

**DECISION APPEALED AGAINST**

Örebro District Court judgment of 19 February 2019 in case no B 1662-18 and B 6072-18, see Annex A

**PARTIES (number of accused 1)**

**Respondent (public prosecutor)**

District prosecutors [...] and [...]  
The Swedish Prosecution Authority  
The National Unit against Organised Crime

**Appellant (accused)**

[...], Iraqi national

Legal representative and court-appointed defence counsel: [...], attorney

**IN THE MATTER OF**

War crimes etc.

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**RULING OF THE COURT OF APPEAL**

The court of appeal changes the length of the sentence to one year, but otherwise upholds the ruling of the district court.

The district court's decision on seizure is upheld.

The district court's decision on secrecy is upheld. The court of appeal rules that the same secrecy conditions will continue to apply to information that has also been submitted to the court of appeal in the part of the main proceedings held in closed session.

[The defence counsel] will be paid SEK 54,544 by the State. This amount comprises SEK 21,735 for work, SEK 13,915 for time, SEK 7,985 for expenses and SEK 10,909 VAT.

The State will bear the costs of the defence in the court of appeal.

**FORM OF ORDER SOUGHT IN THE COURT OF APPEAL**

[The Appellant/accused] asks the court of appeal to acquit him fully, to dismiss the claim for confiscation and to declare the seizure null and void or, in the alternative, to impose a lighter prison sentence or reduce the penalty.

The prosecution opposes any change to the district court's judgment.

**STATEMENT OF REASONS OF THE COURT OF APPEAL**

The written and oral evidence produced in the district court has also been produced in the court of appeal. Audio and visual material or, where applicable, audio material only, was produced in the district court hearing. The court of appeal also held additional hearings with [the Appellant/accused].

The court of appeal endorses the district court's assessment with regard to the charge of *war crimes*; namely that, in February to March 2015, [the Appellant/accused] carried out the actions described in the description of the offences in the area around the villages of Al-Wahda, Saad and Kahlid in the Daquq district of the province of Kirkuk in Iraq. The description states that, on four occasions during this period and in this area, he consciously posed, and allowed himself to be photographed or filmed, with four persons; in one instance his foot was placed on the body of one of them. In the light of the evidence provided by the photographs, the film and, partly, the accused's own account, there is no further reason to doubt that he acted in the manner described, together, and in agreement, with one or more other persons; that these other persons acted on their own account, as stated in the description of the offences; and that he was aware of what he was doing when he posed and allowed himself to be photographed or filmed. The photographs and film also show that all of the four persons with whom [the Appellant/accused] allowed himself to be photographed or filmed had been incapacitated by wounding, or were dead, or were civilians, and that two of their bodies had been mutilated, which he must also have known when he posed and had photographs taken with them.

The district court argued that all of the four persons with whom [the Appellant/accused] posed and allowed himself to be photographed or filmed, were wounded persons within the meaning of section 3 of the Genocide, Crimes against Humanity and War Crimes (Criminal Responsibility) Act (2014:406), although nothing was clear beyond the fact that all four were dead. The court of appeal also endorses the district court's assessment that his actions were part of, or were otherwise connected with, a non-international armed conflict, in the district of Daquq in the province of Kirkuk in Iraq, between the State of Iraq and Islamic State (IS)/Daesh, which he supported. The next question is therefore whether, by acting in the way that he did, [the Appellant/accused] knowingly subjected the wounded persons to humiliating or degrading treatment constituting a serious violation of their dignity. This question should be considered in the light of the context within which he acted and the fact that there is no requirement in any particular case for persons subjected to humiliating or degrading treatment to be injured or to be aware that they are being humiliated (see case RH 2017:59 and bill 2013/14:146, p. 268).

With regard to the cases listed in sub-paragraph 5, points 1, 2 and 4 of the description of the offences, there is no evidence to explain how the wounded persons were treated before [the Appellant/accused] posed and allowed himself to be photographed with them. However, from his own account, it appears that the aim of photographing or filming was to obtain material that could be used to affect the morale of the opposing side in the non-international armed conflict. These three cases concerned wounded persons either with his foot placed on the body, with a mutilated body, or with a mutilated body and someone else's foot placed on it. As the district court found, the circumstances of each of the three cases were such that, by acting as he did, he consciously subjected a wounded person to humiliating or degrading treatment constituting a serious violation of that person's dignity. In the case referred to in sub-paragraph five, point 3 of the description of the offences, the wounded person's body was neither mutilated nor did he, or anyone else, have their foot placed on it. However, the film shows that the wounded person had been hit with the barrel of a gun and had been mocked and kicked by other people immediately before [the Appellant/accused], who was complicit in what was happening, posed and allowed himself to be photographed and filmed with the person. As the district court found, in this case also, the circumstances were such that, by acting as he did, the accused

consciously subjected a wounded person to humiliating or degrading treatment constituting a serious violation of that person's dignity.

[The Appellant/accused] argues that, notwithstanding the court of appeal's findings with regard to his actions, he should not be held criminally responsible because he was ordered by a superior to take part in the photographing and filming, and was forced to follow the order. However, as the district court argued, this part of his objection to the charge can also be disregarded. Furthermore, in the court of appeal's opinion, the nature of [the Appellant/accused]'s conduct is such that he cannot avoid criminal responsibility on the grounds that he was following orders (see Chapter 21, section 5 of the Code of Criminal Procedure; cf. a. bill, p. 63). Finally, the prosecution stated in the main proceedings in the court of appeal that the charge in sub-paragraph 7 of the description of the offences does not constitute a separate criminal offence; that it is unclear when the material was published; and that the offences outlined in the charge are only an aggravating factor to be taken into account for sentencing. The court of appeal therefore makes the same basic assessment of the evidence in this part of the description of the offences as the district court.

The offences referred to above correspond closely to the description of offences for war crimes. [The Appellant/accused] must therefore be sentenced for war crimes.

