

ECLI:NL:RBDHA:2024:22990

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| Instantie | Rechtbank Den Haag |
| Datum uitspraak | 11-12-2024 |
| Datum publicatie | 06-02-2025 |
| Zaaknummer | 71/283722-22 en 71/256885-24 (Engelstalig) |
| Formele relaties | Oorspronkelijke uitspraak: ECLI:NL:RBDHA:2024:20594 |
| Rechtsgebieden | Strafrecht |
| Bijzondere kenmerken | Eerste aanleg - meervoudig Op tegenspraak |
| Inhoudsindicatie | This is an English translation of ECLI:NL:RBDHA:2024:20594, De Nederlandse tekst van deze uitspraak is leidend. Investigation 26 Banning. Conviction of Dutch person who left her country to join IS in Syria, for enslavement as a crime against humanity against a Yazidi woman, participation in IS, promoting crimes with a terrorist objective, and putting and leaving her son in a helpless condition by taking him to a war zone and staying there. Sentenced to a term of imprisonment of 10 years. Diminished responsibility and residence in Kurdish detention camps are reason for reduction of punishment. |
| Vindplaatsen | Rechtspraak.nl |

Uitspraak

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|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Authority | District Court The Hague |
| Judgment date | 11-12-2024 |
| Publication date | 11-12-2024 |
| Case numbers | 71/283722-22 and 71/256885-24 (joined at the trial) |
| Branch of law | Criminal law |
| Characteristics | First instance three-judge criminal division Defended action |
| Indication of the contents | Investigation 26 Banning. Conviction of Dutch person who left her country to join IS in Syria, for enslavement as a crime against humanity against a Yazidi woman, participation in IS, promoting crimes with a terrorist objective, and putting and leaving her son in a helpless condition by taking him to a war zone and staying there. Sentenced to a term of imprisonment of 10 years. Diminished responsibility and residence in Kurdish detention camps are reason for reduction of punishment. |
| Source | Rechtspraak.nl |

Judgment

District Court THE HAGUE

Criminal law

Three-Judge Criminal Division

Public Prosecutors Office numbers: 71/283722-22 and 71/256885-24 (joined at the trial)

Judgment date: 11 December 2024

Defended action

On the basis of the indictment and following the examination at the hearing, the District Court of The Hague delivered the following judgment in the case of the public prosecutor against the accused:

[the accused],

born on [date of birth 1] 1991 in [place of birth], with no known residence or domicile here in the Netherlands, currently detained in the correctional facility [town 1].

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1 The examination in court

The examination was held at the hearings held on 14, 16 and 17 October 2024 (substantive hearing) and 27 November 2024 (closure of the examination).

The court took note of the demand of the public prosecutors M. Blom, LL.M. and C.J. Kroon, LL.M. (hereinafter: the public prosecutor) and that submitted by the accused and her counsels A.M. Seebregts

LL.M. and N.F. Christiansen LL.M.

The court also took note of that submitted by and on behalf of the injured parties.

2 The charges

The accused was charged, after amendment of the description of the indictment at the hearing on 14 October 2024, with:

Summons I (71/283722-22)

1

she, the accused, on one or more occasions in or around the period from 1 May 2015 up to and including 1 December 2015 in [place name 2], or at any rate in one or more place(s) in Syria and/or Iraq, together and in association with one or more other person(s), or at any rate alone, was guilty of enslavement, as referred to in Article 4, paragraph 2 under b of the International Crimes Act, committed as part of a widespread or systematic attack directed by the Islamic State (IS) against a civilian population namely, the Yazidi population in the Iraqi region of Sinjar, at any rate in one or more place(s) in Iraq and/or Syria, with knowledge of the attack, the accused and/or her co-accused(s) then and there had a (Yazidi) woman, named [injured party 1], in her and/or co-accused's house and/or elsewhere, perform cleaning work and/or domestic work and/or prepare food and/or take care of the accused's son, (for many hours a day), while this involved forced labour;

2

she, the accused, on one or more occasions in or around the period from 16 February 2015 up to and including 2 November 2022 in one or more place(s) in Syria and/or Iraq, together and in association with one or more other person(s), or at any rate alone,

participated in a terrorist organisation, namely

Islamic State (IS), or at any rate (an) organisation(s) advocating the armed Jihad, which organisation(s) had and/or has/have the objective of committing terrorist crimes, namely,

- A. deliberately setting fire and/or causing an explosion, while there is a general risk of danger to property and/or danger of grievous bodily harm and/or danger to life for another person and/or this offence results in someone's death (as referred to in Section 157 of the Dutch Penal Code), (to be) committed with terrorist objective (as referred to in Section 176a of the Dutch Penal Code) and/or
- B. manslaughter (to be) committed with terrorist objective (as referred to in Section 288a of the Dutch Penal Code) and/or
- C. murder (to be) committed with terrorist objective (as referred to in Section 289 in conjunction with Section 83 of the Dutch Penal Code) and/or

the conspiracy and/or deliberate preparation of and/or promotion of previously mentioned serious offences (as referred to in Sections 176a and/or 289a and/or 96(2) of the Dutch Penal Code) and/or

the possession of one or more category II and/or III weapons and/or ammunition (as referred to in Section 26(1) of the Weapons and Ammunition Act) (to be) committed with terrorist objective and/or with the intent to prepare or facilitate a terrorist crime (as referred to in Section 55(1) and/or (5) of the Weapons and Ammunition Act)

3

she

on one or more occasions in or around the period from

1 November 2014 up to and including 2 November 2022, in one or more place(s) in the Netherlands and/or Syria and/or Iraq

multiple times, at least once, (each time)

together and in association with one or more other person(s), or at any rate alone,
with the objective to prepare and/or facilitate the commission of (a) serious offence(s) described in
Sections 83 and/or 157 and/or 176a and/or 176b and/or 289(a) and/or 288a of the Dutch Penal Code,
namely:

- murder and/or manslaughter (to be) committed with terrorist objective and/or
 - deliberately setting fire and/or causing an explosion, while there is a general risk of danger to property and/or danger to life and/or danger of grievous bodily harm and/or danger to life for another person and/or this offence results in someone's death, (to be) committed with terrorist objective,
1. sought to induce someone else to commit the crime, to have it committed or to co-commit it, to provide assistance in this context or to provide the occasion, means or information and/or
 2. sought to provide the opportunity, means and/or information for the commission of the serious offence, and/or
 3. possessed one or more objects of which she, the accused, knew that they were intended for the commission of the serious offence,

by,

- A. adopting the radical extremist ideology of the armed Jihad with terrorist objective, conducted by terrorist organisations such as Islamic State (IS), and/or
- B. obtaining information about travelling to and/or staying in the combat zone in Syria and/or Iraq and/or
- C. making the journey to Syria and/or Iraq in order to travel to the combat zone, or at least to an area controlled by a terrorist organisation such as IS and/or to stay for some time in the combat zone in Syria and/or Iraq and/or
- D. joining one or more IS fighter(s), or at least (a) person(s) affiliated with (an) organisation(s) advocating the armed Jihad and/or (in an Islamic manner) entering into a marriage with this (these) IS fighter(s) and/or maintaining a joint household with one or more person(s) who (also) participated in IS, or at least (an) organisation(s) advocating the armed Jihad and/or
- E. participating with one or more co-perpetrator(s) in Syria and/or Iraq in and/or contributing to the armed Jihad waged by the terrorist organisation IS, or at least (an) organisation(s) advocating the armed Jihad and/or
- F. expressing herself (by means of internet/social media(channels)/media platform(s)) and/or chatting/communicating with (an)other(s) and/or posting and/or sharing messages and/or images, relating to and/or containing (inter alia) (violent) Jihadist-oriented and/or (pro)IS-related content/propaganda and/or
- G. using and/or carrying and/or possessing (one or more) (automatic) firearm(s) in Syria and/or Iraq, in which armed Jihad struggle murder and/or manslaughter and/or arson and/or causing explosions are committed, each with terrorist objective;

4

she

during the period from 16 February 2015 up to and including 2 November 2022 in Syria and/or Iraq, deliberately placed or kept in a helpless condition her minor child named [minor 1], born on [date of birth 2] 2010, whom she has to support, nurse and care for by law as a parent of [minor 1], while knowing that [minor 1] could not defend and/or protect himself and/or bring himself into a safe situation during the aforementioned period (also in view of the minor's age), by

travelling with that [minor 1] to Syria and/or Iraq and/or taking that [minor 1] with her and/or making that [minor 1] stay for a long period of time in one or more place(s) and/or area(s) where armed conflicts were going on and/or there was war violence and/or having one or more firearms at hand (in the vicinity of that [child's name]) and/or

(thereby) (repeatedly) exposing that [minor 1] to and/or putting that [minor 1] in a situation of danger and/or the (direct) consequences of armed conflicts and/or war violence (such as bombardments and/or

shelling and/or threats of violence by persons) and/or (thereby) (repeatedly) endangering that [minor 1]'s life and/or mental and physical health and/or well-being;

Summons II (71/256885-24)

she, accused, on one or more occasions in or around the period of 1 April 2016 up to and including 1 August 2016 in [town 2], at any rate in one or more place(s) in Syria and/or Iraq,

together and in association with one or more others, at least alone, has been guilty of enslavement, as referred to in Section 4, (2) under b of the International Crimes Act, committed as part of a widespread or systematic attack directed by the Islamic State (IS) against a civilian population, namely the Yazidi population in the Iraqi region of Sinjar, at least in one or more place(s) in Iraq and/or Syria, with knowledge of the attack, the accused and/or her co-accused(s) then and there had a (Yazidi) woman, named [injured party 2], perform cleaning work and/or domestic work and/or prepare food in her and/or co-accused's house and/or outside it (for many hours a day), while this was forced labour.

3. Jurisdiction and competence of the court and the admissibility of the public prosecutors

Pursuant to Section 15 of the International Crimes Act (hereinafter: ICA), the district court of The Hague is exclusively competent to take cognizance of the crimes set out in the charges.

In brief, and to the extent currently relevant, the accused is charged under summons I, count 2, with participating in a terrorist organisation with the intent to commit terrorist crimes in Syria and/or Iraq during the period from 16 February 2015 to 2 November 2022. The charge covers five parts (A to E). Unlike parts A-D, jurisdiction for part E does not follow from a treaty obligation to establish jurisdiction under Section 6 of the Dutch Penal Code (hereinafter also: DPC).

