

PRESS RELEASE

The court does not consider the LTTE a terrorist organization

Amsterdam, 21 October 2011 – Five Dutch Tamils, suspected of being members of the LTTE, were acquitted today from charges of membership of a terrorist organization and criminal incitement. The international criminal charges filed by the public prosecutor's office were declared inadmissible because the five defendants—two of whom are represented by attorneys Victor Koppe, Tamara Buruma and Göran Sluiter—were not charged with individual involvement in these international crimes. The Tamils were convicted for forming a criminal organization aimed at coercion, the organization of illegal lotteries and money-laundering. Additionally, they were convicted for collecting money for the LTTE and for the continuation of a banned organization, namely the LTTE. According to the defense, the latter contradicts the previous determination that the LTTE is not a terrorist organization.

Acquittal for charges related to a terrorist organization

The court ruled that a non-international armed conflict is raging on Sri Lanka. Facts that are a part of such a conflict cannot be considered terrorist crimes, but must be judged based on the law of war.

If this were any different, the rights granted to individuals by the Geneva Conventions and Protocol II might be wrongfully withheld.¹ (verdict, p 21)

It was not established that the LTTE has committed crimes that have all the characteristics of a terrorist crime and were not related to the armed conflict. As such, it cannot be assumed that the organization is terrorist and the defendants were acquitted from this charge of the indictment (Charge 1A).

Inadmissibility and acquittal international criminal organization

The Tamils were also prosecuted for membership of the LTTE as an international criminal organization aimed towards committing, *inter alia*, war crimes and crimes against humanity on Sri Lanka. However, they were not charged with direct involvement with the crimes that the LTTE was said to be aimed towards committing; the case file also contains no mention thereof. Article 6 of the second additional protocol to the Geneva Conventions bars prosecution of the Tamils: in the case of non-international armed conflicts, paragraphs one and two, chapeau and sub b of that article only allow for the possibility of prosecution based on individual criminal liability.

¹ This excerpt from the verdict was freely translated for use in this press release. An official translation of the verdict will be made available by the court in due course.

*Prosecution based on article 140 of the Dutch Penal Code concerning an organization aimed towards committing crimes (and therefore merely based on the individual decision to become and remain a member of such an organization), those crimes being related to a non-international armed conflict, without the further requirement of any individual liability for the commission of those crimes, would [...] in effect constitute a circumvention, and therefore a violation, of the prosecution ban envisaged by article 6 of Protocol II. Such a violation cannot be accepted.*² (verdict, p 23)

The charges in the indictment concerning the international criminal organization were therefore also declared inadmissible insofar as they concerned crimes committed within the context of a non-international armed conflict. Additionally, the indictment contained charges of recruitment in the Netherlands for the armed conflict and possession of weapons and munitions. The court determined that there was insufficient evidence to prove those charges. The charges of crimes against humanity in the form of imprisonment of Tamils could also not be proven as there was insufficient evidence of a systematic attack on the Tamil population by the LTTE. The Tamils were acquitted for the remainder of the charges under 1B of the indictment.

Criminal incitement (Tamil schools)

The public prosecutor's office had argued that the Tamils had given inflammatory speeches during meetings and demonstrations and moreover, had DVD's and calendars containing such texts in their possession. The public prosecutor's office marked the Tamil schools as places where children were incited to commit crimes, or were recruited to fight in the armed conflict. The defendants were acquitted of all these charges. In agreement with the defense the court ruled that the texts and retrieved items did not exceed the boundaries of free speech.

Violation of the Sanctions Law, and continuation of a prohibited organization

The Tamils were convicted for membership of a criminal organization aimed towards *inter alia* violating the Sanctions Law. They were furthermore convicted for violation of the Sanctions law and the continuation of a prohibited organization. All these facts flow directly from the placement of the LTTE on the EU Terrorist List. The court considered itself bound by the assessment of the Council of the European Union which had placed the LTTE on that list, now that the Dutch prohibitions are directly dependent on Council decisions. In doing so, the court—failing furthermore to provide reasons for this decision—ignored the defense arguments that this legislation contravenes the principle of legality, the freedom of association and assembly, the right to a legal remedy and the right to a fair trial (articles 7, 11, 13 and 6 ECHR).

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Victor Koppe observes:

“This is a contradictory verdict. On the one hand it is determined, based on European law, that the LTTE cannot be considered to be a terrorist organization, from which the conclusion must be drawn that the placement on the EU-list is wrong. On the other hand, that placement is used as the basis for conviction. However this placement only came about as a result of US pressure, as was revealed in an internal memorandum from the US on Sri Lanka published by *Wikileaks*. In this way, a political decision is actually made to be of greater importance than a judicial verdict.”

The Tamils were ultimately convicted to substantial sentences (2,5 and 5 years). The defense is considering whether or not to file for appeal.

Contact person: mr. Victor Koppe – Böhler Advocaten, Keizersgracht 560-562, 1017 EM
Amsterdam. Tel.: +31 (0)20-344 62 00, email: vkoppe@bohler.eu