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Instantie	Rechtbank Den Haag
Datum uitspraak	22-01-2024
Datum publicatie	11-04-2024
Zaaknummer	71/122211-22 vertaling
Rechtsgebieden	Strafrecht
Bijzondere kenmerken	Eerste aanleg - meervoudig
Inhoudsindicatie	The suspect is sentenced to imprisonment for a term of 12 years for co-perpetration of the crime against humanity unlawful deprivation of liberty as well as the subsequent torture (both as an isolated crime as well as a crime against humanity); and for participation in a criminal organization Liwa al-Quds of which the object is to commit war crimes (looting and physical assault) and crimes against humanity (unlawful deprivation of liberty). The court has determined that the suspect was a leader within Liwa al-Quds, a militia that was a loyal ally to the Syrian regime. Officers of the infamous Syrian Airforce Intelligence Service (AIS) maintained close ties with Liwa al-Quds, that arrested (alleged) opponents for the AIS. Victim 1 was violently removed from his home by the suspect, together with others, and placed into a taxi. Subsequently he was held captive for 20 days and tortured (and crime against humanity torture) by the AIS. The deprivation of liberty as well as the torture fit a pattern that has been visible since the uprising in Syria in 2011: the widespread and systematic arrest and detention of civilians who were viewed as opponents of the regime. This constitutes a crime against humanity. The court reaches an acquittal of the torture, crime against humanity torture, and deprivation of liberty of victim 2, since in the opinion of the court it has not been established that the suspect was involved in this. The court rejects the defence that the accusation of participation in a criminal organization (as such) must be assessed by the international criminal standards. The claim for compensation of the injured party is inadmissible, as the Syrian law regarding the prescription and the causality has remained unclear.
Vindplaatsen	Rechtspraak.nl

Uitspraak

THE HAGUE District Court

Criminal Law

Three-judge section

Public Prosecutor's office number: 71/122211-22

Date of the judgment: 22 January 2024

Defence

The Hague District Court has rendered the following judgment following the charges and the inquiry at the hearing, in the case of the Public Prosecutor against the suspect:

[suspect],

[date of birth] in [place of birth]

[address]

Currently detained in the correctional facility in Alphen aan den Rijn, location Eikenlaan.

Investigation name: 26Vescher

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1 The inquiry at the hearing

The inquiry was held at the hearings held on 12 August 2022, 31 October 2022, 27 January 2023, 20 April 2023, 13 July 2023, 2 October 2023 (all pro forma), 30 November 2023 and 4 December 2023 (both substantive hearings). The inquiry at the hearing was concluded on 8 January 2024.

The district court has heard the demand of the public prosecutor, *mr*. M. Blom and *mr*. J.M. Stad, and that submitted by the suspect, his counsels, *mr*. A.M. Seebregts and *mr*. N.F. Christiansen, and the lawyer of the injured party [victim 1] , *mr*. B. van Straaten.

2 The charges

The suspect has been charged with that stated in the indictment. The charges were amended at the hearings of 27 January 2023 and 4 December 2023. The text of the amended charges is appended to this judgment as annex I.

Briefly put, the suspect is charged with having committed seven offences, namely:

1. Primary: co-perpetration of the crime against humanity, unlawful deprivation of liberty of [victim 1];

Alternatively: complicity in the crime against humanity, unlawful deprivation of liberty of [victim 1];

2. Co-perpetration of complicity in torture of [victim 1];

3. Co-perpetration of complicity in the crime against humanity torture of [victim 1];

4. Co-perpetration of the crime against humanity, unlawful deprivation of liberty of [victim 2];

5. Co-perpetration of complicity in torture of [victim 2];

6. Co-perpetration of complicity in the crime against humanity torture of [victim 2];

7. Participation in a criminal organisation, namely shabiha groups from the Al-Nayrab camp and/or the pro-regime militia Liwa al-Quds, of which the object is to commit international crimes, namely:

physical violence, arbitrary detention and pillaging as war crimes and/or other war crimes; and

serious deprivation of the physical liberty in violation of fundamental rules of international law as crime against humanity and/or other crimes against humanity,

while the suspect was a leader, founder and/or director thereof.

3 The validity of the indictment

The court agrees with the defence that the indictment is insufficiently specific with regard to the phrases and/or other war crimes and and/or other crimes against humanity set out in the charges under offence 7. In light of the nature of this wording and the scope of the case file, the suspect cannot be expected to put forward an adequate defence with regard to this phrase. This means that the indictment in respect of these parts does not comply with the requirements set out in Section 261 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*, hereinafter: Sv). The indictment shall therefore be declared null and void with regard to these elements.

The court declares the remainder of the indictment valid, allowing the substantive assessment of the charged offences contained therein.

4 Jurisdiction and competence of the court

The suspect is accused of having been involved in torture, crimes against humanity and war crimes in Syria in 2012 or 2013. These crimes are punishable by law in the Dutch Act of International Crimes (*Wet internationale misdrijven,* hereinafter: Wim).

The suspect is also accused of having taken part in a criminal organisation of which the object is to commit war crimes and crimes against humanity in the period between 2011 up to and including 2017. This offence is punishable by law in Section 140 of the Dutch Penal Code (*Wetboek van Strafrecht*, hereinafter: Sr) Section 1(4) of the Wim stipulates that Section 140 Sr is equated with a crime described in the Wim, insofar as the crime relates to a crime described in Sections 3 through 8b of the Wim.

The suspect travelled to the Netherlands in 2020 and has been residing here since that time.

Pursuant to Section 2(1) under a of the Wim, Dutch criminal law applies to anyone who is guilty of committing the crimes set out in that law abroad, when the suspect is located in the Netherlands.

As the suspect was located in the Netherlands at the time of his arrest, the jurisdiction in this case is based on the provision set out above. This therefore involves the application of (secondary) universal jurisdiction.

Pursuant to Section 15 of the Wim, The Hague District Court is exclusively competent to take cognizance of the crimes set out in the charges.

5 The admissibility of the public prosecutors

The defence adopted the position that the public prosecutors are inadmissible in the prosecution of the suspect for the participation in a criminal organisation (offence 7), as - briefly put - the participation in a criminal organisation is not a criminal offence under international criminal law and prosecution [of the suspect] would violate the principle of legality.

The court has considered in the foregoing that the charges relate to criminal offences in respect of which (secondary) universal jurisdiction can be assumed. The Dutch criminal court applies the criminal provisions

provided for in Dutch law, i.e. Section 1(4) of the Wim in conjunction with Section 140 Sr. In light of the foregoing, the court disallows the defence that participation in a criminal organisation as set out in offence 7 should not be regarded a criminal offence and should result in the inadmissibility of the public prosecutors in the prosecution.

Insofar as the defence was seeking to argue that the criminal prosecution was not foreseeable for the suspect and therefore sought to invoke a miscarriage of justice or mistake of fact, the court finds that the assessment of that defence is of a substantive nature and requires fact-finding and - if successful should result in the acquittal of the suspect. The court shall also discuss this defence after the finding of the facts, i.e. in chapter 12.

The court sees no other impediments for prosecution. The public prosecutors are therefore admissible in the prosecution of the suspect.

6 Finding of the facts and (intermediate) conclusions
6.1. Introduction

The investigation against the suspect was started on the basis of emails sent to the International Crimes Team of the National Police Force on 2 October 2020. The emails reported the fact that the suspect is located in the Netherlands, that he was allegedly involved in the armed group Liwa al-Quds and that he was allegedly involved in crimes whilst in that capacity. An investigation was conducted into the suspect under the name 26Vescher. On 24 May 2022, the police arrested the suspect.

In this chapter, the court will arrive at the establishment of the facts, on which basis the court will also formulate (intermediate) conclusions for the judicial statement and particulars of the offence. This concerns conclusions regarding the nature of the armed conflict and the applicability of the international humanitarian laws of war (6.4.1.15.); the scale and nature of the attack on the civilian population (6.4.1.16.); the relations between shabiha groups and Liwa al-Quds (6.4.1.9. and 6.4.1.14.); the position held by the suspect in Liwa al-Quds (6.4.2.2.); the nature of the suspects involvement in the deprivation of liberty of [victim 1] (6.4.3.2.); and the nature of the suspects involvement in the crime against humanity torture and torture of [victim 1] (6.4.4.2.).

Reference to evidence is made in the footnotes. Furthermore, the footnotes also refer to literature and caselaw.

6.2 The positions adopted by the public prosecutors

The public prosecutors have adopted the position that there is sufficient lawful and convincing evidence that the suspect was a member of a shabiha group and an armed group by the name of Liwa al-Quds which collaborated with the Syrian regime during the period set out in the charges. In that capacity, the suspect and others were involved in the arrest of [victim 1] (hereinafter: [victim 1] or [victim 1]) and [victim 2] (hereinafter: [victim 2]), who were handed over to the Syrian Airforce Intelligence Service following their arrest, where they were tortured and subjected to the crime against humanity torture in a prison of that service.

The public prosecutors have demanded that the charges set out under 1 primary, and that charged under offence 2 through 7, be declared to have been proven.

6.3 The position adopted by the defence

The defence adopted the position with regard to offences 4, 5 and 6 that the suspect should be acquitted as it cannot be legally and convincingly be proven that the suspect actually committed that charged under 4, 5 and 6.

The defence argued in this regard that the suspect was not present at all during the arrest of [victim 2] (offence 4) and that therefore there is no proof for his involvement in the crime against humanity torture and torture of [victim 2] by the Syrian Airforce Intelligence Service (offences 5 and 6).

In regard to the torture and the crime against humanity torture, the defence argued that the suspect did not accept the significant possibility that [victim 1] would end up at the AIS. There were multiple security services and regular police present at Al-Nayrab camp. The file does not show that everyone arrested by Liwa al-Quds ended up at the AIS. That [victim 1] would end up at the AIS can also not be deduced from the fact that an AIS officer was present at the time the arrest was made. After all, it has remained unclear whether anyone of the AIS was present at the time the arrest was made.

In regard to offence 1 and in the alternative as regards offence 4, the defence has argued that the suspect was unaware that the arrests of [victim 1] and [victim 2] were arbitrary, and that he also did not know that these arrests formed part of a widespread and systematic attack directed against the civilian population.

In regard to offences 2 and 3 and in the alternative in respect to offences 5 and 6, the defence argued that the suspect was not involved (also not in collaboration with others) with the transfer of [victim 1] and [victim 2] to the Syrian Airforce Intelligence Service.

Inregard to offence 7, the defence adopted the position that the suspect should be acquitted of being a member of shabiha groups. After all, the suspect has denied that he was a member of a shabiha group. Furthermore, the defence argued that the suspect cannot be regarded as a leader of Liwa al-Quds. The case file provides sufficient basis that the role of the suspect was limited to carrying out activities.

The defence has also argued that the statements given by [witness 2] are not reliable with regard to the deprivation of liberty of [victim 1] and can therefore not be used in evidence. After all, these statements contain important contradictions and moreover, it is possible that the statement given by the witness reflects something she had been told, rather than just her own observations.

6.4 Evidence

When reference is made hereinafter to a report, then this refers to an official report drawn up under oath - unless otherwise is specified - in the legal form, by one or more competent investigative officers or the examining magistrate charged with the hearing of criminal proceedings at this court. When reference is made to file pages in that set out below, then this refers to the pages of the report with number LERFA21004 drawn up by the International Crimes Team of the National Police Force including annexes (consecutively numbered page 1 through 2316).

The names of persons and places are written in various ways in the investigative file. Set down below is an overview of the various manners in which the names are spelled and reference is made to which and whom reference is made, as understood by the court. This judgment always uses the last-named spelling to refer to the person in question.

- As regards [witness 1] and [witness 1], the court understands that reference is made to the same person. The court will refer to this person as [witness 1].

- As regards [name 1], [name 1] or [name 1] or [name 1], or similar names, the court understands that reference is made to the same person. The court will refer to this person as [name 1].

- As regards [name 2], [name 2] or [name 2], [name 2], the court understands that reference is made to the same person. The court will refer to this person as [name 2].

- As regards, [name 3], [name 3], [name 3], [name 3], [name 3], [name 3], [name 3] or [name 3] or [name 3], the court understands that reference is made to the same person. The court will refer to this person as [name 3].

- As regards [name 4] and [name 4], the court understands that reference is made to the same person. The court will refer to this person as [name 4].

- As regards [name 5] and [name 5], the court understands that reference is made to the same person. The court will refer to this person as [name 5].

- As regards Al-Neyrab, Al-Nayrab and al Nayrab, the court understands that reference is made to the same place. The court will refer to this place as Al-Nayrab.

- As regards Deir Ezzor, Deir al-Zour and Deir ez-Zor , the court understands that reference is made to the same place. The court will refer to this place as Deir ez-Zor.

6.4.1. Finding of the facts and (intermediate) conclusions relating to the situation in Syria during the period set out in the charges.

The file contains two reports, titled Liwa al-Quds (hereinafter: report I) and The Syrian Airforce Intelligence Service (AIS) and the Syrian Conflict, particularly in Aleppo (hereinafter: report II), drawn up by *dr*. R. Leenders (hereinafter: Leenders). These reports discuss the conflict in Syria, those involved in this conflict, Liwa al-Quds and the Airforce Intelligence Service (hereinafter: AIS). The reports are based on literature and public sources of information, such as reports of human rights organisations, news articles and social media.

The court has established the following on the basis of these reports and the public sources contained therein and on the basis of witness statements given to the examining magistrate.

6.4.1.1. The situation in Syria in 2011

In March 2011, a revolution broke out in Syria, demanding reform from the regime of president Assad. Various rebel groups formed and in June 2011 the first armed conflict took place between rebel groups and the Syrian army. The start of the large scale armed opposition in Syria was marked by the formation of the Free Syrian Army (hereinafter: FSA) in July 2011. Although the FSA consisted of various rebel groups, it carried out joint military operations, published a code of conduct1 and set up a Supreme Military Council in order to establish a commando structure. In September and October 2011, the media reported the first armed conflicts between the Syrian army and the FSA.2

6.4.1.2. Pro-regime militias

The regime tried to suppress the call for reform by using excessive force.

As there was a shortage of regular forces, the regime relied heavily on groups that consisted of local sympathizers to suppress the rallies hardhandedly. These local sympathizers were referred to as shabihas. Within months of the onset of the revolution, the shabiha groups started organising themselves better with the help of the security services, forming so-called popular committees (lijan sha'biyya). The regime provided weapons and means to the popular committees for the purposes of recruiting new members and engaging them against predominantly unarmed demonstrators and activists.3 In 2011, the independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations (hereinafter: IICISAR) reported that the number shabihas armed by the Syrian regime involved approx. 10,000 civilians.4

The regime increasingly engaged in deadly violence against the demonstrators. The regime ordered the large-scale arresting, torturing and murdering of demonstrators.

The IICISAR has reported that 6,399 civilians and 1,680 deserters were killed in the period from 15 March 2011 until 15 March 2012, that the violence started to escalate in the autumn of 2011 and that the regime engaged snipers and used mortars against civilians. The IICICAR has documented crime against humanity torture cases since 2011 in 38 detention locations, particularly those stated here. As a large number of civilians has been apprehended outside the formal procedures, it is not possible to provide an exact number of civilians currently held prisoner. The Violations Documenting Centre stated in its report of February 2012 that over 18,000 prisoners were being held at that time.5

Over the subsequent period, multiple large-scale military operations were carried out between the parties involved, whereby use was made of military weapons and vehicles, such as tanks and artillery.6 According to IICISAR, 6.7 million civilians had fled the country and 6.2 million civilians were displaced in 2019 as a result of the Syrian conflict.

