

Helsinki District Court	Judgement Delivered in office	19/100801
Div. 4	10/01/2019	Case number R 18/6593
Chairperson	[...], Lawspeaker	
Additional members	[...], District Court Judge	
	[...], District Court Judge	
Prosecutor	[...], District Prosecutor	
Defendant	[...]	
Case	War crime	
Instituted	27/07/2018	

Sentence demanded by the prosecutor

War crime 2400/R/0000134/17 (Chapter 11, Section 5 of the Penal Code of Finland)

Rome Statute (SopS 56/2002), Article 8,

01/03/2015 - 11/03/2015 – International

[The defendant] has committed, in the course of an armed civil conflict, an act that is defined as a war crime under Article 8 of the Rome Statute of the International Criminal Court (SopS 56/2002).

Between 2003-2015, [The defendant] served in the 3rd Company of the 1st Battalion of the 24th Brigade (Muthanna) of the Iraq Army, during which time he participated in (inter alia) military actions against the terrorist group called ISIS/ISIL in Iraq.

In March 2015, the Iraq Army initiated a military operation against ISIS / ISIL in the province of Anbar, in the region of the city of Karma.

During the period of 1/3 - 11/3/2015, in the region of the city of Karma, [The defendant] cut off the head of a dead ISIS /ISIL fighter, [The victim], who had been indicated to him while lying on the ground, with a knife, and dangled the severed head in his hands. Thereafter, [The defendant] displayed the "victory" sign with his hands while another person held the severed head in his hands in front of [The defendant].

[The defendant]'s companions in the fight captured the event on video.

Following this action, on 28/4/2015, [The defendant] uploaded, or allowed another party to upload, the head-severing video along with images in which he poses with burning or burnt soldiers' bodies, to the public Arabic-language Facebook profile of [The defendant].

Additionally, on 30/4/2015, [The defendant] uploaded, or allowed another party to upload, a video with images of [The defendant] posing with burning or burnt soldiers' bodies, to another of his Arabic-language Facebook profiles, this one with the name of [...].

The images and video could potentially have been viewed, freely, by over a billion Facebook users. The object of the actions, [The victim], was recognisable on the basis of the images and video.

In acting the way he did, [The defendant] treated the videotaped and photographed people in an inhumane and defamatory manner, and offended their honour.

[The defendant]'s actions are declared punishable by Article 8, Paragraph 2, Item b, Sub-item xxi, and Article 8, Paragraph 2, Item c, Sub-item ii of the Rome Statute of the International Criminal Court.

Other demands of the prosecutor

Compensation for the costs of presenting evidence in item 1 of the charge

[The defendant] must be obligated to compensate for the costs of presenting evidence.

Criminal Procedure Act, Chapter 9, Section 1

Response

[The defendant] has moved that the charge of war crimes be dismissed. Regardless, the action that is at issue here was, at most, a minor war crime [lievä sotarikos] as specified in Chapter 11, Section 7 of the Finnish Penal Code, which does not constitute an international crime under the Penal Code's definition.

As stated in the prosecution's charge, [The defendant] served as a corporal in the 3rd Company of the 1st Battalion of the 24th Brigade of the Iraq Army, and participated in military actions against the ISIS terrorist group in Iraq. In March 2015, the Iraq Army initiated a military operation against ISIS in the region of the city of Karma, in the Anbar province.

[The defendant] did not upload the photographs, or either of the videos referred to in the charge, to his Facebook profile; nor did he allow another party to upload them there. [The defendant] did not know who uploaded the images or videos. He did not have his phone on his person while in the area of the military operation.

[The defendant] did, in the manner described in the charge, and in the manner apparent from the material uploaded on 28/4/2015, sever the head of a dead fighter with a knife, dangle the head in his hands, and thereafter display the "victory" sign with his hands while another person held the head in his own hands in front of him ([The defendant]). [The defendant]'s companions in the fighting captured this incident on video. The fighter [The victim] was recognisable from the video by persons who had known him, but not easily. [The defendant]'s actions offended the honour of [The victim].

The latter video, uploaded on 30/4/2015, did not contain material that fulfils the distinguishing criteria for a war crime. Neither [The defendant], nor his unit, burned the bodies: the bodies were of ISIS fighters that died in air bombings. Posing in the video in front of a burning body was not a crime. The bodies were unidentifiable, and nothing had been done to them.

