







Overview of National Jurisprudence



April 2021




On a periodic basis, the Genocide Network, in its effort to raise awareness on accountability and the fight against impunity, gathers and translates judicial decisions of national jurisdictions of EU Member States regarding cases of core international crimes. The current selection of national judicial decisions is predominantly focused on the crimes committed in Syria and Northern Iraq, use of open sources and evidence from social media, as well as cumulative prosecution of foreign terrorist fighters (FTFs) for terrorism-related offences and war crimes. By fighting impunity for core international crimes, EU Member States reiterate their commitment to ensuring that the European Union will not become a safe haven for perpetrators of heinous crimes. Please note that translation has been provided from the original language into English as a courtesy of the Genocide Network Secretariat and Eurojust, and is not the official translation of the decisions. The judicial decisions are publicly available in their respective jurisdictions and have been anonymised by the Genocide Network Secretariat.


	Country of trial	Date of decision and link	Stage of decision	Country of crime(s)	Time period of crime(s)	Type(s) of crime(s)	Summary of facts/crimes
	Germany	Case number 7 StS 4/19, 29 April 2020 (previous decision in this case accessible here)	Decision issued by Higher Regional Court	Syria	10/2015 to 04/04/2019	War crime against persons (enlisting a child under the age of 15 into an armed group), participation in a foreign terrorist organisation, child abduction resulting in death, violating a duty of care or education, exercising actual control over a weapon of war	The accused left Germany for Syria in order to join IS, and brought her 3 children without the agreement of their father. She was convicted, <i>inter alia</i> , for: (i) participating in a foreign terrorist organisation, (ii) abducting her children and exposing them to mortal danger, which resulted in the death of her son during an airstrike on their home, and (iii) war crimes against persons for enlisting her son under the age of 15 into a training camp which constituted an armed unit within the armed group IS. The Court recalled that enlisting child soldiers is an independent offence (<i>i.e.</i> from coercion or deployment) and that admission into an active armed combat unit is not necessary – admission for the purpose of training suffices to constitute the offence. The accused was sentenced to a total of 5 years and 3 months of imprisonment.
	Germany	Case number III 2 StS 2/19, 4 December 2019 (previous decision in this case accessible here)	Decision issued by Higher Regional Court	Syria and Iraq	09/2015 to 12/2015	War crime against property, participation in a foreign terrorist organisation	The accused was found guilty of participation in a foreign terrorist organisation and war crime against property. She married an IS fighter online and travelled from Germany to Syria, and then Iraq, to join IS. In Iraq, the family knowingly took possession of a house which



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							previously belonged to a family of Shiite military personnel who had fled or been displaced by IS troops. The Court found that the accused condoned the forced displacement of Shiites and that the appropriation of the house, which was designed to permanently deprive the rightful owners of their property, had a functional connection with the non-international armed conflict in Iraq.
	Belgium	Case number FD30-98.102/02, 20 December 2019	Decision issued by Criminal Court (<i>Cour d'assises</i>)	Rwanda	06/04/1994 to 14/07/1994	Genocide, war crimes against persons (wilful killings)	The accused, a Rwandan national, was found guilty of the crime of genocide and war crimes for the wilful killing (and attempted killing) of civilians belonging to the Tutsi ethnic group. The accused ran his own militia, publicly supported anti-Tutsi propaganda, and knowingly enabled executions by handing over victims or reporting the location of victims to soldiers, such that, without his assistance, these crimes could not have been committed. The judgment further outlines evidence proving the accused's genocidal intent. The Court handed down a sentence of 25 years imprisonment.
	Sweden	Case number B-5948-17, 13 November 2019	Final decision issued by the Supreme Court	Sweden	12/10/2014 to 26/03/2016	Public appeals and recruitment for financing terrorist	In the context of the non-international armed conflict in Syria, an individual was