The popular committees and shabiha groups played a major role in the violent suppression [of the people]. Practically every periodical report issued by IICISAR since 2012 and the reports drawn up by human rights organisations such as Amnesty International and Human Rights Watch and other recognized international organisations and researchers include reports of serious human rights violations committed by the pro-regime militias or those in which the pro-regime militias were involved.8

When the peaceful revolution developed into an armed revolution, many of the popular committees transformed into quasi-autonomous militias that fought rebel groups at local or national level, along with the regular armed forces. These militias were, in most cases, managed by the various divisions of the security services and they were provided arms and ammunition by the regular armed forces. The financial means were mostly obtained as a result of pillaging, smuggling, kidnapping for ransom, blackmail and the levy of taxes at checkpoints. Support was also provided by the business persons affiliated with the regime.9 Report I shows that the pro-regime militias turned out to be essential in reclaiming the territory on the rebels in practically all the important battles and turning points of the conflict, helping the regime (re)gain control of the most important parts of the country. The notion that mainly pro-regime militias made these victories possible and therefore helped the regime maintain their power is also apparent from the estimations that the large majority of the pro-regime fighters who perished since 2014 were

members of such pro-regime militias.10

6.4.1.3. Establishment of shabiha groups from the Al-Nayrab and Handarat camps

The first armed pro-regime groups in the Palestinian Al-Nayrab and Handarat camps were formed in the autumn of 2011. In a matter of months, these groups transformed into armed militias with hundreds of members, led by a small number of individuals who each led their own group, although they did work together. The following persons were among the most famous shabiha leaders: [name 6] , [name 2] , [name 1] , [name 3] and (later) [name 4] . The members of these groups lived in the Al-Nayrab and Handarat camps.11

According to the leaders of the shabiha groups, these shabiha groups existed due the necessity to protect the residents of the Al-Nayrab and Handarat camps against a threat of rebel groups around the camps. Nevertheless, the shabiha groups were also involved in beating down rallies at locations far beyond the camps. The turmoil in and around Aleppo offered the shabiha groups and particularly their leaders, a possibility to increase their political influence in and beyond the camps and to use it for lucrative purposes. The career of [name 1] and his activities in the corrupt construction industry of Aleppo prior to 2011 seems to suggest a clear financial motivation. In this regard, reference can also be made to the manner in which he and other leaders of Liwa al-Quds used the position of power they had gained to profit from pillaging, smuggling, blackmailing and the seizure of the possessions of their opponents. This gave rise to a new shabiha elite, which replaced the traditional Palestinian political factions. Becoming a member of this elite was an attractive prospect for youths from the fugitive camps as the social-economic conditions in the Palestinian fugitive camps was poor and the income offered for taking part in the shabiha groups was enticing.12

6.4.1.4. The Syrian revolution in Aleppo

The Syrian revolution reached the city Aleppo at a late stage. In 2011, most rallies were relatively small-scale and took place in and around the university of Aleppo and in a number of mosques. In early 2012, the rallies started to increase in size and expanded, mainly to the east part of the city. For example, mass rallies took place in the areas in the east of Aleppo in 2012, to which the regime responded with violence. At that time, armed rebel groups had already formed in the country, including the factions of the FSA, Liwa al-Fatah and Liwa al-Tawhid. It didn't take long for armed groups to start accompanying the rallies, which, according to them, was done in order to protect these rallies against Syrian security troops and shabiha groups. In July 2012, various rebel groups moved to the east part of Aleppo city and started what they referred to as the Battle of Aleppo. Heavy fighting broke out, resulting in a stalemate and the division of the city until 2016. During this period, the western part of the city was controlled by regime troops and their allies and the eastern part of the city by various rebel factions.13

6.4.1.5. The Syrian Air Force Intelligence Service

Even before the Syrian revolution in March 2011, the AIS transformed into a security service that became an important pillar for the suppressing of any form of opposition in Syria by using long-term arbitrary detention, torture, crime against humanity torture and disappearances. The ties with the Assad family were close and were strengthened by the fact that practically all of the leaders of the AIS originated from the same native region as the Assad family and were Alawite people, just like the current president and his father. AIS was the most feared and active security services within the Syrian security apparatus.14

The AIS operated throughout Syria and was organised in sectors and departments, which each had their own prisons where systematic crime against humanity torture took place.15 According to the Syrian Network for Human Rights, over 135,000 people were arrested between the start of the Syrian revolution and August 2023, who were either detained by the intelligence services over a long period of time or never released. This equates approximately 6 percent of the total Syrian population.16

When the revolution broke out in March 2011, the regime immediately relied on the various intelligence and security services, including the AIS, to crack down the revolution with heavy hand. A Central Crisis Management Cell (hereinafter: Crisis Cell) was formed within the regime,

in which the most important persons took part, such as the Minister of Defence and the heads of the regimes intelligence and security services. The Crisis Cell ordered the crackdown of the rallies, instructed army troops and security services to use violence against the revolutionaries and played an active role in the encouragement, mobilisation and arming of popular committees.17 According to the Crisis Cell, the only way of ensuring that the regime remained in place was to act in violence that knew no boundaries. The decisions made by the Crisis Cell were implemented via the local sectors of the security services.18 As of 2012, the AIS took the initiative to set up pro-regime militias, also in the camps in Aleppo, so as to have access to considerable troops which could be used to counter the revolution and could scare and harm the civilian population.19

6.4.1.6 Role of the AIS in Aleppo and the Al-Nayrab and Handarat camps

The AIS had various detention centres at its disposal in Aleppo, including the detention centre at Al-Nayrab airport that was run by security chief [name 5].20 Leenders describes in his report how the AIS played an important role in the formation of population militias in the Al-Nayrab and Handarat camps, from which Liwa al-Quds originated.21 [name 1], for example, was a confidant of the AIS in Aleppo and the main contact of AIS in the Al-Nayrab camp already prior to 2011. [Name 2] explained in an interview that took place in April 2017 that, once they were given the green light by AIS to arm and expand their organisation, small shabiha groups set to work. He, [name 1] and [name 3], would receive weapons on individual basis or purchase them from the weapons depot at Al-Nayrab airport. It did not take long before the camp was overrun with weapons and the shabiha groups set up various checkpoints around and inside the camp. As a result, [name 1] became closely affiliated with the head of the AIS in Aleppo, [name 7] and his subordinate [name 5].22 [Name 1] consequently gained an influential position in the camp by acting as an intermediate (*simsar*) for camp residents, for money or otherwise, and using his connections (*wasta*) with the AIS for the purposes of obtaining all sorts of favours, services and privileges. Besides supplying weapons, the AIS is also said to have financed the recruitment of recruits by the militias.

GT089175 has also given a statement regarding the ties between [name 1] and the AIS. According to this witness, [name 1] and [name 2] had connections with the regime and these ties were very close. According to this witness, they were given the order to set up a group which would take action againstthe demonstrators. They therefore started recruiting people, in particular young, muscular and strong men who were ruthless. They subsequently cracked down on the demonstrators at the university of Aleppo and the surrounding area.23

6.4.1.7. The consequences of the conflict for the Palestinian fugitive camps Al-Nayrab and Handarat

During the first years of the conflict a wait-and-see attitude was adopted in both camps, which was reflected in the predominantly neutral position that was adopted, for the purposes of involving the camps as little as possible in the conflict in Syria. At the Al-Nayrab camp, a local coordination group formed by local leaders of Palestinian factions tried to maintain the neutral position by banning anti-regime rallies and by urging pro-regime groups who wanted to protect the camp against advancing rebels not to go outside the camp, let alone help regime troops in cracking down the rallies in Aleppo.

Due to the geographical position of the camps, less than a kilometre from the civil and military airport of Aleppo - and the escalating conflict, the camps became of strategic importance, conflicting with the neutral position that had been adopted. From 2012 onwards, the rebel groups moved towards the airport. The Al-Nayrab camp was an important link for both the rebels and the regime in gaining control over the airport of Aleppo.24 Regular regime troops set up camp at the airport and the AIS coordinated its military operations against the rebels from the airport. In April 2013, the rebels entered the Handarat camp. The airport and the Al-Nayrab camp were subsequently besieged, but their continued attempts to gain control of the airport were unsuccessful and the Al-Nayrab camp also remained in the hands of the regime.25

6.4.1.8. Development of shabiha groups into Liwa al-Quds

Both [naam 1] and [name 2] have confirmed that smaller armed groups in the camps gradually merged together into Liwa al-Quds.26 In fact, the formation of Liwa al-Quds meant that the various shabiha groups continued their activities under a new name with a formally appointed united leadership. The notion that the formation of Liwa al-Quds was in fact a restructuring, is also apparent from the significant level of continuity between Liwa al-Quds and the shabiha groups. For example: practically all the shabiha leaders who had played a prominent role in the organisation prior to the formation of Liwa al-Quds, continued to do so after the formation. The close ties between the leaders of the shabiha groups/Liwa al-Quds and the AIS also remained in place. A publication of human rights organisation Zaman al-Wasl, published in September 2013, and the many photographs of [name 5] with commanders of Liwa al-Quds (including [name 2]) also reflect those close ties.27 The close collaboration is also apparent from the fact that, during the besieging of east Aleppo, Liwa al-Quds used the AIS headquarters in al-Zahraa, Aleppo city, as its main military basis in the city.28 The close relations of Liwa al-Quds with the AIS were essential during the first years of the organisation for the arming, organisation and training of the group. This is confirmed by witness GT202650, who has stated that Liwa al-Quds largely relied on the financial support of AIS, in addition to the income it received from thefts it committed in the places it raided.29

At the time, the formation of Liwa al-Quds was largely unsung. Only later did [name 1] say that Liwa al-Quds had been formed in Al-Nayrab camp on 6 October 2013. However, there are strong indications that Liwa al-Quds had been formed prior to 6 October 2013. Liwa al-Quds refers to [name 6], the shabiha leader who was killed in September 2012, as its first martyr and on 3 October 2021, an invitation was posted on the official Facebook page of Liwa al-Quds to celebrate the 10th anniversary on 6 October 2021. This is an indication that the merging of the shabiha groups in Liwa al-Quds took place prior to October 2013.38

6.4.1.9. Intermediate conclusion of the court with regard to Liwa al-Quds

As a result of the establishment of the facts set out in the foregoing, the actions of the shabiha groups from the Al-Nayrab and Handarat camps can in fact be attributed to and be regarded as actions engaged in by Liwa al-Quds as an umbrella group.

6.4.1.10. Transformation of Liwa al-Quds into a paramilitary infantry division

Liwa al-Quds became one of the most reliable allies of the Syrian regime due to the part it played in the suppression of the rallies, the persecution of activists of the opposition in Aleppo and by its subsequent provision of significant military assistance in most battles that took place as of 2013. As of 2014, Liwa al-Quds transformed into a tightly organised militia with branches all over the country. However, the leadership of Liwa al-Quds remained in Aleppo, with its head office in the Al-Nayrab camp, led by [name 2], and its head office in the Hamdaniya neighbourhood in Aleppo city, led by [name 1].31

In doing so, Liwa al-Quds and its shabiha predecessors evolved from a group that was involved in cracking down on peaceful protests in Aleppo, into an armed militia and infantry unit that focussed on combating the rebels. Initially, Liwa al-Quds consisted of a couple of hundred fighters, but it was able to develop into a formidable paramilitary infantry division of up to 5,500 men in 2018. Up to 2016-2017, the military operations of the group focused on the area directly surrounding the Al-Nayrab camp, the city Aleppo and the surrounding areas in the country of the Aleppo province. Liwa al-Quds was subsequently deployed in practically all active fronts in the country. The group regularly drew attention to the fact that it took part in 140 battles in the province Aleppo alone and was later active in large-scale fighting in lots of location in north-west Syria, the east of the country, Damascus, Hama and the south of the country. According to estimates based on information provided by the group, Liwa al-Quds is said to have lost many men in those fights, over 400 up to 2015 and 1,000 up to 2019. The scope of the troops of Liaw al-Quds was considerable for a Syrian pro-regime militia, its effort in important battles, its role in turning points of the conflict, and its significant losses confirm that the group must be regarded as a militia that was of great military importance for the regime in its efforts to resist and beat the opposition and the rebels.32 From the beginning and for the duration of the conflict, the group acted as a proxy for the Syrian regime that outsourced its state monopoly on violence to

them. The ties between Liwa al-Quds and the AIS weakened after the departure of [name 7] as AIS chief in Aleppo in September 2016 in favour of the Military Intelligence Service (hereinafter: MIS) which, in collaboration with the Russian troops in Syria, started to manage the group.33 As of the end of 2016, the group served as proxy for the Islamic Revolutionary Guard Corps (IRGC) and the Russian troops in Syria.34

6.4.1.11. Involvement of Liwa al-Quds in crimes committed by the AIS.

During the early days of the Syrian revolution, the AIS used deadly violence to suppress rallies that took place in various Syrian cities. The United Nations estimates that 2,600 civilian victims died in September 2011 alone. Not only the participants in the rallies against the regime fell victim to the AIS. Each expression of sympathy for the protests or other forms of opposition was a possible reason for arrest. If you were a resident of a certain area or neighbourhood where the rallies took place, this could also be a reason for the AIS to arrest you. Besides repressing demonstrators, the AIS also focused on the regular troops. Soldiers who refused to shoot demonstrators in order to suppress the revolution would, for example, be shot dead by the AIS and air force pilots were intimidated by AIS officers into bombarding civilian targets.35

Various Syrian human rights organisations, authors and eyewitnesses have mentioned the shabiha groups, which later merged into Liwa al-Quds, for their role in the violent suppression of these peaceful rallies in Aleppo between 2012 and 2013. The Lebanese pro-regime newspaper Al-Akhbar also wrote an article about the Al-Nayrab camp, stating that twenty men from the camp attacked the demonstrators in the mosques in Aleppo with batons in the spring of 2012. According to various eyewitnesses, members of the shabiha groups, including those of [name 1], [name 2] and [name 6], spoke about their supression of the rallies when they returned to the Al-Nayrab camp with a pick-up truck every week at the end of the day.36

The witness [witness 1] - the son of the aforementioned [victim 1] - stated in this regard that the shabiha group of [name 6] cracked down on demonstrators in return for payment. According to this witness, it was common knowledge that each person who took part in that action, such as precipitating demonstrators, would receive 500 lira. They did not have fire arms at that time, but they did have sticks and batons.37

Two anti-regime rallies took place in camp al-Nayrab between 2011 and 2013. Liwa al-Quds is said to have responded violently. Violence and intimidation by members of the group against dissidents in the Al-Nayrab camp also took on other forms. Particularly when some in the Al-Nayrab camp still felt that a neutral position should be adopted in the conflict, this was immediately suppressed. According to the Action Group for Palestinians of Syria, they set up checkpoints in the camp and arrested persons whom they suspected had taken part in the rallies in Aleppo. Members of the rival Palestinian parties and the local coordination committees of the camp, including [name 8] (the son of Hamas leader [name 9]), Hamas leader [name 10], committee member [name 11] and his son [name 12] are said to have been taken prisoner by Liwa al-Quds and detained over a long period of time. [Name 8] is said to have been subjected to the crime against humanity torture, resulting in his death.38 According to a report drawn up by Pro-Justice, Liwa al-Quds was also told by AIS to extradite persons who were suspected of sympathising with the opposition or taking part in the rallies and they have contributed to the arrest of over 4,000 civilians since 2011. Many of them are said to have been subjected to the crime against humanity torture, and/or murdered or have died under appalling circumstances during their detention.39

The witness [witness 1] gave a statement about the random arrests by Liwa al-Quds. According to this witness, one only had to voice criticism on the regime in order to become the subject of a report.40 Liwa al-Quds arrested people for the security services.