Pursuant to Section 7 DPC, Dutch criminal law applies to a Dutch citizen who commits an offence outside the Netherlands that is considered a crime by Dutch criminal law and punishable by the law of the country where it was committed.

The court is unable to determine whether Iraqi law imposes punishment for the conduct charged to the accused, who has Dutch nationality, in the indictment under E. To that extent, the provisions of Section 7(1) DPC have not been met and there is no jurisdiction under this provision. The court will therefore declare the public prosecutor inadmissible in the prosecution for the conduct charged under E insofar as it relates to Iraq.

The court finds that in respect of all other offences charged, Dutch criminal law applies and jurisdiction therefore exists.

4 The assessment of the charges

In summary, the accused is accused of being guilty of taking part in one (or more) terrorist organisation(s) (summons I, count 2), of carrying out preparatory acts to commit terrorist offences (summons I, count 3), of putting and leaving her minor son [minor 1] in a helpless position (summons I, count 4) and of being guilty of enslavement in respect of two Yazidi women, [injured party 1] (hereinafter: [injured party 1]) and [injured party 2] (hereinafter: [injured party 2]) (summons I, count 1 and summons II).

4.1. The position adopted by the public prosecutor

The public prosecutor has adopted the position that the offences charged in summons I under counts 1, 2, 3 and in summons II could be legally and convincingly proved, with the provision that, with regard to the charged period until 1 November 2015 in summons I under 1, the charged period until 1 March 2019 in summons I under 2, 3 and 4, and the charged period from 1 May 2016 in summons II, the public prosecutor deems them legally and convincingly proven.

With regard to the charges in summons I, under 3, the public prosecutor sought acquittal of the conduct charged under E and F.

4.2. The position adopted by the defence

The defence has pleaded for acquittal of the charges under count 1, 3 and 4 in summons I and summons II due to lack of legal and convincing evidence.

Regarding the charges in summons I, under 3, the defence alternatively pleaded for acquittal for the period up to June 2015 and from the end of 2017.

Regarding the charges in summons I, under 2, the defence referred to the opinion of the court, on the understanding that the charges from June 2015 until the end of 2017 can be legally and convincingly proved. Of the other periods charged, the accused must be acquitted.

To the extent necessary, the court will address the defence's arguments below.

4.3. Evidentiary considerations

4.3.1. Finding of the facts

The court enclosed the lawful evidence with the facts and circumstances that justify the judicial finding of facts. On the basis of those legal means of evidence, the court finds the following.

Islamic State

The organisation Islamic State in Iraq and the Levant (ISIL) declared the caliphate in the territories it conquered in Iraq and Syria on 29 June 2014. From then on, it stopped using the name ISIL and replaced it with Islamic State (IS). IS is described as a jihadi Salafist organisation, which called for the violent overthrow of secular regimes. Residents of IS-controlled territory, under threat of extreme violence, were required to conform to IS's interpretation of Islam.

At the time the caliphate was declared, IS was headed by [name 1], who presented himself as caliph. Muslims were urged to take the oath of allegiance to the caliph. From its inception, IS was characterized by the systematic use of extreme violence, including publicly carried out executions (through beheadings and crucifixions, among others). Terrorist attacks were also carried out inside and outside the caliphate. IS and its followers distributed videos of executions of opponents via the internet and social media. IS has been declared a terrorist organisation by the Dutch courts on several occasions.¹

Yazidis and enslavement

Yazidis belong to a religious and ethnic minority group in parts of Iraq, Syria and Turkey. In 2014, most of the Yazidi population in Iraq lived around the Sinjar Mountains, north of the city of Mosul and in the Iraqi-Kurdish province of Dohuk, nearby the city of Sheikhan. On 3 August 2014, IS attacked the area around Sinjar, in northwestern Iraq. The attack was carried out by hundreds of IS fighters and aimed at taking towns and villages on all sides of Mount Sinjar. Sinjar was home to around 400,000 Yazidis at the time. As a result of the attack, many Yazidis fled to the Sinjar Mountains, after which IS began encircling and besieging the higher reaches of the mountains.

Yazidis who could not escape IS's attack were captured or killed. Yazidi men and older boys who refused to convert to Islam were executed. Thousands of Yazidi women and girls were taken to other parts of Iraq and Syria and subjected to enslavement.

Much of IS's governing body was involved in the practice of enslavement in the caliphate. IS official documents described and legitimised the practice of enslavement by referring to passages from the Quran and Sunnah: enslavement was described as a reintroduction of an early Islamic practice. Enslavement was also seen as a religious precept for Muslims. Captured Yazidis were seen as *ghanima* (spoils of war), Yazidi women and children were labelled *sabaya* (slaves) to be distributed among IS fighters, among others. *Souq sabaya* (slave markets) were set up in various places in Iraq and Syria, where Yazidi women and children were traded. For a short time, there was even online trade in slaves. Children were separated from their mothers: boys older than seven were transferred to military training camps or employed as domestic servants. Girls

from the age of nine were separated from their mothers. Besides legitimising the practice of enslavement, IS documents also included manuals on how to deal with slaves. These described, among other things, that it was allowed to have sexual contact with slaves, even if the slave was a minor. Applying (severe) physical violence was legitimised, as was punishing a slave if it tried to escape. Slaves were allowed to be traded or transferred from one IS fighter to another.

Yazidi slaves, including children, were housed in the homes of IS fighters, among others, where in many cases they were forced to convert to Islam and marry their owner. They were mistreated, used as sex slaves and forced to work for the IS fighter and his family. Yazidi slaves awaited severe punishment if they resisted the (sexual) violence. Their children were used by IS as leverage. If Yazidi slaves tried to escape, they faced severe punishment: death, severe beatings including gang rape, and collective punishment.

The practice of enslavement in the caliphate was not only described and encouraged by official IS documents, but social media also described the benefits of enslavement by IS fighters and by female IS supporters. The case file contains a document that includes a number of Twitter messages in which enslavement was legitimised and applauded.

[injured party 1] and [injured party 2]

Following IS's attack on the Sinjar area in August 2014, [injured party 1] fled to the Sinjar mountains with her family. After one night, she and her three daughters and her son were captured by IS. [injured party 2] was also captured by IS, having fled into the mountains when Sinjar was taken. In January 2015, five months after the attack, [injured party 1] and [injured party 2] along with many other Yazidis were taken from Iraq to the Syrian city of [place name 2] the capital of the IS caliphate. After staying about a month in various locations, including a farm and an underground prison, [injured party 1] and [injured party 2] together with another Yazidi woman and a girl were taken to a house on [street name] in [place name 2].

The women stayed in this house with three IS fighters named [name 2], [name 3] and [name 4]. Each of the Yazidi women was assigned to one of these IS fighters, whom they were eventually forced to marry. The women were forced to sleep in a room with these men and were sexually abused. The fighter to whom [injured party 1] was assigned, was [name 2]. [injured party 2] was assigned to [name 3].

The house was locked so that the women could not escape. During their stay in this house, the Yazidi women had to perform household chores including cleaning, doing laundry and cooking. They also had to convert to Islam and were forced to pray five times a day. If they did not do what was asked of them, the women were beaten. After about three months, [injured party 1] moved to another house together with [name 2]. [injured party 2] continued to live together with [name 3] in the house on [street name].

After leaving the house on [street name], [injured party 1] remained forced to do housework and sleep in a room with [name 2]. The sexual abuse and use of force against [injured party 1] also continued. [name 2] threatened to sell [injured party 1] to another IS fighter if she did not do what he asked of her. [injured party 1] was not paid or otherwise compensated by [name 2] for the work she did, seven days a week.

At the end of September 2015, [injured party 1] moved with [name 2] and her son, with whom she was in contact again at that time, to [city 3]. In that city, [injured party 1] contacted a Kurdish people smuggler at an internet café. On 7 November 2015, [injured party 1] and her son were taken by this smuggler, and they managed to escape enslavement.

Accuseds preparation and exit to Syria

In September 2014 the accused started immersing herself in Islam by reading the Quran and praying. Before then, she was not practising. The accused decided to immerse herself in Islam to find footing.

In December 2014, the accused started dressing Islamically, wearing a headscarf and long robes, something she did not do before. Witness statements from staff at the school where the accused was following her education, show that during this period, the accused's Facebook page

contained several pictures, including a picture of an IS flag with an AK47 and bullets, a picture of fighters with weapons in a desert together with a man in a white robe completely covered and holding a weapon and, finally, a picture with fighters praying on the ground, with weapons on the ground next to them.

Because of the accused's Facebook profile and the way she suddenly dressed, the school staff were concerned about the accused and contacted the police. The police initiated a conversation with the suspect about this the same month, together with a counsellor with whom the accused was already in contact. The accused told her that she had been thinking about travelling out to Syria from time to time.

Around this time, the accused had been active on IS internet pages for two months already. This is how the accused was in contact with people who were in Syria and with people who were advertising it, showing images or broadcasting news. Before her exit, the accused gained knowledge about IS, so she knew what to expect and how to dress.

In February 2015, the accused decided to actually travel out to the caliphate in Syria because she saw it as her duty as a Muslim to perform *hijrah*. At the hearing, the accused stated that she knew at the time that there was war in Syria, that she knew what IS was doing and what it was known for. She had gained this knowledge through the internet, social media and the news.

In preparation for her exit, the accused approached a random person on one of the IS pages and asked if he could help her. From him, the accused received instructions to buy a plane ticket to Turkey and to contact him once she was in Turkey. The accused then bought two plane tickets for her and her young son [minor 1] (born on [date of birth 2] 2010 and known to have developmental and behavioural problems) from Düsseldorf International Airport (Germany) to Antalya (Turkey) with a departure date of 17 February 2015.

Upon arrival in Turkey, the accused called her contact person. As instructed, she and her son travelled to a certain pick-up location, from where they were taken to a house. There, they were picked up by people who helped them cross the border into Syria.

After her arrival in Syria, the accused was placed with her son, aged four at the time, in a *madafa*, a women's home. Upon her arrival, the accused states she was firmly interrogated to check that she was not a spy. The accused stayed in this women's house for two to three weeks, after which she was transferred to another *madafa* in [place name 2]. From this *madafa*, the accused got married to an IS fighter in early May 2015, with the *kunya* (nickname) [nickname 1] and originally from Morocco. His real name is not known.