[The defendant] did not act in a defamatory manner, and did not offend the honour of the deceased whose bodies were in the video.

Both videos were uploaded to his personal Facebook profile. The videos were not freely viewable by the general public, but could only be viewed by Facebook friends. With the exception of [The victim], [The defendant] did not treat anyone who was videotaped or photographed in an inhumane or defamatory manner, or offend their honour. The measures used by ISIS had been cruel. As a soldier, [The defendant] had witnessed all the destruction, losses and fear that ISIS had caused. In Iraq, the severing of an enemy's head was a common practice, and a display of heroism.

[The defendant] considered his actions to be normal. The video uploaded on 28/4/2015 was made, and presented, in a positive vein. The severing of the head took place in circumstances where [The defendant] knew that four people close to him had been kidnapped by ISIS.

ISIS had cut off their heads. [The defendant] cut off the head of a dead person who committed these actions due to an impulse of the moment, and in a surge of emotion, encouraged by his army companions.

[The victim] had himself been a terrorist, and committed far more serious acts. [The defendant] did not cause anyone suffering, pain or injury with his actions. Considered as a whole, and taking into account the circumstances of the moment, his actions were of a minor nature.

The crime was not committed in Finland. A minor war crime is not an international crime for which the prosecutor would have a cause of action.

Presentation of evidence

Witnesses

1. The defendant, [The defendant], in the capacity of a witness
2. [The expert], doctorate in military science, serving as an expert

Written evidence

1. Video uploaded on 28/4/2015 to the Facebook account used by [The defendant], showing the head being severed, and including other images mentioned in the description of the acts committed (Pretrial Investigation Log, Appendix 1, separate floppy disk)
 - 1b. Photo appendix regarding the video of Exhibit 1 (Pretrial Investigation Log, pp. 36-48)
2. Memory video uploaded on 30/4/2015 to another Facebook account used by [The defendant], containing images mentioned in the description of the acts committed (Pretrial Investigation Log, Appendix 3, separate floppy disk)
 - 2b. Photo appendix regarding the video of Exhibit 2 (Pretrial Investigation Log, pp. 49-56)

On the basis of Section 9, Paragraph 1, Item 3 of the Act on the Openness of Legal Proceedings, Exhibits 1, 1b, 2 and 2b are to be kept confidential for 25 years after the date the case was first instituted, 27/7/2018, unless there has been an order to the contrary before that.

3. Device search report (Pretrial Investigation Log, pp. 72-85)

Expert statements

The charge does not establish whether the videos were potentially freely viewable to over one billion Facebook users.

Imputation

1. Statement of the Finnish Immigration Service on the actions of the 24th Brigade (Pretrial Investigation Log, pp. 88-106)

2. THL's statement regarding the circumstances at the time of the actions (Pretrial Investigation Log, pp. 107-110)

During the course of a civil conflict in Iraq, [The defendant] committed a war crime, for which the prosecution has demanded to be penalised, by uploading the videos referred to in the charge, or allowing another party to upload them, to one of his Arabic-language Facebook profiles on 28/4/2015 and 30/4/2015, in such a way that the videos were potentially viewable to 100-200 Facebook users.

Grounds for judgement

Statutory background and framing of the issue

According to Chapter 1, Section 7, Paragraph 1 of the Penal Code of Finland, the law of Finland is to be applied to crimes committed outside Finland the punishment of which, regardless of the laws of the location where the act took place, is based on an international treaty that is binding upon Finland, or another statute or ordinance that is internationally binding upon Finland (international crimes).

According to Section 1, Paragraph 1, Item 2 of the Decree on the application of Chapter 1, Section 7 of the Finnish Penal Code, when Chapter 1, Section 7 of the Finnish Penal Code is applied, international crimes include, inter alia, war crimes as referred to in Article 8 of the International Criminal Court's Rome Statute.

