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## Fight against Terrorism by trial

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### Abstract

Terrorism plagues many countries. Countries, such as Israel, have suffered from terrorism for a long time. Democratic nations should conduct the struggle against terrorism with a proper balance between two conflicting values and principles. Human rights are not a stage for national destruction. Judges of the International Criminal Court (ICC) consist of 18 judges of the Court. To our opinion, the level of effectiveness, decency and justice of the International Court in its rulings is not clear, since it is unlikely that a professional judge without public representatives or suitable jurors will issue maximal justice. How can we explain the fact that public representatives/jurors do not serve in the International Court that passes on criminal aspects? The jury trial was reintroduced in Russia in 1993, and extended to another 69 regions in 2003. In the USA (2015), a jury dealt with a claim of terrorism victims against the Palestinian Authority, due to execution of terrorist attacks in Israel. In JAPAN On May 28, 2004, the National Diet passed a law requiring selected citizens to participate as judges (and not juries) in trials for certain severe crimes. The saiban-in system was implemented in May 2009. Germany for example, has a mixed court system: lay assessors and professional judges form part of the panel of judges. They hear the cases and together they decide on all procedural matters that arise during the main hearing. Unlike a jury system, where laymen are selected from a cross-section of society, Swedish lay judges differentiate themselves with regards to age, gender, profession and income from the rest of the population. A poll in 2011 by Swedish state television revealed that 60% of the professional judges have no confidence in the lay judge system. In Norway, In the district courts of Norway, lay judges sit alongside professional judges in mixed courts in most cases .Lay judges also serve during criminal cases in the appellate courts. If the crime carries a maximum sentence of six years imprisonment or more, the lay judges are replaced with a jury. Main Findings of an earlier

statistical survey on an existing situation in the field of public representatives in Israel are: A sweeping tendency was found by rate of 77% that justice can come to light in trials with public representatives, It was found to a level of 56% that participation of public representatives in trials socially reflects the "common sense" to a greater extent, than a trial with a professional judge alone, 71% of the respondents claim that from little extent to completely, that it will not be easy to public representatives to judge other people, in a criminal court and that it will be hard for them to judge whether a person is guilty or not guilty.

Our recommendations in current article is to pass by legislation an application of a substantial change (structural and administrative) in general, in the role of public representatives ( lay judges) or jurors in courts of law. International courts and tribunals should be saved for judges and the public representatives should be specialized in achieving the goals of Law, as reflectors of the atmosphere in society and social justice from the aspect of "reasonable justice" rather than the Law. Therefore, our unambiguous recommendation is to train public representatives to appear as judges for every matter also in criminal aspects of international courts and also in state courts and particularly in the anti-terrorism trials as it happens in non-democratic states like Russia and China and in democratic European countries and the USA. The public representatives or the jury should be free than a judge from Evidence Law and different precedents that encumber a proceeding, and to represent more moral aspect in the direction of justice rather than the Law. Human rights are not a stage for national destruction; they cannot justify undermining national security in every case and in all circumstances. Current article should turn on a red flashing light in towards Law Authorities in Israel and in the world, as they sit before judging defendants in terrorism attacks.

**Keywords:** Terrorism plagues, conflicting values and principles, Human rights, International Criminal Court (ICC), effectiveness

### Introduction

Crimes against humanity and attack directed against any civilian population, with knowledge of the attack are Terrorism. Terrorism plagues many countries. The United States realized its devastating power on September 11, 2001. Other countries, such as Israel, have suffered from terrorism for a long time. While terrorism poses difficult questions for every country, it poses especially challenging questions for trial cases, because not every decision is effective of a legal means. Democratic nations should conduct the struggle against terrorism with a proper balance between two conflicting values and principles. On one hand, we must consider the values and principles relating to the security of the state and its citizens. Human rights are not a stage for national destruction; they cannot justify undermining national security in every case and in all circumstances. Similarly, a constitution is not a prescription for national suicide. But on the other hand, we must not consider the values and principles relating to human dignity and freedom. Yes ' it is true National security cannot justify undermining human rights in

every case and under all circumstances. National security does not grant an unlimited license to harm the individual. For example, judges of the international criminal court (ICC) consist of 18 judges of the Court, organized into three chambers, the Pre-Trial Chamber, Trial Chamber and Appeals Chamber, which carry out the judicial functions of the Court. Judges are elected to the Court by the Assembly of States Parties. They serve nine-year terms and are not generally eligible for reelection [1]. All judges must be nationals of states parties to the Rome Statute, and no two judges may be nationals of the same state. They must be "persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices" [2]. The Prosecutor or any person being investigated or prosecuted may request the disqualification of a judge from "any case in which his or her impartiality might reasonably be doubted on any ground". Any request for the disqualification of a judge from a particular case is decided by an absolute majority of the other judges [3]. A judge may be removed from office if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions. The removal of a judge requires both a two-thirds majority of the other judges and a two-thirds majority of the state's parties [4].