The accused had three children with [nickname 1], namely [minor 2] (born on [date of birth 3] 2016), [minor 3] (born on [date of birth 4] 2017) and [minor 4] (born on [date of birth 5] 2018). During this time, the accused used three different kunyas referring to the children's names, namely [nickname 2], [nickname 3] and [nickname 4].² [name 5] is the name given in Syria to [minor 1]. The accused also shared pictures of her children via WhatsApp. On 30 January 2016, she sent a picture of her son [minor 1] and on [date of birth 1] 2016, a picture of her newborn daughter [minor 2]. Both pictures show [minor 1] and [minor 2] wearing a band with the IS logo on it.

Residence of the accused in the home of [injured party 1] and [name 2]

Shortly after her marriage, the accused and her son stayed at the home of [name 2] and [injured party 1] for a period of about a month. The accused was allocated a private room in the residence where she spent most of her time. At the times when [name 2] was not present and the accused could use the other rooms in the home, she came into contact with [injured party 1]. The accused stated that [injured party 1] performed housework at these times. The accused knew that [injured party 1] was a Yazidi woman enslaved by [name 2].

Further course of the stay in IS territory

The accused lived in several places in both Syria and Iraq. Due to bombings, fighting and the shrinking of the IS-controlled area, the accused, for her own safety and the safety of her children, was forced to move several times. For example, one of the houses where the accused

lived was hit during a bombing. The accused, pregnant at the time with [minor 2], had just gone to hospital for an echography when the bombing occurred.

On several occasions during her stay, the accused contacted her father via WhatsApp and updated him on the situation. For instance, on 3 September 2015, the accused writes that the fighting in Iraq is heavier than in Syria, and that the Wi-Fi has been switched off for safety against the kuffar you know with those planes they have bombed often with Ramadan and el ied. Later, on 3 January 2017, the accused sends her father the following message, *I hear a lot of planes here now the last few days few days ago they dropped two bombs here very near here I am close to death here every day subhanaa Allah duaa dad please do duaa for us and for the mujahedeen dien fighting are bidznillah go we all shaheed.*

The accused's daily activities consisted of doing housework and taking care of the children. She also watched videos put out by IS showing violence.

The accused supported the sharia law that IS pronounced and enforced. In the accused's eyes, sharia law is Islam. The accused's views are echoed in the messages she sent to her father. For instance, on 10 February 2017, she wrote: *I [h]eard that the dogs now give a ban to the women who wear niqab/burka [...] may Allah curse these dirty dogs and choke their hatred they hav[e] in it [...] so you see again dad how these dirty kuffar treat us Muslims when will you come this way [...] do you want jannah then you should follow the akhira and not these dirty dunya!!! Fear Allah dad this world is nothing'. The accused also asked her father (and aunt) to come to her several times, positively portraying life in IS territory to them. For example, a message dated 12 October 2015 reads: [...] do come this way now here you h[a]ve better life than in the Netherlands".*

The accused and her family had to make ends meet on the money her husband [nickname 1] received each month from IS. [nickname 1] left most days in the morning and only returned in the evening. Occasionally he was away for a longer period of time. He was also wounded once in a bombing. [Nickname 1] carried weapons; he had a pistol and an AK47. The accused also carried a weapon on two occasions, because her husband ordered her to do so according to her statement.

In 2018, during the pregnancy of [minor 4], [nickname 1] pronounced the divorce. After giving birth in July that year, the divorce between the accused and [nickname 1] was also official. Since she no longer received any money because of the pronouncement of the divorce, the accused registered with IS so that she could get food and drink. She was given a membership card and received nappies for the children in addition to food.

The accused's name appears in several documents from the IS administration. For instance, her name has been registered by the Fighters Affairs Department and the Centre for (War) Prisoners and Martyrs in Al Baraka province during the period from 9 July 2018 to 26 February 2019. It is noted that the accused received one food basket and 10 units of flour from IS. Her membership card had number 1209 and personal identification number 554289.

In 2019, the accused stayed in Al Baraka province, which was at that moment in time the last remaining piece of territory held by IS. The accused left for the al-Hol camp in February 2019 and was repatriated in early November 2022.

IS's caliphate fell in March 2019.

4.3.2. In respect of summons I, count 2: participation in a terrorist organisation

Under count 2, the accused is charged with participating in a terrorist organisation. The relevant legal framework against which this offence should be assessed can be summarised as follows.

Terrorist organisation

Section 140a (1) DPC refers to participation in an organisation which has as its purpose the commission of terrorist offences. The purpose of the organisation, an alliance in varying composition or not, must therefore be aimed at the commission of (specific) serious offences listed in Section 83 DPC, provided they are committed with the terrorist object described in Section 83a DPC.

Pursuant to Section 83a of the DPC, terrorist objective means the objective to cause serious fear in the population or a part of the population of a country, or to unlawfully compel a public authority or international organisation to act or to refrain from certain acts or to tolerate certain acts, or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation.

To prove the objective, significance may be attributed to crimes already committed within the framework of the organisation, the more permanent or structured nature of the cooperation as may be apparent from the mutual division of work or mutual coordination of activities of participants within the organisation with a view to achieving the organisation's common goal and, more generally, the methodical or systematic nature of the activities of participants within the organisation carried out with a view to this goal.

The offence under Section 140a DPC is therefore not about the actual commission of terrorist offences, but about the objective to commit those offences. For that objective, the organisation's ulterior purpose may also suffice. It is not required that the commission of terrorist offences is the organisation's main *raison d'être*.

Participation

Participation in a terrorist organisation can only be established if the accused is a member of the alliance and contributes to actions aimed at or directly related to the realisation of the objective to commit terrorist offences, or if the accused supports the aforementioned actions.

Such a contribution may consist of the (co-)commission of any crime, but also of the performance of acts of assistance which need not be punishable in themselves, but are aimed at realising the objective of the terrorist organisation. It is sufficient that the accused generally knows, in the sense of unconditional intent, that the organisation has the commission of terrorist offences as its purpose. It is not required that the accused has any kind of intention to commit the concrete offences sought by the terrorist organisation. Nor is it required that the accused herself participated or participates in the commission of offences committed or to be committed by (members of) the organisation.

IS

It is now established case law that during the period of the indictment, IS had the objective to destroy the fundamental political structure of Syria and Iraq and to instil serious fear in the population, and that participation in the armed struggle on the part of IS entails committing terrorist offences.³ During the period of the indictment, IS achieved its objectives, including replacing the existing political structure by a structure based on Sharia law, partly by sowing death and destruction among everyone who did not share their extreme fundamentalist beliefs. IS can thus be classified as an organisation which has as its purpose the commission of terrorist offences, as referred to in Section 140a DPC.

Accused's participation in IS

The court finds that the accused participated in the terrorist organisation IS. To this end, the court considers the following.

It is established that the accused travelled with her son [minor 1] to Syria via Germany and Turkey on 17 February 2015. Despite conversations about this with the police and an aid worker, the accused wanted to go to the caliphate proclaimed by IS to perform the *hijrah*, even though she knew that there was war in Syria and that IS was committing (extreme) violence towards non-believers. She stated as much at the hearing. Before her departure, the accused deliberately gained knowledge about IS, so that she knew what to expect and how to dress and behave. Telling is her statement to the police: *"If I went there with a blank image they are going to question you. So I had to prepare certain things. IS was already known what kind of organisation it is. Therefore I thought then I know what to expect. This is what IS does, what they are known for.* Thus, the trip to the caliphate was not merely motivated by the desire to live a peaceful and undisturbed life.

After staying in a *madafa* for over two months, the accused chose to marry an IS fighter and settle in the caliphate of IS in Syria and Iraq for a long period of time. The accused maintained a joint household with [nickname 1], an active IS fighter. The accused and her family made ends meet on the money that [nickname 1] received from IS every month. Thus, she and her family benefited financially from IS. This support ensured that the accused could devote herself to the household and the upbringing of the children, which was considered an important task for women within IS. [nickname 1] possessed firearms, while the accused herself carried one of his weapons (at least twice).

Even after she divorced [nickname 1], the accused remained within IS territory, even until the fall of the caliphate. The accused chose to turn to IS even then, as is shown by the documents from IS's records. She also has been identified in IS's membership records with a corresponding personal identification number during the period from 9 July 2018 to 26 February 2019.

Throughout the period of her stay, the accused placed herself under the authority of IS, submitting to the rules of sharia law imposed by IS. This was a choice by conviction. The accused supported the sharia rules and identified them with Islam. She also propagated the ideology of IS to people around her, including her father, as evidenced by the messages to him in which she talks about dirty *kuffars* (infidels). This solidarity with IS is also evidenced by the fact that she portrayed two of her children with an IS band around their heads.

In conclusion, through her actions, prompted by her conscious and convinced choice to remain in IS territory, the accused numerically reinforced IS's sphere of influence each time. The accused thus carried out conduct that was aimed at or directly related to the realisation of the terrorist objective of IS, while the accused was aware of the terrorist objective of this organisation in general. After all, she knew about the armed struggle and extreme violence used by IS, as her statement at the hearing showed. She was also aware of (some of) the atrocities taking place in Syria, if only because she had watched videos of IS showing them several times.

All the aforementioned facts and circumstances result in the accused being considered a member of and (thereby) a participant in the terrorist organisation IS.

Acquittal of co-perpetration

The court is furthermore of the opinion that it cannot be derived from the means of evidence that the foregoing involved a sufficiently close and deliberate collaboration between the accused and another person, which at its core consisted of a joint execution, so that the court will acquit the accused of the charges of co-perpetration.

Period in which the offence was committed

The means of evidence show that the accused appears in IS's records up to 26 February 2019. It states that she left as of that date in the context of the negotiations. This is consistent with the accused's statement that she stayed in Kurdish refugee camps from the end of February 2019. The file does not show that the accused performed any act of participation after that time. The court will therefore acquit the accused of the charges against her as regards the period after 26 February 2019.

Conclusion count 2

In view of the above, the court finds that in the period from 17 February 2015 up to and including 26 February 2019, the accused participated in Syria and Iraq in an organisation which has as its objective the commission of terrorist offences, namely IS.

4.3.3. In respect of summons I, count 3: preparatory acts

Under count 3, the accused is charged with having committed several punishable preparatory acts, listed in the indictment under the letters A (familiarizing with extremist ideas); B (obtaining information about travelling to the combat zone); C (travelling to Syria); D (joining IS fighters); E (contributing to the armed Jihad struggle); F (sharing IS propaganda); and G (carrying firearms).

In assessing this charge, the following legal framework applies.

