

## JUDGMENT

### OF THE SUPREME COURT

Case no

Delivered in Stockholm on 13 November 2019 B 5948-17

### THE PARTIES

Appellant

[...]

Legal representative and court-appointed defence counsel: [...], attorney

Respondent

The Chief Public Prosecutor

Box 5553

114 85 Stockholm

### IN THE MATTER OF

Offences under the Law (2010:299) on Penalties for Public Appeals, Recruitment and Training for the purposes of Terrorist Offences and other Particularly Serious Crime

### DECISION APPEALED AGAINST

Judgment of Skåne and Blekinge Court of Appeal of 27.11.2017 in case B 949-17

### RULING

The Supreme Court upholds the ruling of the court of appeal.

[The Attorney] will be paid SEK 63,882 from public funds for defending [the Appellant] in the Supreme Court. This amount comprises SEK 49,680 for work, SEK 1,265 for time, SEK 161 for expenses and SEK 12,776 VAT. [The Appellant] will repay the State for the cost of the defence.

### FORM OF ORDER SOUGHT IN THE SUPREME COURT ETC.

[The Appellant] asks the Supreme Court to quash the conviction offences under section 2(5) and section 3 of the Law (2010:299) on Penalties for Public Appeals, Recruitment and Training for the purposes of Terrorist Offences and other Particularly Serious Crime (the Recruiting Law). He also asks to be exempted from liability for repaying the state for the costs of his defence.

The Chief Public Prosecutor objects to any changes to the court of appeal's judgment.

The Supreme Court has declared the appeal admissible for the reasons given in paragraph 5.

## STATEMENT OF REASONS

1. [The Appellant] has been convicted of the offences under section 2(5) and section 3 of the Recruiting Law which are set out in the following statement of offences.

In communications to the general public produced in the municipality of Burlöv in the period from 12 October 2014 to 26 March 2015, [the Appellant] appealed, or incited others, to commit particularly serious crime, namely offences under section 3 of the Law (2002:444) on Penalties for the Financing of Particularly Serious Crime in Certain Cases.

[The Appellant] posted these public communications, which were addressed to an unspecified group of people, on the electronic bulletin board Facebook using the account A-S, to persuade them to transfer money to Jahbat al-Nusra, Islamic State and Ahrar ash-Shaam to buy weapons. The communications provide information about how to send the money, through contacts with the financiers M a-O and S a-A, with the intention of using the money to commit particularly serious crime, or in the knowledge that it would be used for that purpose.

Jahbat al-Nusra has been listed as a terrorist organisation by the EU, UN, USA and United Kingdom since May 2014, and by Canada since November 2013.

Islamic State has been listed as a terrorist organisation by the UN, EU and the United Kingdom since October 2004, by the USA since December 2004, and by Canada since August 2012.

S a-A has been listed as a financier of terrorism by the USA since August 2014, by the UN and the EU since September 2014, and by the United Kingdom since October 2014.

2. These communications were published on 11 May and the 21 August 2013. The communication of 11 May 2013, for example, invites people to 'Contact me to send equipment to your brothers at the front'. The communication of 21 August 2013 starts with the words 'My brothers and sisters in aqidah!' and then refers to a chemical attack carried out by the Syrian president's forces in al-Ghuta against 'our defenceless brothers and sisters'. It goes on to say that the attack claimed the lives of 2,000 people and to ask for 'Help (...) to supply our brothers at the front with weapons so they can avenge our brothers and sisters.'

3. The district court convicted [the Appellant] of the charge. The court sentenced him to six months' imprisonment (the sentence also related to a minor firearms offence).

4. The court of appeal upheld the district court's ruling. However, the court of appeal held that the evidence does not adequately support the assertion that appeals to provide financial support for the financiers M a-O and S a-A can be regarded as equivalent to inciting them to commit particularly serious crime. It made the same assessment with regard to Ahrar ash-Shaam. However, the court of appeal found that appeals to provide financial support for Islamic State and Jahbat al-Nusra to buy weapons can be regarded as equivalent to inciting them to commit particularly serious crime, since both of these organisations are clear examples of terrorist organisations which, at the time of the conviction, were committing the kind of particularly serious crime referred to in the conviction repeatedly and systematically, if not exclusively. The court of appeal argued in this regard that it is common knowledge that Islamic State systematically commits serious acts of violence which primarily target, or disproportionately affect, civilians with the aim of intimidating the population. It

also argued that the evidence submitted in the case shows that, in the period before, during and after the conviction, Jahbat al-Nusra was behind a large number of terrorist attacks in Syria which targeted, or disproportionately affected, civilians.