A report would be written about persons who were possibly politically active, after which this person would be arrested and handed over to the security service at the airport.41

[Victim 1] has also stated that Liwa al-Quds arrested people for the regime. He knew this because he was a member of the committee for the improvement of the relations with the surrounding area. People from the Al-Nayrab village came to him to complain about the arrest of

a number of villagers by Liwa al-Quds. Liwa al-Quds handed these people over to the AIS.42 During his detention, the AIS confronted him with a report drawn up by Liwa al-Quds.43

According to witness GT202650, it was common knowledge that Liwa al-Quds wrote damning reports and that people would then be arrested.44 Initially, members of Liwa al-Quds arrested people from the Al-Nayrab camp. But after the arrest of [victim 1] and all that happened after that, they were afraid to do so. They were afraid that this would result in turmoil in the camp. The people of the surrounding villages were still being arrested. If the family paid Liwa al-Quds money, they would release people. Some people were prepared to pay a lot of money. If no payment was made, the people would be transferred to the AIS.45 This witness gave a specific statement, stating that [name 14] and [name 15], [name 22] and [name 13] were picked up by Liwa al-Quds, viz. the group of [name 3]. According to this witness, this was the only group in the camp that was able to do this. [name 13], [name 14] and [name 15] were arrested in 2012 and [name 22] in 2013. [Name 14], [name 15] and [name 13] were handed over to the AIS. The witness heard that [name 15] was abused and subjected to the crime against humanity torture.46

The case file shows that the detainees were transferred to one of the AIS prisons, in which the prisons in Damascus, Harasta, Dara, Homs, Aleppo, Hama, Latakia, Deir ez-Zor and Raqqa were most frequently mentioned. The treatment of the prisoners was cruel to such an extent that the United Nations and human rights organisations hold the AIS responsible for the most severe forms of crime against humanity torture in Syria since the revolution broke out.47

In report II by Leenders, a description is provided of various forms of severe crime against humanity torture, including the *falaqa* crime against humanity torture method, involving floggings of the feet. The witness statements also show that applying electric shocks, pulling out nails, cutting out eyes, mutilations, stabbing with a knife, and performing mock executions were common crime against humanity torture methods.48 Sexual violence was also used. The purpose of applying such extreme violence was to obtain (false) confessions and to punish the prisoners.49 The application of such extreme violence very regularly resulted in the death of the prisoners. Based on the reports of the international and Syrian human rights organisations, the Human Rights Data Analysis Group calculated that 17,723 people died whilst in detention in the period between 2011 and 2015.50 In Aleppo, bodies were found in the area of the AIS almost daily in 2012, including bodies of children.51

6.4.1.12. The reputation of the AIS

The reports and witness statements show that the activities of the AIS were common knowledge. The civilian population was aware of the fact that the AIS arrested members of the opposition as well as normal citizens or had them arrested for the purposes of subjecting these arrested persons to extreme forms of systematic violence. It was also common knowledge that many people did not survive the crime against humanity torture practises of the AIS. The knowledge about this was supported by the persons who did survive the crime against humanity torture and told family and friends about it. Camera footage shared via social media also showed how the prisoners were being subjected to the crime against humanity torture.52 Everyone within the (relatively) small and close community of Al-Nayrab camp was fully aware of the reputation of the AIS.53

This is also clear from various witness statements. [Victim 1] described the AIS as follows: The cruellest service in all of Syria is the Airforce Intelligence Service.

The Airforce Intelligence Service is the service that is most active in arresting people. If someone is arrested by this service and then released, we say that he has been given a new life.54 [witness 1] stated that everyone was aware of the crime against humanity torture engaged in by the AIS. He described the reputation of the AIS: Anyone who comes out of there alive, should be very thankful to God.55 [Witness 2] described the AIR as the centre of death.56 The witness [witness 3] used similar words: It is common knowledge that the security service, the intelligence service of the Airforce is ruthless. (...) [Victim 1] should thank God that he came out of there alive, most dont survive. Dont take my word for it, it is official knowledge.57 Witnesses GT202650 and GT089175 also gave a statement about the AIS. GT202650 stated the following:

It was common knowledge that many of the people handed over to the Airforce Intelligence Service did not make it out of there alive. Many family members of people who had been handed over would later receive a phone call in which they were told to come collect the ID document of their child. In other words: He is dead.58 GT089175 stated that the reputation of the AIS was extremely bad, that they were notorious and that anyone who fell into their hands would disappear.59

6.4.1.13. Other activities Liwa al-Quds

The file also shows that Liwa al-Quds and its leaders profited in various ways from the opportunities offered to them by the Syrian war economy. They did this by taking ownership of goods in the areas they controlled. In the Al-Nayrab camp, the group used its position of power to confiscate possessions, particularly from opponents and fugitives.

Various sources have confirmed that Liwa al-Quds played a major role in the looting that accompanied the conquering of territory by armed groups in the Syrian war. There are reports that looting took place when the Palestinian shabiha groups assisted the Syrian regular army in a military operations against the rebels in Tal Shaghbib, a village near Al-Nayrab camp in March 2013. The Lebanese pro-regime newspaper al-Akhbar also wrote an article about the Al-Nayrab camp, reporting that various shabiha groups had confiscated goods from the village and had subsequently offered the goods for sale at a market in the camp. Pillaging by members of Liwa al-Quds was something that also took place on a large scale in Aleppo during and after the military offence had driven the rebels out the city. Eyewitness reports also speak of systematic looting by Liwa al-Quds in Deir ez-Zor at the end of 2017, which was sometimes accompanied by deadly violence against residents and rival pro-regime militias. Liwa al-Quds set up open air markets in various place where it sold the goods they had looted, such as fridges and furniture. The old metals the group stripped from destroyed or other buildings and houses were sold on a large scale.60

The Fata/Integration report (2019) drawn up by the Syrian Centre for Legal Studies and Research and the Democratic Republic Studies states that Liwa al-Quds had taken possession of various houses of members of the opposition in the camp.61 The houses of [name 13] and a person by the name of [name 10] were mentioned. The taking of these possessions is said to have been part of a campaign of Liwa al-Quds to take possession of the houses of members of the opposition and of persons who supported the ideas of the opposition and had fled to Europe. [Name 2], the vice-commander of Liwa al-Quds is said to have confirmed the taking possession of houses of people who had fled to Europe on his personal Facebook page. [Name 2] is said to have refused people, who had fled earlier, to re-enter the Al-Nayrab camp. He is also said to have communicated the decision to take possession of the houses, as a message to those residents of the Al-Nayrab camp who had publicly expressed their support for a person by the name of [name 23], a member of the armed opposition who had been killed.62

Various witness have also given statements concerning the activities of Liwa al-Quds. [Victim 1], for example, stated that Liwa al-Quds was guilty of organised looting and theft in the villages. The leaders were aware of the practices of their members and permitted it. Liwa al-Quds attacked villages and had its members loot these villages.

After payment of 10,000 Syrian lira, each member of Liwa al-Quds was allowed to loot a house.63

According to witness [witness 1], the members of the shabiha groups were paid per job in the beginning. However, persons who became an official member would receive substantial salaries and stopped working as this became their job. Once the fighting started, they received income in addition to their salary by looting the areas they gained control over. According to this witness, the suspect would collect the looted goods on the roof of his parents house during a certain period. The witness saw this with his own eyes. He saw them drive a pick-up into the camp and heard them say these are looted goods. Particularly when they raided and stormed Teil Shughaib. They were very brash and publicly said that they had looted Teil Shughaib.64

GT202650 stated that Liwa al-Quds initially suppressed demonstrators. Later, when Liwa al-Quds became better armed, it took part in fighting and supported the Syrian army, it occupied and controlled certain areas and would loot a lot. The witness saw that Liwa al-Quds brought in lots of looted goods into the Al-Nayrab camp. Liwa al-Quds took the goods into the warehouse of [name 3]. A truck would sometimes be filled with new car tyres, another time it would be filled with olive oil. The witness also frequently saw members of Liwa al-Quds drive in looted cars. At one time, they had place a very large generator on a car. Their warehouse was located outside the camp. The group said that they had taken the goods themselves. The witness also gave a statement about a specific incident. In a place approximately 4-5 km from the camp, the group of [name 3] looted everything they could find. Engines, TVs, cars, even womens clothing. From the beginning, the group of [name 3], consisting of 7 or 8 men, was the group that kept the proceeds of the looting all to itself. Later, other shabihas also looted.65

6.4.1.14. Intermediate conclusion with regard to Liwa al-Quds

Based on the establishment of the facts set out in the foregoing, the court finds that Liwa al-Quds was a regime-affiliated militia that held a position of actual control in and outside the Al-Nayrab camp as proxy of the AIS and later as proxy of the Syrian and Russian armed forces. The leaders and the members abused that position for their personal gain.

6.4.1.15. The nature of the conflict

In order to answer the question as to whether a judicial finding of fact can be established of a criminal organisation of which the object is to commit war crimes (offence 7), it needs to be determined whether the international humanitarian law applies. To this end, we must assess whether, during the period charged, there was, in view of the phrasing of the charges, a non-international armed conflict in Syria.

Pursuant to caselaw of the Yugoslavia tribunal (hereinafter: ICTY), a non-international armed conflict is considered present if this involves protracted armed violence between the government and one or more organised armed groups or between armed groups.

Whether or not a protracted armed violence is considered present, can be established on the basis of the duration and the intensity of armed confrontations, the quantity and the type of fired ammunition, the type of weapons and other military equipment deployed, the number of victims, the scope of the material damages and the number of internally displaced persons. Whether an organised armed group is involved or not can also be established on the basis of the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of headquarters; the possibility to plan, coordinate and carry out military operations, the possibility to establish a uniform military strategy and the use of military tactics, and the possibility to speak with a single voice and to negotiate.

The court finds that the requirements of protracted armed violence on the territory of Syria as of July 2011 have been met. The court considers on the basis of the aforementioned development of the conflict that there was a strong increase of the number of armed confrontations and that the intensity of the armed violence also increased from that moment on. In the subsequent period, many large-scale military operations were carried out between the parties involved, whereby use was made of military weapons and vehicles such as tanks and artillery. Also the amount of (deadly) victims, material damage and (internal) displaced persons is extremely substantial, as established in the foregoing. The court finds that these circumstances, seen in relation and in connection, entails that the requirement of protracted armed violence has been met.

The court also finds that - on the basis of the aforementioned facts and circumstances - the required degree of organisation of the armed group has been met as well. The start of the armed opposition in Syria was marked by the formation of the FSA in July 2011. Although the FSA consists of various rebel groups, the court finds that the required degree of organisation has been met. To this end, the court considers that the FSA carries out joint operations, issued a code of conduct and formed a Supreme Military Council in order to shape a command structure.

Intermediate conclusion: non-international armed conflict as of July 2011

The court finds that a non-international armed conflict existed in Syria as of July 2011, between the opposition groups operating in the FSA on the one hand and the Syrian regime and its affiliated popular committees/militias on the other hand. This entails that as of that moment and for the duration of the period charged, the international humanitarian laws of war apply.

6.4.1.16. Crimes against humanity

The charges include crimes against humanity, crime against humanity torture, unlawful deprivation of liberty (offences 1, 3, 4 and 6) and participation in a criminal organisation of which the object is to commit crimes against humanity (offence 7).

What differentiates a crime against humanity from a crime under ordinary law (and from other international crimes such as war crimes or genocide), is the condition that the crime must have been committed within the context of a widespread or systematic attack directed against a civilian population, for the implementation or continuation of the policy of a government or organisation.

Section 4(2) under a of the Wim defines an attack directed against a civilian population as the multiple committing of offences set out in that Section directed against a civilian population, for the purposes of the implementation or continuation of the policy of a government or organisation of which the object is to commit such an attack. Pursuant to caselaw, the conduct that forms part of the attack does not need to be violent, nor does it always need to protect the same legal interests. This means that an attack can consist of a sum of various types of conduct, provided there is a link between the conduct and the attack. The attack must also be directed against a civilian population. However, the attack does not have to be directed against the civilian population as a whole, an attack directed against a considerable number of individuals will suffice.

Moreover, the attack must be of a widespread and systematic nature, whereby widespread refers to the scale or scope of, for example, the number of victims, and systematic refers to the existence of a plan or pattern. Another requirement is that the attack takes place by way of implementation or continuation of the policy of a government or organisation, which refers to an active encouragement or promotion of an attack on a civilian population by a government or organisation. As regards the form of the policy, the policy does not have to be formally adopted as government policy. The policy or plan also does not have to be explicitly announced or set out in a detailed plan. A *de facto* or implicit plan will suffice.

A widespread or systematic attack directed against the civilian population

In view of the establishment of the facts set out in the foregoing, it is clear that the Syrian regime collaborated with groups such as the popular committees as of March 2011 in order to suppress the peaceful rallies by using violence to disperse and arrest the demonstrators. The Crisis Cell of the regime controlled the various security services as well as the army and ordered a hard crackdown on the opposition. As the peaceful rallies increased in number, so did the violent acts of the Syrian regime. The regime provided groups with weapons and other means and used the army, the security services and these groups for the purposes of killing, arresting and torturing civilians and detaining civilians under extremely dire circumstances, resulting in the death of tens of thousands of civilians. This conduct can, in view of its nature and scope, be regarded as an attack directed against a civilian population.

According to the Crisis Cell the mass arrest and detention of civilians was the main element of the repression arsenal used by the regime as a means of suppressing the rallies. This violence was used as a means to instil fear and served to repress the population so as to protect the regime of Al-Assad. The people targeted by the violence were (alleged) members of the opposition, demonstrators and activists, as well as civilians (including children) who were in no way involved in the rallies. The civilian population targeted by the attack were mainly Syrian citizens. One only needed to be involved in the protests, to have made critical statements regarding the regime or to know someone who is suspected of this, in order to become a target of repression and violence. The court therefore finds that this involves both a widespread as well as a systematic attack directed against the civilian population.

Intermediate conclusion: widespread and systematic attack directed against the civilian population for the implementation of the policy of the Syrian regime

The court considers that the arrests of civilians and the use of violence against civilians that took place as of March 2011 can be qualified as an evolving attack directed against a civilian population. The decisions of the Crisis Cell were implemented as of April 2011 and the court considers that this involves a widespread and systematic attack directed against a civilian population, in view of the number of victims and the systematic nature of the conduct. The Syrian regime and its Crisis Cell controlled the violent suppression of civilians. Therefore the widespread and systematic attack directed against the civilian population took place in implementation of the policy of the Syrian regime.

6.4.2. Establishment of the facts and (intermediate) conclusions with regard to the position of the suspect

The suspect has stated that he joined Liwa al-Quds, but that he did this in order to defend his family.66 According to him, he was only involved in the security of the Al-Nayrab camp and its residents.67 However, he is accused of having a far further reaching involvement and that he had a leading role at Liwa al-Quds as well.