The acts of preparation and promotion described in Section 96(2) DPC are punishable regardless of their outcome. The requirement is that the perpetrator undertakes the conduct with the objective of preparing or promoting the terrorist offence in question. Conditional intent to prepare or promote a terrorist offence is not sufficient. The offence being prepared or promoted will have to be established to the extent that it can be determined whether it is an offence the preparation and promotion of which is punishable under Section 96(2) DPC. Time, place and manner of execution will thus have to be somewhat concrete. The imputed acts of preparation and promotion may be considered together. Even if isolated acts do not constitute punishable preparation, the accused's intent to prepare a crime can be inferred from the combination of all the acts and the accused's ideology together.

Following on from the considerations set out above with respect to the charges in summons I under count 2, the court finds as follows.

With regard to the offences charged under A, B, C and D, the court finds that it can be deduced from the means of evidence that the accused had already familiarised herself with the ideology of IS prior to traveling to Syria by gathering knowledge about it and she was already a supporter of the armed struggle by IS while she was still in the Netherlands. This in view of what has been considered above in relation to the period before the departure for Syria and in particular given the photos on her Facebook account, which showed an IS flag, weapons and fighters. With the conduct that took place thereafter, travelling out and joining IS fighters, she also put her ideological beliefs into practice.

The court does not consider the conduct charged under E to have been legally and convincingly proved. There is no evidence in the case file that the accused actually participated in the armed jihad struggle, or that she made a significant contribution to it. The accused will be acquitted of that part of the indictment.

Nor does the court consider the conduct charged under F to have been legally and convincingly proved. It cannot be inferred sufficiently from the case file that the accused expressed herself online or communicated with others about the IS ideology or tried to promote it. The app messages with her father, significant as they are, are essentially private messages and cannot be qualified as propaganda.

However, the court does consider the charge under G to have been legally and convincingly proved. The accused has acknowledged having carried firearms, while a witness also mentioned this.

In view of the above and in view of the above findings of fact and considerations with respect to the charges in summons I under count 2, the court deems the conduct listed under A, B, C, D and G to have been legally and convincingly proved, as reflected in the judicial finding of fact.

In the court's opinion, there was no close and deliberate cooperation between the accused and another that consisted, in essence, of joint execution, so that the accused is acquitted of the co-perpetration charge.

By so acting, the accused provided herself or others with the opportunity, means and information to commit the terrorist offences mentioned in summons I under count 3 and, by having firearms at her disposal, possessed objects which she knew were intended for the commission of such an offence.

Finally, from the combination of the acts proven under A, C, D and G, considered in combination with each other, the accused's intent to prepare these crimes can be inferred. The defence's argument that there was no terrorist objective is therefore rejected.

Of the period after 26 February 2019, the court will (partially) acquit the accused, as the accused then surrendered and stayed in Kurdish refugee camps.

The court concludes that during the period from 17 February 2015 up to and including 26 February 2019, the accused was guilty of promoting and preparing terrorist crimes.

Thereby, the court concludes that the charges in summons I under count 3 have been proven.

4.3.4. In respect of summons I, count 4: placing or keeping a minor in a helpless condition

Under count 4, the accused is charged with placing and keeping her minor son [minor 1] in a helpless condition.

It is established that the accused took her minor son [minor 1], born on [date of birth 2] 2010, around 17 February 2015, from the Netherlands to the combat zone in Syria and Iraq. The accused stated that she knew at the time of departure that a war was going on in Syria. Thus, the accused took [minor 1] to an area of armed conflict and violence of war. In doing so, she knowingly and intentionally accepted the substantial chance that there would be danger to [minor 1]'s life or health and thus put him in a helpless condition.

The fact that the accused, in her own words, wanted to live in a peaceful area does not alter this; after all, the accused knowingly travelled to a war zone. Contrary to what the defence argued, it did not appear that the accused had such a lack of insight in her actions and their consequences that it would have to be concluded that the required intention to put a minor in a helpless condition was lacking.

The court further finds that the accused not only deliberately placed [minor 1] in a helpless condition, but also kept him in such a condition. The WhatsApp messages and the accused's statement show that [minor 1] was exposed to dangers such as bombing and shelling. He was further deprived of the care he needed, partly in view of the existing developmental problems. The stay in Syria and Iraq thus had a very detrimental impact on [minor 1]'s development.

The fact that a parent and the child were unable to leave the combat zone may play a role in the question of whether there was a case of deliberately keeping the minor child in a helpless condition.⁴ However, the case file does not provide sufficient evidence that she was unable to leave and also contains information to the contrary, which makes the court find that the accused did not *want* to leave the combat zone. This is evident from the circumstance that the accused repeatedly asked her father via WhatsApp to come to Syria and join her, even after she had been in IS territory for quite some time and IS's influence was waning.

The court therefore deems the charges in summons I under count 4 legally and convincingly proved as far as the period up to 26 February 2019 is concerned. As regards the period from 26 February 2019 onwards, the court will acquit the accused.

4.3.5. In respect of summons 1, count 1 and summons II: enslavement

In brief, the accused is charged with participating in enslavement as a crime against humanity consisting of making [injured party 1] and [injured party 2] perform forced labour.

Crimes against humanity

The charges are tailored to Article 4(1)(c) ICA, which criminalises enslavement as a crime against humanity. A proven crime against humanity requires that the crime was committed as part of a widespread or systematic attack directed against a civilian population with knowledge of the attack.

An attack directed against a civilian population is defined in Article 4(2)(a) ICA as the multiple commission of acts referred to in the first paragraph of that article against a civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack.

In assessing this allegation, the court took into account relevant rulings by international criminal tribunals and the International Criminal Court from which it follows, among other things, that the conduct forming part of the attack need not be violent or always protect the same legal interest. The attack may consist of a sum of different acts, as long as there is coherence between the acts and the attack.⁵ Furthermore, the attack must be directed against a civilian population. It is not required that the attack be directed against the entire civilian population,⁶ an attack directed against a significant number of individuals is sufficient.⁷

In the requirement of a widespread or systematic nature of the attack, widespread refers to the scale or extent of, for example, the number of victims,⁸ and systematic refers to the existence of a plan or pattern.⁹ It is further required that the attack takes place pursuant to or in furtherance of State or organisational policy referring to active encouragement or promotion of an attack on

a civilian population by a State or organisation.¹⁰ Also, the policy or plan need not be explicitly proclaimed or detailed.¹¹ A *de facto* or implicit plan is sufficient.

Enslavement

The concept of enslavement is further defined in Article 4(2)(b) ICA. According to this article, enslavement means the exercise of any or all of the powers attaching to the right of ownership over a person.

Article 4(1)(c) ICA reflects Article 7(1)(c) of the Rome Statute of the International Criminal Court. The court took note of the Elements of Crimes, which, under the aforementioned Statute, are intended to assist in the interpretation and application of the provisions of the Statute. The Elements of Crimes belonging to Article 7(1)(c) read as follows:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Furthermore, the court took into account decisions of international criminal tribunals and the International Criminal Court, which provide further guidance on the interpretation and application of enslavement as a crime against humanity.¹²

From that case law, it follows that the court should assess, based on the circumstances of the case, whether there has been the exercise of any or all of the powers attaching to the right to ownership over a person.¹³ Indicators for this include (i) control over or restriction of a person's freedom of movement and, more generally, the taking of measures to prevent or discourage escape; (ii) control over the physical environment; (iii) psychological control or pressure; (iv) force, threat of violence or coercion; (v) the duration of the exercise of the powers attaching to the right of ownership; (vi) exercise of exclusivity; (vii) subjection to cruel treatment and abuse; (ix) forced labour or subjection of the person to a submissive status; and (x) the vulnerability of the person and the socio-economic circumstances in which the powers are exercised.¹⁴ There is no requirement that a person has been acquired or alienated for monetary or other consideration.¹⁵ However, these are classic examples of the exercise of powers attaching to the right of ownership and strong indications that enslavement has occurred. ¹⁶ Finally, it is important to note that any deprivation of liberty of the victim may take different forms, it may include, for example, situations where a victim is not physically confined, but otherwise unable to leave because she has nowhere else to go and fears for her life.¹⁷

Widespread and/or systematic attack on a civilian population by IS?

The court must determine whether there was a widespread or systematic attack on a civilian population.

It follows from the factual findings presented above that IS carried out an attack on the Yazidi community from August 2014. Enslaving and trafficking captured Yazidi women was part of this attack. The enslaved Yazidi women were forced to work as domestic workers for IS families and many of them were subjected to abuse and rape. These acts, given their nature and extent, can be classified as an attack on a civilian population.

During the attack, hundreds of thousands of Yazidis were displaced, many hundreds of Yazidis were killed and thousands of Yazidis are still missing to this day. Thousands of women and girls were enslaved and trafficked. Considering the large number of victims of IS's attack, in the court's view, the attack was widespread.

Moreover, the attack on the Yazidi community involved a preconceived plan and process for selecting and separating Yazidis based on gender and age. The Yazidi women were taken away in

an organised manner by buses and trucks before being trafficked in the specially established slave markets. Enslaving the Yazidis was legitimised, approved and encouraged by IS. This is evident, among other things, from IS publications that outlined the regulations regarding slavery as well as the practical handling of slaves and thus the policies of IS. These regulations revealed, among other things, that trafficking slaves was allowed. This trafficking took place at slave markets organised by IS in Syria and Iraq. All aspects involved in the enslavement of Yazidi women involved the IS administration. In view of the foregoing, in the court's opinion there was also a systematic attack.

Thus, in the court's opinion, there was a widespread and systematic attack on a civilian population.

Knowledge of the attack

Regarding the question of whether the accused had knowledge of the attack on the Yazidi community, the court considers the following.

At the hearing, the accused stated that she knew of the existence of the Yazidi community, and that she knew that [injured party 1] was a Yazidi woman. She also knew that [injured party 1] was used as a slave by [name 2], was not free and could not escape, as detailed below.

However, the accused has denied that she knew about IS's attack on the Yazidi community. The court does not find that statement credible.

The attack on the Yazidi community and enslaving women and children was part of life within the caliphate. Many of the enslaved Yazidi women were taken to [place name 2] and then sold among others at slave markets organised there. During the offence charged, the accused resided in [place name 2], the capital of the caliphate. Also, in the period prior to but also after the accused had travelled to Syria, both official bodies within IS and third parties published widely on enslavement and the fate of the Yazidi. IS publications were publicly available, justified enslavement and even offered detailed manuals on how to treat slaves. Viewed against this background, the accused's statement already lacks credibility from the outset.