In the light of the court of appeal's findings on the charge of *driving without a licence (a serious criminal offence)* and *the use of false documents*, the district court's assessment must stand. The descriptions of these crimes have been confirmed. [The Appellant/accused] must therefore also be sentenced for driving without a licence, in a manner regarded as a serious criminal offence, and using false documents.

The part relating to war crimes is crucial for determining an aggregate sentence for the offences. The penalty for war crimes is a custodial sentence of up to six years. However, this crime includes a mixture of different offences with widely varying sentences. In this case, [the Appellant/accused] is convicted of having subjected the bodies of four persons to humiliating and degrading treatment constituting a serious violation of their dignity; however he is not convicted of having moved or injured them. The case-law for war crimes against bodies committed abroad is sparse. If he had committed a similar crime

in Sweden in peacetime, he would have been convicted of the desecration of human remains; the penalties for this range from fines to a maximum of two years' imprisonment. In view of this, the court of appeal finds that the aggregate sentence for the offences is one year's imprisonment. The result of the investigation into the publication of the images themselves cannot be regarded as an aggravating circumstance. According to the charge, the accused published or arranged the publication of images at an unknown time, but not until after the period during which the war crimes were committed. What happened then is essentially irrelevant to the sentence, although his subsequent conduct is evidence which should be taken into account when examining the question of his guilt (cf. Code of Criminal Procedure, and commentary, BrB 29:1 p. 12 et seq).

Having regard to the high level of the sentence, and taking account of the findings about [the Appellant/accused]'s personal circumstances, a custodial sentence must be imposed. When considering the length of the sentence, there are no circumstances that would justify waiving it. The fact that he allegedly deleted some images of war crimes subsequently is irrelevant. When taken as a whole, the arguments set out above indicate that the penalty must be reduced to one year's imprisonment.

There is no reason to dismiss the decisions of the district court otherwise.

The penalty is therefore reduced to one year's imprisonment; the ruling of the district court is otherwise upheld.

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**HOW TO APPEAL**, see Annex B

The deadline for lodging an appeal is 22 October 2019.

The decision was made by senior appeal court judge [...], appeal court judge [...] (rapporteur), temporary associate appeal court judge [...] and lay judges [...] and [...].

**The decision of the court of appeal is unanimous.**

**A STATEMENT OF TIME IN DETENTION TO BE TAKEN INTO ACCOUNT**  
can be found in the court of appeal's file.

Division 3

PARTIES (number of accused: 1)

**The** **accused**  
 [...]Iraqi national

Court-appointed lawyer:  
 [...] attorney

**Prosecution**

District prosecutors [...] and [...] Authority  
 The Swedish Prosecution  
 The National Unit against Organised Crime  
 101 21 Stockholm

**RULING****The accused is convicted of:**

1. Use of false documents, Chapter 14 section 1 and section 10 of the Code of Criminal Procedure  
13.2.2018
2. Driving without a licence, serious crime, section 3 sub-section 1, sentence 2 of the Traffic Offences Act (1951:649)  
13.2.2018
3. War crimes, section 4, sub-section 1(7) and sub-section 2 of the Genocide, Crimes against Humanity and War Crimes (Penalties) Act (2014:406)  
1.2.2015 – 31.3.2015

**Penalty****etc.**

Imprisonment of 1 year and 3 months

**Confiscation and seizure**

1. The forged driving licence seized and the translation of that licence are hereby confiscated. The seizure will continue. (The Swedish Police Authority).
2. The files and USB stick seized are hereby confiscated. The seizure will continue (The Swedish Police Authority National Operations Department).

**Secrecy**

The secrecy provisions of Chapter 21 section 1 of the Public Access to Information and Secrecy Act (2009:400) will continue to apply to the photographs containing non-blurred images, for example of deceased persons, produced in the proceedings held in closed session.

Victims' fund

The accused is ordered to pay SEK 800 under the Victims' Funds Act (1994:419).

### Remuneration

1. [The defence counsel] will be paid SEK 66,693 out of public funds. This amount comprises SEK 30,935 for work, SEK 8,855 for time, SEK 13,564 for expenses and SEK 13,339 VAT.
2. The State will bear the costs of the defence.

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### FORM OF ORDER SOUGHT ETC.

The prosecution seeks the conviction of [the Appellant/accused] for *war crimes* as specified in the description of the offences attached to the judgment as Annex 1 and for *driving without a licence, a serious criminal offence, and use of false documents*, as specified in the descriptions of the offences attached to the judgment as Annex 2.

### STATEMENT OF VIEWS

#### *War crimes, Annex 1 to the judgment*

[The Appellant/accused], who admits that he is the person in photographs 1–4, denies the offences. He contests the assertion that posing in the photographs in paragraphs 1–3 is a crime and argues that he did not handle or otherwise have anything to do with the bodies, either before, during or after posing and that, in any case, his intention was never to humiliate the deceased. He contests the assertion that it is a person lying on the ground in photograph no 4 and argues that it is therefore not a wounded person. If the district court finds that it is a wounded person, he contests the assertion that posing is a crime and argues that he did not handle or otherwise have anything to do with the body, either before, during or after posing and that, in any case, his intention was never to humiliate the deceased. He also contests the assertion that publication is a crime and that he spat on or made offensive comments to the deceased.

[The Appellant/accused] contests the individual claims.

#### *Driving without a licence etc., Annex 2 to the judgement*



[The Appellant/accused] denies the offences and contests the plea.

## EVIDENCE SUBMITTED TO THE COURT

### *War crimes, Annex 1 to the judgment*

[The Appellant/accused] has been questioned about the charge. At the prosecution's request, witness interviews have been conducted with the civil investigator [...] and with [...], professor of Islamic theology and philosophy. The prosecution has submitted the written evidence referred to in the document instituting the proceedings (Annex 1 to the judgment). The prosecution has also submitted three reports from the UNAMI (United Nations Assistance Mission in Iraq) Human Rights Office.

When questioned in more detail about the charge, [the Appellant/accused] replied as follows.