To our opinion, the level of effectiveness, decency and justice of the International Court in its rulings is not clear, since it is unlikely that a professional judge without public representatives or suitable jurors will issue maximal justice. The importance of reasoning of public representatives in the social aspect, as reflecting the atmosphere in society, in understanding the position derived from understanding the goals of ruling, in great. Public representatives serve as an example in criminal courts in USA, the UK and Eastern-European countries in positions of judges in criminal instances or as jurors in instances of murder, for example. So how can we explain the fact that public representatives/jurors do not serve in the International Court that passes on criminal aspects?

In several high-profile terrorism cases, Dagestani judges and juries have failed to convict suspected terrorists brought to trial by the authorities. In a system that once found nearly everyone brought to trial guilty this outcome is unexpected. These cases show that Russian law does matter: juries and judges are throwing out terrorism cases [5]. Trial by jury was first introduced in the Russian Empire as a result of the judicial reform of Alexander II in 1864, and abolished after the October Revolution in 1917 [6]. Lay judges were in use in the Soviet Union. After a 1958 reform they were elected for 2 years at general meetings of colleagues at their place of work or residence, or at higher levels appointed by the soviet [7]. The incidents of lay judges overruling professional judges was rare, and was officially reported in only 1 case by the late 1960s [8]. Unlike the juries of the United States, lay judges were not selected from panels that are cross-sections of the entire population, but selected by institutions in each district. The jury trial was reintroduced in Russia in 1993, and extended to another 69 regions in 2003 [7]. Fabricated Evidence and Fair Jury Trials.

In the USA, a jury dealt with a claim of terrorism victims against the Palestinian Authority. The trial of the claim conducted against the Palestinian Authority and PLO due to execution of terrorist attacks in Israel opened in January 2015 in New York. The legal strategy of the Palestinian Authority

was: the Intifada terrorism attacks and shooting incidents in the years of 2001-2004 were done by individuals that acted on their own without any connection to the Authority itself. The Palestinian Authority will have to defend against dozens of testimonies of terrorism victims, terrorism specialists and eye witnesses that will represent the claims of the prosecution. The chosen jurors, ordinary American citizens, may hold in their hands the key to international legal statements on the subject of terrorism damages responsibility in general, and in the Israeli-Palestinian arena in particular. The plaintiffs are 11 families, casualties of acts of hostilities with Israeli and American citizenship, represented by Israel Law Center organization, and sue by power of American Law that enables American citizens to sue terror organizations in the US due to terrorist attacks that have happened outside the USA as well. The families accuse the PLO leadership and the Palestinian Authority in financing, planning and execution of seven terrorist attacks and shootings against Israeli citizens in Israeli territory, through the activation of clerks, officers, security personnel and other paid employees that are working for them. The compensation sum sued is more than one billion dollars, based on legal precedents in the USA in terrorism suits. The jury – with neither Muslims nor Jews, and that are very distant from the Israeli-Palestinian dispute [9].

In JAPAN On May 28, 2004, the National Diet passed a law requiring selected citizens to participate as judges (and not juries) in trials for certain severe crimes. Citizens chosen for such service, called "saiban-in" (裁判員?, "lay judge"), are randomly selected out of the electoral register and, together with professional judges, conduct a public investigation of the evidence in order to determine guilt and sentencing. In most cases, the judicial panel is composed of six saiban-in and three professional judges. In cases where there is no substantial dispute over guilt, the panel is composed of four saiban-in and one professional judge. Unlike under the older jury system, the defendants are not allowed to waive trial by saiban-in. The saiban-in system was implemented in May 2009 [10].