What adds to the lack of credibility of the statement is the circumstance that the accused met several enslaved women and their owners in person at meetings on Friday nights. This makes it clear that the accused could have known that the fate of [injured party 1] was not an isolated incident.

In view of the above, the court finds that the accused did have knowledge of the IS attack on the Yazidi community, and knew of the IS practice of enslaving Yazidi women.

Assessment summons I, count 1

The question before the court is whether it can be legally and convincingly proved that the accused was guilty of enslavement towards [injured party 1]: exercising of any or all of the powers attaching to the right of ownership over [injured party 1].

Reliability of statements made by [injured party 1]

The suspicion against the accused rests to a considerable extent on the statements of [injured party 1]. The court will have to assess whether facts and circumstances can be derived from these statements with sufficient certainty on the basis of which the accused's involvement in the offence charged in summons I under 1 can be established. In doing so, caution is required, in view of the not insignificant lapse of time between the events charged and the making of the statements, and the circumstance that the witness has made statements about highly traumatic events.

[injured party 1] made statements at different times to various organisations about what she experienced after IS attacked the Sinjar region, including to the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL (hereinafter: UNITAD). At UNITAD, [injured party 1] gave statements about the accused for the first time, during an

interview on 28 March 2022. On 27, 28 and 29 June 2022, [injured party 1] was further questioned about the conduct of the accused. The March and June 2022 statements were both incriminating to the accused. On 27 and 29 August 2024, [injured party 1] was heard by the examining magistrate and again made incriminating statements about the accused.

The court finds that [injured party 1]'s statements are sufficiently consistent where it concerns important parts: her capture by IS, being separated from her children, eventually ending up in the house at [street name] in [place name 2] and then being taken by [name 2] to another house where eventually the accused came to live with her temporarily. [injured party 1] also states with sufficient consistency about when the accused moved into the house.

However, the court also notes that [injured party 1]'s statements at UNITAD and her statement at the examining magistrate diverge with regard to, among other things, the number of times the accused stayed at [injured party 1]'s house and the accused's attitude towards [injured party 1]. Contrary to what the defence has argued, these discrepancies are not, in the court's opinion, of such a great weight that they render [injured party 1]'s statement at the examining magistrate unreliable. After all, the statements were made in different ways in different contexts, whereby the court deems it important that at UNITAD, the questioning was to a lesser extent about details of the accused's involvement. Moreover, the hearing before the examining magistrate took place more than two years after the interviews at UNITAD. In the court's opinion, both [injured party 1]'s statements at UNITAD and her statement at the examining magistrate can be used as evidence. The court therefore takes [injured party 1]'s statements as a starting point.

Enslavement

The court must determine whether the accused exercised any or all of the powers attaching to the powers of ownership against [injured party 1].

The facts and circumstances established above show that [injured party 1] was appropriated by [name 2]. She had to stay with him in a house and perform domestic work for him including doing the laundry, cooking and cleaning. [name 2] forced [injured party 1] to sleep in a room with him, sexually abused her and used (other) violence against her. The file shows that [injured party 1] had access to a key to the house at some point and could therefore physically leave the house. Unlike the defence put forward, in the court's opinion this does not alter the fact that [injured party 1] was actually unable to escape, given the circumstance that she lived in the capital of the caliphate and escaping there was not a realistic option for her, as a Yazidi woman. Moreover, [injured party 1] stated that she did not want to escape without her children who had also been captured by IS and were staying near her.

The court therefore finds that [injured party 1] was held and used as a slave by [name 2], and that the accused knew this. At the hearing, when it came to the position of [injured party 1], the accused said, that she the accused was free though. From this, the court concludes that the accused knew that [injured party 1] was not, and was being held as a slave.

Based on [injured party 1]'s statements, the court finds that the accused did not help [injured party 1] perform her household tasks. Instead, the accused increased the amount of work that [injured party 1] had to perform by requiring [injured party 1] to also prepare food for the accused, wash the accused's and her son's clothes and perform other household tasks. Moreover, the accused gave [injured party 1] orders to do household work, and to take care of the accused's son, not only at times when [injured party 1] was alone with the accused, but also at times when [name 2] was present in the house.

In these findings, the court ignores the accused's contrary, denying statements about what took place in [name 2]'s house. After all, as considered above, [injured party 1]'s statements are reliable and, moreover, correspond to what is generally known and has also been reflected above about what was done to Yazidi women in the caliphate.

The accused stayed in the same house as [name 2] and [injured party 1] in the knowledge that [injured party 1] was [name 2]'s slave. She then not only took advantage of the existing situation by having [injured party 1] perform tasks for herself and her son, but also actively gave

orders to [injured party 1]. In other words: she not only maintained the existing situation in which [injured party 1] had to perform work for [name 2], but also actively contributed to this. In the court's opinion, by acting in this way, the accused made [injured party 1] perform forced labour.

The evidence shows that [injured party 1] was convinced that she could not refuse the accused's orders. She was afraid that a refusal would be passed on to [name 2] with all possible consequences. The court finds that this conviction of [injured party 1] was justified. [injured party 1] stated that the accused was not nice to her. Although the accused herself did not use violence against [injured party 1], in the court's opinion it cannot be other than that the accused knew that [name 2] did, and even sexually abused [injured party 1]. After all, the accused lived together with [name 2] and [injured party 1] in a relatively small house, [injured party 1] stated that she discussed the (sexual) violence with the accused and the accused herself stated at the court hearing about the use of violence by IS fighters against enslaved people. The violence took place when [injured party 1] did not behave as [name 2] wished. Moreover, the court considers relevant that [name 2] told [injured party 1] to do everything the accused asked of her. The court finds that, given this context, [injured party 1] had no choice but to carry out the accused's orders and could not refuse them.

In particular, the background against which the accused's conduct took place should be taken into account. [injured party 1] had been abducted by IS, enslaved and subsequently come into the ownership of [name 2] by whom she was subjected to abuse and (threats of) violence. Added to this, within IS, having (Yazidi) slaves was highly encouraged and promoted. Both prior to and during the period that the accused stayed in the house, [injured party 1] was forced to perform work seven days a week for which she was not compensated. It was effectively impossible for [injured person 1] to escape this situation.

The accused knew of [injured party 1]'s particularly vulnerable position and took advantage of it herself by making [injured party 1] perform forced labour. In the court's opinion, [injured party 1] was therefore also in a submissive position towards the accused in which she was deprived of any autonomy. The court therefore rejects the defence's argument that the accused did not sufficiently exercise ownership powers in relation to [injured party 1].

The defence has argued that the incriminating statements of [injured party 1] do not find sufficient support in other evidence and therefore the minimum evidence requirement of Section 342(2) of the Dutch Code of Criminal Procedure (DCCP) is not met. The court rejects this defence.

The accused and [injured party 1] have both stated that during her stay in the house, the accused was mainly in her room. Moreover, the accused stated at the hearing that [injured party 1] did not ask her for help. This passive attitude of the accused is in line with [injured party 1]'s statements that the accused was lazy and did not help her in the household. Moreover, both the accused and [injured party 1] have stated that [name 2] went away during the day and they were in the house together at those times. The accused also stated at the hearing that she knew that [injured party 1] was Yazidi, stayed in the house against her will and was not free. Finally, the accused confirmed that [injured party 1] was constantly cleaning, washing and cooking during the day, and that it was not possible for [injured party 1] to escape. In the opinion of the court, these statements by the accused provide sufficient concrete support to [injured party 1]'s statements about the charged conduct.

Co-perpetration

The court is also faced with the question whether there is co-perpetration as charged. In the opinion of the court, it follows from the case file and the investigation at the hearing that there was a sufficiently close and conscious cooperation between the accused and [name 2], which in essence consisted of a joint execution. At the time the accused moved into [name 2]'s home, she found herself in a situation in which [name 2] was already keeping [injured party 1] as a slave. The accused stated that she knew that [injured party 1] had been enslaved and was also being used as such by [name 2]. The accused maintained this situation and, in addition, also

independently gave orders to [injured party 1], including about the household duties, even at times when [name 2] himself was in the house. This fact suggests that [name 2] was aware of the accused's actions and either tacitly or otherwise consented to them. The fact that the accused was not allowed to communicate with [name 2] or to be alone in a room with him does not alter the finding that the accused and [name 2] cooperated.

The court therefore considers the charged co-perpetration proved.

Part of the attack

The court considered that enslaving Yazidi women and then making them perform domestic work was part of a widespread and systematic attack against the civilian population. The court finds that the enslavement of [injured party 1] and what happened to her fits seamlessly into the general pattern of the attack already outlined whereby Yazidi women were abducted and enslaved. The accused knew that [injured party 1] was a Yazidi woman abducted and enslaved by IS. Furthermore, the accused knew that [name 2] forced her to perform household duties. This context allowed the accused to give orders to [injured party 1] herself. In the court's opinion, the accused's actions cannot be viewed in any other way than in the light of IS's attack on the Yazidi community.

Period in which the offence was committed

The case file shows that [injured party 1] managed to escape with her son on 7 November 2015. In her statement to UNITAD, [injured party 1] stated that forty days before she escaped, she went to live with [name 2] and her son in [place name 3]. It is therefore not possible for the accused to have given orders to [injured party 1] after 1 October 2015. The court will acquit the accused for the period stated in the charge after 1 October 2015.

Conclusion

The court finds that the accused is guilty of co-perpetrating the crime against humanity enslavement against [injured party 1] in the period from 1 May 2015 to 1 October 2015.

Assessment summons II

Finally, the question that lies before the court is whether it can be legally and convincingly proved that the accused was guilty of enslavement towards [injured party 2].

Reliability of statements made by [injured party 2]

The suspicion against the accused largely rests on the statements of [injured party 2]. The court will also have to assess with regard to these statements whether facts and circumstances can be derived with sufficient certainty on the basis of which the accused's involvement can be determined. In doing so, just as with regard to the statements of [injured party 1] and for the same reasons, caution is required.

The case file contains three statements by [injured party 2], made at different organisations, in which she mentions the accused. On 23 and 24 September 2020 and 7 October 2020, [injured party 2] made a statement to UNITAD. In this statement, she mentioned the accused in response to being asked whether she had encountered Europeans in [place name 2]. Furthermore, [injured party 2] stated that the accused did not stay in her house but visited her and that the accused did not have an enslaved woman in the house herself.