5. The Supreme Court has admitted the appeal on the basis of the court of appeal's assessment that, during the period from 12 October 2014 to 26 March 2015, [the Appellant] intentionally posted these communications on Facebook.

### **Questions to be considered**

6. The fact that there was a non-international armed conflict in Syria at the time of the offences, and that Jahbat al-Nusra and Islamic State were among the armed groups involved in the conflict, is not disputed in this case.

7. The case raises questions particularly about the relationship between international humanitarian law, especially the law related to non-international armed conflicts, and the Swedish legislation on terrorism, more specifically, whether, and if so to what extent, the application of terrorism legislation is restricted by international humanitarian law.

### **Requirements for the statement of offences**

#### **The legal provisions**

8. The first question to be considered is how precise and specific a statement of offences in a prosecution for breaches of section 3 in conjunction with section 2 of the Recruiting Law must be to ensure that a judgment which finds in favour of the prosecution does not conflict with Chapter 30, section 3 of the Code of Judicial Procedure.

9. Under Chapter 30, section 3 of the Code of Judicial Procedure, a judgment may relate only to an offence for which a prosecution was properly instituted. In the document instituting the proceedings under Chapter 45, section 4 (1) (3), the prosecution must list the criminal offences, stating the time and place where they were committed and any other circumstances required to identify them. The prosecution is therefore not required to describe the criminal offences in detail.

10. The statement of offences must therefore state what the prosecution believes the crime to be. The Supreme Court points out that the accused can only be held responsible for a crime if the statement of offences complies with the requirements of this provision of criminal law. Hence, a conviction cannot be based on claims related to offences which cannot be inferred from the statement of offences. (See, for example, NJA 2003 p. 486, NJA 2013 p. 7, NJA 2014 p. 664 and NJA 2015 p. 405.) At the same time, it follows from the case referred to that, when applying Chapter 30, section 3 of the Code of Judicial Procedure, the court interprets the statement of offences to a certain extent since it views it in the light of the crime committed, or that the prosecution claims has been committed, by the accused and the legal provisions cited in evidence. However, interpretation of the statement of offences must not lead to a judgment that is based on an element that is surprising to the accused and against which the accused cannot defend him- or herself.

## Assessment of the statement of offences in this case

11. The statement of offences describes criminal responsibility for publicly inciting others to commit particularly serious crime in the form of offences under section 3 of the Law on Penalties for the Financing of Particularly Serious Crime in Certain Cases (the Financing Law). The statement complies with all of the requirements of section 2(5) and section 3 of the Recruiting Law. There is no need to specify in more detail which offences are financing offences to understand which offence is alleged or to comply with the requirements of Chapter 45 section 4(1)(3) of the Code of Judicial Procedure. On the basis of the facts of the case set out by the prosecution, [the Appellant] can also defend himself against the prosecution's claims. Hence, there is nothing to prevent an assessment based on the offences claimed.

## Terrorist offences legislation

12. Most of the Swedish legislation on terrorist offences and offences linked to terrorism is contained in the Law (2003:148) on Penalties for Terrorist Offences (the Terrorist Offences Law), the Financing Law and the Recruiting Law. The legislation was enacted primarily as a result of Sweden's obligations under international law. The terrorist offences legislation is therefore based on a number of different instruments of international and EU law.

13. The Recruiting Law was originally based on the 2005 Council of Europe Convention on the Prevention of Terrorism and the Council's framework decision of 2008 amending the framework decision of 2002 on combatting terrorism (cf. bill 2009/10:78 p. 11 et seqq.). The Financing Law was introduced to implement the UN's International Convention for the Suppression of the Financing of Terrorism of 1999 (cf. bill 2001/02:149 p. 24).

14. Under section 3 of the Recruiting Law, publicly appealing to others to commit particularly serious crime is a criminal offence. To be guilty of this offence, the offender must have appealed to, or incited, others to commit particularly serious crime. The penalty is a maximum of two years' imprisonment. Particularly serious crime is defined in section 2. Paragraph 5 of the provisions refers to crimes under section 3 of the Financing Law.

15. Under the version of section 3(1) of the Financing Law in force before 1 April 2016, which will be applied in this case, anyone who collects, provides or receives money or other property with the intention of using it to commit particularly serious crime, or in the knowledge that that is the intention, must be sentenced to a maximum of two years' imprisonment. Particularly serious crime is defined in section 2. Paragraph 1 of these provisions, lists a number of crimes – including murder, manslaughter and grievous bodily harm – that are classified as particularly serious crime if they aim to intimidate a population or groups within a population, or to compel a government or an international organisation to take, or to abstain from taking an action. Paragraph 2 also states that terrorist offences including those under section 2 of the Terrorist Offences Law, also constitute particularly serious crime under the Financing Law.