6.4.2.1. Establishment of the facts

Just like GT089175, [victim 1] has stated that the suspect had been a member of Liwa al-Quds since the revolution began in 2011.68 According to [witness 1], the suspect was initially a member of the group of [name 6], the neighbour of the suspect. He started as a regular member, but evolved from there. When the rallies started in Aleppo, this group was formed for the purpose of repressing the rallies. For example, [witness 1] saw the suspect leaving with a group of [name 6] in a car going to or coming back from Aleppo.69

After [name 6] died, the suspect evolved into one of the confidants of [name 3], the military commander of Liwa al-Quds. According to witness GT202650, [name 3] had two types of confidants: persons who were close to [name 3] and persons that had a more distant position. The suspect formed part of the inner circle of [name 3], together with seven or eight other men.70 [Victim 1] has stated that the suspect was the righthand man of [name 3].71 GT089175 refers to him as a confidant of [name 3] as well.72

The witness [witness 3] has seen the suspect wearing military clothing and weapons in the camp.73 [Victim 1] gave a similar statement.74 GT089175 has stated that the suspect carried a weapon and wore a uniform.75 GT202650 has seen the suspect carrying a Kalashnikov dozens of times76 and has also stated that the suspect was involved in an incident whereby members of Liwa al-Quds drove through the streets dragging a body behind a car. At the time, the suspect was standing in the trunk of the car to which a body was tied. The body is said to have been dumped in a garbage container.77

GT202650 has given a statement about the arrest of two men and a woman in 2012 at a checkpoint involving the group of [name 3]. According to the witness, they were apprehended at the checkpoint and subsequently abused and taken by [name 3] and members of his group, including the suspect, after which they handed them over to the AIS.78 It was the group of [name 3], which included the suspect, that engaged itself in looting. This witness actually saw the group take looted goods into the camp.79 The suspect had a private warehouse for the looted goods.80

According to GT05:2C1175, the suspect was involved in arrests within the camp. The suspect was assigned by the leaders of Liwa al-Quds to pick someone up, which he subsequently did with a number of other people.81 At one such arrest, this witness heard the suspect order other members of Liwa al-Quds to arrest the person in question, to handcuff them and place them in the car. The suspect also manned the checkpoints at the entrances and exits of the camp. If he was there, he usually sat inside. The common members performed the work.82 This witness also stated that when Liwa al-Quds would be given an order to fight outside the camp, the suspect would be in charge of the group. The witness knows this because this was talked about in the camp, in a manner such as; I was in the group of and then the name of the suspect would be

mentioned and it would be discussed what was done outside the camp, who had been hurt, who had perished etc.83

GT202650 has stated that the position of the suspect was high (at least in 2012) to an extent that the manning of a checkpoint was beneath his rank.84 This witness also stated that the suspect was a leader of a group within Liwa al-Quds as of 2012 as well.85 This witness heard and saw the suspect give orders to the rest of the group, such as: You will take this car and you will take that car. If people needed to be replaced at the checkpoints and in the lines controlled by Liwa al-Quds, then the suspect would also do that. According to this witness, the group of the suspect joined the assaults and he knew this because the suspect talked about this proudly. The witness stated for example that the witness had said: Today we attacked a group, picked up someone and handed him over to the Airforce Intelligence Service. Later, when Liwa al-Quds was better organised, there were clear structures and the organisation had grown, the suspect was the leader of the Al Badya front and he had been given access to rockets.86

GT0889175 has stated very specifically in this regard about the looting by Liwa al-Quds and the suspect. This witness stated that Liwa al-Quds raided houses outside the camp, thereby making false accusations. For example, that weapons were said to be in the property. The house would then be raided and looted. Money, jewellery and gold would subsequently be taken. The suspect and others would also place checkpoints along roads and force cars to stop, after which they carried out lootings.87

These statements are supported by the photos in the file on which the suspect can be seen and the posts on social media in which his name is mentioned. For example, the following post is placed on the Facebook profile of a certain [name 28] on 14 March 2014. Engineer [name 1] and [name 2], two commanders of Liwa al-Quds, have resolved the crisis with the help of residents, in the presence of the commander of a division within Liwa al-Quds, [suspect]. The suspect can be seen on the enclosed photo, sitting on a sofa next to [name 1] and [name 2].88

On 7 March 2015, a video was shared on the YouTube channel of Liwa al-Quds. It is specified with this video that the troops stationed in Khanassar welcome their commander [name 1]. We see the suspect approaching [name 1] first and hugging him and smiling.89

On 23 October 2015, photos were shared on the Facebook-profile [name 16] on which members of Liwa al-Quds can be seen pushing forward towards Khanassar. The following message was posted on that date: The heroes of Liwa al-Quds, Martyr [name17] battalion, on their way to Athria. The suspect is shown on the photo, directly behind [name 3] and [name 4] and has his hands on their shoulders.90

The suspect is also shown on photos taken of tactical discussions. He is seen wearing a military-style outfit on a photo which was posted on Facebook-profile [name 16] on 4 September 2016. On the photo, he is seen studying a map along with [name 4]. On the basis of satellite images, the location of this map is pinpointed as being in the Armament College in Aleppo, an important strategic position in the battle of Aleppo in 2016.91

The suspect is also one of the high ranking Liwa al-Quds fighters given a Russian distinction in the autumn of 2016 for their role in the Handarat offensive. On the photo taken on that occasion, the suspect can be seen in the company of [name 1], [name 3], [name 4] and [name 18].92

On 8 January 2017, a series of photos is posted on a Facebook page by the name of Liwa al-Quds / Syrian-Arab Commando / Salamiyah Center which, according to the accompanying text, were taken on the occasion of the fortieth birthday of martyr [name 24]. The text states that the people on the photo were members of Liwa al-Quds accompanied by the governor of Hama and the secretary of the party organisation in Hama. On this photo, the suspect can be seen standing behind the governor.93

On a Facebook profile of a person by the name of [name 19], who, as stated on his Facebook profile, lives in Aleppo and works for the Syrian Arab army, two messages were posted on 4 September 2017. The posts include photos; on both of these photos the same group of people can be seen.

The first post was: The troops of Liwa al-Quds are moving towards Deir ez-Zor, led by our superior [suspect], may Allah continue your glory later, great man.

The second post was: [...] was founded by engineer [name 1] by ordering the military leaders [name 20] and Mr [suspect] to support our brothers at the edge of Deir ez-Zor.94

The Facebook profile [name 21] also contains a large number of photos depicting the suspect. On 12 May 2018, one of his photos is accompanied by the following text: [Suspect], commander of the assault company, may God protect you.95 A post was placed on the Facebook page of Liwa al-Quds by the name of Recruitment agency of Liwa al-Quds, Damascus and surrounding area, which included six photos. The post was as follows:

The leaders of Liwa al-Quds share their joy with the children of Al-Nayrab camp on Eid al-Fitr, may you remain healthy every year. May God protect you, leaders of Liwa al-Quds.

The victim is seen on these photos in close proximity of [name 1], [name 2] and [name 4].96

6.4.2.2. Role suspect at Liwa al-Quds

The statement given by the suspect that he joined Liwa al-Quds simply to protect and keep his family and the residents of the camp safe is implausible in view of the facts established in the foregoing.

In answering the question whether the suspect can also be regarded as a leader of Liwa al-Quds within the meaning of Section 140 Sr, the court states first and foremost that a leader within the meaning of Section 140 Sr does not necessarily have to be the highest ranking leader. An organisation can have multiple leaders. It needs to be established whether a person has certain powers within the organisation, has a certain authority, or differs from the other participants by their actions, such as taking initiative, distributing tasks, giving orders and instructions that are followed up. It involves a continuous actual control.

The file shows that [name1], [name2] and [name3] (and following his death [name 4]) were the highest ranking leaders of Liwa al-Quds. Based on the statements given in the foregoing and the other documents in the file, the court concludes that the suspect treats them as equals. They are regularly shown in the photos - often in a friendly manner - directly next to or behind the highest ranking leaders. He is involved in the arrests within the camp and had a leading role at the checkpoints in the camp. He is also mentioned as a commander of a division, commander of the assault company and superior. He is one of the five highest ranking leaders of Liwa al-Quds who received a Russian distinction in the autumn of 2016. He is also one of the leaders of Liwa al-Quds who celebrated Eid-al Fitr with the children of Al-Nayrab camp on 15 June 2018. He was involved with battle operations as commander in Khanassar, the Handarat offensive, Zarzour and Deir ez-Zor, and other locations. He also took part in the looting and kept part of the looted goods on the roof of his parents house.

Intermediate conclusion: the suspect played leading role within Liwa al-Quds

In view of the position he held in the organisation as direct confidant of the leaders, his leading role in the activities of Liwa al-Quds, both inside the camp with regard to the manning of the checkpoints and outside the camp in battle operations and in lootings and the taking of a share of that looted, the court finds that the suspect had continuous actual control within Liwa al-Quds in respect of other (lower ranking) militia participants, to such an extent that he can be considered a leader within the meaning of Section 140 Sr.

6.4.2.3. The suspects awareness of the reputation and actions AIS

The considerations set out in the foregoing show that the residents of the camp were aware of the AIS reputation. The suspect has also stated that the AIS had a bad reputation in every regard. He was fully aware of this, because his uncle [name 13] had been imprisoned and subjected to the crime against humanity torture by AIS. After his uncle had been released, the suspect visited him and noticed how emaciated his uncle had become and that his health had deteriorated significantly. His uncle had also suffered mentally.97 The court therefore concludes that the suspect had knowledge of the bad reputation of the AIS and the detaining and crime against humanity torture of (the) opponents and crime against humanity torture of (alleged)

opponents.

6.4.3. Establishment of the facts and (intermediate) conclusion with regard to the deprivation of liberty of [victim 1]

6.4.3.1. Establishment of the facts

[Victim 1] is of Palestinian descent and has been living in the Palestinian Al-Nayrab fugitive camp since his birth in 1956.98 He played a social role within that camp and ever since the armed conflict in Syria started, he was a prominent member of a committee that tried to maintain the neutrality of the camp and to prevent youths from being recruited for taking part in the armed fights.99 The ideas and activities of the committee were opposed by the security services and representatives of the Baath party.100

On 28 January 2013,101 around midnight102, a group of five to seven people103 entered the home of [victim 1] in the Al-Nayrab camp. These people were carrying kalasjnikovs104 and three or four persons wore a scarf as mask.105 The breath of these persons reeked of alcohol.106 A fight erupted in the home involving pushing and shoving,107 and there was cursing and shouting.108 One of the members of the group shot in the ceiling.109 [victim 1] received a blow of a fist in his face and was struck on the back with a riffle butt. His son [witness 1] was also struck. He became unwell after receiving a blow on the head with a riffle butt and lost consciousness.110 The leader of the group said: Take him and his son.111 At that moment [victim 1] decided to cooperate and he was dragged outside, dressed in pyjamas and bare feet.112 A ripped T-shirt was pulled over his head.113 There was no arrest warrant and [victim 1] was not told why he was taken away.114

The home of [victim 1] was along a narrow passage that ends in a broader street.115 A taxi was parked along that broader street, which was surrounded by a few members of Liwa al-Quds.116 [victim 1] was placed in the back seat of the taxi and two persons also got in the car next to him on both sides.117 The taxi subsequently sped off at high speed towards the office of the military security service.118 It took half an hour to remove [victim 1] from the home.119

The group of persons entering the house of [victim 1] and subsequently placing him in the taxi were members of Liwa al-Quds, an agent of the military security service and an officer of AIS.120 The latter was the leader, gave the orders and was spoken to by members of Liwa al-Quds as Sir.121 The members of Liwa al-Quds were recognised as being [name 25] (also known as [name 25]); [name 3]; his brother [name 4]); [name 27], [name 17]; and the suspect.122 The driver of the taxi was a man with the nickname [name 26] (the bunny).123 The officer of the AIS was first warrant officer [name 5], working at Aleppo airport.124 The name of the military security service agent is unknown.

The suspect was initially standing by the door, in other words at the front door of the home of [victim 1].125 Just like the others, he was wearing camouflage clothing. He also wore a tactical vest full cartridges.126 Later, he was standing close 'against the taxi, together with [name 3], while other members of Liwa al-Quds were standing a little further from the taxi.127 The latter members formed a circle around the taxi, for the purposes of keeping by-standers at a distance.128 According to [victim 1], the role of the suspect was to stand guard and see whether other people would interfere with his arrest and stop them if necessary.129 According to [victim 1], the suspect and two others had been given the task to ensure that the other group could safely put me in the car.130

6.4.3.2. Conclusion of the court: co-perpetration

The question the court needs to answer is whether the suspect can be held responsible as a co-perpetrator for the deprivation of liberty of [victim 1].

The court considers the involvement in a criminal offence as co-perpetration can be declared proven if it has been established that it involved a sufficiently close and deliberate collaboration with one or more others upon engaging in the criminal offence. The focus lies on the collaboration in this regard, and less on the question as to who performed which factual acts. When answering the question if there was a close and deliberate collaboration, the court can

take into account the intensity of the collaboration, the mutual task division, the role in the preparation, the performance or completion of the offence and the importance of the suspects role, his presence at important moments and not withdrawing at an appropriate time. All in all, the qualification co-perpetration is only justified if the - intellectual and material - contribution of the suspect to the offence, as declared proven, is sufficiently substantive.

As shown by the aforementioned facts, various people from various ranks were involved in the aforementioned factual acts. Besides members of Liwa al-Quds, an officer of the AIS and an officer of the military security service was present. A taxi was also ready to transport [victim 1] to the office of the last-named service. The foregoing indicates that a certain degree of joint preparation must have preceded the arrest and transfer of [victim 1]. Although the exact role and involvement of the suspect in that preparation cannot be established, it is difficult to imagine that the suspect - in light of his position at Liwa al-Quds as established in the foregoing, in any event as right hand man of [name 3] did not have advance knowledge of the plans to deprive [victim 1] of his liberty.

In any event, the suspect formed an unmistakable part of the group of persons who engaged in the deprivation of liberty during the performance of that arrest and transfer. The suspect was on site, along with other members of Liwa al-Quds and was wearing camouflage clothing and an automatic firearm, just like the others. He was standing by the door of [victim 1] when the others entered that house and was later on close to the taxi used to transport [victim 1]. There was a degree of collaboration and a certain division of tasks. Some persons from the group engaged in the physical arrest of [victim 1], while others - the suspect, [name 3] and a third party - stood close to the taxi when [victim 1] was placed in the taxi, whereby others stood around the taxi in a circle for the purpose of keeping bystanders at a distance.

The court considers it important in this regard that the suspect was directly present at two key moments in the deprivation of liberty of [victim 1]. He was, as considered in the foregoing, present during the entering of the home and when the victim was placed in the taxi. The role of the suspect was therefore more than just keeping watch as argued by the defence, a conduct that is generally associated with complicity. The context is also important in this regard. As concluded in paragraph 6.4.1.14., Liwa al-Quds was a militia that was affiliated to the regime at the time the deprivation of liberty took place, and also held a position of actual authority in the Al-Nayrab camp. If one holds such a position of authority, there is no need to keep watch. On the contrary. The suspect was armed with an automatic attack weapon and wore a tactical vest over his camouflage clothing, which contained cartridges for that weapon, and has as such contributed to the atmosphere of intimidation and fear.

All in all, the court finds that the suspect worked closely and deliberately with the other persons present during the physical deprivation of liberty of [victim 1], and that his contribution was of such a nature that the suspect can be regarded a co-perpetrator.

6.4.4. Establishment of the facts and (intermediate) conclusions with regard to the crime against humanity torture and torture of [victim 1].