Two years later, on 29 September 2022, [injured party 2] made another statement to UNITAD. In this statement, she indicated that she saw the accused regularly. When asked whether [injured party 2] herself had ever received orders from the accused, [injured party 2] answered in the negative. The statement also shows that [injured party 2] never saw or heard the accused giving orders to other Yazidi women. Furthermore, [injured party 2] stated that she regularly visited the accused and that the accused stayed at her and [name 3]'s house for a period of two weeks because the accused's house had been bombed. When asked, [injured party 2] stated that she never helped with housework at the times when she visited the accused, and said she did not do their work.

On 23 and 25 May 2024, [injured party 2] was heard by the examining magistrate and she stated that the accused had lived with her for about two months. During this interview, [injured party 2] stated that during this period she was ordered by the accused to do housework. Moreover, the accused allegedly forced her to pray together. Confronted with her (contrary) statement at UNITAD of 29 September 2022, [injured party 2] said she did not remember everything correctly and only received orders from the accused when the accused was staying with her ([injured party 2]).

The court finds that [injured party 2]'s statements contained significant discrepancies regarding the accused's actions. In the court's opinion, these discrepancies are so significant that they cannot be explained by the manner in which the statements were made, or the lapse of time between the events and the making of the statements. Moreover, the court finds that the discrepancies between the statements concern an element that would be decisive for the evidence: the exercise of ownership powers. In view of this, the court finds that it cannot use [injured party 2]'s statements as evidence.

Thus, the court is also unable to assess the question whether there is sufficient legal and convincing evidence to be able to arrive at a proven statement by means of a so-called link similar fact evidence construction, as argued by the public prosecutor. In essence, such a construction in this case amounts to whether [injured party 2]'s statements are supported by other evidence, as a result of which it would be possible to conclude that the charge were proven. Since the court will not use [injured party 2]'s statements as evidence and the case file contains insufficient further evidence for the finding that the accused committed the conduct charged under summons II, she should be acquitted thereof.

Conclusion

The court acquits the accused of the offences she is charged with under summons II.

4.4. Judicial finding of fact

With regard to the offences charged in summons I under 1, 2, 3 and 4, the court finds that these offences have been legally and convincingly proved. The court declares proved against the accused that:

Summons I (71/283722-22)

1

she, in or around the period from 1 May 2015 to 1 October 2015 in [place name 2], together and in association with one or more other person(s), was guilty of enslavement, as referred to in Article 4(1)(c), of the International Crimes Act, committed as part of a widespread or systematic attack directed by the Islamic State (IS) against a civilian population namely, the Yazidi population in places in Iraq and Syria, with knowledge of the attack, the accused and her co-accused then and there had a Yazidi woman, named [injured party 1], perform cleaning work and domestic work, prepare food and take care of the accused's son (for many hours a day), while this involved forced labour;

2

she, in the period from 17 February 2015 up to and including 26 February 2019 in Syria and Iraq, participated in a terrorist organisation, namely Islamic State (IS), which organisation had and has the objective of committing terrorist crimes, namely,

deliberately setting fire and/or causing an explosion, while there is a general risk of danger to property and/or danger of grievous bodily harm and/or danger to life for another person and/or this offence results in someone's death (as referred to in Section 157 of the Dutch Penal Code), (to be) committed with terrorist objective (as referred to in Section 176a of the Dutch Penal Code) and

manslaughter (to be) committed with terrorist objective (as referred to in Section 288a of the Dutch Penal Code) and

murder (to be) committed with terrorist objective (as referred to in Section 289 in conjunction with Section 83 of the Dutch Penal Code) and

the conspiracy and/or deliberate preparation and/or promotion of previously mentioned serious offences (as referred to in Sections 176a and/or 289a and/or 96(2) of the Dutch Penal Code) and possession of one or more category II and/or III weapons and/or ammunition (as referred to in Section 26(1) of the Weapons and Ammunition Act) (to be) committed with terrorist objective and/or with the objective to prepare or facilitate a terrorist crime (as referred to in Section 55(1) and/or (5) of the Weapons and Ammunition Act).

3

she during the period from 1 November 2014 up to and including 26 February 2019, in places in the Netherlands and Syria and Iraq, multiple times, with the objective to prepare and/or facilitate the committing of (a) serious offence(s) referred to in Sections 83 and/or 157 and/or 176a and/or 176b and/or 289(a) and/or 288a of the Dutch Penal Code, namely:

- murder and/or manslaughter (to be) committed with terrorist objective and/or
- deliberately setting fire and/or causing an explosion, while there is a general risk of danger to property and/or danger of grievous bodily harm and/or danger to life for another person and/or this offence results in someone's death, (to be) committed with terrorist objective,

sought to provide the opportunity, means and information for the commission of the serious offence, and

possessed one or more objects of which she, the accused, knew that they were intended for the commission of the serious offence,

by,

A. adopting the radical extremist ideology of the armed Jihad struggle with terrorist objective, conducted by the terrorist organisation Islamic State (IS), and

B. obtaining information about travelling to and/or staying in the combat zone in Syria and

C. making the journey to Syria and Iraq in order to travel to the combat zone, an area controlled by

the terrorist organisation IS and to stay for some time in the combat zone in Syria and Iraq and

joining an IS fighter and entering into a marriage with this IS fighter and maintaining a joint household with a person who also participated in IS and

G. carrying and possessing (automatic) firearms in Syria and Iraq,

in which armed Jihad struggle murder and/or manslaughter and/or arson and/or setting off explosions are committed, each with terrorist objective;

4

she during the period from 16 February up to and including 26 February 2019 in Syria and Iraq, deliberately placed and kept in a helpless condition her minor child named [minor 1], born on [date of birth 2] 2010, whom she has to support, nurse and care for by law as a parent of [minor 1], while knowing that [minor 1] could not defend and protect himself and bring himself into a safe situation during the aforementioned period (also in view of the minor's age), by travelling with that [minor 1] to Syria and Iraq and taking that [minor 1] with her and allowing that [minor 1] to stay for a long period of time in places and areas where armed conflicts were going on and there was violence of war and having one or more firearms at hand (in the vicinity of that [minor 1]) and

thereby repeatedly exposing that [minor 1] to and putting that [minor 1] in a situation of danger and the (direct) consequences of armed conflicts and violence of war (such as bombardments and shelling and threats of violence by persons) and thereby repeatedly endangering the life and the mental and physical health and well-being of that [minor 1].

To the extent that the charges contain typographical and linguistic errors, these have been corrected and italicised in the finding of facts, without the accused's defence being prejudiced.

5 The punishability of the judicial finding of fact

The proven facts are punishable by law, as no facts or circumstances have been demonstrated which exclude the punishability of the facts.

6 The punishability of the accused

The accused is also punishable as no facts or circumstances have been demonstrated which exclude her punishability.

7 The punishment imposed

7.1. The demand of the public prosecutor

The public prosecutor demanded that the accused be sentenced to a term of imprisonment of eight years, less time spent in pre-trial detention.

7.2. The position adopted by the defence

On behalf of the accused, the defence requested the court when determining the sentence to take into account the advice given in the Pro Justitia report that the offences charged in summons I, under 2, 3 and 4 should be imputed to the accused to a reduced extent. The defence has also taken the view that the accused's long-term stay in the Kurdish detention camps constitutes a mitigating circumstance. This also applies to the considerable chance that the accused will be deprived of her Dutch nationality as a result of her conviction, which will result in the accused disappearing into illegality. Furthermore, the defence argued that the reasonable time limit had been exceeded in the present case.

Furthermore, the defence requested that should the court conclude that the charges of enslavement have been proven, when determining the sentence it should take into account the accused's limited freedom of movement and the duration of the charges.

Finally, the defence argued that the accused agrees with the advice given in the Pro Justitia report, to impose long-term counselling in several areas of life as part of special conditions for a suspended sentence.

7.3. The judgment of the court

The sentence referred to below is in accordance with the gravity of the offences committed, the circumstances under which they were committed and is based on the person and personal circumstances of the accused, as demonstrated during the hearing. The court takes the following into account in particular.

Gravity of the offences

The accused travelled to Syria in February 2015, more than six months after the caliphate was declared, together with her vulnerable son, who was four years old at the time. At the time, the accused knew of the existence of the armed conflict there and knew of IS' views and actions, but travelled to Syria nonetheless. In Syria, the accused joined the terrorist organisation IS and married a fighter. She embraced the extremist ideology of IS and stayed in IS-controlled areas for years, until the end, when the caliphate fell, thus strengthening IS's power through her presence. During her marriage, she facilitated her husband's work for IS by doing the joint household and taking care of him. Moreover, she possessed firearms. Thus, she facilitated the commission of terrorist crimes.

Battle groups such as IS aim to establish an Islamic state in which the rights of dissenters are systematically and very violently violated. It has been established that the violence used by IS to achieve its goal was exceptionally brutal and that serious crimes such as summary executions, murder, torture, enslavement and mutilation of prisoners of war and civilians were committed against

dissenters on a large scale. Furthermore, IS was partly responsible for the destruction or wrecking of houses, agriculture and infrastructure. Terrorised residents fled and had to leave everything behind as a result. There have also been numerous attacks in the name of IS, not only in Syria and Iraq, but also in Europe and the rest of the world. All this has led to widespread feelings of fear and insecurity from 2014 onwards. This is also IS's ulterior goal: sowing fear and division among what they consider to be an infidel part of the world's population.

The accused completely ignored all this when she joined IS and did not want to acknowledge the indescribable suffering that has affected many in the battle zone and beyond.

In August 2014, IS attacked the Yazidi community around the Sinjar Mountains in northern Iraq. During this attack, thousands of members of the Yazidi community were killed and abducted. The attack was premeditated: the Yazidis were selected and separated based on gender and age. Adult men and adolescent boys were killed or forced to convert to Islam after which they were forced to work for IS. Underage boys were transported to IS training camps. The captured women and girls were made into (sex) slaves and sold or handed out to IS fighters in that capacity. The enslavement of the Yazidi women and girls was approved and legitimised by IS on the basis of the Quran, Sunna and their interpretation of it. As a result, slavery became part of daily life within the caliphate. IS's widespread and systematic attack on the Yazidi qualifies as a crime against humanity and has left deep marks on the Yazidi community.

Crimes against humanity, including enslavement, are among the most serious international crimes and are of great concern to the entire international community. The prohibition of slavery is a rule considered so fundamental to the international legal order that deviation from it is not permissible. The attack by IS on the Yazidi community in which women and girls were enslaved sparked massive international outrage and concern.