The Silent Lay Judges Influence in the Community Falls Short of Expectations. Germany for example, has a mixed court system: lay assessors and professional judges form part of the panel of judges.<sup>1</sup> They hear the cases and together they decide on all procedural matters that arise during the main hearing. In the end, they deliberate and rule as one body.<sup>2</sup> tellingly, lay judges at criminal court are called "Schöffen," which derives from the German verb for "to make something." They "make law," recognizing that a people's law is not only formulated by parliaments, but also specified in daily court rulings. At other branches of the courts, lay judges are called "honorary judges" which emphasizes the significance of the office and the absence of material interests. There are a number of reasons that are commonly given for the participation of lay judges. Lay judges provide special knowledge in some more specialized branches of the courts, like the juvenile courts. Or they represent the public in courts with general jurisdiction-administrative secure a careful deliberation of cases. Lay judges should also contribute to the "education of the public" on the law and the legal system.<sup>3</sup> Broadly conceived, lay judges could provide others with information about the law and its application, about professionals working in the area of law, and about the inner workings of the courts. Ultimately, such knowledge could enable citizens to make a more competent use of the

law, which might also have repercussions on legal policy. Armed with this knowledge, citizens may be better suited to influence political decisions as voters or as members of political associations. In a narrower sense, lay participation is seen as a source of legitimacy for the courts and the legal system; it can enhance the trust of the parties and of the broader public.<sup>4</sup> According to Max Weber's famous definitions the "legitimacy" of a social order means a belief in its exemplariness and the "legitimacy" of a social order means a belief in its exemplariness and validity; a "legitimate rule" means that orders of an authority have to be obeyed even if their content is resented.<sup>5</sup> The eminent politician and judge Rudolf Wassermann viewed the legitimating function as supported even by those jurists who otherwise disregard lay judges.<sup>6</sup> In the past, empirical studies showed that citizens wanted courts to involve a lay element<sup>[11]</sup>.

Another example the system of lay judges in Sweden. Unlike a jury system, where laymen are selected from a cross-section of society, Swedish lay judges differentiate themselves with regards to age, gender, profession and income from the rest of the population .A poll in 2008 by the SOM Institute in Gothenberg revealed that 37% of Swedish people consider the competency of lay judges to be low .A poll in 2011 by Swedish state television revealed that 60% of the professional judges have no confidence in the lay judge system .The dangers of having lay judges from a xenophobic party (SD) deciding in court cases became a hotly discussed issue in September 2010. The debate came about after the Sweden Democrat party (SD) soared in the Swedish general elections. Asylum determination cases were cited as an example in which party bias could compromise the outcome of the trial. Christian Diesen, Lecturer in Procedural Law at Stockholm's University, said" :It is possible that the SD [Sweden Democrat party] lay judges can influence the atmosphere in court and eventually create a harsher climate, especially for immigrants. If this happens it won't be discernible in the reasoning of the court, but it will be visible through longer term statistics of legal decisions... with NY Democratic [New Democracy, an extreme right-wing party in the 1990s] one could see a pattern: their lay judges made more reservations than the other lay judges from other parties, and their dissenting opinion had to do with giving immigrants from outside Europe harsher sentences than the rest. They also wanted to combine the sentence with deportation to a greater degree than the other judges... There are good reasons to carefully monitor what happens with the SD (Sweden Democrat party) lay judges ".In 2008 a lay judge for the Moderate party, Cecilia Uggla, was forced to resign. She was judging at the Arboga murder trial. Uggla stated to the tabloid Expression that she believed that the person who was accused in the trial she was adjudicating was guilty, while the trial was still ongoing .In 2010 a lay judge for the district court in Örebro, Katrin Tensmyr, revealed to the magazine Misstänkt that she wasn't so much interested in the evidence produced in the proceedings as she was in studying the body language of the defendants. [12] In Norway, In the district courts of Norway, lay judges sit alongside professional judges in mixed courts in most cases.[13] In most cases, 2 lay judges sit alongside 1 professional judge. The court leader (Sorenskriver) may decree that a case have 3 lay judges sitting alongside 2 professional judges if its workload is particularly large or if there are other significant reasons.[14] Decisions are made by simple majority. Lay judges also serve during criminal cases in the appellate courts. For smaller

cases, the court is convened with three professional and four lay judges. If the crime carries a maximum sentence of six years imprisonment or more, the lay judges are replaced with a jury. The jury is chosen from the same list as the lay judges, meaning that lay judges in the appellate courts also serve as jurors. If the jury finds the defendant guilty, three of the jurors are selected at random to serve as lay judges during the sentencing. In the few cases there the professional judges overturn the jury's verdict, regardless of whether the original verdict was one of guilt or innocence, the case is re-tried with three professional judges and four lay judges.In the Supreme Court, there are no lay judges.Lay judges are not considered to be representative of the population About 75% of lay judges are nominated by the political parties in Norway<sup>[13]</sup> For the purpose of discussion on the issue, following are the findings of an earlier statistical survey on an existing situation in the field of public representatives in Israel, conducted by author of current article. The survey was conducted for the purpose of current article, regarding effectiveness of the functioning of pubic representatives in the Regional Court of Labor and Social Security. The survey was by a questionnaire of 48 questions (appendix No. 2), during December of 2014. The research population numbered 41 people, about 70% of those who have filled out the questionnaire are lawyers and 30% are managers in companies attending a session in the Regional Court for Labor and Social Security .Following are main findings of the survey:

