

District Court of Pirkanmaa
Department 4

Judgment

16/112431

18 March 2016

Case number
R 16/1304

Chair District Court Judge [...]

Members District Court Judge [...]
District Court Judge [...]

Prosecutor District Prosecutor [...]

Defendant [...]

Case War crime

Instituted 8 March 2016

Act for which punishment is requested by the Prosecutor

1. War crime
2400/R/0000306/15
Chapter 11(5) of the Criminal Code of Finland
Rome Statute of the International Criminal Court (Treaties of Finland 56/2002)
article 8
1 January 2015 – 2 January 2015 International

[The Defendant], in connection with war or another international or domestic armed conflict, committed an act defined as a war crime under article 8 of the Rome Statute of the International Criminal Court (Treaties of Finland 56/2002).

During 2014–2015 [the Defendant] was a fighter with Kataeb Jund al-Imam, a paramilitary group working alongside the Iraqi army, and partook in combat against the group ISIS/ISIL. On 1 January 2015 and 2 January 2015 [the Defendant] published a total of three photographs on Facebook, on a profile by the name of [...], depicting the severed head of an enemy soldier who had apparently died in combat. The person was identifiable on the basis of the photographs, and their identity was stated after the publication of the photographs. The images were published on a public profile, meaning that they would have been freely accessible to any of Facebook's more than a billion users.

[The Defendant's] conduct amounted to treating the person photographed in an inhumane and degrading way, causing an outrage upon their dignity.

[The Defendant's] conduct is punishable as a criminal offence under article 8(2)(b)(xxi) and article 8(2)(c)(ii) of the Rome Statute of the International Criminal Court.



Other requests of the Prosecutor

Reimbursement of costs of taking evidence for charge 1

The Defendant is to be responsible for reimbursing the state for any costs of taking evidence.

Response

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The Defendant has denied the charge. The Defendant has admitted to publishing the photographs referred to in the charge on his Facebook profile. The Defendant's conduct does not constitute a serious violation as required for a war crime. At most, the Defendant's conduct could constitute a petty war crime.

Evidence

Witnesses

1. The Defendant for evidentiary purposes.
2. Expert [A.].

Documentary evidence

1. Photographs 15, 18 and 19 of the photograph appendix.
2. Expert statement from [M.] dated 26 January 2015.
3. Expert statement from [A.] dated 10 March 2016.

Grounds for the judgment

Attribution

The Defendant has committed a war crime.

Grounds for the attribution

The Defendant has admitted being a fighter with a group by the name of Kataeb Jund al-Imam – The Imam's Soldiers' Battalions – a paramilitary group operating alongside the Iraqi army, and having participated in combat against ISIS/ISIL. The Defendant has admitted to on 1 and 2 January 2015 publishing on Facebook three photographs of the severed head of a dead enemy soldier. The aforementioned dead person was identifiable based on the photographs, and his identity was stated after the publication of the photographs.

According to the Defendant, when uploading the photographs to his Facebook profile, he did not restrict their visibility, and instead posted them publicly, making them viewable to any Facebook user.

This matter concerns whether the Defendant's conduct constitutes the elements of a war crime. The Defendant has alleged that the matter did not constitute a serious violation and thus a war crime.

Photograph 15, presented as documentary evidence, shows that the Defendant posed for the photo with one of his feet on the head of the enemy soldier. Photographs 18 and 19 in the photograph appendix show the Defendant holding the enemy soldier's severed head in his left hand.



Expert [A.'s] statement indicates that at the time of the events, the Iraqi state was undergoing a domestic armed conflict.

The judgment must, therefore, be considered on the basis of the Rome Statute of the International Criminal Court and its interpretation guidelines. Article 8(2) of the Rome Statute of the International Criminal Court defines war crimes, and under paragraph 2(c) of the article in question, in the case of an armed conflict not of an international character, war crimes are serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts, committed against persons taking no active part in the hostilities,

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including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause. According to section c(ii) of the aforementioned paragraph, committing outrages upon personal dignity, in particular humiliating and degrading treatment, is regarded as a serious violation.

According to the interpretation guidelines for the Rome Statute of the International Criminal Court, elements of the aforementioned article 8(2)(c)(ii), i.e. a crime constituting a serious outrage of personal dignity and regarded as a war crime, are as follows:

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more person. The interpretation guidelines include the clarification that 'persons' may also refer to dead persons. The victim need not personally be aware of the existence of the humiliation or degradation or other outrage upon personal dignity. The interpretation guidelines go on to clarify that aspects relating to the victim's cultural background are taken into consideration in the guidelines.
2. Humiliation, degradation or other violation to such degree as to be generally recognised as an outrage upon personal dignity.
3. The persons in question were either *hors de combat*, or civilians, medical personnel or religious personnel taking no active part in the hostilities
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Concerning photographs 15, 18 and 19 of the photograph appendix presented as documentary evidence, the District Court states that the photographs, and in particular photograph 15, are degrading towards the dead enemy soldier. The Defendant spread the photographs through his Facebook profile in an unrestricted manner. The Defendant's conduct therefore outraged the enemy soldier's dignity. The District Court is of the view that the Defendant's conduct must be regarded as serious in the sense specified in the Rome Statute of the International Criminal Court.