6.4.4.1. Establishment of the facts

Based on the evidence, the court establishes the following facts. After [victim 1] was forced into a taxi on 28 January 2013 - see paragraph G.4.3.1. - this taxi drove to the office of the military security service,131 on the edge of Al-Nayrab camp.132 [Victim 1] was then immediately taken to a side entrance at the nearby airport.133 After having been held in the military part of the airport for eight days134, [victim 1] was taken to the military Assad by helicopter, and was taken to the office of the AIS in Aleppo in a van135 and was held there.136 This office of the AIS had an underground prison.137 [victim 1] was placed in a cell there; this cell was four by five meter and held between 87 and 100 prisoners. There was too little room to stretch the legs and the prisoners were continuously sitting or sleeping with their legs tucked in.138 One was only permitted to visit the toilet twice a day, during which the prisoners were beaten with a stick or whip.139 Some prisoners would pee in a bottle.140 There were only very small ventilation openings in the cell, and it was hot.141 The prisoners were given very little to eat and drink and

the food and drink was bad and the prisoners would drink oil mixed with water tapped from the central heating system.142 Before he was deprived of his liberty, [victim 1] weighed 80 kilos, when he was released, he weighed 35 kilos.143

The cell was located next to the interrogation room and [victim 1] could hear the interrogations that took place there, the crime against humanity torture and the screaming of the prisoners.144 Five days after he arrived in the prison, [victim 1] was taken to a room where an officer was standing.145 This officer discussed a report which was said to show that he had demonstrated against armed fighters and that he was in contact with members of the armed opposition.146 When he denied, the officer told another man: Take him and make sure he confesses.147

This man - a torturer, as [victim 1] calls him148 - took him to an interrogation room, pushed him to the ground and started beating and kicking him against the head, back and the flanks.149 Whilst [victim 1] was lying on his back, he was beaten on his bare feet with a stick, 30 to 40 times, whereby he was forced to stand and jump and skip in the between beatings, to encourage the blood circulation and sensation in his feet.150 At the same time, he was yelled at, telling him to confess.151

After initially having remained silent, [victim 1] started shouting at one point, saying that he had nothing to do with the accusation.152 To which the man beating him said: You will be summarily tried.153 Upon returning to this cell - [victim 1] was unable to stand and crawled on his belly154 - the other prisoners fell silent when he told them what he had been told. After all, it meant that [victim 1] was going to be executed.155 When he saw how this shocked his fellow prisoners, he also became fearful.156

[Victim 1] had been detained approximately 20 days157 before he was released in the night of 28 February 2013. He was collected by family members at the gate of the AIS prison and immediately taken to hospital159, where he was held in a coma at the intensive care department.160 One toe of his right foot and a toe of his left foot were amputated.161 A doctor told [victim 1] that his feet had been burnt and electrocuted.162

6.4.4.2. Conclusion of the court: co-perpetration in complicity

After changing the charges, the suspect is accused, briefly put, of having been a co-perpetrator, together and in unison with others, in the crime against humanity torture of [victim 1], by depriving [victim 1] of his liberty, jointly and in unison with others, and handing him over to the AIS.

In regard to the latter, the court has already established in paragraph 6.4.3.2. above that the suspect, together and in unison with others, therefore as a co-perpetrator, deprived [victim 1] of his liberty and forced him into a taxi. That deprivation of liberty cannot be seen separately from what subsequently happened to [victim 1]: the ultimate transfer to an AIS prison and his treatment there. The presence of the AIS officer when he was taken out of the house and the transfer of [victim 1], and the leading role played by this officer indicates that the suspect must have known that [victim 1] would ultimately fall into the hands of the AIS and that his actions, together with the actions of all the other members of Liwa al-Quds, contributed to this. The court therefore considers it proven that the suspect - again as co-perpetrator - handed over [victim 1] to the intelligence service of the Syrian air force.

The question is then whether the suspect was therefore intentionally helpful during the crime against humanity torture and torture of [victim 1] that followed after he had been handed over to the AIS. The court answers this question affirmatively. One of the reasons for this answer is that, as considered in the foregoing, the AIS engaged in the crime against humanity torture and torture in the widespread and systematic attack directed against (alleged) political opponents and that this practice was common knowledge. Moreover, as also considered in the foregoing, the suspect was aware of the crime against humanity torture practices of this service because it also happened to someone close to him. After all, his uncle had been detained and had been subjected to the crime against humanity torture during his detention in August 2012; just a few months prior to the handover of [victim 1] to the AIS. The court considers that this means that the suspect, by being a co-perpetrator of the deprivation of liberty, the forcing into the taxi and

handing over to the AIS of [victim 1], at the very least deliberately accepted the considerable chance that he was aiding the crime against humanity torture and torture of [victim 1]. The suspect was not the only person helpful in this regard. After all, the other members of Liwa al-Quds also contributed to this by their actions. This means that this involves co-perpetration of accessory to crime against humanity torture and torture.

7 Offence 1: the crime against humanity unlawful deprivation of liberty

7.1 Introduction

The court established in paragraphs 6.4.3.1. and 6.4.4.1. that the suspect removed [victim 1] from his home and handed him over to the AIS. The court needs to answer the question as to whether the suspect was guilty of the crime against humanity unlawful deprivation of liberty. In the Netherlands, thiscrime against humanity is punishable by law in Section 4(1) under e of the Wim.

7.2 The position of the Public Prosecution Service

The public prosecution service has demanded the judicial finding of fact of offence 1 primary.

7.3 The position adopted by the defence

The defence adopted the position that the physical deprivation of liberty of [victim 1] does not violate the fundamental rules of international law. After all, the deprivation of liberty was of such a short duration that this is insufficiently severe to be considered in violation of the fundamental rules of international law. Nor have any other circumstances become apparent that would justify this short-term deprivation of liberty being regarded as an international crime. The violence applied during the arrest was not of such a gravity that it could be considered a crime against humanity, despite its short duration.

According to the defence, the deprivation of liberty was not arbitrary as there is a possible legal basis for the deprivation of liberty, as it is possible that the security situation in the camp could justify such a deprivation of liberty. After all, there was an extremely precarious security situation at the Al-Nayrab camp and in view of these circumstances, the regime had a relatively broad margin when assessing who had to be detained. In view of the contacts [victim 1] had with the opposition to bring the necessary goods into the camp and his resistance against the arming of residents of the camp, it was not strange that he would be arrested by the regime.

7.4 The assessment of the charges

7.4.1. **The assessment**

The charges are geared towards Section 4(1) under e of the Wim. Legal history shows that by using this phrasing in the provision in the Wim, an attempt was made to avoid giving the term imprisonment a too restrictive interpretation whilst at the same time ensuring that the act can only be qualified as a crime against humanity if this involves unlawful forms of imprisonment. Reference is made to, *inter alia*, the Universal Declaration of Human Rights (the Articles 9, 10 and 11) and the International Covenant on Civil and Political Rights (Articles 9, 10, 11 and 14).

Article 4(1) under e of the Wim is a provision that is based on Article 7(1) under e of the Rome Statute. The Elements of Crimes - insofar relevant - explains in that Article the requirement that the suspect must have seriously deprived a person from his or her liberty, that this deprivation of liberty was serious to an extent that it violated the fundamental rules of international law and that the suspect was aware of this, that the deprivation of liberty formed part of a widespread or systematic attack directed against the civilian population and that the suspect knew or intended for the conduct to form this.

Severity of the deprivation of liberty

It is not dispute that [victim 1] was deprived of his liberty during some time: after all, he was violently taken from his home against his will, dragged outside and forced to sit on the back seat of a taxi, whereby people sat on the left and right of him, effectively preventing him from being able to leave.

The deprivation of liberty set out in the charges focuses on the taking out of the home and forcing into the vehicle of [victim 1]. The actual acts are of a limited duration: according to [victim 1], this lasted half an hour.

Contrary to the defence, the court does not attach any significant importance to the (limited) duration of the deprivation of liberty. The unlawful nature of that deprivation of liberty is, however, of greater importance. It has been established that [victim 1] was in no way told why he had been taken and that he was not shown a warrant for his arrest: a violation of Article 9 of the ICCPR (a treaty that was ratified by Syria in 1969). The unlawful nature of the deprivation of liberty is also clear from the facts and circumstances thereof. The timing of the entering of the home at midnight, the involvement of (drunk) members of an irregular militia without any official position in the Syrian government system, the cursing and shouting, the shooting in the home, the violence used against [victim 1] and his son, the taking away of [victim 1] in a vehicle that was generally used as taxi and was driven by a civilian: all these factors substantiate the courts finding that the deprivation of liberty was in no way lawful. The other argument put forward by the defence, namely that the deprivation of liberty was not arbitrary, but had a legal basis or took place on the basis of legitimate security considerations - is rejected as implausible in view of the foregoing.

Furthermore, the deprivation of liberty cannot be seen separately from what subsequently happened to [victim 1]: the ultimate transfer to an AIS prison and his treatment there. Although that event took place after the acts and facts set out in the charges of offence 1, [victim 1] must have feared what was in store for him due to the presence of the AIS officer - in view of the commonly known cruel reputation of that service. That circumstance contributes to the severity and the substance of the deprivation of liberty.

Part of a widespread or systematic attack directed against the civilian population

That the physical deprivation of liberty in general was widespread and was used systematically as a weapon in an attack directed against the civilian population is set out in the foregoing. Liwa al-Quds was told by the AIS to deliver persons with an (alleged) sympathy for the opposition, after which many of them were subjected to the crime against humanity torture and/or murdered or died under appalling circumstances during their detention, whereby the ultimate objective was to suppress the opposition in favour of the State.

When assessing the question as to whether the physical deprivation of liberty of [victim1] formed part of the widespread and systematic attack, we need to assess the characteristics, the objective, the nature and consequences of the committed acts. With due observance thereof, the court finds that the specific deprivation of liberty of [victim 1] perfectly fits the aforementioned general pattern. [Victim 1] was a prominent member of a committee that expressed views that were interpreted by the security services and the regime as being oppositional. When [victim 1] was removed from his home, there was an AIS officer present, as well as a military security service agent, while the removal was performed by members of Liwa al-Quds. [Victim 1] was eventually - as established in that set out below subjected to the crime against humanity torture and tortured in an AIS prison, for the purposes of instilling fear in him to a degree that he would stop his activities.

Knowledge suspect

The court also finds that the suspect knew that the deprivation of liberty of [victim 1] formed part of that widespread and systematic attack directed against the civilian population. As set out in the foregoing, Liwa al-Quds served AIS during the performance of arrests and deprivation of liberty of (alleged) opponents, including people from the Al-Nayrab camp. It has also been described that the (cruel) reputation of AIS was common knowledge. As the suspect was a member of Liwa al-Quds and in that capacity formed part of the group that violently removed [victim 1] from his home and forced him in the taxi, and all this was carried out under the supervision of an AIS officer who was present, the suspect must have known that [victim 1]s arrest formed part of a widespread and systematic attack directed against the civilian population. Another factor that is taken into consideration is that the suspect was well aware on the basis of the experiences of his own family, as set out in the foregoing. The arrest and deprivation of liberty of the suspects uncle is similar in many respects to the manner in which [victim 1] was deprived of his liberty. As a result, the court considers that the knowledge of the suspect is established.

7.4.2. The judicial finding of fact

The court considers it proven in respect of the suspect, that:

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in Al-Nayrab, Syria, on or around 28 January 2013, he, together and in unison with others, deprived [victim 1] from his physical liberty, in violation of the fundamental rules of international law,

which deprivation of the physical liberty consisted of him, the suspect, in his capacity as a member of the pro-regime militia Liwa al-Quds and multiple co-perpetrators, standing guard in front of the house of said [victim 1], and in doing so preventing any help of third parties, while said [victim 1] was violently taken from his home and forced into a vehicle by other members of the Liwa al-Quds militia and the military security service and the intelligence service of the Syrian air force, while this deprivation of the physical liberty was committed as part of a widespread and systematic attack directed against a civilian population, while he, the suspect, knew that this conduct formed part of a widespread and systematic attack performed by the Syrian intelligence organisation and the Syrian army and pro-regime militias directed against the Syrian civilian population.

In so far as the indictment includes typing errors and/or linguistic errors, these have been corrected in the judicial finding of facts. On the basis of that discussed during the hearing, the defence of the suspect has not been infringed by this.

8 Offence 2 and 3: torture and the crime against humanity torture

8.1 The assessment of the charges

Crime against humanity torture

The charges of offence 3 are geared towards Section 4(1) under f of the Wim: crime against humanity torture as crime against humanity. The term crime against humanity torture is defined in Section 1(1) under d of the Wim. According to this definition, crime against humanity torture must involve the intentional causing of severe pain or suffering, either physical or mental, to a person who is being held captive or is under the control of the accused. And finally, it must be established whether the conduct formed part of a widespread or systematic attack directed against the civilian population and whether the suspect was aware of this.

The court finds that the aforementioned conduct (in light of the nature, duration and intensity thereof) and the circumstances under which [victim 1] was held, can undoubtedly be regarded as the intentional causing of severe pain and suffering, physical and mental, while he was being held captive in a prison of the intelligence service of the Syrian air force. The court therefore considers it proven that [victim 1] was subjected to the crime against humanity torture.

Part of a widespread or systematic attack directed against the civilian population

It has been considered in the foregoing that the crime against humanity torture was implemented in a widespread and systematic manner in an attack directed against the civilian population. Just like the deprivation of the liberty of [victim 1], the subsequent crime against humanity torture fits the general pattern of the systematic violent repression of the civilian population perfectly.

Knowledge suspect

The court also finds that the suspect knew that the crime against humanity torture formed part of that widespread and systematic attack directed against the civilian population. The court refers to its considerations regarding the knowledge of the suspect concerning the deprivation of liberty of [victim 1] as part of a widespread and systematic attack. The same is applicable in full to the crime against humanity torture that subsequently took place (see 7.4.1.).

Conclusion

The court finds that the suspect is guilty of the co-perpetration to the accessory in the crime against humanity torture of [victim 1].

Torture

The charges of offence 2 are geared to Section 8 of the Wim: torture. Based on this provision and the definition of torture as included in Article 1(1) under e of the Wim, torture must involve crime against humanity torture of a person for the purposes of obtaining a confession, punishing or instilling fear - insofar relevant in this case - committed on behalf of the government by a civil servant or a person working for the government during the performance of his professional duties.

It has already been established in the foregoing that [victim 1] was subjected to the crime against humanity torture.

The court also finds that the crime against humanity torture of [victim 1] took place for the purposes of obtaining the confession from him that he had been in contact with the armed opposition and for the purposes of instilling fear in him. This is apparent from the statements made by the officer and the torturer and the statement of the torturer that he would be summarily sentenced, which means: executed.

The court also considers it established that the crime against humanity torture was committed by the government or by a civil servant or another person working for the government, during the performance of his professional duties. After all, [victim 1] was detained in an AIS prison - a service of the Syrian government - while his crime against humanity torture was ordered by an officer of that government service and carried out by someone, insofar as he was not a civil servant, in any event a person serving the government. Both acted in the performance of their professional duties: As set out in the foregoing, the AIS considered the persecution of alleged opponents one of its state security duties. The officer and the man whom [victim 1] referred to as torturer, worked closely and deliberately together.

Conclusion

The court finds that the suspect is guilty of co-perpetration of accessory to the crime of torture of [victim 1].

8.1.1. The judicial finding of fact

The court considers it proven in respect of the suspect, that:

Judicial finding of fact offence 2:

Employees of the (prison of the) intelligence service of the Syrian air force, at least persons working on behalf of the Syrian government, in the performance of their professional duties,

in the period between 28 January 2013 up to and including 01 March 2013, in Aleppo,

together and in unison,

tortured [victim 1], which torture consisted of the aforementioned persons intentionally causing severe pain or severe suffering, physical and mental, while said [victim 1] was in captivity of aforementioned persons, for the purposes of obtaining a confession from said [victim 1] and instilling fear in him, committed on behalf of the government.

