human rights and thus deserve a fully transparent review of the criminal proceedings under the judicial system of the respective country exercising jurisdiction over them. This requires an honest search for the truth on all sides.
13. Arguing over the legal merits and the rights of those sentenced does, however, not relieve the countries involved in the above dispute from showing compassion with the families of the tragic victims in both cases and from reaching agreement on full and adequate compensation for each and every victim (in those cases in which this has not yet been achieved). Again, only the revelation of the full truth will make the compensation more than “blood money” paid out of political necessity. Knowledge of the truth, whether in the Lockerbie case or that of the Bulgarian nurses and the

Palestinian doctor, is an essential part of justice and a sublime compensation owed to the families of the victims of those unspeakable tragedies that are documented in the two cases under dispute.

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Dr Hans Koechler

Web site of Dr. Hans Koechler's Lockerbie Observer Mission:

http://i-p-o.org/lockerbie_observer_mission.htm