There is a dispute concerning section 3 of the interpretation regulations, i.e. whether the section ought to be interpreted in such a way as to not apply here to a person who had taken active part in the hostilities. In the view of the District Court, the wording of the interpretation guidelines clearly refers to either a soldier who is *hors de combat*, or someone belonging to one of the other groups

mentioned who has not taken active part in the hostilities. The English-language version of the interpretation guidelines also supports this view. Thus, the aforementioned section 3 does not prevent the application of article 8(2)(c)(ii).

It is indisputable that the Defendant was aware of the factual circumstances that established the status of the enemy soldier as intended in the agreement. It is indisputable that the Defendant knew that the head he held and on which he placed his foot belonged to an enemy soldier belonging to ISIS/ISIL. The Defendant knew that the circumstances constituted a domestic armed conflict, as he was a member of a paramilitary group operating alongside the Iraqi army.

According to the Defendant, he uploaded the photographs to his Facebook profile to console the families of the victims of the ISIS soldier, as according to information received by the Defendant, the ISIS soldier in question had detonated themselves, and in doing so killed several people. Thus, the Defendant was aware that his actions the context of a domestic armed conflict, and were linked to it.

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The Defendant was aware of factual circumstances that established the existence of an armed conflict, as he himself had participated in it.

In the view of the District Court, the requirements of the aforementioned article 8(2)(c)(ii) have been fulfilled and the conduct in question constitutes a war crime.

This leads to the question of whether the Defendant's conduct ought to be regarded as petty, taking into account the consequences of the crime, or other aspects relating to the crime. According to Government Proposal 55/2007, when assessing whether the act was petty, the resulting consequences must be taken into consideration above all else. Consequence here refers to any physical or mental suffering, pain, disability or similar effect in addition to the damage caused. If the act has caused suffering, in general it ought to be regarded as more serious than average actions causing damage. The kind of actions to be regarded as petty must be proportionate to the conditions of the war or armed conflict. Where the line is drawn between a war crime and a petty war crime is ultimately determined on the basis of an overall review. Other elements than just the consequences caused are taken into account when determining where the line is drawn.

The Defendant stated that ISIS/ISIL had begun publishing similar photographs on social media. That the opposing side does not follow international regulations on war is of no significance in assessing whether the Defendant's conduct in these circumstances is petty, when assessed as a whole, nor whether the Defendant's conduct constitutes the elements of a war crime.

The Defendant published the photographs on his Facebook profile without restricting access to them. As stated previously, the photographs are degrading and outrage the dignity of the enemy soldier. The Defendant's crime cannot, when considered as a whole, be regarded as petty.

Penalty

The penalty imposed for war crimes is imprisonment of at least one year, up to a maximum of lifetime imprisonment. The issue at hand is the application of



Chapter 11(5)(2) of the Criminal Code of Finland. The aforementioned section of the Rome Statute of the International Criminal Court shall be applied to the Defendant's conduct. Under subsection 1, a person who has committed the following acts, amongst others, may be sentenced for war crimes: killing, wounding, torturing or maiming another; raping another; subjecting another to sexual slavery; taking or recruiting children below the age of 18 years into military forces or into groups in which they are used in hostilities; forcing a prisoner of war to service in the military forces of the enemy; attacking the civil population; holding in unlawful detention or forcibly transferring or deporting a population or parts thereof; or using poison or a poison weapon, suffocating or poisonous gases, or other corresponding substances.

The Defendant's conduct in question is not as serious as the acts described above, which constitute war crimes. Taking this into consideration, imprisonment of one year and four months is considered sufficient and just.

Defence counsel's fee

The District Court confirms the fee of [...], attorney-at-law, designated as Defendant [...]'s defence counsel, in accordance with the number of hours he has claimed from the preparations to the main hearing, and a fee for 2.5 hours is confirmed for [...], attorney-at-law, for the main hearing.

The Defendant has not presented an account of financial circumstances necessitating the receipt of legal aid. The District Court considers presentation of the aforementioned account unnecessary.

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Release

The Defendant will not continue to be held in detention for this matter. The Defendant is to be released immediately, unless there is some other reason for his continued detention.

Operative part



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Department 4

Operative part

16/112431

18 March 2016

Case number
R 16/1304

Defendant

[...]

Attributed crime

1. War crime

1 January 2015 – 2 January 2015

The Criminal Code of Finland Chapter 11(5)

Rome Statute of the International Criminal Court (Treaties of Finland
56/2002) article 8

Criminal sanctions

Imprisonment

Imprisonment for one year and four months.

Period of detention 13 November 2015 – 18 March 2016

The sentence is a suspended sentence.

The probation period will end on 18 March 2018.

The suspended sentence may be enforced if the convicted party commits a crime during the probation period for which they are sentenced to an unconditional custodial term, and for which a charge is brought within a year of the end of the probation period.

Other statements

The Defendant will not continue to be held in detention for this matter. He is to be released immediately, unless there is some other reason for his continued detention.