The most obvious and dominant data in the survey is that compatibility test are to be conducted upon acceptance to duty of all the public representatives, while 73% on the respondents state a total agreement and 15% state low agreement.

- On the other hand, it was found that 49% of the questionnaire respondents think that there is a difficulty in public representatives to understand the legal proceeding and content of the subjects deliberated in the Court.
- A sweeping tendency was found by rate of 77% that justice can come to light in trials with public representatives .
- It was found that 46% of the respondents think from a low to complete agreement that the opinions of public representative affect the outcomes of a legal discussion, and that the legal proceeding in Labor Court is fair (34% can't decide.)
- There is a sweeping agreement of 78% that the public representatives are not dismissed from an obligation to some sort of decision.
- It was found to a level of 56% that participation of public representatives in trials socially reflects the "common sense" to a greater extent, than a trial with a professional judge alone.
- It was found that 46% of the respondents claim that they would rather personally be in a trial in which public representatives are involved, in a personal case as a "defendant" in any legal proceeding .
- It was found that should public representatives serve in criminal court there is no conclusive finding whether they will have difficulties or feel uncomfortable in determining guilt.
- It was found that public representatives will not have a tendency to acquit the defendant.
- It was found that the public representatives will fear making a decision due to fear of the defendant: 34% of

- the respondents tend to think there is fear amongst public representatives and 25% think they will fear completely.
- It was found that should public representative serve in a criminal court, they will almost tend to not convict innocents (39% agree totally, and 29% can't decide on the subject), and they will tend to respect the rights of casualties/victims to a little extent by rate of 39%, and to a complete extent by rate of 17%.
- A prominent finding is that 71% of the respondents claim that from little extent to completely, that it will not be easy to public representatives to judge other people, in a criminal court and that it will be hard for them to judge whether a person is guilty or not guilty.

More to be said: In the Labor Courts in Israel, some judges have positive attitude towards public representatives, however, others see them as redundant and unnecessary. And so, there is a deficiency in a legal proceeding since there is often room for interpretations, there is room for a choice between alternatives and there is even room for proposing alternatives. Every legal system needs social legitimacy. Without it, its rulings have no right to exist; without it only use of sheer force will guarantee social order. A modern society is not based on existence of a uniform and consolidated value system but rather on agreed-upon and acceptable system of rules .

Our recommendations in current article is to pass by legislation an application of a substantial change (structural and administrative) in general, in the role of public representatives or jurors in courts of law .

As an opening, it will be said right away that expertise in the aspect of the law in state courts and in international courts and tribunals should be saved for judges and the public representatives should be specialized in achieving the goals of Law, as reflectors of the atmosphere in society and social justice from the aspect of "reasonable justice" rather than the Law.

Therefore our unambiguous recommendation is to train public representatives to appear as judges for every matter also in criminal aspects of international courts and also in state courts and particularly in the anti-terrorism trials as it happens in non-democratic states like Russia and China and in democratic European countries and the USA. The public representatives or the jury should be freer than a judge from Evidence Law and different precedents that encumber a proceeding, and to represent more moral aspect in the direction of justice rather than the Law<sup>[15]</sup>.

### **The Epilogue**

In the Global Terrorism Strategy and Plan of Action, States must make every effort to develop and maintain an effective and rule of law-based of national criminal justice system that can ensure, in planning, or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms after terrorist suspect has arrested, charged, detained and prosecuted. Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective, respect the rule of law and are seen to be fair. On the other hand, Human rights are not a stage for national destruction; they cannot justify undermining national security in every case and in all

circumstances. Similarly, a constitution is not a prescription for national suicide. But on the other hand, we must not consider the values and principles relating to human dignity and freedom.

### **Conclusion**

Current article should turn on a red flashing light in towards Law Authorities in Israel and in the world, as they sit before judging defendants in terrorism attacks.

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