The pictures shown by the prosecution are genuine. It is not unusual for pictures to be taken in that situation. There was a war in Iraq, and one of the sides in the conflict was Islamic State. If people did not follow the IS interpretation of Islam, they could be beheaded or killed in another way. He was one of many who were part of the Iraqi army and the Peshmerga forces. He was an ordinary member of the rank and file and did not have the rank of an officer. In the case in question, IS had control of the villages of Al-Wahda, Saeed and Khalid outside Kirkuk in Iraq. When IS first took over the area, he was near Jalula. The air force helped in the early stages of the battle and the ground forces then went in and freed the people who were still there. He was carrying a Kalashnikov, but he did not need to fire a single shot. The forces involved were roughly 2,000–3,000 strong. Picture 32 was taken before the start of the air attack. Picture 40 does not show [the Appellant/accused] but another commander and the picture was taken after the air attack. Many international TV stations were in the area reporting on the battle, but he was never interviewed. The pictures he gave to the Swedish Migration Agency were evidence to support his asylum application. The pictures were probably taken by comrades, but he does not remember clearly. He does not know what was on the USB stick; the pictures may have been deleted and other data may have been stored on it. The

pictures were taken to be deposited with an authority. In Iraq, if you are ordered to do something by a commander, there is no question of refusing. He was ordered to pose for the pictures. The picture on page 26 of the evidence presented by the prosecution was taken after clashes. A commander was with him in the picture, and can clearly be seen. The person in the picture who was killed in an air strike was an IS member; you can tell that from his large beard. Another group on their side must have been there before they arrived and taken the ammunition from the IS member and everything else he had on him. He said that he was there, but did not commit a crime. Of course it was not pleasant to pose for such pictures, but it is quite common in Iraq. There are pictures of ministers in the same situations. In any case it is the commander who gives the order to pose for pictures. He himself gained nothing from being in such a picture. It was the commander who benefitted. If he had said no he would have been treated in the same way. During the earlier police interview, he did not mention anything about being forced to do this, because he was agitated, stressed and, as those present can attest, he was afraid. He was arrested by 10–15 people. He had no interest in hiding anything. Picture 29 was also an IS member who was killed in an air strike; most of his head was missing. He had been burned and his blood can be seen on the walls. Picture 27 was from the same incident. The person in the middle was an officer and the officer said that everyone should gather together and take pictures. That officer, in the middle, was a higher-ranking officer who worked at the ministry of the interior. He himself was nobody compared to the high-ranking ministers and many journalists in the world have taken such pictures. He was in the picture, but the picture does not show that he had committed a crime. Of course, what he did was not right; that is why he asked for forgiveness to begin with. He deleted the pictures from the USB stick in Iraq, as he said during the interview. He thought that picture 28 was the remains of a person, but comrades later told him that it was things, rather than a person. He does not remember where the photo was taken. It may have been taken at the same time as pictures 26 and 27, but not in the same place; you can tell that by the walls in the background. He previously said that picture 28 showed a body and that blood could be seen on the walls; he does not deny that he said that, but he was given more information by a friend afterwards. When the police came they said that he was suspected of murder. [The Appellant/accused] Facebook account was his account and it

was his photo. But the pictures on there now were not there before. He does not know how they got there. He thinks he only used the account twice. As he cannot read or write, he was not able to use computers. He does not know how to upload pictures to Facebook, but his daughter does. He only shared pictures and did not need a password. He used the [M...] Facebook account, but that is his son's name. He watched news, but the pictures were not there. When he opened the account there were no pictures there. The computer was not a private computer, it belonged to the Iraqi authorities. He did not know anything about Facebook or computers and a friend of his arranged for him to use the computer. The pictures were supposed to have been deleted in Iraq, he did not understand how they came to be on his computer. He posted the picture on page 243 of the preliminary investigation report on the internet; it was his commander who was wounded in the war. As regards the film, that was the way things were in Iraq. He took part in the film, but it was not pleasant; the person filmed probably had children and a family. He has seen similar pictures many times and he found them upsetting. He wondered why people chose that path. The film was taken on 16 March. He did not do anything; he appeared only for five seconds at the end and then went and sat down. It wasn't that unusual that the commander wanted to take pictures or film; they were shown openly on TV. The pictures were taken to show the countries that helped with weapons and training that they were fighting. It was propaganda. He did not think the treatment of the bodies was right. The picture on page 9 of the preliminary investigation report was of an IS member who had been holding a grenade. It detonated in his hands. He cannot explain why they took the photo; even children posed with the dead. He guessed that the pictures were probably taken by ordinary people before they arrived. He did not have his foot on any of the bodies. It was the commander who had his foot on them. If you looked closely at the picture, you could see that he was reluctant to do it. He was certain of his innocence. He did not receive any training on the laws of war from the Peshmerga forces. If the dead were members of the Peshmerga, they would note down their rank and name and take a photo, but they did not do that with IS members. The IS members came from different countries and they did not know which of them belonged to IS. The commander appeared in the pictures. If the officer had not called him over he could not have done it. He understood it to be an order. You had to do whatever the commanders said. If you said

no, you would have to flee the country. He had not encouraged them to take the pictures and he had not done anything with the body. The pictures were taken many years ago, so he does not remember if he saw anyone with his foot on the body in this case. In the film, you could see that there were several people around the body and he was the last to join them. His commander put pressure on him to come over and take the photo. He did not make anyone take the film or spit on anyone. He did not say any of the words heard in the film either. He would not use such foul language. The film shows that he came round and sat down there.

***Driving without a licence, serious crime etc., Annex 2 to the judgment***

[The Appellant/accused] has been questioned about the charge. The prosecution has submitted the seizure report and the expert opinion of the Swedish National Forensic Centre as written evidence. The photographs have been shown.

When questioned in more detail about this part of the charge [the Appellant/accused] replied as follows.

