

National Jurisprudence summary

Swedish case no. B 20218-20, 4 March 2022

The District Court sentenced the defendant for having committed serious crimes under international law and serious war crimes. She was convicted as an accomplice for failing, in her capacity as a guardian, to prevent her son J., aged 12-15, from being recruited by unknown accomplices and used as a child soldier by the Islamic State (IS) during the armed conflict in Syria.

Sentence

6 years' imprisonment

Summary

The defendant, a Swedish national, travelled with the couple's younger children and joined her husband and an older son in Syria in April 2013. The District Court further found that J. was recruited in Syria and used as a child soldier for IS. He was last deployed in August 2013 and subsequently participated on the IS side in the war until his death. The court found the defendant guilty of complicity in war crimes, namely, for failing (in her capacity as legal guardian) to prevent her son (then aged 12 to 15 years old) from being recruited and used as a child soldier in hostilities by IS in the armed conflict taking place in Syria. The court assessed that the defendant chose to place herself and her children in an extraordinarily dangerous situation where, based on her knowledge of the situation and relevant Islamist groups, she must have been aware that she would be unable to prevent the recruitment and use of her son as a child soldier. Further, the defendant did not take adequate measures to prevent J. from leaving home to carry out his duties as a child soldier, and the court found that she did not intend to prevent this either, but that his role as a child soldier was in accordance with her beliefs, and thus not something to which she objected. The District Court concluded that war crimes can be committed by omission, even if they are primarily aimed at active conduct. The assessment of the court was that a guarantor cannot escape criminal liability for failing to prevent something that he/she herself/himself has determined with good sense that she cannot prevent, and which she/he does not wish to prevent.