Profound suffering has also been caused in this case. Witness [injured party 1] aptly expressed this at the hearing in her victim impact statement. [injured party 1] was assigned to an IS fighter and was held under appalling conditions in this man's home, where, in addition to forced labour, there was also (sexual) violence. The accused, who knew that [injured party 1] had been enslaved by IS and knew that [injured party 1] could not escape that situation, did nothing to alleviate [injured party 1]'s suffering. On the contrary, she herself also gave orders to [injured party 1] and was thereby guilty of enslavement. The objectionable aspect here is that the accused did this in the knowledge that what happened in the house was part of a greater whole, the aforementioned widespread and systematic attack on the Yazidi community. The court therefore holds this heavily against the accused.

Finally, her deliberate choice to travel out and spend years in the IS combat zone also had irreversible consequences for the accused's son. Her son had to spend a large part of his childhood in an IS-controlled war zone, with all its inherent dangers and risks. Moreover, during this entire period her son did not receive the special care and guidance he needed given his problems. The court also holds this against the accused.

Criminal record

The court took note of the accused's criminal record dated 23 August 2024, which shows that the accused has not been previously convicted of similar offences.

The person of the accused

With regard to the person and personal circumstances of the accused, the court took note of the contents of the triple examination Pro Justitia dated 24 December 2023, the ideological interpretation report prepared by *Nuance door Training en Advies (NTA)* dated 10 October 2023 and the probation advice dated 17 September 2024.

Disorders and/or limited development of mental faculties

The experts, a psychologist and a psychiatrist, conclude in the Pro Justitia Report that at the time of the commission of the offences charged in summons I under 2, 3 and 4, the accused had a slight mental impairment and another specified personality disorder. This personality disorder is related to the very unsafe situation in which the accused grew up and consists mainly of borderline and avoidant traits. The experts note that the personality disorder and mental impairment lead to an increased level

of distrust and impulsiveness in the accused. The accused is naive and cannot adequately oversee the consequence of her actions. Furthermore, there is insufficient and strong avoidant coping and a tendency to flee when there is tension and stress.

The report shows that the above influenced the accused's decision to travel out to Syria. The accused hardly immersed herself in the religion while the radicalisation process was taking place at a breakneck speed. According to the experts, the accused seems to have realised only to a limited extent what awaited her in Syria as well as what the consequences of her exit and life in a combat zone with a fighter as husband would be. Factors such as naivety and not being able to oversee the consequences of her actions also play a role in the accused's decision to take her minor son to Syria.

Imputability

In the experts' opinion, both disorders influenced the accused's behavioural choices at the time of the commission of the offences charged in summons I under 2, 3 and 4. For this reason, they recommend that these offences be imputed to the accused to a lesser extent.

Due to the accused's denying attitude during the proceedings with regard to the charged offences of enslavement, the experts have not been able to determine whether the identified problems have had an impact on her behavioural choices.

The court finds that the conclusions and recommendations of the Pro Justitia Report are supported by its findings and the underlying investigation which, in the court's view, were carefully prepared. The court finds that the accused has the disorders as named by the experts. The court arrives at the opinion that the offences charged in summons I under 2, 3 and 4 can be attributed to the accused to a lesser extent.

The court further finds that the offence charged in summons I under 1 can also be attributed to the accused to a lesser extent. The offence took place in the same indictment period and the case file shows no evidence to support the view that her disorders did not play a role in this offence. In the court's opinion, the accused's behaviour in relation to the victim shows similarities with the manifestations of her mental disorders described by the experts.

Risk of recidivism

The interpretation report concludes that the accused has internalised some extremist views, among other things about *tafkir*, declaring another person an infidel and the democracy. She is still convinced that, from a religious point of view, emigration to a caliphate is mandatory.

At the same time, the accused is reported to have distanced herself from IS as a result of her negative experiences as a woman in the caliphate and her bad marriage to an extremist. Furthermore, the accused has repeatedly criticised the limited rights and freedoms of women under IS, has no personal ambition to emigrate and would advise others against doing so. Moreover, the accused has repeatedly expressed a personal aversion to carrying out violence.

The report states that her extremist views do not currently legitimise intolerant, hostile or violent behaviour towards dissenters and dealings with dissenters. The substantiation of her extremist views and her religious views in general are very superficial. The accused's level of religious knowledge is very limited and she is unaware of the political implications of her views. The accumulation of traumatic events prior to and during her exit, the accused's very limited and one-sided religious identity formation and craving for personal attention, make the accused vulnerable to influence from extremist or criminal circles according to the report.

A risk analysis in the Pro Justitia Report shows that there are few risk factors and some protective factors related to future violent behaviour and future extremist violence. The experts assess the overall risk of violent behaviour and the risk of repetition of the offences charged as limited. However, the experts do point to an overall increased risk of longer-term impulsive flight behaviour, related to potential problems with finances, housing, raising her children, potential partner choice and addiction susceptibility.

The risk of recidivism was also investigated by *Reclassering Nederland*. (Dutch Probation Service). The probation report assessed the risk of general and violent recidivism within two years, as well as the risk of bodily harm, as low. The risk of extremist violence is assessed as moderate.

Type and severity of the sentence

In determining the type and severity of the sentence, the court sought to follow the sentences that are usually imposed in somewhat similar cases. The court points out in this respect that no suspect has been convicted of enslavement in the Netherlands before and that no comparison can be made with other cases for this offence that carries the most weight in the sentencing.

The situation is different for participation in a terrorist organisation. The starting point for determining the sentence, regardless of the proven charged period, is an unconditional six-year prison sentence (cf. Court of Appeal of The Hague 13 March 2024, ECLI:NL:GHDHA:2024:394). Because of the substantive connection of this offence with the acts of preparation and promotion, the latter offence does not carry additional weight in terms of the sentence to be imposed.

The offence of placing and keeping minor children in a helpless condition carries a maximum sentence of two years' imprisonment. By travelling to a war zone and staying in the IS caliphate, the accused placed and kept her minor son in such danger that, in view of the gravity of this, in the court's opinion a two-year prison sentence, being the maximum prison sentence, should be taken as the starting point.

Enslavement as a crime against humanity concerns an extremely serious offence that, in the court's opinion, warrants a long-term unconditional prison sentence of multiple years.

In determining the sentence in this case, the court, mindful of the starting points, takes into account the following sentencing aggravating and mitigating circumstances.

The accused, despite having distanced herself from IS, still holds some extremist views. This also emerged during the substantive hearing. For example, during the substantive hearing, the accused referred to IS members as brothers and sisters and she stated that she supports Sharia law. This is a disturbing circumstance that the court weighs as an aggravating factor.

In a mitigating sense, the court weighs that the accused did not personally participate in the armed struggle: her contribution to the jihad, although not insignificant, was in a sense indirect.

Also mitigating is the fact that after the fall of the caliphate and her capture in Syria, the accused spent a long time in the Al-Hol and Al-Roj detention camps, under very poor conditions, and thus already suffered significant negative consequences of her actions.

In determining the term of the sentence, the court also takes into account the accused's diminished imputability.

Reasonable term

The court also took into account the duration of this criminal case. The basic principle in cases of preventively detained suspects is that the hearing must be completed with a final judgment within 16 months after the reasonable term started, unless there are special circumstances. The accused was arrested by the police on 2 November 2022. The court will deliver judgment today on 11 December 2024, after more than 25 months. This means that the reasonable term has been exceeded by about 9 months. In the present case, there were two rogatory trips to hear witnesses who were abroad, which delayed the investigation. However, partly in view of the nature and seriousness of this case and the otherwise expeditious manner in which the case was investigated and dealt with, the court sees no reason to mitigate the sentence. It suffices to state that the reasonable term has been exceeded.

Conclusion

In the court's opinion, all things considered, the seriousness of the offences; the personal circumstances of the accused; the principles for sentencing; and the specific aggravating and mitigating circumstances of the case, no other response can be given than an unconditional prison sentence of a term longer than that demanded by the public prosecutor.

The court considers that an entirely unconditional prison sentence of 10 years is appropriate and necessary. The time the accused spent in pre-trial detention will be deducted from this.

8 The injured party's claim/compensation measure

[injured party 1] and [injured party 2] have each joined the criminal proceedings as injured parties. [injured party 1] claims damages of 30,000 and [injured party 2] claims damages of 25,000, both to be increased by statutory interest, and with the imposition of the compensation order. These amounts consist of non-material damages.

The injured parties have based their claims, in brief, on the fact that the accused acted unlawfully towards them by using them as slaves, and that they suffered non-material damage as a result of the accused's actions. In support of the claims, the witness statements of the two injured parties were referred to on behalf of the injured parties, which show that they were traumatised by what was done to them, also by the accused. That the accused committed slavery along with others does not affect her liability and obligation to pay compensation. The obvious violation of standards, the committed infringement of the fundamental rights of [injured party 1] and [injured party 2] is sufficient for the claim to be allowed. Regarding the amount of the claim, reference was made to amounts from Dutch personal injury practice and a link was sought with Dutch judgments in which damages were awarded to victims of exploitation.

8.1 The position adopted by the public prosecutor

The public prosecutor moved for the claims to be allowed in their entirety, with the imposition of the compensation order.

8.2 The position adopted by the defence

Principally, the defence requested that the injured parties be declared inadmissible in their claims in view of the pleaded acquittal.

In the alternative, the defence argued that handling the claims would impose a disproportionate burden on the criminal proceedings. The accused cannot be held responsible for the damage caused to the injured parties by actual conduct other than that charged, committed by third parties. Establishing the causal link between the damage claimed and the factual conduct charged is also not straightforward.

In the further alternative, the defence took the position that the cases cited by the injured parties are not comparable to the present case and the amount of the damages claimed should be substantially mitigated.

8.3 The assessment of the court

The claims of injured parties are governed by substantive civil law. This also means that, pursuant to Section 10:2 of the Dutch Civil Code (hereinafter: DCC), the court ex officio applies the rules of private international law and the law designated by those rules.

In this case, the assessment of the claims should be made according to Syrian civil law. This follows from the so-called Rome II Regulation. Indeed, the claims are non-contractual claims within the meaning of Article 1 of the Rome II Regulation. Under Article 3, this regulation has a universal formal scope of application. This means that this regulation applies to cases brought before Dutch courts, even if the law of a non-member state is designated by the application of the rules of the Rome II Regulation. Finally, the Rome II Regulation applies to damage-causing events that occurred from 11 January 2009 onwards.