He had a driving licence from Sulaymaniyah. It was one of the safest driving licences in Iraq. He applied to renew the licence and it was going to be sent to him. He showed the new driving licence and the translation. When the driving licence expired he had to get a new one. His driving licence could be collected by a close relative and his mother collected it. The driving licence was sent to Sweden by post. A friend sent it. He received it over a year ago and it took around one month to get it. The police suspected that it was false because it had no stamp, but they did not say that they meant the whole driving licence. He had been in Sweden since 2015. He was not able to apply to exchange it for a Swedish driving licence because he was an asylum-seeker. Nobody had told him that you could only drive on an Iraqi driving licence for the first year, but they did say that the licence had expired and he needed to renew it. He had the feeling that the police did not trust anything Iraqi. The driving licence looks different depending on whether it comes from Baghdad or Kirkuk. The driving licence from Kirkuk looked different to the licence from Sulaymaniyah. In Sulaymaniyah the driving licence had a red background. He had not had the driving licence for long. He checked the photograph, but not the dates.

He did not check the name either. The most important thing was that the colour in the top left-hand corner changed when the card was held at an angle. He had a piece of paper with his and his mother's photographs on it, which acted more or less as written authorisation. His mother used this document to collect the driving licence from the transport agency in Kirkuk. It probably cost around SEK 150–200, which was paid by his mother. He got the translation which the police have from a translator the first time; when he was stopped he told the translator that he needed a new document with a stamp and that is the document he showed during the proceedings.

## STATEMENT OF REASONS

### *Guilt*

In criminal proceedings it is up to the prosecution to prove both that the accused committed the offence, and that the offence is an unlawful act. For a conviction in criminal proceedings, the evidence submitted must prove, beyond reasonable doubt that the accused is guilty of the offence with which he is charged. Therefore, to all intents and purposes, the possibility that the events took place in any way other than that asserted by the prosecution must be ruled out.

### *War crimes, Annex 1 to the judgment*

Under section 4 sub-section 7 of the Genocide, Crimes against Humanity and War Crimes (Penalties) Act, (2014:406), anyone who subjects a wounded person to humiliating and degrading treatment constituting a serious violation of that person's dignity must be convicted of war crimes. A condition for this is that the offence must be part of, or otherwise connected with, an armed conflict or occupation.

The first question the district court must consider is whether a non-international armed conflict was going on in the district, as asserted by the prosecution. Armed conflicts are categorised as international, or non-international, internal, conflicts. The district court itself must determine whether the conflict in question is a non-international, internal armed conflict. There is no legal definition of a non-international armed conflict. Two factors which must be taken into account particularly when determining whether the

conflict in question is a non-international armed conflict are the intensity of the armed violence and the degree of organisation of the groups.

At the time to which the charge relates, Islamic State (IS)/Daesh was fighting against the Iraqi army. It can be regarded as common knowledge that IS, which proclaimed its existence on 10 June 2014, is an armed group. The prosecution submitted, inter alia, reports from UNAMI and the OHCHR (Office of the United Nations High Commissioner for Human Rights) as evidence of an armed conflict between the Iraqi government and IS at the time. Report no 4, which covers the period from 11 December 2014 to 30 April 2015, establishes the effect the on-going non-international armed conflict against IS in Iraq was having on civilians in terms of wounded, dead and refugees.

As observed by Svea court of appeal in its judgment of 5 August 2016 in case no B 4770-16, it is reasonable for the district court to base its assessment on the assessments of recognised international bodies. On the basis of the reports and media coverage of the situation in the villages of Al-Wahda, Saad and Khalid submitted by the prosecution, the district court finds that there is no doubt that, at the time to which the charge relates, a non-international armed conflict was taking place in the district of Daquq in the province of Kirkuk in Iraq between the Iraqi government, Peshmerga forces, who were allies of the Iraqi government at that time, and IS.

[The Appellant/accused] has said himself that, at the time of the charge, he was part of the Iraqi army and Peshmerga forces fighting against IS in the district of Daquq in the province of Kirkuk in Iraq.

[The Appellant/accused] is charged with having subjected wounded persons to humiliating or degrading treatment constituting a serious violation of their dignity, together, and in agreement, with others. This charge relates to four different incidents which were also captured in photographs and/or on film. The prosecution described the humiliating and degrading treatment in more detail in the description of the offences and in paragraphs 1–4. On the basis of the technical evidence submitted to the court, the district court finds that it has been clearly established that the photographs and the film were taken in the district of Daquq in the province of Kirkuk in Iraq during the period to

which the charge relates. It is also clear from the forensic investigation of the photographs that they have not been manipulated.

[the Appellant/accused] has admitted that he is the person in the photographs and film. He could not say whether some of the photographs were taken with his own mobile phone or with someone else's. Nor was he able to say for certain how they came to be in his possession.

The prosecution has asserted that the persons laying on the ground in the photographs and on the film must be regarded as wounded persons, since they had been incapacitated by wounding, or were dead, or were civilians.

Section 3 of the Genocide, Crimes against Humanity and War Crimes (Penalties) Act defines wounded persons as the wounded, sick, shipwrecked or civilians or those who, for other reasons, enjoy special protection under the Geneva Conventions of 12 August 1949, Additional Protocol 1 to the Geneva Conventions of 1977 or otherwise under public international law applicable to armed conflict or occupation. The dead are also to be regarded as wounded persons (Skåne and Blekinge Court of Appeal, judgment of 11 April 2017 in case no B 3187-16).

In the opinion of the district court, there is no doubt that the persons lying on the ground in pictures 1–3 and the film are to be regarded as wounded persons, irrespective of the fact that it is impossible to decide in all cases whether they were civilians or combatants or whether all of them were dead or only badly wounded. With regard to picture no 4, [the Appellant/accused] claims that he and another person are not trampling on a person, but on things lying on the ground, that [the Appellant/accused] has confirmed that he stated in the interview with the police that it was a body they were trampling on, as he believed at the time that it was the remains of a person. He has said that he subsequently asked a friend and found out that it was not a body. It is difficult to determine with the naked eye whether the photograph shows part of a human body or not. The district court notes that the walls behind [the Appellant/accused] appear to be covered in blood. The National Forensic Centre (NFC) has examined the photograph and has confirmed that it was taken in Al-Wahda on the same day as the photograph in paragraph 2. The results of



this examination provide some support (-1) for the view that the people in the picture are have their feet on a body. The reason given for this is that the object is the right overall size and shape and that the waist, flies and pockets of a pair of trousers can faintly be seen. It is also reasonably unlikely that the persons in the photograph have their feet on anything else.