## International humanitarian law

### General comments about International humanitarian law

16. The regulations of international law are part of the international legal order and cover many areas of law. The international law of warfare - international humanitarian law – governs the conditions during armed conflicts. Its principal aim is to minimise the suffering and damage caused by armed conflict, both to civilians and combatants. At the same time, the regulations accept that freedom of action is also required for military reasons, to incapacitate enemy soldiers and win conflicts by military means. The regulations therefore do not contain a general prohibition on taking military action against enemy forces, but fundamentally permit this. The rules and principles of international humanitarian law have been formed by the interaction between the two concepts of humanity and military necessity. (See, for example, SOU 2010:72 p. 93 et seq. and bill 2013/14:146 p. 24.)

17. There are two different types of armed conflict, international and non-international. An international armed conflict is a conflict in which two or more states use armed violence against each other. A non-international armed conflict is a conflict between a state and one or more organised, armed groups, or between such groups within the territory of a state. The question of who is involved in an armed conflict is assessed on the basis of the circumstances on the ground, particularly the intensity of the violence and, in the case of non-international armed conflicts, and whether the groups involved fulfil the requirements for organisation and structure. By contrast, the ideological reasons behind the involvement of such groups in the conflict are irrelevant. The extent to which the group's members respect humanitarian rules is equally irrelevant. Instead, the determining factor is whether the group's structure and organisation allows them to follow the rules. (See, for example, SOU 2010:72 p. 89 et seq., SOU 2016:40 p. 75 and The International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Judgement, The Prosecutor v. Boskoski and Tarculovski, IT-04-82-T, 10 July 2008, para. 194 et seq.)

18. An association of persons such as that which constitutes a terrorist organisation, may be involved in a non-international armed conflict (see, for example, SOU 2016:40 p. 74 and 76, Ds 2017:62 p. 91, and Geneva Academy of International Humanitarian Law and Human Rights, Foreign Fighters under International Law, Academy Briefing No. 7, October 2014, p. 23).

19. Humanitarian law has traditionally been divided into two groups of rules. One group, the Geneva rules, aims to protect people who are not actively involved in the conflicts; civilians, for example, have special protection under these rules. These provisions are contained primarily in the four Geneva Conventions of 1949 and the three Additional Protocols of 1977 and 2005. Many of these provisions are now part of customary international law. Article 3, which is common to all four conventions, establishes a minimum level of protection in non-international armed conflicts. The other part of international humanitarian law is the Hague Conventions. These prohibit or regulate the use of certain weapons and specify permitted methods of combat.

20. Those fighting in international armed conflict, known as combatants, have an express right under international humanitarian law to participate in the armed conflict by means of military

action, in other words to use violence to defend themselves and against enemies (Article 43.2 of Additional Protocol I to the Geneva Conventions). They therefore have immunity for their actions as combatants on condition that they do not commit war crimes.

21. A state's armed forces taking part in a non-international armed conflict basically have the same rights as combatants to take military action. However, other combatants do not have such an express right (cf., for example, SOU 2016:40 p. 80 et seqq.). These people have no immunity for their actions, even when the actions comply with international humanitarian law. A soldier who belongs to a non-government force, for example, and who, without breaking international humanitarian law, kills an enemy soldier belonging to government forces in a non-international armed conflict, will be prosecuted for murder. This follows from principles of autonomy and non-intervention in the internal affairs of states (Article 3.1 of Additional Protocol II to the Geneva Conventions).

22. However, it has been argued many times in international debates, that international humanitarian regulations should be given greater force and become relevant to the examination of national criminal cases, even those concerning combatants in non-government forces involved in non-international armed conflicts. In this regard, it has been pointed out particularly that, if the international humanitarian regulations are not taken into consideration when applying national criminal law, there is a significant risk that the combatants will have less of an incentive to comply with the prohibition under international humanitarian law, which may lead to an increase in attacks on civilians. (See, for example, Report of the 31st International Conference of the Red Cross and Red Crescent, International Humanitarian Law and the challenges of contemporary armed conflicts, Geneva, 28 November to 1 December 2011, p. 50 et seq., Report of the 32nd International Conference of the Red Cross and Red Crescent, International Humanitarian Law and the challenges of contemporary armed conflicts, Geneva 8 to 10 December 2015, p. 18, Erling Johannes Husabn and Ingvild Bruce, ass., Fighting Terrorism through Multilevel Criminal Legislation, 2009, p. 381 et seqq., Daniel O'Donnell, International treaties against terrorism and the use of terrorism during armed conflict and by armed forces, International review of the Red Cross, Volume 88 Number 864 December 2006, p. 868, Geneva Academy of International Humanitarian Law and Human Rights, a.a. p. 61 et seqq., Stéphane Ojeda, Global counter-terrorism must not overlook the rules of war, the Humanitarian Law and Policy blog, 13 December 2016 and Ben Saul, Terrorism and international humanitarian law, Research Handbook on International Law and Terrorism, ed. Ben Saul, 2014, p. 230 et seq. See also SOU 2016:40 p. 85 et seqq.)