In addition to acts that are expressly identified in Chapter 11, Section 5 of the Finnish Penal Code, a party may be sentenced for a war crime on the basis of the aforementioned Section 2 if that party, in the context of a war or other armed international or civil conflict, commits any other act defined as a war crime in Article 8 of the Rome Statute of the International Criminal Court, or in any other way breaches ordinances of an international treaty that is binding upon Finland regarding war, armed confrontation, or occupation, or generally recognised, established war-related laws and customs based on international law.

According to Chapter 11, Section 7 of the Finnish Penal Code, if a war crime, taken as a whole, with the consequences caused and other facts related to the crime taken into account, is of a minor nature, then the party that committed the act is to be sentenced for minor war crimes.

According to Section 1 of the Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court (1284/2000), the ordinances that fall within the scope of the legislation of the International Criminal Court's Rome Statute, instituted in Rome on 17/7/1998, are in effect, as law, in the form in which Finland has committed to them.

In the main hearing, the prosecutor clarified the charge, stating that in this case, an armed civil conflict was taking place in Iraq at the time of the act in question.

According to Article 8, Paragraph 2, Item c) of the Rome Statute of the International Criminal Court, with respect to armed civil confrontations, the term "war crime" refers, inter alia, to serious offences included in the mutual Article 3 of the four Geneva Conventions of 12/8/1949 -- i.e., to any of the acts listed in further detail in the aforesaid Item, when these acts are committed against persons that are not actively participating in the hostilities, including members of the armed forces that have lowered their weapons or that have become incapacitated for conflict due to illness, injury, imprisonment, or other reasons. Said acts include, inter alia, crimes against a person's honour that are referred to in sub-item ii) of the Item, particularly inhumane and defamatory treatment.

What must be evaluated in the case is, first, whether the actions apparent in the videos constitute a crime against a person's honour, particularly inhumane or defamatory treatment, and whether the action is of a minor nature when taken as a whole. Additionally, it must be resolved whether [The defendant] himself uploaded the videos and photographs to his own Facebook profile, or allowed another person to upload them there.

In accordance with Article 9, Paragraph 1 of the Rome Statute of the International Criminal Court, the court shall use the interpretation guidelines for the definitions of crimes to assist in the interpretation and application of Articles 6-8. According to the *travaux préparatoires* that led to the enactment of Chapter 11, Section 5 of the Finnish Penal Code (HE 55/2007 vp p.26), there is reason to take the aforementioned interpretation guidelines into account when applying the Finnish Penal Code's criteria for identifying war crimes.

According to the interpretation guidelines for the definitions of crimes included in the Rome Statute of the International Criminal Court, the identifying characteristics of a crime against a person's honour that is regarded as a war crime in Article 8, Paragraph 2, Item c), Sub-item ii) of the Statute include, inter alia, that the seriousness of the inhumane or defamatory treatment, or other offence, that it could generally be regarded as offending a person's honour. According to the interpretation guidelines, the crime-identifying features of Item c), Sub-item ii) also include that the person(s) in question either lacked the capacity to fight, or were civilians, medical personnel, or personnel doing religion-related work, and that they were not actively participating in the hostilities. According to the interpretation guidelines, it is not required for the victim to have been personally aware of the inhumane or defamatory treatment, or other offence of his/her honour. In the interpretation guidelines, aspects related to the victim's cultural background are taken into account. Additionally, the interpretation guidelines state that "persons" in the Statute may also refer, in this context, to deceased persons.

According to the *travaux préparatoires* of Chapter 11, Section 5 of the Finnish Penal Code (HE 55/2007 vp p.30), the types of war crime referred to in Paragraph 2 include the following, inter alia, in international law: killing or wounding a person who lacks the capacity to fight; deceitful killing or

wounding; taking persons as prisoners of war through deceitful means; destruction or seizure of an enemy's property not justified by military necessity; types of war crimes that involve offence against a person's honour, such as inhumane or defamatory treatment; and punishment and execution without due legal process. If an action, taken as a whole, is to be regarded as minor, then the category of minor war crime becomes applicable.