In summary, the district court finds that [the Appellant/accused]'s story that he believed at the time that he had his foot on a human body, but that he subsequently asked a friend and was told that it was not a body but things, appears to have been entirely fabricated after the event. His explanation is so improbable that it can be disregarded. [the Appellant/accused] stated in the interview with the police that he had placed his foot on parts of a human body.

The district court believes that these statements, together with the NFC's assessment, are sufficient to establish that the photograph shows a wounded person.

Therefore, as determined by the district court above, the photographs and film show wounded persons. Such persons must be treated with respect and not subjected to humiliating or degrading treatment. In the light of this, the district court will determine whether [the Appellant/accused], in agreement with others, subjected the four persons seen lying on the ground in the photographs and the film, to harmful or degrading treatment constituting a serious violation of their dignity.

The photographs appear to have been taken at the place where the persons fell and the evidence does not suggest that those who were mutilated had been subjected particularly to such degrading treatment by the combatants on the Iraqi side. Nor has the prosecution alleged that [the Appellant/accused] handled the bodies in a particular way.

All of the photographs show [the Appellant/accused], along with others, standing next to, or otherwise posing with the bodies lying on the ground. The fact that three of the bodies have been mutilated is of course also an aggravating factor. In two of the photographs (1 and 4) the combatants also had one foot on the bodies. In photograph 4, [the Appellant/accused] is even trampling on the body lying on the ground. The film



sequence shows the combatants spitting on and kicking the body, making insulting remarks about them and hitting them with the barrel of a gun. The film shows [the Appellant/accused] walking away after this incident and being filmed and photographed, and crouching down very close to the bodies, whose faces can clearly be seen in the photographs and film. In photograph number 2, [the Appellant/accused] is crouching down next to a body, which has been mutilated and is headless. Trampling on a dead body must be regarded as disrespectful in all cultures and is clearly offensive. The interview with [...], who is a professor of Islamic theology and philosophy, confirmed that that is also the case in Arabic and Islamic culture. It is obvious to the district court that, by participating and posing with the bodies lying on the ground, [the Appellant/accused] subjected these wounded persons to humiliating and degrading treatment constituting a serious violation of their dignity. [The Appellant/accused] has confirmed that the bodies of members of his own forces would never have been subjected to such treatment.

[The Appellant/accused] has stated that it is quite common to photograph fallen enemies in a war and that it should be seen as a form of war propaganda. In the view of the district court, there is a clear connection between the offence and the armed conflict. He also stated in the main proceedings that he was ordered to join in with the photographs. According to the findings of the investigation, this statement is entirely new. From a purely factual point of view, the pictures do not give the impression that [the Appellant/accused] was forced to join in. On the contrary, he appears to take an active part in posing, by leaning forward, placing a foot on, or crouching next to mutilated bodies and looking straight at the camera. In the district court's view, this shows beyond doubt, that [the Appellant/accused] was not forced to participate in various ways and that he has since actively used the images in various ways, which does not support his claim that he joined in against his will.

[The Appellant/accused] has admitted that he had two different Facebook profiles, [K...], which is the account on which the police first found some of the images, and subsequently [M...]. It is clear from the technical evidence that he logged into Facebook both in Iraq, and later while he was fleeing to Sweden. Pictures 1 and 4 were found on his Facebook

pages. It may be that [the Appellant/accused] had help to publish them, because he was not able to upload them himself for purely technical reasons but, in the district court's view, that does not make any difference to the case. The photographs in 2–4 were also found on a USB stick, handed in by [the Appellant/accused] in connection with his application for asylum here in Sweden. Photographs were also found on his computer, although some of the images had been deleted and were recovered by technicians. In view of the foregoing, the district court finds that [the Appellant/accused]'s claim that he was forced to participate has been refuted.

As a result of the publication of the photographs on Facebook, the offensive actions were disseminated even more widely, since the photographs could be viewed by anyone, as the Facebook pages were public. Police officer [...], for example, reported that he was able to go into the Facebook pages and see the published images.

In summary, the district court confirms the charge and finds that [the Appellant/accused] must be convicted of war crimes.

With regard to the application for confiscation of the computer and USB stick seized, the prosecution has stated that everything except certain offensive photographs have been copied and returned to [the Appellant/accused] or the Swedish Migration Agency. The application for confiscation is well founded and must be accepted.

*Driving without a licence, serious crime etc., Annex 2 to the judgment*

[The Appellant/accused] has denied the offence and maintains that his driving licence is genuine.

After examining the driving licence, the National Forensic Centre (NFC) concluded that the results strongly indicate that the driving licence is not genuine but a complete forgery (level -4). The district court finds that there is no reason to deviate from the NFC's assessment and that the driving licence is therefore a complete forgery. In the district court's view, it can be presumed that [the Appellant/accused] knew that the driving licence was forged. He must therefore be convicted both of using false documents and of driving without a licence in a manner regarded as a serious crime.

The separate claim is well founded and must be accepted.

### ***Penalty***

[The Appellant/accused] appears twice in the criminal records. In November 2017 he was given a penalty for drink-driving and driving without a licence. On 15 March 2018 he was convicted of driving without a licence in a manner regarded as a serious criminal offence and ordered to pay a daily fine.

According to the evidence submitted by the probation service in these proceedings, [the Appellant/accused] lives in decent conditions, although he does have some physical and mental health problems. He also applied for asylum in Sweden in December 2015 but he has not yet received a decision on his application.

Ruling of the district court.