By, then and there, beating said [victim 1] on his bare feet and on his head and kicking his side and back multiple times and committing other acts of violence and threatening him with killing, by adding the following words: you will be summarily sentenced, at least words of a similar intent, and engaging in other acts that intentionally caused severe pain or severe suffering,

during the committing of said crime, he, the suspect, together and in unison with others, on 28 January 2013, in Al-Nayrab, was intentionally helpful, after having deprived him of his physical liberty, together and in unison with others, in violation of the fundamental rules of international law, transferred him, [victim 1] together and in unison with others, to the intelligence service of the Syrian air force, while he, the suspect, deliberately accepted the significant chance that said [victim 1] would, as a result, be exposed to torture.

Judicial finding of fact offence 3:

Employees of the (prison of the) intelligence service of the Syrian air force, in the period from 28 January 2013 up to and including 1 March 2013, in Aleppo,

together and in unison,

subjected [victim 1] to the crime against humanity torture, which crime against humanity torture consisted of the aforementioned persons beating said [victim 1] multiple times with a stick on his bare feet and head, and kicking his sides and back multiple times and engaging in other acts of violence and threatening to kill him, [suspect 1] , by adding the words: You will be summarily sentenced, or words of a similar intent,

in the commitment of which crime, he, the suspect, jointly and in unison with others, on 28 January 2013, in Al-Nayrab, was intentionally helpful, after having deprived him of his physical liberty, together and in unison with others, in violation of the fundamental rules of international law, transferred him, [victim 1] together and in unison with others, to the intelligence service of the Syrian air force, while he, the suspect, deliberately accepted the significant chance that said [victim 1] would, as a result, be exposed to crime against humanity torture.

while this crime against humanity torture formed part of a widespread and systematic attack directed against a civilian population.

while he, the suspect, knew that this conduct formed part of a widespread and systematic attack performed by the Syrian intelligence organisation and the Syrian army and pro-regime militias directed against the Syrian civilian population.

In so far as the indictment includes typing errors and/or linguistic errors, these have been corrected in the judicial finding of facts. On the basis of that discussed during the hearing, the defence of the suspect has not been infringed by this.

9 Acquittal offences 4, 5 and 6

The suspect is also accused of having deprived [victim 2] from his liberty, together and in unison with others, and subsequently handing said [victim 2] over to the AIS, where said [victim 2] was subjected to the crime against humanity torture and tortured.

Based on the statements of [victim 1], the court can establish that [victim 2] was arrested during the same night as [victim 1] and that [victim 2] ended up in the same car as [victim 1] at any moment. Those statements and the statement given by [victim 2] during the immigration interview conducted by the Swedish authorities also show that they were handed over to the AIS together, were detained in AIS detention centres at the same time and were also released at the same time. Both [victim 2] and [victim 1] have given statements about violent acts committed against [victim 2] during the period they were being held. [Victim 1] stated that [victim 2] was beaten on his head by multiple shabihas in the second detention centre and that he was pushed out of a helicopter when he was transferred to this detention centre, as a result of which he broke his foot. During his interview with the immigration service, [victim 2] also spoke of this (and other) injuries and stated that he was subjected to the crime against humanity torture with the use of electricity as well.

The court finds that it has been established that [victim 2] was deprived of his liberty and was subsequently transferred to the AIS and subjected to the crime against humanity torture and tortured. However, contrary to [victim 1], the court cannot establish that the suspect was physically present during the arrest and the subsequent transfer of [victim 2] to the AIS. Although the physical presence of the suspect is not in itself a requirement for the judicial finding of fact of co-perpetration, the file also does not show that the contribution of the suspect was otherwise sufficiently substantive. The file contains insufficient clues to indicate that there was a close and deliberate collaboration between the suspect and other persons who were present during the arrest and the transfer of [victim 2] to the AIS. The court can therefore not establish that the suspect, together with others, deprived [victim 2] of his liberty and therefore acquits him from that charged under 4.

As the involvement of the suspect in the crime against humanity torture and torture of [victim 2] relates to his involvement in the deprivation of liberty of [victim] and the suspect is acquitted of this, the court shall therefore also acquit the suspect of that charged under 5 and 6.

10 Offence 7: participation in a criminal organisation of which the object is to commit war crimes and crimes against humanity

10.1 The position of the Public Prosecution Service

The public prosecution service has adopted the position that there is sufficient legal and convincing evidence that the suspect took part as a leader in shabiha groups and the pro-regime militia Liwa al-Quds, which organisation has the objective of engaging in war crimes and crimes against humanity as charged.

10.2 The position adopted by the defence

The defence adopted the position that the international legal framework for participation in a criminal organisation should be applied with regard to this offence. As the Rome Statute on the International Criminal Court (hereinafter: Rome Statute) does not include the punishability in respect of participation in a criminal organisation and in light of the explanatory memorandum to the Wim, one must look at the participation form pursuant to Article 25(3) under d of the Rome Statue for the international legal framework. Applying this international legal framework rather than applying the legal framework under Dutch law means that higher requirements must have been met before one can claim a participation in a criminal organisation. According to the defence, these higher requirements have not been met, which means that the suspect must be acquitted of that charged under 7.

As regards the physical act of violence as war crime, the defence argued that the file does not show that this already involved a non-international armed conflict, during the time the violence was committed when the suppression of the rallies against the regime took place (early 2011). Moreover, it is unclear as to whether the armed conflict played a substantial role in the committing of the crime, as required for the nexus between the conduct and the armed conflict.

As regards the arbitrary detention as war crime, the defence has argued that the file contains insufficient evidence to indicate that the arrests violated the fundamental rules of international law.

As regards the looting as war crime, the defence argued that only the appropriating of goods that belong to the enemy or the opponent in the conflict constitutes a war crime.

10.3 The assessment of the charges

The court shall first discuss the defence that the applicable legal framework is that of Article 25 of the Rome Statute, after which it will assess the charged participation in a criminal organisation.

Substantiation Section 140 Dutch Penal Code

In offence 7, the suspect is accused of having been guilty of participating in a criminal organisation of which the object is to commit international crimes.

Section 1(4) of the Wim dictates that Section 140 Dutch Penal Code is equated with the crimes set out in the Wim, if Section 140 Dutch Penal Code relates to the committing of international crimes. The explanatory memorandum to the Wim sets out the following with regard to Section 2(2) of the Wim (former):

The second subsection (also derived from Section 3 part 3 of the Dutch Criminal Law in Wartime Act) expands the jurisdiction to a number of crimes committed abroad, that are closely linked to the crime set out in paragraph (sedition to such a crime, offer of co-perpetration, handling stolen property/goods). Section 140 Dutch Penal Code, the participation in an organisation of which the object is to commit crimes as described in paragraph 2, has been added to this. If, for example, a crime against humanity committed abroad by anyone becomes prosecutable here, then the government considers that the same rule should apply to the contribution to the committing of such a crime by way of a criminal organisation.

As is apparent from the parliamentary history of the Wim, the court must, upon interpreting the international crimes included in the Wim, focus on the explanation provided in international criminal law in respect of the description of the offence of these crimes. This means that the Dutch court must observe the case law of the international Criminal Tribunals and the International Criminal Court.

The explanatory memorandum to the Act of 8 December 2011, introducing the current Section 1(4) of the Wim, explains that the assimilation of certain general offences with international crimes is required for the implementation of Article 25 of the Rome Statute:

Pursuant to the Rome Statute, the criminal law principals such as the liability of commanders (Article 28), the non-limitation (Article 29) and the immunities (Article 27) apply to both the international crimes and the closely related general crimes. These general criminal law principles have been implemented in paragraphs 3 and 4 of the Wim. In view of that stated in the Rome Statute, it is logically the intention for the national government to have the aforementioned general principles apply to the related general crimes. This has been done by equating the relevant general crimes in the Section 2(2) with the (international) crimes set out in the Wim. As the equation of the general crimes with the international crimes have been placed in the context of the jurisdiction (Section 2 Wim), this can possibly result in lack of clarity with regard to the applicability of the general criminal law principles as set out in paragraph 3 and 4 of the Wim for these general crimes. By determining in Section 1 Wim - instead of in Section 2 concerning jurisdiction - that these general crimes, insofar related to an international crime, are equated with an international crime described in the Wim, it is clarified that any reference made in the Wim to «crimes described in this Act» also refers to the aforementioned general crimes.

Section 1(4) of the Wim equated the general offences set out there to the crimes included in the Wim in the Sections 3 through 8b. In doing so, this provision does not intend to introduce new, independent penalizations: after all, it refers to an equation and not to new penalizations.

This means that only the interpretation given by the Dutch criminal court in general cases is leading when interpreting Section 140 Dutch Penal Code as a crime that is equated to the crimes in the Wim. If, upon interpreting of Section 140 Dutch Penal Code with regard to international crimes, one would observe international case law, then this would result in the general offence of taking part in a criminal organisation being given a different substance with regard to international crimes if the jurisdiction were to be determined on the basis of universal jurisdiction. This means that Section 140 Dutch Penal Code is interpreted differently depending on the basis for jurisdiction and whether the criminal organisation relates to the committing of international crimes or the committing of general crimes. This would mean that there would be no coherent and consistent interpretation of the terms for the criminal law liability with regard to the membership of a criminal organisation.

Contrary to the defence, the court interprets the Explanatory Memorandum as follows: the orientation on international criminal law relates to the substantiation of the crimes that relate to the object of Section 140 Dutch Penal Code, and does not relate to the substantiation of the other elements of Section 140 Dutch Penal Code. The court will assess the participation in a criminal organisation in the charges based on Dutch standards.

10.3.1. Organisation

Legal framework

An organisation within the meaning of Section 140 Dutch Penal Code refers to a collaboration with a certain substance and structure between the suspect and at least one other person. The establishment that one must have collaborated with, or had to be aware of, all other persons who form part of the organisation is not a requirement, nor that the composition of the collaboration should always be the same. Indications for the existence for such a collaboration could, for example, be: common rules, having discussions, joint decision-making, a division of tasks, a certain hierarchy and/or ranks.

As the collaboration becomes closer and more substantive, the requirement of a collaboration having a certain structure will be met sooner. Such a collaboration can be accidental and can have arisen during the course of time because one realises during the course of the activities

that one has a common objective which is served by the realisation of a sustainable collaboration. Such a collaboration does not depend on rules, explicit agreements or hierarchical relations, but can certainly be sustainable and derive a certain structure from the activities performed for a common objective.

Does this involve an organisation?

The suspect is accused of having taken part in an organisation in Syria, namely a shabiha group and/or Liwa al-Quds. The first question that needs to be answered in this regard, is whether this involves an organisation within the meaning of Section 140 Dutch Penal Code during the period set out in the charges. The court deduces the following, in summary, from the facts and circumstances set out in Chapter 6.

As evidenced by the established facts, shabiha groups were used to suppress the revolution from the beginning of the revolution against the Syrian regime in 2011. These groups collaborated, but were each led by their own leaders. Witnesses have stated that there were three groups that consisted of residents of the Al-Nayrab and Handarat camps, and that were led by [name 6], [name 2] and [name 3]. These groups were supplied weapons and means by the regime. Various shabiha groups, including in any event the groups of [name 6], [name 2] and [name 3], subsequently continued their activities under the name Liwa al-Quds.

The court considered in paragraph 6.4.1.9. that the activities performed by the shabiha groups from the Al-Nayrab and Handarat camps before the actual formation of Liwa al-Quds, must be attributed to Liwa al-Quds. After all, the formation of Liwa al-Quds was a restructuring of the shabiha groups and the persons who were a member of shabiha groups became members of Liwa al-Quds as a result of the restructuring. Also, virtually all the leaders of the shabiha groups who had been leaders prior to the formation of Liwa al-Quds, also held a prominent position after the formation. For example, [name 3], became the military commander of Liwa al-Quds and [name 2] became the head of security affairs of Liwa al-Quds and the right hand man of [name 1], the person responsible for the formation of Liwa al-Quds. Liwa al-Quds had various leaders, who all answered to [name 1]. Liwa al-Quds was divided into various groups; these groups also had a hierarchal structure. Liwa al-Quds members received a salary for their participation, even before the official formation of Liwa al-Quds, when this still consisted of shabiha groups.

The suspect was initially a member of the shabiha group of [name 6], but after he died and the shabiha groups were restructured to form Liwa al-Quds, the suspect became a member of the group of [name 3] within Liwa al-Quds. The suspect was known as being his right hand man and therefore had a higher position than other members of that group. Until his departure from the Al-Nayrab camp in 2019, the suspect operated in groups with various compositions, as a member of Liwa al-Quds. Witness GT202650 has stated that the suspect also led a unit up to the moment he left. In view of the foregoing and the fact that he is stated as being a member of Liwa al-Quds in a news article published in December 2017, the court considers it proven that the suspect was a member of Liwa al-Quds until, at least, 31 December 2017 (the end of the period set out in the charges).

Intermediate conclusion: sustainable and structured collaboration

The court finds that the foregoing means that, as of the autumn of 2011 up to and including 31 December 2017, there was a sustainable and structured collaboration between the suspect and other members of the shabiha groups/Liwa al-Quds and therefore regards the shabiha groups/Liwa al-Quds as organisations within the meaning of Section 140 Dutch Penal Code.

10.3.2. Objective committing of war crimes and crimes against humanity

The judicial finding of fact of Section 140 Dutch Penal Code also requires an organisation to have an objective to commit crimes. The objective is primarily defined as the main objective: the immediately intended object. The criminal organisation does not need to have a criminal main objective, it is also possible for it to - also - have a legitimate objective. The judicial finding of fact for the existence of a criminal organisation means that the main objective should therefore be the committing of crimes. The main objective can be proven, for example, by the crimes

already committed within the framework of the organisation, the more sustainable or structured nature of the collaboration, as clear from the mutual division of activities or mutual agreement on the activities of participations within the organisation for the purposes of achieving the common objective of the organisation and, in general, by the planned and systematic nature of the activities performed by participants of the organisation in view of this objective.

10.3.2.1. Objective committing of war crimes

The charges set out that Liwa al-Quds objective was to commit war crimes within the meaning of Section 6 of the Wim, namely physical act of violence, arbitrary detention and looting.

War crimes physical act of violence

The court has already established that there was a non-international armed conflict in Syria as of July 2011. The court also established facts and circumstances in paragraph 6.4.1. which, in summary, show that the various security services in collaboration with proxy groups such as Liwa al-Quds unlawfully deprived civilians of their liberty in a widespread manner and as part of their modus operandi, subjected civilians to the crime against humanity torture and held civilians prisoner under extremely appalling circumstances, often resulting in death. One example of this, is the involvement of the suspect and Liwa al-Quds in the crime against humanity torture and torture of [victim 1], as established.

As considered in the foregoing, these offences were committed against civilians for the objective to counter any form of opposition against the regime, enforcing subjection to the Syrian regime and for the objective of retaliation. Contrary to that argued by the defence, the court finds that the conduct took place in the context of the non-international armed conflict and the suspect was aware of the factual circumstances of the armed conflict.

The court therefore finds, contrary to the defence, that it has sufficiently been established that the objective of Liwa al-Quds, during the conflict, at the time of the period set out in the charges, was to engage in physical acts of violence, punishable as war crime in Section 6(1) under a of the Wim.

War crime arbitrary detention

The court finds that it has not been sufficiently established that the shabiha groups/Liwa al-Quds had the objective to commit arbitrary detention as a war crime. The case file contains insufficient evidence to support this.

War crime looting

The offence description of looting as set out in Section 6(3) under e of the Wim is in line with Article 8(2) under e(v) of the Rome Statute. Based on the Elements of Crimes, it needs to be established whether the suspect appropriated property for his own use for the purposes of removing the owners ownership of that property without the owners permission. The appropriation must also have taken place within the context of a non-international armed conflict of which the suspect was also aware. Pursuant to caselaw, the appropriation of any property, movable and immovable, private or public, can be considered looting.