### **Prohibition on terrorism under international humanitarian law**

23. A fundamental principle expressed in many provisions of international humanitarian regulations is that civilians should be protected from hostilities as far as possible and should never be a target for attacks; this is called the principle of distinction (see, for example, Article 3, common to all the Geneva Conventions). Furthermore, international humanitarian law expressly prohibits terrorism. Article 4.2 d) of Additional Protocol II, for example, prohibits acts of terrorism against persons who do not take a part in hostilities. Under Article 13.2 of the same protocol, civilians must not be the object of attack and acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

24. International humanitarian law understands terrorism to mean actions which are targeted at, or disproportionately affect, civilians. Attacks against combatants are therefore not generally regarded as terrorism, even if an offence may be regarded as a war crime on the grounds of the choice of weapons and combat methods. (See, for example, SOU 2015:63 p. 96 et seq., SOU 2016:40 p. 88 et seq., Antonio Cassese et. al., Cassese's International Criminal Law, 3rd edition. 2013, p. 153 et seqq., and Geneva Academy of International Humanitarian Law and Human Rights, a.a. p. 24 et seqq.)

#### **The limits on the application of international instruments to international humanitarian law**

25. The international instruments on which the recruiting and Financing Laws were originally based (see p. 13) contain provisions which limit the application of instruments to international humanitarian law.

26. Consequently, Article 21 of the 1999 Financing Convention, states that nothing in the Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principals of international humanitarian law. The distinction in relation to international humanitarian law is also expressed in Article 2.1.

This article lists the acts which it is an offence to finance under the Convention. Article 2.1 b) applies only to offences against persons not taking a direct or active part in the hostilities in a situation of armed conflict. Therefore, financing an offence described in this article is not covered by the provision if it is targeted against State armed forces or armed groups. (See, for example, Daniel O'Donnell, a.a., p. 869 et seq.)

27. Article 26.4 of the 2005 Terrorism Convention states that nothing in the Convention shall affect other rights, obligations and responsibilities of parties and individuals under international law, including international humanitarian law. Article 26.5 also states that the Convention is not applicable to the activities of armed forces during an armed conflict - as those terms are understood under international humanitarian law, - which are governed by that law.

28. Recital 11 of the 2002 Terrorism Framework Decision states that actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties, are not governed by this framework decision.

29. In a special declaration on the adoption of the Framework Decision, the Council stated that the Framework Decision on the fight against terrorism covers acts which are considered by all Member States of the European Union as serious infringements of their criminal laws committed by individuals whose objectives constitute a threat to their democratic societies, respecting the rule of law and the civilisation upon which these societies are founded. It has to be understood in this sense and cannot be construed so as to argue that the conduct of those who have acted in the interest of preserving or restoring these democratic values, as was notably the case in some Member States during the Second World War, could now be considered as 'terrorist' acts. Nor can it be construed so as to incriminate on terrorist grounds persons exercising their fundamental right to manifest their

opinions, even if in the course of the exercise of such right they commit offences. (See bill 2002/03:38 p. 108.)

30. The 2002 Framework Decision has been replaced by the Terrorism Directive of 2017. Recital 37 to the Directive states that the Directive should not have the effect of altering the rights, obligations or responsibilities of the Member States under international law, including under international humanitarian law. The same recital states that the Directive does not govern the activities of armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of those terms under that law.

**The international instruments do not limit the possible length of a sentence in international law.**

31. The EU Framework Decision and Directive have been implemented to incorporate them into Swedish law. This means that a Swedish national law has been created, which fulfils the requirements contained in the Framework Decision or Directive. The Swedish law will also be interpreted in accordance with the Treaty, which means that various recitals of the EU legal instruments may be relevant for the interpretation of the law. There is no need to incorporate other international conventions and agreements, for example those of the UN or Council of Europe, into Swedish law in a similar way. However, as a general principle, provisions created to fulfil our international obligations, or which govern the same areas as these, must be interpreted in accordance with the provisions of the Treaty. When rules of international humanitarian law express customary international law they become binding on Sweden, irrespective of any independent legislation (cf. NJA 1946 p. 65 and the provisions of Chapter 2 section 7 of the Code of Criminal Procedure, which expresses this principle).