In view of the nature of war crimes a custodial sentence is normally given. The district court finds that the aggregate sentence for the offences is a term of imprisonment of one year and three months. In the light of the possible sentences for these offences, a non-custodial sentence cannot be given. The length of the term of imprisonment must be that specified above.

### ***Other matters***

[The Appellant/accused] is ordered to pay SEK 800 to the Victim Compensation Fund. This charge must be paid by anyone convicted of a crime carrying a custodial sentence.

There are grounds for secrecy in the sense referred to in the ruling.

The costs of his defence will be borne by the state in the light of the fact that he has now been sentenced to a longer term of imprisonment.

**HOW TO APPEAL**, see Annex 3

An appeal is to be lodged against the judgment. The district court must receive the appeal, which will be submitted to Göta Court of Appeal, by 12 March 2019.

On behalf of the district court

[...]

---

The decision was made by senior judge [...] and lay judges [...], [...] and [...]. The district court's decision is unanimous.

**A statement of time in detention to be taken into account is attached.**



**The statement relates to**

Person/co-ordination number/date of birth .....	Date of judgment/decision 19.2.2019
Surname [the Appellant/accused]	Forename [the Appellant/accused]

The person referred to above has been held for a continuous period of at least 24 hours in detention or on remand or otherwise detained within the meaning of section 19(a) of the Sentences (Calculation) etc. Act (1974:202) or section 10(a) of the Youth Custody Act (1998:603); the periods of detention are given below.

<b>Detained</b>	<b>Detention cancelled/terminated/suspended</b>
27.3.2018	28.3.2018

**Special Notes**

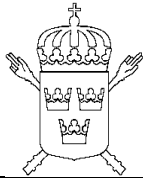
- The Swedish Prison and Probation Service has informed the court that it has information which is relevant to the time to be taken into account (section 8 of the Regulation on the calculation of sentences etc. (1974:286)).

**Specific information for the Swedish Prison and Probation Service and other authorities**

- There are previous judgments, decisions or statements of time in detention to be taken into account in accordance with section 12(a) of the Punitive Decisions Order (1970:60) which state the types of detention that can be taken into account (section 3(4) of the Regulation on the notification of judgments in certain criminal proceedings, etc. (1990:893)).

---

Signature



THE SWEDISH PROSECUTION  
AUTHORITY  
National Prosecution Department - The  
National Unit against Organised Crime  
District Prosecutor Peter Larsson

**Summons**

25.10.2018

Annex 1

Page 1(4)  
Document 133

Case	AM-106298-17
Handled by	860-G3

Quote these details when contacting the authority

Örebro District Court  
General Case Unit, Division 3  
Box 383  
701 47 ÖREBRO

ÖREBRO DISTRICT COURT Division 3
RECEIVED: 25.10.2018 CASE NO: B-1662-18 FILE ANNEX: 16

DC case: B 1662-18  
Handled by: OVR

<b>1</b>	Accused: surname and all forenames <b>[the Appellant/accused]</b>		Given name <b>[the Appellant/accused]</b>	Title
	Personal ID number .....	Citizen of <b>Iraq</b>	Telephone	Interpreter required
	Address .....			
	Court-appointed defence counsel/legal representative .....			
	Detention etc. <b>Arrested on 27.3.2018 at 08.05, Released on 28.3.2018 at 16.59.</b>			
Details of service				

**Form of order sought etc.**

**WAR CRIMES (5000-K410758-17)**

Offence

In the spring of 2015, and at least until October 2015, a non-international armed conflict took place in the district of Daquq in the province of Kirkuk in Iraq between the government of Iraq and Islamic State (IS)/Daesh.

During that period, [the Appellant/accused] belonged to an armed military unit within the Iraqi government forces or the Kurdish Peshmerga forces/Asayish which, at that time, were allies of the Iraqi regime and were fighting against IS/Daesh.

On four occasions at some time between February and March 2015, in the area around the villages of Al-Wahda, Saad and Khalid in the district of Daquq, [the Appellant/accused], together, and in agreement, with others, subjected four persons belonging to the opposing party's armed forces or armed groups or to the civilian population, who were protected under public international law, to humiliating or degrading treatment constituting a serious violation of their dignity.

The persons are to be regarded as wounded persons because, at the time of the offences they were incapacitated by wounding or were dead or because they were civilians.

Postal address  
Box 57  
10121 STOCKHOLM

Office address  
Hantverkargatan 25 A

Telephone  
010-562 50 00

Email  
registrator.riksenh-int@aklagare.se

Fax  
010-562 54 83

The humiliating and degrading treatment consisted of the following.

1. [the Appellant/accused], together and in agreement with two other persons, posed and allowed himself to be photographed standing next to a victim, on whose body each of the two co-perpetrators had placed a foot. At the time the victim's body was mutilated.
2. [the Appellant/accused], together and in agreement with others, posed and allowed himself to be photographed next to a victim, whose body had been mutilated.
3. [the Appellant/accused] together and in agreement with others, posed and allowed himself to be photographed and filmed next to a victim while he was being subjected to degrading treatment. One of the co-perpetrators then hit the victim's body with the barrel of a gun, spat on the victim's face and kicked his body while abuse was being shouted at the plaintiff.
4. [the Appellant/accused] together and in agreement with another person, posed and allowed himself to be photographed standing next to a plaintiff with a foot placed on his body.

[the Appellant/accused] subsequently published images from these incidents, or had them published, on two different profiles belonging to him, on the social media service Facebook, where they could be disseminated widely, because both of these profiles were public.

The offence constituted a serious violation of the plaintiff's dignity and was part of, or otherwise connected with, the armed conflict. [The Appellant/accused] committed the offence intentionally.

#### Legal basis

Section 4 sub-section 1(7) and sub-section 2 of the Genocide, Crimes against Humanity and War Crimes (Penalties) Act (2014:406)

#### Separate claim

Confiscation of computer and USB stick seized containing offensive images etc. (2017-5000-BG 89684 p. 1 and 2018-5000-BG32401 p. 2)

#### Evidence

##### *Oral evidence*

Interview with the accused [the Appellant/accused]

Witness interview with police officer [...] about his view of the [K...] Facebook profile and the way the content of the profile was secured (telephone interview accepted).