Under Article 4(1) of the Rome II Regulation, when assessing an alleged wrongful act, the law of the country where the damage occurs applies. This leads to the conclusion that Syrian law applies when assessing the claims of the injured parties. After all, the (alleged) events causing damage on which the injured parties based their claims occurred in Syria. The applicability of Syrian law was not in dispute during the hearing.

Pursuant to Article 15 of the Rome II Regulation, the applicability of Syrian law extends as far as relevant to the basis and extent of liability (introductory paragraph and under (a)); the apportionment of liability (introductory paragraphs and under (b)) and the existence, nature and assessment of damages (introductory paragraphs and under (c)).

In preparation for hearing the announced claims, the court gave the injured parties the opportunity to explain the claims in advance and set out the applicable legal framework. The injured parties subsequently had an expert report prepared on Syrian law and filed that report, accompanied by an

explanation, on 25 July 2024. That expert report was subsequently supplemented by a short addendum. The defence was given the opportunity to respond and indicated on 20 August 2024 that it saw no reason to ask any questions.

The claims themselves were filed on 16 September 2024 and explained in more detail at the hearing. The court now assesses the claims as follows.

As set out above under 4.3.5, the court has ruled that there is insufficient evidence that the accused made [injured party 2] work for her as a slave. For this reason, the accused is acquitted of this offence. This means that the court will declare [injured party 2] inadmissible in her claim.

On the other hand, the court does consider it proved that the accused was guilty of making [injured party 1] work as a slave, which is an offence, for which the accused is punishable. Thereby, the accused's unlawful conduct towards [injured party 1] is established, also under Syrian law.

It is also established that [injured party 1] was caused unspeakable suffering and that she was traumatised. This is conclusively evident from the file. The suffering of [injured party 1] and the claim of non-material damage has also not been disputed as such by the accused.

What is in dispute, is the extent to which that damage is attributable to the accused and the extent to which there is a link between the accused's actions and the damage claimed. What is further in dispute, is the amount of the damage claimed.

These issues are also subject to Syrian law. Indeed, in view of the provisions of Article 15 of the Rome II Regulation, the extent and apportionment of liability as well as the assessment of damages should also be governed by Syrian law. The fact that under Dutch law an obvious violation of standards can lead to an award of damages does not mean, as argued on behalf of [injured party 1], that this can also be done under Syrian law. At least, the court did establish this beforehand, while the expert opinion submitted by the experts on behalf of the injured parties does not provide any leads for such a legal interpretation either. Nor can the link sought on behalf of [injured party 1] with Dutch personal injury practice and the reference to Dutch case law be unquestioningly followed.

The question arises whether these issues and their required assessment under Syrian law can take place within this criminal case. The court answers that question in the negative and to that end considers as follows.

With the possibility of filing a claim within the criminal proceedings, the legislator intended to provide not only low-threshold proceedings that result in persons who have suffered damage as a result of a criminal offence being compensated as much as possible, but also simple proceedings. These proceedings do not offer the injured party and the accused the same procedural guarantees as ordinary civil proceedings.¹⁸ The proceedings pursuant to Section 51f of the Dutch Code of Criminal Procedure are ancillary to the criminal proceedings (cf. Parliamentary Papers II, 2007/2008, 31 241, no. 6, pp. 9-10) and are not a perfect substitute for regular proceedings before the civil court.

This may be problematic in case the criminal court is under an obligation to apply the rules of foreign law pursuant to Section 10:2 DCC. That obligation to apply foreign law finds its limit where that application and the acquisition of the knowledge required for it would place a disproportionate burden on the criminal proceedings.

In this case, the assessment of the aforementioned issues crosses that line. Syrian law is not easily knowable. Publicly accessible sources of law hardly exist, at least not in translated variants. In addition, the two issues before us require not only familiarity with the provisions of the Syrian Civil Code, but also knowledge of Syrian legal practice and case law. This, too, is not readily available. This means that the court would have to obtain further information, from an expert other than the expert on behalf of the injured party. The possibilities to do so do exist and have been explored by the court, but they are time-consuming and could mean that the parties would have to be given another opportunity to respond to the court's findings on Syrian law, especially since the points of dispute only became clear after the defence was conducted at the hearing.

In the court's opinion, to do so in this case would lead to unacceptable delay in the outcome of the criminal case, and go beyond the ancillary nature of the proceedings. The assessment of [injured party

1]'s claim thus places a disproportionate burden on the criminal proceedings. The court will therefore determine that [injured party 1]'s claim is inadmissible. She may, however, bring her claim before the civil court so that it can be assessed there in regular proceedings.

9 The applicable sections of the law

The sentence to be imposed is based on Sections:

- 47, 57, 83, 83 a, 96, 140a, 157, 176a, 176b, 255, 288a, 289 and 289a of the Dutch Penal Code;
- 4 of the International Crimes Act.

These regulations have been applied as they were applicable in law at the time of the proven offence or are applicable in law at the time of this judgment.

10 The decision

The court:

declares the public prosecutor inadmissible in the prosecution of the accused in respect of the conduct charged in summons I under 2 under E, in so far as that conduct took place in Iraq;

declares not legally and convincingly proved that the accused committed the offence charged in summons II and acquits the accused thereof;

declares legally and convincingly proved, that the accused committed the offences charged in summons I under 1, 2, 3 and 4, as declared proved above under 4.4. and that the proved offences constitute:

in respect of summons I count 1

co-perpetration of the crime against humanity enslavement;

in respect of summons I count 2

participation in an organisation which has as its purpose the commission of terrorist crimes;

in respect of summons I count 3

with the objective to commit murder and/or manslaughter and/or deliberately setting fire and/or causing explosions, while there is a general danger to property and/or mortal danger to another person and/or danger of grievous bodily harm and/or this offence results in the death of a person, committed with terrorist objective, preparing and/or promoting the commission of the offence, procuring the opportunity, means and information to commit the offence and having in her possession an object which she knows is destined for the commission of the offence;

In respect of Summons I count 4

intentionally placing and keeping in a helpless condition a person whom she is obliged to support, nurse and care for by law or by agreement;

declares the proven facts and the accused punishable therefor;

declares not proven all other charges against the accused than those declared proved above and acquits the accused thereof;

sentences the accused to:

a term of imprisonment of **10 (TEN) YEARS;**

determines that the time spent by the convicted person in custody and pre-trial detention prior to the enforcement of this judgment will be deducted in full from the prison sentence imposed on her, in so far as that time has not already been deducted from another sentence;

The claim of the injured parties [injured party 1] and [injured party 2]

determines that the injured parties [injured party 1] and [injured party 2] are inadmissible in the claims for damages and can only bring the claims to the civil court to that extent;

orders the injured party to pay the costs incurred by the accused in defence of that claim, assessed to date at nil.

This judgment was passed by

J. Snoeijer, LL.M., presiding judge,

K.C.J. Vriend, LL.M., judge,

R. Wieringa, LL.M., judge

pronounced in open court of this District Court on 11 December 2024 in the presence of K. Muijsert, LL.M., A. Copier LL.M. and E.J.M. Imthorn, LL.M., the court clerks.

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1. Cf. ECLI:NL:GHDH:2023:1052 and ECLI:NL:GHDH:2023:2570.
 2. In the file, the spelling of the kunya s varies, including the spelling [nickname 3], and [minor 1] is also written as [minor 1] and [minor 1]. For the sake of readability, the court uses the spelling as shown above.
 3. See, inter alia, Court of Appeal The Hague 20 December 2023, ECLI:NL:GHDHA:2023:2570, Court of Appeal The Hague 25 May 2018, ECLI:NL:GHDHA:2018:1249 and Rotterdam District Court 29 October 2020, ECLI:NL:RBROT:2020:9659. Also refer to the knowledge appendix 140a Dutch Code of Criminal Procedure Official Report the Islamic State' attached hereto as evidence.
 4. Cf. Rotterdam District Court 13 April 2023, ECLI:NL:RBROT:2023:3081.
 5. ICTR, *Prosecutor v. Kayeshema and Ruzindana*, Trial Chamber Judgment, Nr. ICTR-95-1-T, paragraph 122.
 6. ICTY, *Prosecutor v. Kunarac et al*, Trial Chamber Judgment, Nr. IT-96-23-T & Nr. IT-96-23/1-T, paragraph 424.
 7. ICC, *Prosecutor v. Katanga*, Trial Chamber Judgment, Nr. ICC-01/04-01/07-3436, paragraph 1105.
 8. ICTY, *Prosecutor v. Dusko Tadić*, Trial Chamber Judgment, Nr. IT-94-1-T, paragraph 648.
 - 9 ICTY, , *Prosecutor v. Dusko Tadić*, Trial Chamber Judgment, Nr. IT-94-1-T, paragraph 429.

10 ICTR, *Prosecutor v. Akayesu*, Trial Chamber Judgment, Nr. ICTR-96-4-T, paragraph 580; ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, Nr. ICC-01/04-01/07-3436, paragraph 1108.

11. ICTY, *Prosecutor v. Blaskic*, Trial Chamber Judgment, Nr. IT-95-14-T, paragraph 204.
 12. Inter alia: ICC, *Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04- Ol/I5-1762-Red; ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, Nr. ICC-01/04-01/07-3436; ICTY, *Prosecutor v. Kunarac et al*, Appeals Chamber Judgment, Nr. IT-96-23 & Nr. IT-96-23/1-A; ICTY and *Prosecutor v. Kunarac et al* , Trial Chamber Judgment, Nr. IT-96-23-T & Nr. IT-96-23/1-T.
 13. ICC, *Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04- Ol/I5-1762-Red, paragraph 2712 ; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06 ICC, paragraph 952, ICTY, *Prosecutor v. Kunarac et al*, Trial Chamber Judgment, Nr. IT-96-23-T & Nr. IT-96-23/1-T, paragraph 542; ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, Nr. ICC-01/04-01/07-3436, paragraph 976.
 14. ICC, *Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04- Ol/I5-1762-Red, paragraph 2712.
 15. ICTY, *Prosecutor v. Kunarac et al*, Trial Chamber Judgment, Nr. IT-96-23-T & Nr. IT-96-23/1-T, paragraph 542.
 16. Idem.
 17. ICC, *Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04- Ol/I5-1762-Red, paragraph 2713; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06 ICC, paragraph 952; ICTY, *Prosecutor v. Kunarac et al*, Trial Chamber Judgment, Nr. IT-96-23-T & Nr. IT-96-23/1-T, paragraph 542.
 - 18 Cf. Supreme Court 28 May 2019, ECLI:NL:HR:2019:793, legal ground 2.1.
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