With respect to minor war crimes, it is stated in the *travaux préparatoires* (pp. 31-32) that the meaning of this legal provision is that minor breaches of international treaties, or generally recognised, established war-related laws and customs based on international law, regarding war, armed confrontations, or occupation are not meant to be punished as war crimes. However, international conventions also include certain obligations that are almost indicative in nature, the breach of which does not bring significant consequences. According to the aforementioned *travaux préparatoires*, when evaluating whether an act is of a minor nature, the consequences that have been caused should be taken into account above all. "Consequence" means not only damage, but also bodily or mental suffering, pain, handicaps or similar. If an action has resulted in suffering, then there is reason to regard it as generally more serious than one that only causes damage. As to what damage should be considered minor, this should be assessed in proper proportion to the circumstances of the war, armed confrontation or occupation in question. According to the *travaux préparatoires* in question, the line between a war crime and a minor war crime is ultimately to be drawn through an overall assessment of all criteria. In the drawing of the line, other facts besides the consequence(s) caused are to be taken into account.

Investigation presented, and the legal evaluation thereof in this case

It is undisputed in this case that, during the years 2003-2015, [The defendant], as stated in the charge, served in the Iraq Army as first soldier, i.e. corporal, and was thus a rank-and-file soldier, and that he participated in military operations against ISIS and others in Iraq during this time. It is also undisputed that, in March 2015, the Iraq Army initiated the military operation in the Karma region, in which [The defendant]'s unit was involved, that is referred to in the charge. According to his own account, he did not participate in the fighting at that time as he was involved in communications tasks.

Both the statement by the Finnish Immigration Service and [The expert]'s report, show that the armed conflict referred to in the charge was taking place in Iraq at the time of the actions in question. In this respect, [The defendant]'s account is congruent with the aforementioned statement and [The expert]'s report. On the basis of the statement by the Finnish Immigration Service and [The expert]'s report, one can confirm that there was an armed civil conflict underway as referred to in Article 8 of the Rome Statute of the International Criminal Court, and that fighters from outside Iraq were also participating in this conflict, in the manner apparent from [The expert]'s report.

The video uploaded on 28/4/2015 to [The defendant]'s Arabic-language Facebook profile shows that [The defendant] severed the head of ISIS fighter [The victim] with a knife and dangled it in his hands. [The defendant]'s account, and the supporting statement by the National Institute for Health and Welfare (THL), dated 16/6/2017, along with the criteria indicated therein, show that [The victim] was already dead at the time his head was cut off. It is apparent from the video that [The defendant] displayed the "victory" sign with his hand while another person held the severed head in front of him. The video also includes excerpts of [The defendant] and other persons standing near a group of burning bodies. The video and photographs could be seen on the profile at least until 26/6/2015, at

which time the last comments (as displayed in Exhibit 1) were written on it. The comments show that numerous persons saw the video, and commented on it supportively and encouragingly.

A video was also uploaded to [The defendant]'s Facebook profile on 30/4/2015 that depicts [The defendant] together with his fellow soldiers. The initial part of the video depicts the group with weapons and equipment in various different situations, where they display "victory" signs. The remainder of the video depicts [The defendant] in front of the burning bodies that can also be seen in the first video. He is displaying the "victory" sign. The video ends with images of [The defendant].

[The defendant] has admitted to the actions shown in the video. He has stated that when he severed the head, he was acting according to a surge of emotion in the situation. He did not view himself as committing a crime. In March 2015, he was serving as a signaller in the Iraq Army. At the time, ISIS had declared that it had captured four of his army companions, and demanded ransom payments. These demands were refused. [The defendant] then received a notification of the death of the four captured persons, and the location of their bodies. According to the information that [The defendant] received, they had been decapitated, and their bodies had been mined. This shocked him. The battalion's commander then asked him to bring some materials to the front. Upon arriving at the site, he unexpectedly saw the body of [The victim], who had been reported to be the killer of his four army companions, and he acted quickly. As he understood it, [The victim] had been among a group of suicide bombers that had been stopped by the Iraq Army. He has been unable to explain the reason for his actions seen in the video.

[The defendant] has stated that the battalion had a media unit, which was responsible for recording the videos. He did not know who did the taping, or who edited the videos. Nor did he know who uploaded the videos to his Facebook profile.

He had not asked anyone to upload them there. In any event, bringing smartphones to the front was prohibited, and he did not have one with him during the situation shown in the videos. The soldiers were not permitted to disseminate images or videos. The images were given to them as a memento while they were on leave. [The defendant] heard from his father about the first video on Facebook, but he did not remember the date of the phone conversation. He called his superior officer about the matter, after which he removed the video from Facebook. He suspected that a certain other soldier, who wanted to damage him with the video, uploaded it to Facebook for that reason.