Witness interview with [...], professor of Islamic theology and philosophy, about the meaning of putting a foot or shoe on another person in Arabic and Islamic culture to support the assertion that such behaviour constitutes a serious violation of a person's dignity (telephone interview accepted).

### *Written evidence*

Photographs from the [K...] Facebook profile (forensic examination report, p. 4–10 and 14–18) showing, among other things, [the Appellant/accused] posing and having his photograph taken next to dead or badly wounded victims.

Photographs and slideshows from the [M...] Facebook profile (forensic examination report, p. 238–246) showing, among other things, [the Appellant/accused] posing and having his photograph taken next to dead or badly wounded victims.

Memo about search paths (p. 236) and PM about securing slideshows from Facebook (p. 259–265).

Photographs from the USB stick submitted to the Swedish Migration Agency and an IT forensic examination of these photographs (forensic examination report, p. 160–163, 189–191, 194–205) showing, among other things, [the Appellant/accused] posing and having his photograph taken next to dead or badly wounded victims. The image on page 198 and the film sequence described on page 207 are also cited as evidence of the time and place of the event.

Image comparison and expert opinion from the NFC on the image comparison (forensic examination report, p. 220, 277–280) indicating that two of these images were taken on the same occasion.

Forensic examination of images to determine whether they are genuine etc. (forensic examination report, p. 266–275) indicating that the images have not been manipulated, that many of them were taken on the same occasion and that one of the images shows a body.

Report on media coverage of the retaking of the villages of Al-Wada, Saad and Khalid (forensic examination report, p. 223–227).

Memo summarising the seizure and the IT forensic examination of a computer belonging to [the Appellant/accused] (forensic examination report, p. 318–319 and 323–324) indicating that images published on both Facebook profiles and the film on the USB stick submitted to the Swedish Migration Agency were found on [the Appellant/accused]'s computer.

Summary of a report on IP logs on the Facebook account (forensic examination report, p. 252) indicating that the account was activated from an area in northern Iraq at the time of the offences.

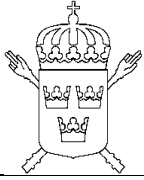
Presentation of film showing [the Appellant/accused] together with a dead or badly wounded victim and memo about the content of the film and a translation of what is said on the film (forensic examination report, p. 215–218).

Seizure report (forensic examination report, p. 347 and 358).

### Conduct of the proceedings

It is estimated that the hearing will take one day. The witnesses, who can appear by telephone, should be available from 13.00.





THE SWEDISH PROSECUTION  
 AUTHORITY  
 Prosecution Area Bergslagen  
 Public Prosecution Office, Örebro  
 District Prosecutor Dag Svärd

**Summons**

28.11.2018

Page 1(2)  
 Document 5

Case	AM-154583-18
Handled by	503A-17
Quote these details when contacting the authority	

Örebro District Court

**Simplified service**

ÖREBRO DISTRICT COURT	
RECEIVED:	28.11.2018
CASE NO:	B 6072-18
FILE ANNEX:	1

# Summons

## The accused

**[theAppellant/accused]** (.....)

Interpreter required – [...]; Iraqi citizen

Form of order sought etc.

### 1.1 DRIVING WITHOUT A LICENCE, A SERIOUS CRIMINAL OFFENCE

5000-K181844-18

On 13 February 2018 [the Appellant/accused] drove a car on Djupdalsgatan in Lindsberg in the municipality of Lindsberg while not entitled to do so. [the Appellant/accused] who has no driving licence and who has previously been prosecuted for driving without a licence committed the offence intentionally.

Legal basis: section 3 sub-section 1, sentence 2, Traffic Offences Act (1951:649)

### 1.2 USE OF FALSE DOCUMENTS

.....

On 13 February 2018 during a driving licence inspection on Djupdalsgatan in Lindsberg in the municipality of Lindsberg, [the Appellant/accused] produced and showed the police a forged Iranian driving licence which, in the light of the evidence, constituted a danger.

[the Appellant/accused] committed the offence intentionally.

Legal basis: Chapter 14 section 1 and section 10, Code of Criminal Procedure

### **Separate claim**

Confiscation of the forged driving licence and translation of that licence seized from [the Appellant/accused] under Chapter 36 section 2 sub-section 1, or section 3(1), Code of Criminal Procedure.

2018-5000-BG16951.1

2018-5000-BG16951.2.

### **Oral evidence**

Interview with the accused [the Appellant/accused] (... interpreter required) who denies the offence.

### **Other evidence**

Driving licence details (submitted separately), proving that [the Appellant/accused], was not entitled to hold a driving licence.

Seizure report and expert opinion of the National Forensic Centre - NFC (forensic examination report, p. 6 and 12–16, proving that [the Appellant/accused] showed the police a completely forged driving licence and therefore is not authorised to drive vehicles.

Photographs (images) of the forged driving licence (forensic examination report, p. 8 and 10).

### **Procedure**

At a face-to-face meeting on 19 November 2018, the accused was informed by the police that the district court may use the simplified procedure for service of a summons.



# THE SWEDISH COURTS

## How to appeal

### Judgments in criminal proceedings, district court

TR-01

If you want a judgment to be changed in some way, you can appeal. You can find out how to do that below.

#### Appeal in writing within three weeks

The appeal must be received by the court within three weeks of the date of the judgment. The latest date for an appeal can be found on the last page of the judgment.

#### Appeal after the other party has appealed

If one party has appealed in time, the other party also has the right to appeal, even if the time limit for appeals has expired. This is called a cross-appeal.

A party has an extra week, from expiry of the time limit for appeal, to lodge a cross-appeal. A cross-appeal must therefore be received within four weeks of the date of the judgment.

A cross-appeal ceases to be valid if the first appeal is withdrawn or does not go any further for another reason.