The absence of the owners permission can be deduced or assumed in specific situations, including by way of duress and threats. If it is unclear who the owner of a property is, then it will suffice that the perpetrator was aware that the property belonged to someone other than himself, and that each appropriation without the owners permission should be considered to have taken place.

The defence has argued that looting is only considered a war crime if the appropriated goods belong to someone affiliated to the other party. The defence refers to a consideration of the Pre-Trial Chamber of the International Criminal Court in the Katanga case with regard to war crimes, set out in Article 8(2) under b (xvi) and (xiii) of the Rome Statute.

The court considers that, contrary to the war crimes committed in this case, these articles relate to war crimes committed in an international armed conflict. As regards the substantiation of the war crime looting in a non-international armed conflict, the Trial Chamber of the International Criminal Court ruled on 7 March 2014 in that same case, that it is not required for the

appropriation to concern goods of persons that form part of the opposition.

The evidence set out above in Chamber 6 shows that Liwa al-Quds and its leaders enriched themselves in various ways by grabbing the opportunities presented to them by the Syrian war economy. Liwa al-Quds abused its position of power in Aleppo and the Al-Nayrab camp for the purposes of appropriating possessions, particularly from homes of opponents and fugitives.

The court therefore finds that it has sufficiently been established that Liwa al-Quds had the objective to engage in looting, as they appropriated goods without the permission of the owners for their own use and also that this appropriation took place within the framework of a non-international armed conflict.

10.3.2.2. Objective of committing the crime against humanity unlawful deprivation of liberty

It has been established above, in Chapter 6, that Liwa al-Quds had been led by the AIS since 2011 and engaged in widespread arrests, in considerable numbers, and systematically, of persons who were suspected of sympathising with the oppositions or taking part in rallies, and handed them over to the AIS. The unlawful deprivation of liberty of [victim 1] formed part of these activities and formed part of the widespread and systematic attack directed against the civilian population.

The court therefore finds that it has sufficiently been established that Liwa al-Quds had the object of committing the crime against humanity unlawful deprivation of liberty.

10.3.3. Participation

First and foremost, a participation in a criminal organisation can only be considered such if the person concerned forms part of a collaboration and participates in this, or offers support to conduct that purports to or directly relates to the realisation of the objective of the organisation. For a criminal participation, it will suffice that the person concerned is generally aware that the organisations objective is to commit crimes. Any form of intent on the organisations specifically anticipated crimes is not required.

Participation in Liwa al-Quds by the suspect

The court has concluded that the suspects position within Liwa al-Quds was such that he can be regarded as a leader. The suspect was also involved, within this group and personally, in the storage and/or sale of looting goods and the violent arrest of [victim 1], who was subsequently handed over to the AIS. The suspect was also aware of the objective of Liwa al-Quds.

10.3.4. Conclusion

In light of the foregoing, the court considers it legally and convincingly proven that the suspect, as leader, took part in a criminal organisation which has the objective to commit international crimes, namely the committing of physical acts of violence and looting as war crimes and the severe deprivation of the physical liberty as a crime against humanity.

10.3.5. The judicial finding of fact with regard to offence 7

The court considers it proven in respect of the suspect, that:

in Al-Nayrab, at least in Syria, in the period from 1 July 2011 up to and including 31 December 2017, he took part in organisations, namely a shabiha group from the Al-Nayrab camp and the pro-regime militia Liwa al-Quds, in which in any event the suspect and other persons took part, which organisation has the objective to commit international crimes, namely:

- the committing of physical acts of violence as war crime and looting as war crime,

in relation to a non-international armed conflict on the territory of Syria,

and

- the severe deprivation of physical liberty in violation of the fundamental rules of international law, such as the crime against humanity, as part of a widespread and systematic attack directed against a civilian population,

while he, the suspect, was a leader.

In so far as the indictment includes typing errors and/or linguistic errors, these have been corrected in the judicial finding of fact.

In light of that discussed at the hearing, the suspect defence is not infringed by this.

11 The punishability of the judicial finding of the fact

The judicial finding of fact is punishable in accordance with the law, as no facts or circumstances have become plausible that exclude the punishability of the offences.

12 The punishability of the suspect

12.1 The positions adopted by the Public Prosecutors

The public prosecutors adopted the position that no facts or circumstances have become plausible that exclude the punishability of the suspect, which means that the suspect is punishable.

The public prosecutors also adopted the position that there is no violation of the principle of legality with regard to offence 7, in particular whether the prosecution was foreseeable to the suspect. Whether it was foreseeable for the suspect that he would be prosecuted for the participation in a criminal organisation, must be assessed on the basis of objective standards, namely that crimes and participation forms should, in general, be foreseeable.

12.2 The position adopted by the defence

As set out in Chapter 5, the defence argued that it was not foreseeable for the suspect that he would be prosecuted for that charged as offence 7 as the participation in a criminal organisation is not a criminal offence under Syrian law, nor under international criminal law.

The defence also argued that the court should refer to the case law of the International Criminal Court with regard to the interpretation of Article 25(3) under d of the Rome Statute, when answering the question as to whether the suspect was guilty of participation in a criminal organisation. According to the defence, international criminal law imposes higher requirements to the participation in a criminal organisation, when compared to Dutch standards. After all, one needs to prove that the international crimes in respect of the objective have actually been committed, and not just that the objective of the organisation is the committing of international crimes. Another requirement is that the suspect had knowledge of the specific crimes to which the objective of the organisation relates and the suspects knowledge of the criminal objective is, in itself, insufficient. And the final requirement with regard to the role of the suspect is that he provided a significant contribution to these specific crimes. The defence argued that these three requirements have not been met, which means that it was not foreseeable for the suspect that he would be prosecuted under Dutch law, for the participation in a criminal organisation.

12.3 The judgment of the court

The criminal law principle of legality as, *inter alia*, set out in Section 1(1) of the Dutch Penal code, includes the requirement that it must be foreseeable which conduct the government has declared punishable. This means that punishabilities must clearly describe which conduct is punishable under which circumstances. The requirement of foreseeability can also be found in the caselaw of the European Court of Human Rights, where it relates to the interpretation of Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is determined in that Article that no sentencing can follow if the act (or failure to act) of the suspect did not constitute a criminal offence under national or international law at the time the suspect acted (or failed to act).

The court first establishes that the punishability of Section 140 Dutch Penal Code in conjunction 1(4) of the Wim relies on a law in a procedural sense. As such, this means that the standard of accessibility of the legal penal provision contained in the principle of legality, has been met.

The question is whether the suspect could reasonably have foreseen that his act was punishable at the time the offences were committed. The court finds that this is indeed the case and substantiates its decision as follows.

The suspect took part in the organisation Liwa al-Quds. This organisation's object was to commit international crimes, in particular international crimes set out in offence 7. It is not in debate that such crimes were punishable at the time they were committed and that it was foreseeable that such acts constitute a criminal offence. The suspect was able to foresee, in view of his participation in Liwa al-Quds and the knowledge of the crimes planned and committed by this organisation, that this act in group setting results in a criminal law liability. It is not a requirement for the suspect to have been able to foresee in which manner the group liability for the committing of international crimes is described in the penal provision of Section 140 Dutch Penal Code. This fact is not altered by the argument that participation in a criminal organisation does not constitute an independent criminal offence under Syrian criminal law and it was therefore not foreseeable to the suspect that he was engaging in a criminal offence. It is also important that the criminal law liability for the conduct engaged in by one or multiple others, or in (organised) group setting, features in many legal systems. The punishability and the exact definition of such criminal law liability may vary per national legal system, but that does not mean that the suspect can successfully appeal a violation of the principle of legality. The defence is therefore rejected.

For the sake of completeness, the court considers the following. Insofar as the defence argued that the prosecution was not foreseeable for the suspect because the higher requirements of international criminal law are not met (be it as it may), then this defence is also rejected. The court finds that Chapter 10 entails that the international crimes to which the objective relates, have actually been committed. In regard to offence 7 meaning is also attributed, in respect of the required objective, to crimes that have already been committed within the framework of the organisation. Chapter 10 also shows that the crimes to which the objective of Liwa al-Quds relates, have been committed for the sustainable and structured collaboration of which the suspect formed part. This therefore also shows that the suspect had knowledge of the specific crimes that were committed by this collaboration.

13 The punishment imposed

13.1 The demand of the public prosecutors

The public prosecutors have demanded that the suspect be sentenced to a prison sentence for the duration of seventeen years, less the time already spent in pre-trial detention.

13.2 The position adopted by the defence

The defence has argued that the sentence demanded by the public prosecutors bears little relation to the offence he is accused of. Reference is made in this regard to the German criminal proceedings Koblenz versus Eyad A., who was imposed a term of imprisonment of 4.5 years. According to the defence, Eyad A. was accused of worse offences than the suspect in the criminal case at hand.

With reference to the Dutch criminal case Blackwell, the defence also requested that the court take into account the circumstance that the suspect did not seek out the conflict in Syria, and was unable to withdraw from it. Furthermore, the defence also points out the realistic possibility that the suspect will lose his residence permit in the Netherlands after his sentencing and will therefore be unable to take part in a penitentiary program and will also not be able to make use of the conditional release program.

And finally the defence requested that the court take into account the impact this criminal case has already had on his family.

13.3 The judgment of the court

The court has declared the facts proven in respect of the suspect that he has been guilty of crime against humanity torture and unlaw deprivation of liberty (both as crimes against humanity), torture and participation (as leader) in a criminal organisation which has the objective to commit crimes against humanity and war crimes.

The sentence set out below is in in accordance with the severity of the committed facts and the circumstances under which they were committed and is based on the person and the personal circumstances of the suspect, as they have become apparent during the court hearing. The court takes the following in particular into consideration.

Actions of the suspect

The suspect took part in the Liwa al-Quds over a long period of time and was a high ranking member of this organisation. The suspect actively contributed to the realisation of the objective of this organisation, namely the committing of war crimes and crimes against humanity. Liwa al-Quds took part in the conflict in Syria on the side of the Syrian regime and, in doing so, contributed to the continuous government aggression and repression in Syria directed against the civilian population. The cruel reputation of the Syrian intelligence and security services, and of AIS in particular, was common knowledge to many people, as is apparent from the witness statements given. Detention in an AIS prison meant that one would be exposed to systematic and severe violence, as a result of which many have died. The detention circumstances were inhumane and will have contributed to the physical suffering and the feelings of fear of the persons detained. It was completely unclear to the prisoners and their loved ones if, and if so when, the prisoners would be released. Liwa al-Quds worked closely with this organisation, as set out in the foregoing.

In itself, it is correct that the suspect did not seek out the conflict in Syria, but he certainly did make a personal choice with regard to the manner in which he took part, which, as it seems, was mainly based on his personal profit and gain. The file shows that there were enough residents in the camp who chose differently.

As a member of Liwa al-Quds, the suspect and others deprived [victim 1] of his liberty for the security services of the Syrian regime. Prior to these events, the suspect was aware of the cruel violence and the unlawful acts engaged in by the Syrian security services directed against civilians. Nevertheless he, the suspect, deprived [victim 1] from his liberty for the security services and handed him, [victim 1], to the AIS and in doing so unmistakeably exposed him, [victim 1], to severe physical and mental suffering. [Victim 1] and his loved ones were unsure of his fate from the moment of his arrest. After [victim 1] was handed over to the Syrian security service, he was subsequently subjected to the crime against humanity torture and tortured. After the twenty days [victim 1] had been detained, he spent seven days in a coma on an intensive care unit and two of his toes were amputated.

In addition to that read by the court in the detailed statements given by [victim 1], in which he explains in detail what was done to him, the counsel of [victim 1] gave a statement on his behalf, expressing the deep impact these offences have had on him. The court finds that the offences of which [victim 1] fell victim, are extremely severe and have had major consequences, both physically and mentally, on [victim 1]. Whats worse is that the offences of which [victim 1] fell victim are in line with a system of state repression of which the suspect was aware, causing the crime against humanity torture and killing of many innocent civilians.

Severity of the offences

Torture and crimes against humanity form part of the most severe international crimes and fill the international community as a whole with concern. The ban on torture and crime against humanity torture is mandatory law, a rule that is considered fundament for the international legal order to the extent that deviation from this rule is not permissible.

The crimes as declared proven have given rise to widespread international outrage and concern. The court considers that the role of Liwa al-Quds and the suspect in the widespread and severe attack directed against civilians, count strongly against the suspect.

The exceptional severity of these offences also stems in this case from the fact that they were committed in unison with the Syrian AIS and for the performance of the policy of the Syrian regime. The widespread and systematic repression therefore originates from the same government from which

civilians could expect to receive protection at a time of conflict and from which the victims of serious crimes should be able to count on the protection by the State. This causes pain and suffering to the victim and his loved ones, as well as a strong feeling of powerlessness.

Other (Dutch or foreign) criminal law cases relating to international crimes only offer limited hold when determining the sentence, as many of these cases are extremely case-specific an are not very comparable. It is true, however, that the crimes declared proven in this case in themselves already justify a long-term unconditional prison sentence.

Upon determining the duration of the sentence to be imposed, the court takes into consideration that this involves a concurrence of offences with regard to the crime against humanity torture and torture [victim 1].

Person of the suspect

The suspect does not have a criminal record in the Netherlands.

During the police investigation and the court hearing, the suspect largely exercised his right to remain silent. As a result, only a limited insight was gained into the personal circumstances of the suspect. The case file shows that the suspect applied for asylum in the Netherlands in October 2020, and lived together with his wife and two children in the south of the Netherlands until he was arrested on 24 May 2022. From that put forward by the counsel of the suspect, it appears that the wife apparently expressed a desire to divorce the suspect. As a result, the suspect has not been in contact with his children any more, which is something that is very tough on him.

The file does not include (probation service) reports on the person of the suspect, so that the court also has not been able to gain an insight via that way into the personal circumstances of the suspect.

The punishment to be imposed

In view of the foregoing, the court considers that imposing a term of imprisonment for the duration of twelve years is appropriate and necessary. The time that the suspect spent in pretrial detention shall be deducted from the prison sentence.

14 The demand of the injured party/the compensation measure

The injured party claims compensation for an amount of 40,000.00. This amount consists of 10,000.00 immaterial damage due to the unlawful deprivation of liberty he was subjected to (offence 1) and 30,000.00 immaterial damages due to the crime against humanity torture and torture he was subjected to (offences 2 and 3). The injured party adopted the position that the claim under Syrian law has not expired and that there is a causal link between the acts of the suspect and the damage the injured party suffered. The injured party also referred to similar cases in which compensation was awarded. In order to further substantiate the claim, the injured party submitted an expert report drawn up by Syrian judge A. Majni. This expert report sets out the legal framework with regard to compensation on the basis of an unlawful act under Syrian civil law. Set out below, along with the assessment of the court, the court will discuss the elements of this expert report.

14.1 The positions adopted by the public prosecutor

The public prosecutors conclude to award the claim, thereby imposing a compensation measure.

14.2 The position adopted by the defence

The defence adopted the position that the claim of the injured party should be declared inadmissible. The defence primarily argued that the suspect should be acquitted from the three offences underlying the claim. De defence argued in the alternative that it adopts this position because the processing of this claim would involve a disproportionate burden of criminal proceedings. It is unclear to which parts of the claim Dutch law or Syrian law should be applied. Too little is known of the Syrian civil law, making it difficult to establish whether the suspect is liable under that law. What is also important is that, according to the defence, the suspect did not play an essential role in the arrest and the subsequent crime against humanity torture and torture of [victim 1]. It is also unclear whether the

claim has already prescribed under Syrian law.

