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The Supreme Court has today upheld a Syrian fighter's acquittal of an outrage upon the personal dignity of deceased Syrian government army soldiers, a war crime. According to the Supreme Court the Court of Appeal applied the law correctly in its ruling that the accused should be acquitted of that offence and also provided sufficient grounds for its ruling.

The case

The accused Syrian fighter applied for asylum in the Netherlands in October 2019 following a previous application in Germany. The Dutch police then received information from the German authorities that the accused was the subject of an alert. The suspicion had arisen in Germany that the accused had been active as a fighter and regional leader of Ahrar al-Sham in Syria. A criminal investigation of the accused was subsequently initiated in the Netherlands. In it, Dutch police secured a video from YouTube showing Ahrar al-Sham fighters, including the accused, with slain Syrian army soldiers. In the video, Ahrar al-Sham fighters curse and spit at the soldiers.

The charges and the District Court's decision

The Public Prosecution Service prosecuted the accused for participating in the terrorist organisation Ahrar al-Sham and for an outrage upon the personal dignity of the deceased Syrian government army soldiers allegedly shown in the YouTube video. The latter offence is a war crime in violation of Common Article 3 of the Geneva Conventions. The District Court convicted the accused of both offences.

The decision of the Court of Appeal

On appeal, the Court of Appeal convicted the accused of participating in Ahrar al-Sham, but acquitted him of the war crime.[\[1\]](#)

The Court of Appeal sentenced the accused to five years and four months' imprisonment for his participation in a terrorist organisation. The Public Prosecution Service and the accused lodged an appeal in cassation before the Supreme Court.

Complaints in cassation

In cassation, the Public Prosecution Service complained firstly about the acquittal of the war crime by the Court of Appeal. Secondly, the Public Prosecution Service was of the opinion that the Court of Appeal did not properly explain its judicial finding of fact that the accused had participated in the terrorist organisation for a shorter period than that stated in the Public Prosecution Service's indictment.

The accused complained in cassation about the Court of Appeal's rejection of his defence that the YouTube video did not constitute sufficiently reliable evidence and about its judgment that he had participated in a terrorist organisation.

Opinion of the Advocate General (AG)

The AG advised the Supreme Court that, in his opinion, the Public Prosecution Service's second complaint should succeed and that the other complaints should not.

The Supreme Court's decision

The Public Prosecution Service's appeal against the war crime acquittal

The Supreme Court dismissed the Public Prosecution Service's appeal against the acquittal of the war crime, holding that the Court of Appeal had applied the law correctly. The Court of Appeal had also provided sufficient grounds for its decision on the facts. The Supreme Court found the following in this regard.

"An outrage upon personal dignity, in particular humiliating and degrading treatment" is punishable in the Netherlands under Section 6(1) of the International Crimes Act (Wet Internationale Misdrijven). The legislative history shows that the legislature intended the Dutch courts to interpret that statutory provision in line with the interpretation of the prohibition of an 'outrage upon personal dignity, in particular humiliating and degrading treatment' under international (customary) law, in particular Common Article 3, opening words, and (1)(c) of the Geneva Conventions. According to the legislature, the case law of international tribunals and of national courts in other countries are relevant in matters of international (customary) law, and the Elements of Crimes drafted under Article 9 of the Rome Statute^[2] can also be helpful in interpreting the definition of the offence.

The Court of Appeal drew on the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY^[3]) for its decision, with reference to the Elements of Crimes. The Court of Appeal's findings on the interpretation of Article 6(1)(c) of the International Crimes Act come down to the following. An outrage upon personal dignity may be constituted by statements or behaviour, which may consist of acts or omissions or a combination of them. It has to be a serious violation of personal dignity, which may consist of degrading or humiliating treatment. The nature and duration of such statements or behaviour and the circumstances under which they took place may also play a role in the assessment. Significance may also be attached to the cultural and/or religious context in which the statements or behaviour took place. According to the Supreme Court, the Court of Appeal's interpretation of Article 6(1)(c) of the International Crimes Act was legally correct in this regard.

In addition, the Court of Appeal took as a starting point that the prohibition of outrages upon personal dignity also applies to deceased persons. The Supreme Court held this to be legally correct as well, partly having regard to the interpretation of international (customary) law in (a footnote to) the Elements of Crimes and in the case law of the national courts of other countries.

The Court of Appeal made the following and other findings regarding the video footage in this case. Ahrar al-Sham fighters, including the accused, are standing around bodies of deceased Syrian government army soldiers. They shout slogans, chant and comment on their own success and the defeat of the government army. They also insult and curse at the deceased, calling them "dogs" and "carcasses". One of the fighters

puts his foot on one of the bodies, the accused makes a movement with his leg towards one of the bodies and two persons spit in the direction of the bodies. These actions all take place very briefly. The bodies of the deceased and their uniforms remain virtually untouched, while it seems that the deceased soldiers are shown as they were found.

The Court of Appeal held that although the conduct of the accused and the other fighters was disrespectful, objectively speaking it was not serious enough to classify it as the war crime of 'outrage upon personal dignity' within the meaning of Common Article 3 (preamble and under) (1)(c) of the Geneva Conventions, and therefore it also did not constitute an 'outrage upon personal dignity' within the meaning of Article 6(1)(c) of the International Crimes Act. The Court of Appeal provided detailed grounds for this finding, considering the nature of the conduct and the circumstances in which it took place. In this regard, the Court of Appeal included in its ruling that the deceased were not displayed as trophies, that the emphasis was on celebrating the victory rather than humiliating the deceased, and that the bodies of the deceased and their uniforms remained virtually untouched. The Court of Appeal also took into account the accused's cultural and religious background in its assessment of his actions.

The Supreme Court dismissed the Public Prosecution Service's appeal against the acquittal of the war crime, holding that the Court of Appeal had applied the law correctly. The Court of Appeal had also provided sufficient grounds for its decision on the facts.

The Public Prosecution Service's complaint about the accused's partial acquittal from the charge regarding the period of his participation in a terrorist organisation (the second charge).

The Supreme Court deemed that this complaint has merit. At the hearing on appeal, the Public Prosecution Service elaborately substantiated its position on the evidence which it believed demonstrated a longer period of participation in the terrorist organisation Ahrar al-Sham.

The Court of Appeal took a different position in its decision but did not give sufficient reasons for that. The Supreme Court has therefore referred the case back to the Court of Appeal of The Hague for a rehearing on this point alone.

The accused's appeal

The Supreme Court dismissed the accused's appeal in cassation, providing abridged grounds.

Publication

The anonymized verdict is published on: [ECLI:NL:HR:2025:594](#), [Hoge Raad](#), 22/04694

[1] The Court of Appeal's decision is published on the website [rechtspraak.nl](#): [ECLI:NL:GHDHA:2022:2421](#). The English translation: [ECLI:NL:GHDHA:2022:2858](#).

[2] Rome Statute of the International Criminal Court

[3] International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991.