#### You should do the following:

1. Write the district court's name and case number.
2. Explain why you think the judgment must be changed. Explain the change you want to make and why you think the court of appeal should admit the appeal (find out more about leave to appeal below).
3. State what evidence you wish to cite. Explain what you want to show with each piece of evidence.

Send any written evidence which has not already been submitted in the case with your appeal.

If you want a person who has already been questioned to be questioned again, or if you want something new to be investigated (for example, a visit to a place), you must say so and explain why.

If you want the victim to attend a main hearing in person, you must also say so.

4. Give your name and personal ID number or business registration number.

Give full and up-to-date contact details so that the court can reach you: postal address, email addresses and telephone numbers.

If you have a lawyer to represent you, give the lawyer's contact details as well.

5. Sign the appeal yourself, or get your lawyer to sign it.
6. Send or deliver the appeal to the district court. You will find the address in the judgment.

#### What happens next?

The district court checks that the appeal has been received in time. If it has been received too late, the court rejects the appeal. This means that the judgment stands.

If the appeal has been received in time, the district court forwards it to the court of appeal together with all the case documents.

If you have previously received letters by simplified service, the court of appeal can also send letters in this way.

### **Leave to appeal to the court of appeal**

When the court of appeal receives the appeal it first considers whether the case is admissible.

If you are *not* given leave to appeal, the judgment you wish to appeal against stands. So it is important to include all the arguments you want to make.

### **When do you need leave to appeal?**

#### **Criminal part**

In the criminal part, leave to appeal is needed in two different cases:

- The accused was only ordered to pay a fine.
- The accused was acquitted of a crime which carries a maximum sentence of six months' imprisonment.

#### **Damages part**

Leave to appeal is needed for the court of appeal to consider an application for damages. An exception can be made when an appeal is lodged against the criminal part of a judgment and it is linked to an application for damages for the crime. In that case, leave to appeal is not needed for the damages part, if

- leave to appeal is not needed in the criminal part  
or if
- the court of appeal gives leave to appeal in the criminal part.

#### **Decision on other matters**

In cases where leave to appeal is needed in the criminal part (see above), it is also needed for decisions that can only be appealed against in connection with an appeal against the judgment. Decisions which can be appealed against separately do not need leave to appeal.

### **When is leave to appeal given?**

The court of appeal gives leave to appeal in four different cases.

- The court believes that there is reason to doubt that the district court adjudicated correctly.
- The court does not believe it can assess whether the district court adjudicated correctly without admitting the case.
- The court needs to admit the case to give other courts guidance in the application of the law.
- The court believes that there are reasonable grounds for admitting the case for others reasons.

### **Do you want to know more?**

Contact the district court if you have any questions. The address and telephone number are given on the first page of the judgment.

More information can be found at [www.domstol.se](http://www.domstol.se).



GÖTA COURT OF APPEAL  
Chamber 2  
Division 25

**STATEMENT OF TIME IN  
DETENTION TO BE TAKEN  
INTO ACCOUNT**  
24.9.2019  
Jönköping

### The statement relates to

Person/co-ordination number/date of birth .....	Date of judgment/decision 24.9.2019
Surname [the Appellant/accused]	Forename [the Appellant/accused]

The person referred to above has been held for a continuous period of at least 24 hours in detention or on remand or otherwise detained within the meaning of section 19(a) of the Sentences (Calculation) etc. Act (1974:202) or section 10(a) of the Youth Custody Act (1998:603); the periods of detention are given below.

<b>Detained</b>	<b>Detention cancelled/terminated/suspended</b>
27.3.2018	28.3.2018

### Special Notes

- The Swedish Prison and Probation Service has informed the court that it has information which is relevant to the time to be taken into account (section 8 of the Regulation on the calculation of sentences etc. (1974:286)).

### Specific information for the Swedish Prison and Probation Service and other authorities

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.....  
Signature

Doc. ID 306705

<b>Postal address</b>	<b>Office address</b>	<b>Telephone</b>	<b>Fax</b>	<b>Opening hours</b>
Box 2223 550 02 Jönköping	Hovrättsgränd 4	036-15 69 00	036-15 65 36	Monday–Friday 08.00–16.00
		<b>Email:</b> <a href="mailto:gota.hovratt@dom.se">gota.hovratt@dom.se</a>		
		<b>Website:</b> <a href="http://www.gotahovratt.se">www.gotahovratt.se</a>		



## How to appeal against a decision of the court of appeal

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Anyone who wishes to appeal against a decision of the court of appeal must write to the Supreme Court. However the notice of appeal must be sent or delivered to the court of appeal.

### Deadline for appeals

The court of appeal must receive the appeal by the date given at the end of the court of appeal's decision.

There is no time limit for appeals against decisions on detention under Chapter 24 section 5(a) Code of Judicial Procedure or travel bans.

If the appeal is received in time, the court of appeal forwards it to the Supreme Court together with all of the case documents.

### Leave to appeal to the Supreme Court

Leave to appeal is needed for the Supreme Court to examine an appeal. The Supreme Court only gives leave to appeal if

1. it is important for guidance in the application of the law that the appeal be examined by the Supreme Court; or if
2. there are special grounds for examining the appeal, such as the existence of grounds of review on a point of law, formal defect, or where the outcome of the case before the court of appeal is manifestly attributable to negligence or serious error.

### Content of the appeal

The appeal must contain the following information:

1. the appellant's name, address and telephone number;

2. the decision appealed against (the name and chamber of the court of appeal and the date of the decision and case number);
3. the change to the decision sought by the appellant;
4. the reasons why the appellant wants the decision to be changed;
5. the reasons why the appellant believes leave to appeal should be given; and
6. the evidence the appellant wishes to cite and what each piece of evidence is intended to prove.

### Simplified service

If an appeal is lodged against the case the Supreme Court can use simplified service to send out case documents, on condition that the recipient has been given information about simplified service at that time, or during the proceedings in a lower court.

### More information

For information about the judicial process in the Supreme Court, see [www.hogstodomstolen.se](http://www.hogstodomstolen.se)