The defence has also argued that the cases referred to by the injured party are incomparable to the case at hand. And finally, the defence argued that the amount claimed is disproportionate in view of the role played by the suspect in the criminal offences underlying the claim.

14.3 The assessment of the court

The court must provide an ex officio answer to the question as to which law should be applied to the claim of the injured party. This question must be answered on the basis of the rules from the so-called Rome II Regulation. After all, the claim concerns a non-contractual claim within the meaning of Article 1 of the Rome II Regulation. This Regulation has a universal formal area of application pursuant to Article 3. This means that this Regulation applies to cases brought before the Dutch court, also if the law of a non-Member State is appointed as a result of the implementation of the rules of the Rome II Regulation. After all, the Rome II Regulation applies to damage causing events that have taken place after 11 January 2009.

Pursuant to Article 4(1) of the Rome II Regulation, the law of the country where the damage presents itself applies when assessing a claimed unlawful act. This leads to the conclusion that Syrian law applies to the assessment of the claim made by the injured party. After all, the damage causing events on which the injured party based its claim took place in Syria. The applicability of Syrian law was not a point of debate during the hearing of the case.

Pursuant to Article 15 of the Rome II Regulation, the rules with regard to prescription should be assessed on the basis of Syrian civil law. This also includes the start, the interruption and the suspension of the term of prescription. Pursuant to Article 15 of the Rome II Regulation, it is relevant for the assessment of the claim for compensation to determine the grounds and scope of the liability, in this case under Syrian civil law, which includes the question as to who can be held liable for which activity. It must also be established under Syrian civil law what the nature and scope of the damage is.

The prescription

The expert report submitted by the injured party shows that under Syrian law, the question as to whether a claim for compensation that relates to a criminal offence is prescribed, depends on whether the criminal case to which it relates has prescribed. if the claim relates to a criminal offence (crime) and if the criminal proceedings has not prescribed, then the right to claim compensation shall only be prescribed if the criminal proceedings are prescribed. The injured party has argued that the claim under Syrian law has not prescribed because it is subject to a term of prescription of ten years. The injured party argued in the alternative that if the claim would have prescribed under Syrian law, Article 16 of the Rome II Regulation should apply therefore give way to the extended term of prescription within the meaning of Section 3:310(4) of the Dutch Civil Code.

The defence has argued, summarily put, that the question concerning the prescription under Syrian law is complex and should therefore not be answered within the framework of these criminal proceedings.

The causality

The injured party pointed out the provisions concerning the joint and several liability and causality. Syrian law includes the so-called theory of equivalence of causes. Article 203 of the Syrian Civil Code stipulates that in that regard:

1. The causal link between an action or the failure to act on the one hand and the criminal consequence on the other shall not be cancelled by a concurrence of other, earlier, simultaneous or later causes, regardless of whether the person who committed them was unaware of them and regardless of whether these were independent from his acts.

2. The foregoing does not apply when the later cause is, in itself, sufficient to bring about the criminal consequence. In that case, the person who committed the crime is only punishable for the offence that he personally committed.

The explanatory notes to this article shows that the second paragraph contains an exception to the so-called theory of equivalence of causes. If an intervening cause is involved, between the act and the consequence, causing the causal link to be broken, then the theory of the suitable cause applies. The

court has declared proven that the suspect is guilty of the co-perpetration of the crime against humanity, unlawful deprivation of liberty of [victim 1], the co-perpetration of the torture of said [victim 1] and the co-perpetration of the crime against humanity, unlawful crime against humanity torture of said [victim 1].

The defence has argued that the question concerning the causal link between the acts of the suspect and the alleged damage is not an easy one. To this end, the defence referred to the aforementioned causality theory and the explanation of this theory, as provided by the counsel of the injured party.

The court finds that, in view of the legal framework set out in the foregoing and that put forward at the hearing by the parties in respect of the claim, the exact content and scope of the elements of the Syrian civil law as it relates to the claim are currently insufficiently clear in order to be able to assess the claim. The assessment as to whether the claim has prescribed under Syrian law, can also not be answered at this time on the basis of the documentation currently available and the examination in court. It is unclear whether the claim had already prescribed under Syrian law before these criminal proceedings were brought. It is also not clear whether the definition of criminal proceedings under Syrian law also includes criminal proceedings brought before a foreign court. In order to be able to answer these questions, it is important to be able to establish whether the claim of the injured party has prescribed or not.

As regards the question concerning the causal link: on the basis of the documentation currently available and that put forward in this regard by the parties, it is currently insufficiently clear whether and if so, how and to what degree there is a causal link pursuant to Syrian law, between the conduct of the suspect and the alleged damage. It is also important in this regard that it is currently insufficiently clear to the court how the theory of the suitable cause relates to the conduct of the suspect as co-perpetrator or accessory declared proven.

A further inquiry into the aforementioned questions would mean that the inquiry at the hearing should be reopened pursuant to Section 361 of the Dutch Code of Criminal Procedure, so as to enable the court to conduct further inquiries or have them conducted into these question. However, this would result in a disproportionate burden for the criminal proceedings. This means that the court declares the injured party inadmissible in its claim and that they can bring the claim before the civil court.

15 Applicable articles of law

The punishments and measures are based on Sections:

- 47, 48, 55, 57 and 140 of the Dutch Penal Code;

- 4 and 8 of the Dutch Act of International Crimes.

These requirements have been applied, as legally valid at the time of that declared proven took place or as legally valid at the time this judgment was rendered.

16 The decision

The court:

Declares the indictment partially null and void as set out in the foregoing under 3;

Declares it not legally and convincingly proven that the suspect committed that charged under 4, 5 and 6 and acquits the suspect in this regard;

finds it legally and convincingly proven that the suspect has committed the offences charged under 1, 2, 3 and 7, as stated above under 7.4.2. and 8.1.1. and 10.3.5. and declares the following proven:

with regard to offense 1(primary):

co-perpetration of the crime against humanity unlawful deprivation of liberty;

with regard to offence 2 and 3:

concurrence of offences of accessory of co-perpetration to the crime torture

and

co-perpetration of accessory to the crime against humanity torture;

with regard to offence 7:

participation in a criminal organisation of which the object is to commit war crimes and crimes against humanity, while he, the suspect, was a leader thereof;

finds that declared proven and the suspect punishable in that respect;

finds that any additionally or differently charged than that declared proven above, has not been proven and acquits the suspect of these charges.

sentences the suspect to:

a term of imprisonment for a term of **TWELVE (12) YEARS**;

orders that the time the person sentenced spent in pre-trial detention and incarceration shall fully be deducted from the term of imprisonment imposed on him, insofar as this time not already been deducted from another sentence.

Declares the disadvantaged party inadmissible in its claim.

This judgment was rendered by

mr. E.A.G.M. van Rens, presiding judge,

mr. J. Snoeijer, judge,

mr. K.C.J. Vriend, judge,

in the presence of *mr*. F. Kok and *mr*. M.C. Witte-de Vries, clerk of the court,

and pronounced in open court of this district court on 22 January 2024.

1.

A document, i.e. 'The Code of Conduct FSA' of the Geneva Call Database Their Words. Directory of Armed Non-State Actor Humanitarian Commitments, consulted via http://theirwords.org/media/transfer/doc/sy_fsa_2012_01-670a046d8c995deb933cec25f062ea7e.pdf, 2012.

2 A document, i.e. A news article of France24, "Free Syrian Army' poses growing threat to Assad', published on 14 October 2011, consulted via https://www.france24.com/en/20111014-free-syria-army-opposition-bashar-al-assad-exile-turkey-batallion; (https://www.france24.com/en/20111014-free-syria-army-opposition-bashar-al-assad-exile-turkey-batallion;) the document, i.e. a news article of The

Economist, Cracks in the army', published on 29 October 2011, consulted via https://www.economist.com/middle-east-and-africa/2011/10/29/cracks-in-the-army. (https://www.economist.com/middle-east-and-africa/2011/10/29/cracks-in-the-army.)

3 A document, i.e. Report I, p. 272.

4 A document, i.e. a Report of the independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations, 22 November 2011, no. A/H RC/S-17/2/Add, consulted via:

https://www.ohchr.org/sites/default/files/Documents/Countries/SY/A.H RC.S-17.2.Add.1_en.pdf.

5 A document, i.e. a Report of the independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations, 22 February 2012, no. A/H RC/19/69, consulted via: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf. (https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf.)

6 A document, i.e. a Report of the independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations, 22 February 2012, no. A/H RC/19/69, consulted via: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf. (https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf.)

7 A document, i.e. a Report of the independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations, 15 August 2019, no. A/H RC/42/51, consulted via: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/243/69/PDF/G1924369.pdf?. OpenElement.

8 A document, i.e. Report I, p. 275-276.

9 A document, i.e. Report I, p. 273.

10 A document, i.e. Report I, p. 275.

11 A document, i.e. Report I, p. 287-290.

12 A document, i.e. Report I, p. 294-295.

13 A document, i.e. Report I, p. 282.

14 A document, i.e. Report II, p. 7.

15 A document, i.e. Report II, p. 7.

16 A document, i.e. Report II, p. 15.

17 A document, i.e. Report II, p. 7, 9, 10, 11, 13.

18 A document, i.e. Report II, p. 7, 8.

19 A document, i.e. Report II, p. 11.

20 A document, i.e. Report II, p. 25.

21 A document, i.e. Report II, p. 27.

22 A document, i.e. Report I, p. 291.

23 Report of the questioning of witness GT089175 and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 6.

24 A document, i.e. Report I, p. 283.

25 A document, i.e. Report I, p. 284.

26 A document, i.e. Report I, p. 296.

27 Report of findings, drawn up on 16 January 2023, p. 859.

28 A document, i.e. Report I, p. 299.

29 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 5.

30 A document, i.e. Report I, p. 276; Report of findings, drawn up on 17 January 2023, p. 862-864.

31 A document, i.e. Report I, p. 297-298.

32 A document, i.e. Report I, p. 277.

33 A document, i.e. Report I, p. 299.

34 A document, i.e. Report I, p. 276, p. 282 and page 299.

35 A document, i.e. Report II, p. 14.

36 A document, i.e. Report I, p. 304.

37 Report of the questioning of [witness 1] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 8-9.

38 A document, i.e. Report I, p. 305; Report of the questioning of witness GT202650 drawn up and signed by the Examining Magistrate charged with the handling of the criminal proceedings in this court and the registrar, p. 47.

39 A document, i.e. Report I, p. 306.

40 Report of the questioning of [witness 1] and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 8.

41 Report of the questioning of [witness 1] and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 9.

42 Report of the questioning of witness, drawn up on 29 April 2021, p. 104.

43 Report of the questioning of witness, drawn up on 29 April 2021, p. 115.

44 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 61.

45 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 19.

46 Report of the questioning of witness GT202650 and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 47.

47 A document, i.e. Report II, p. 16.

48 A document, i.e. Report II, p. 17.

49 A document, i.e. Report II, p. 18.

50 A document, i.e. Report II, p. 19.

51 A document, i.e. Report II, p. 20.

52 A document, i.e. Report II, p. 32-33.

53 A document, i.e. Report II, p. 33.

54 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 28.

55 Report of the questioning of [witness 1] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 9.

56 Report of the questioning of [witness 2] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 20.

57 Report of the questioning of [witness 3] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 13.

58 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 13.

59 Report of the questioning of witness GT089175 signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 6-7.

60 A document, i.e. Report I, p. 328-329.

61 A document, i.e. Report I, p. 271-272.

62 Report of findings, drawn up on 11 April 2023, p. 1028.

63 Report of the questioning of witness [victim 1], drawn up on 29 April 2021, p. 127.

64 Report of the questioning of [witness 1] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 10.

65 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 18 - 19.

66 Statement of the suspect, given at the hearing of 12 August 2022.

67 Report of the hearing of 30 November 2023.

68 Report of the questioning of [victim 1] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 8;

Report of the questioning of witness GT089175 signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 5.

69 Report of the questioning of witness [witness 1], drawn up on 19 July 2022, p. 502-503.

70 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 6.

71 Report of the questioning of witness [victim 1], drawn up on 29 April 2021, p. 105, 108.

72 Report of the questioning of witness GT089175 signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 5.

73 Report of the questioning of [witness 3] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 7.

74 Report of the questioning of [victim 1] and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 8.

75 Report of the questioning of witness GT089175 signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 5.

76 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 7-8.

77 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 14.

78 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 11.

79 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 18-19.

80 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 6.

81 Report of the questioning of witness GT08 9175 signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar, p. 8.

82 Report of the questioning of witness GT089175 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 11.

83 Report of the questioning of witness GT089175 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 8, 11, 13.

84 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 12.

85 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 6-7.

86 Report of the questioning of witness GT202650 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 41.

87 Report of the questioning of witness GT089175 and signed by the examining magistrate entrusted with the handling of criminal cases in this court and the registrar, p. 5, 8.

88 Report of findings, drawn up on 25 April 2022, p. 35.

89 Report of findings, drawn up on 25 April 2022, p. 58.

90 Report of findings, drawn up on 25 April 2022, p. 52.

91 Report of findings, drawn up on 25 April 2022, p. 63.

92 Report of findings, drawn up on 25 April 2022, p. 37-39.

93 Report of findings, drawn up on 11 April 2023, p. 1012.

94 Report of findings, drawn up on 11 April 2023, p. 1016-1017.

95 Report of findings, drawn up on 11 April 2023, p. 1021.

96 Report of findings, drawn up on 11 April 2023, p. 1014.

97 Report of findings, drawn up on 16 January 2023, p. 866-867; Report of the questioning of suspect, drawn up on 29 September 2022, p. 683-684.

98 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 93.

99 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 95, 115 (prominent'); Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 476 (neutrality).

100 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 115;

Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 478.

101 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 492, read in combination with the report of findings, drawn up on 18 October 2022, p. 757.

102 Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 147.

103 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109;

Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 147 (6 persons).

104 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 113.

105 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109, 110; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 148.

106 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 112;

Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 149.

107 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 110;

Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 151.

108 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 114.

109 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109.

110 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109;

Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 151.

111 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109, 116; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 151.

112 Report of the questioning of witness [victim 1] up on 28 April 2021 p. 109.

113 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 10.

114 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 114.

115 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 11 and annex to EM questioning, p. 32.

116 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 112.

117 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 13.

118 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 117.

119 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 114;

Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 148.

120 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109;

Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 148.

121 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 116.

122 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109, 110 and 111; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 148; Report of findings, drawn up on 16 January 2023, p. 848-861.

123 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 10; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 148.

124 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 109; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 149.

125 Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 148, 152.

126 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 113.

127 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 112; Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 10.

128 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 112.

129 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 119, 120.

130 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 114.

131 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 117.

132 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 480.

133 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 481.

134 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 123;

Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 17.

135 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 482, 483; and a document, i.e. Report I, p. 306.

136 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 123; EM questioning, p. 17.

137 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 483; a document, i.e. Report I, p. 16; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 163.

138 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

139 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 487; Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 123.

140 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 487.

141 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

142 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 123.

143 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 123.

144 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486

145 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 124.

146 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

147 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

148 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

149 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

150 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

151 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 19.

152 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

153 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 486.

154 Report of the questioning of witness [victim 1], drawn up on 19 July 2022, p. 487.

155 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 124; Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 486.

156 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 21.

157 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 124.

158 Report of the questioning of witness [victim 1], drawn up on 28 April 2021, p. 125; Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 163.

159 Report of the questioning of witness [witness 1], drawn up on 29 April 2021, p. 163.

160 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 17.

161 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023 p.17.

162 Report of the questioning of witness [victim 1] drawn up and signed by the examining magistrate charged with the handling of criminal cases in this court and the registrar on 12 January 2023, p. 20.