[The defendant] stated that the publishing of videos like this, both by the army and by ISIS, was common. From the army's perspective, it was about encouraging the people, so that both the army and the people would persevere. Similar, and much crueller images or videos could be seen in the news and on social media. Because of the sensitive material, efforts had been made to obscure people's faces. [The defendant] stated that the videos had only been visible to his (roughly) 100-200 Facebook friends. The Facebook account was not public.

The District Court finds that the wording used in Article 8, Paragraph 2, Item c), Sub-item ii) of the Rome Statute of the International Criminal Court -- "members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause" -- and the express statement of the interpretation guidelines for the definitions of the Statute's crimes, concerning applicability to those who are hors de combat, demonstrate that, in the context of honour-offending war crimes, a "person" can also refer to deceased persons. [The victim]'s identity can be

recognised from the video uploaded on 28/4/2015 to [The defendant]'s Facebook profile, and from the photographs stored in the profile. The District Court finds that the actions of [The defendant] to sever the head of [The victim] that are depicted therein already constitute, by themselves, defamatory treatment as referred to in the Statute. Additionally, the actions of posing in the image with the severed head, posing near a burning body in two separate images, and the publication of the video on social media are, when taken as a whole, a demonstration of inhumane and defamatory treatment as referred to in Article 8, Paragraph 2, Item c), Sub-item ii) of the Rome Statute.

The District Court finds that the video uploaded on 30/4/2015 to [The defendant]'s Facebook profile, assembled from the situation described above, and removed from the profile on 26/6/2015, depicts [The defendant] and his army companions in battle gear, and also more freely dressed. However, the video has a section in which [The defendant] is depicted standing by a group of burning bodies. The bodies are not recognisable to an outside viewer. Hasan stated that the videos and images were taken after the fighting actions had ended. The District Court finds that the publication of a video filmed in the aforementioned circumstances serves to demonstrate defamatory treatment as referred to in Article 8, Paragraph 2, Item c), Sub-item ii) of the Rome Statute.

The report of the expert, [The expert], shows that ISIS powerfully utilised social media to communicate propaganda over the course of the Iraq conflict. His report shows that individual soldiers in the Iraq Army, or soldiers who have served in the Ministry of the Interior's units, have similarly disseminated images showing prisoners of war, or corpses, being treated in certain ways. [The expert] expressed his understanding that peer pressure, or encouragement within small groups, has pushed soldiers in the direction of committing acts depicted in the disseminated images. The dissemination of the material is regarded as justified, and it is met with "likes" on social media. He is not aware of any army commanders encouraging the dissemination of this material.

The videos referred to in the charge were uploaded to [The defendant]'s personal Facebook account. The content of the videos depicts him and confers heroism specifically on him. It is well known that social media accounts are protected by user IDs and passwords. Thus, [The defendant]'s claim that some other soldier signed in, both times, to his personal account in order to upload the material, is not credible in view of the videos' content. It is also apparent from the video uploaded on 30/4/2015 that two of the soldiers appearing therein have ordinary smartphones in their hands. [The defendant]'s claim about phones being left at the base camp is therefore not entirely credible. [The expert], stated that he has not heard of any mutilation or execution videos being published by an army unit, or another official account -- rather, this has been done by individual soldiers. The aforesaid viewpoint, and the viewpoint of his report regarding the role of videos as a sign of heroism, support the view that the person who published the material is either the person appearing in the video, or another person he knows who has access to his profile. After evaluating the evidence in its entirety, the District Court does not find it credible that the aforesaid material could have been published on [The defendant]'s profile without him knowing about it. The conclusion is further supported by the fact that the material uploaded on 28/4/2015 was viewable up until the end of June. The District Court finds that [The defendant] either uploaded the material himself or allowed someone else to do so. On the basis of a report of the number of [The defendant]'s Facebook friends, the video and photographs were disseminated to a large group of people. However, it has not been demonstrated that [The defendant]'s Facebook profile was public in the sense that all users of Facebook could see it.