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						activities; incitation to commit particularly serious crimes	convicted and sentenced to 6 months' imprisonment for publicly appealing and requesting funds or properties to support terrorist activities of ISIL and other groups, through several Facebook posts. It was held as an incentive to commit particularly serious crimes, as the purpose was specifically to buy weapons to avenge a chemical attack against civilians.
	Germany	Case number AK 56/19, 17 October 2019	Decision on remand detention issued by Federal Supreme Court	Syria	10/2015 to 04/04/2019	Participation in a foreign terrorist organisation; war crimes against persons with aggravated abduction of minors resulting in death; neglect of the duty of care and education; bodily harm	The accused left Germany for Syria with her 3 sons without the agreement of the other parent. She was charged with participating in a foreign terrorist organisation, and war crimes against persons for abducting minors leading to the death of 1, and integrating her son under the age of 15 into an armed group – an IS training camp for him to learn how to handle weapons.
	Germany	Case number AK 47/19, 5 September 2019	Decision on remand detention issued by Federal Supreme Court	Syria	29/04/2011 to 07/2012	Crimes against humanity; bodily harm	The defendant, a colonel in charge of the 'investigations' unit of Branch 251 of the Syrian General Intelligence Directorate, was charged with committing crimes against humanity and acts of bodily harm. Under his leadership and responsibility, individuals were ruthlessly tortured as part of a systematic attack on the Syrian civilian population, by causing them considerable physical and



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							psychological harm in the prison managed by the Branch.
	Netherlands	Case number 09/748003-18V, 23 July 2019	Decision issued by District Court (First Instance Court)	Syria	24/10/2014 to 03/09/2016	War crime against persons (outrage upon personal dignity); participation in a terrorist organisation	A Dutch national and former ISIL fighter was found guilty of participating in a terrorist organisation, and of committing the war crime of outrage upon personal dignity, for which he was sentenced to 7 years and 6 months in prison. He posted and distributed a picture of himself laughing next to a dead and crucified Iraqi on Facebook, amounting to violating an <i>hors de combat</i> person's dignity.
	Germany	Case number AK 22/19, 15 May 2019	Decision on remand detention issued by Federal Supreme Court	Syria and Iraq	03/2015 to 05/2016	Participation in a foreign terrorist organisation; war crime against property and other rights	The accused, who travelled from Germany to join IS, was charged for her active participation in a foreign terrorist organisation, as well as having taken possession of a house under the management of IS that had been left behind by their legal owners while fleeing or when expelled by IS – amounting to a war crime against property and other rights.


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	Germany	Case number AK 12/19, 4 April 2019	Decision on remand detention issued by Federal Supreme Court	Syria	01/2014 to 10/2017	War crime of pillage; trafficking in human beings; deprivation of liberty; membership in a terrorist organisation	The defendant, a German woman underage at the time of the offences, travelled to Syria and married an ISIL fighter in 2014. There, along with supporting ISIL as a member of the organisation and exercising policing and security activities, she moved into and used properties seized by the organisation from their lawful owners, amounting to the war crime of pillage. She also held three Yazidi women as slaves, and is currently in pre-trial detention.
	Sweden	Case number B939-19, 19 February 2019	Decision issued by Appeal Court, including First Instance Court decision	Iraq	02/2015 to 03/2015	War crime against persons (outrage upon personal dignity)	The defendant, an Iraqi who fought against ISIL, was convicted to 1 year in prison for committing the war crime of outrage upon personal dignity. He posted pictures and films taken of himself in 4 occasions with bodies that he must have known were incapacitated by wounding or death, and two others, which were decapitated. As such, the defendant subjected those bodies to degrading treatment, constituting a violation of the persons' dignity.
	Finland	Case number R 18/6593, 10 January 2019	Decision issued by District Court (First Instance Court)	Iraq	03/2015 to 04/2015	War crime against persons (outrage upon personal dignity)	The defendant, an Iraqi citizen, served as a corporal in the Iraq Army, and participated in military actions against ISIL. In March 2015, during an

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							operation, the defendant cut off the head of a dead ISIL fighter and dangled it in his hands. He also displayed the "victory" sign with his hands while another person held the severed head, an event which was captured on video, and got uploaded publicly on Facebook late April 2015, along with images in which he poses with burnt soldiers' bodies. Such conduct amounts to inhumane and defamatory treatment, which offends the honour of the deceased. The defendant was conditionally sentenced to 1 year and 6 months imprisonment.
	Germany	Case number 3 StR 149/18, 23 August 2018	Decision issued by Federal Supreme Court – Case referred back to the Higher Regional Court for determination of sentence	Syria	03/2013 to 05/2013	Aiding and abetting a war crime against humanitarian operations; extortionary kidnapping; attempted severe extortionate assault; severe deprivation of liberty, but sentence annulled	On 17 February 2013, a UN civilian employee was kidnapped and held captive in a villa, until his escape in October 2013, by a group sympathising with Islamist ideas. The defendant, who did not belong to the group, spent at least 7 days in the villa. He knew about the kidnapping and its aim for ransom. The defendant sympathised with the plan, hence offered his support as guard for at least seven days. Sentenced to 3 years and 6 months' imprisonment at first instance, the decision was quashed in appeal, leading to the annulment of the sentence,