The District Court finds that the actions committed by [The defendant] -- the severing of the dead fighter's head, taking images and video of this action, and uploading, or allowing the uploading, of both the videos referred to in the charge, along with the photographs, to the Facebook profile -- constitute, in view of the content that was published and the actions as a whole, a general offence against a person's honour. It shows retaliatory actions and a pursuit of heroism. The publication of the material has led to the dishonour of the memory of a recognisable dead individual, and to the suffering of the individual's relatives. In turn, the burning of unrecognisable bodies degrades the human value of the dead. As [The defendant]'s behaviour was of an active nature, including the severing of a person's head, the action is not, when taken as a whole, to be considered minor in nature.

At the time, [The defendant] had served for many years as a soldier in the Iraq Army, so the situation would not have been unforeseeable or surprising to him. The assessment made by the report of [the expert], that in view of the cultural context, and the cruelty of the acts perpetrated by ISIS on the local population, people in the region have commonly been driven to commit reciprocal acts of force, does not constitute grounds for regarding inhumane, human-value-degrading treatment as acceptable, and thus as a factor that would preclude deliberateness in this case. Nor does the District Court find that any of the criteria for exemption from liability referred to in Chapter 4 of the Finnish Penal Code are present in this case.

On the above grounds, the District Court finds that the charge of a war crime has been proven true in this case.

Sentence

Under Chapter 6, Section 4 of the Finnish Penal Code, a sentence must be measured out in fair proportion to the degree of damage and danger caused by the crime in question, the motives of the criminal act(s), and the guilt of any other parties in the crime.

In regards to war crimes, the legally-prescribed penalty scale includes at least one year of imprisonment, or life imprisonment. Of the different degrees of criminal acts that, in the manner of their commission, cover the broad scope of war crime, the crime imputed to [The defendant] falls among those that, in their objectionability, are at the low end of the penal scale. In their evaluation of the objectionability of the crime, the District Court takes into account the fact that the behaviour imputed to [The defendant] includes not only the publication of videos, but also active actions on his part. The aforementioned actions show a degree of dishonour and disrespect for human value that is greater than that of the mere act of publication. The District Court is of the view that a fair and reasonable sentence for the acts imputed to [The defendant] is one year and six months of imprisonment.

[The defendant] has not previously been sentenced for a crime. The seriousness of the crime, the guilt of the perpetrator or the perpetrator's prior criminality, do not require to be sentenced to unconditional incarceration. Therefore, the sentence will be made conditional on the basis of Chapter 6, Section 9 of the Finnish Penal Code.

Remuneration of assistants

[The defendant] is receiving legal aid, without a self-paid portion due to the state. The assistant's remuneration is based on 17.75 hours of work, plus the hours corresponding to the duration of the main hearing, and also costs consisting of interpreter fees and travel expenses. This remuneration claim is reasonable, so it will be paid, accounting for the accompanying costs, in the amount requested.

Operative part of the judgement

The District Court has decided this case unanimously, in the manner indicated in the operative part of the judgement.

Helsinki District Court Div. 4

Operative part of the judgement

10/01/2019

19/100801

Case number R 18/6593

Defendant

[The defendant], 240377-279S

Crime imputed

War crime 01/03/2015 - 11/03/2015 Finnish Penal Code, Chapter 11, Section 5

Statute of Rome (SopS 56/2002), Article 8

Sentences Imprisonment

Crimes imputed: 1

1 year and 6 months of imprisonment

Period of deprivation of freedom: 27-30/6/2017

This imprisonment sentence is conditional.

The period of probation will end on 10/1/2021

A conditional sentence can be ordered to be served in full if, during the period of probation, the person who was sentenced commits a crime for which he/she is sentenced to unconditional imprisonment, and for which he/she is charged within one year of the end of the probation period.

Compensation obligation

[The defendant]'s legal assistant, shall be paid from the State's funds in the amount of EUR 2,447.50 (remuneration), EUR 238.22 (reimbursement of expenses), and EUR 644.57 in VAT, for a total of EUR 3,330.29.

Appeal

A change to this ruling may be petitioned by filing an appeal with a court of appeal, or through an advance-decision appeal to the Supreme Court.

Finality

This judgement is not final.

Signature

[...], Lawspeaker