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							while the findings on which the conviction was based remain.
	Switzerland	Case numbers BB.2017.9 – BB.2017.10 – BB.2017.11, 30 May 2018	Decision on the continuation of proceedings issued by Appeal Court – Case remitted to the public prosecutor for further investigation	Algeria	14/01/1992 to 31/01/1994	Torture; forced disappearances; murders	The Appellate Chamber found that the degree of violence in Algeria between law enforcement and the Islamist opposition at the time sufficed to consider the conflict a non-international one, and that one of the groups was organised enough to be considered a non-international armed group. Switzerland hence has jurisdiction to investigate the case, in which the defendant, a former General and Algerian Minister, is alleged to have ordered, participated in, and encouraged the widespread use of torture in Algeria, as well as murders and forced disappearances of alleged opponents.
	Germany	Case number StR 57/17, 27 July 2017	Final decision issued by Federal Supreme Court	Syria	08/03/2014 to 16/04/2014	War crime against persons (outrage upon personal dignity)	The defendant, a German national, was sentenced to 2 years' imprisonment for war crimes against persons, specifically demeaning and degrading treatment of dead persons. While in Syria, 3 photographs of him posing with the severed heads of enemy combatants impaled on metal rods were taken, and then uploaded onto Facebook after his return to Germany.

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	Sweden	Case number B3187-16, 11 April 2017	Appeal Court, including First Instance Court decision	Iraq	Spring 2015	War crime against persons (outrage upon personal dignity)	The defendant, an Iraqi migrant, was convicted to 9 months' imprisonment for committing a war crime. He posed next to the severed heads of enemy soldiers, and shared the images on Facebook, hence subjecting the corpses to humiliating and degrading treatment intended to seriously violate their personal dignity.
	Germany	Case number (2A) 172 OJs 26/16 (3/16), 1 March 2017	Decision issued by First Instance Court	Iraq	March 2015	War crime against persons (outrage upon personal dignity)	The defendant, an Iraqi citizen, was convicted to a suspended sentence of 1 year and 8 months imprisonment, on two counts of war crime against persons. A lieutenant in the anti-terrorism unit of the Iraqi army in March 2015, following the Second Battle of Tikrit, he had been pictured holding the severed heads of two IS fighters killed during the clashes, while wearing his combat gear. Held only by their hair, the facial features of the victims were clearly recognizable, hence amounting to mocking and degrading the dignity of an enemy <i>hors de combat</i> soldier.
	Sweden	Case number B3787-16, 16 February 2017	Final decision issued by Appeal Court, including First Instance Court decision	Syria	06/05/2012	Crime against international law, namely murder as a war crime	The defendant, a Syrian asylum seeker, was sentenced to life imprisonment and to expulsion from the country for actively participating in the deliberate,

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							extrajudicial killings of seven captured Syrian soldiers (thus <i>hors de combat</i>) during the Syrian conflict. A YouTube video, on which the defendant appeared, constituted the central piece of evidence.
	Sweden	Case number B2639-16, 11 May 2016	Appeal Court	Syria	05/2012 to 06/2012	International crime; aggravated assault	The defendant, a Syrian national, was convicted to 8 years' imprisonment for aggravated assault and international crime in the context of a non-international armed conflict, for torturing an <i>hors de combat</i> person. The Court of Appeal, considering the nexus between the aggravated assault and the ongoing armed conflict, which the defendant was aware of, decided that they must be linked, hence adding "international crimes" to the charges.
	Finland	Case number R 16/214, 22 March 2016	First Instance Court	Iraq	19/03/2015 to 02/04/2015	War crime against persons (outrage upon personal dignity)	The defendant, an Iraqi migrant and sergeant of the Iraqi army, was convicted to a 13-month suspended sentence for committing the war crime of outrage upon personal dignity. He posed for a picture while holding the decapitated head of an ISIL fighter, and shared these images on Facebook, amounting to desecrating and violating the dignity of a dead person.

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	Finland	Case number R 16/1304, 18 March 2016	Decision issued by First Instance Court	Iraq	02/01/2015	War crime against persons (outrage upon personal dignity)	An Iraqi migrant and fighter in a paramilitary group received a 16-month suspended sentence for committing the war crime of desecrating and violating the dignity of a dead person. He held the head of an IS fighter and shared it on Facebook.