32. Whether there are conditions in national law which go further in criminalising offences and apply a wider definition of criminal offences than the underlying Framework Decision or Directive must ultimately be determined by examining the intended meaning of the instrument. Various recitals are relevant to this assessment.

33. Although there have been calls internationally for non-government parties fighting in non-international armed conflicts to be covered by international humanitarian law in the same way as combatants, so that certain military actions are permitted, the current legal position does not provide any clear support for such a law (cf. p 21 and 22). Nor can such to permitted military actions be considered part of customary international law.

34. The text of the Recruiting Law and the Financing Law does not limit the definition of criminal offences on the basis of international humanitarian law. The relationship between the Recruiting Law and international humanitarian law has not been addressed in the preparatory work on the law (cf. bill 2009/10:78). The same applies to the Financing Law (cf. bill 2001/02:149).

35. The provisions must be interpreted in accordance with the Treaty. However, the underlying international instruments are not designed to prevent Member States or signatory states from defining offences more broadly than those instruments (for the situation in the UK, cf., for example, *R v Gul (Appellant)* [2013] UKSC 64). As has been pointed out, there is no basis either for the view that customary international law requires publicly appealing for financial support for the purchase of weapons to be used at the front by non-government combatants participating in a non-international



armed conflict to be exempted from the definition of a criminal offence (cf. p. 33). In the light of this, there is no support for an interpretation of the provisions of Swedish criminal law that includes such an exception – contrary to its wording.

### **The applicable provisions of criminal law**

36. Criminal responsibility within the meaning of section 3 of the Recruiting Law applies to anyone who, in a communication to the general public, calls on, or otherwise incites, others to commit particularly serious crime. In other words, there must be intent.

37. Particularly serious crime within the meaning of section 2 of the Recruiting Law includes offences within the meaning of section 3 of the Financing Law (see section 2(5) of the Recruiting Law). Offences within the meaning of section 3 of the Financing Law aimed at those who provide money or other property with the intention that the property should be used or in the knowledge that it is to be used to commit particularly serious crime, as referred to in the list in section 2(1), where the aim is to intimidate a population or a group within a population, or to compel a government or an international organisation to take or to abstain from taking an action, or terrorist offences within the meaning of section 2(2).

### **Requirement for intent and the fulfilment principle**

38. As has been stated, responsibility within the meaning of section 3 of the Recruiting Law requires intent to appeal to or otherwise incite the general public (incitement part) to commit particularly serious crime by providing money or other property (Financing Part). The finance must be provided with the intention that it should be used, or in the knowledge that it is to be used, for particularly serious crime. The offender's aim in calling on the general public must therefore be to persuade others to finance particularly serious crime. However, the offender does not need to intend to commit a specific offence at a specific time and place; the intended type of offence (financing offence) can instead take place at an earlier or later date (see bill 2001/02:149 p. 60).

39. Nor does the intent in the incitement part have to relate to the type of particularly serious crime to be financed, as long as it is clear that the finance is intended at least partly for a form of particularly serious crime listed in section 2 of the Financing Law. Criminal responsibility within the meaning of section 3 requires only that anyone who provides money or property obtained as a result of an appeal knows precisely what the property is intended for; he does not need to consider how this will be regarded legally (see, for example Mari-Ann Roos, Finansieringslagen, 2 September 2018, Lexino, comments on section 3 in 2.2.2.2 The subjective requirement).

### **Type of offence**

40. There is nothing in the preparatory work which directly supports the view that an offence within the meaning of section 3 of the Recruiting Law is a type offence for which a prison sentence must generally be imposed. However, there is some support for this conclusion in the later preparatory work for the proposal to introduce a special sentence for travel for the purpose of terrorism (see bill 2015/16:78 p. 39).

41. The Supreme Court has previously stated that great care should be taken when determining the effect the type of crime may have in different cases on the basis of general preventive reasoning, without express support in the preparatory work, and that there is limited scope for developing legal practice so that other types of crime are given special treatment with reference to this type. One instance in which this may still arise is when the type of crime as such constitutes a risk to society which is not reflected in any other way when sentencing (cf. 'De kinesiska kullagren' NJA 2014 p. 559 p. 31 and 32).

42. Offences within the meaning of section 3 of the Recruiting Law are examples of preparatory offences which take place very early on in the chain of events and hence do not carry a particularly high sentence. However, generally preventive reasoning of the kind referred to in the decision of 2014 means that, in view of the nature of the offence, there is a presumption that the penalty must be imprisonment.

### **Assessment in this case**

43. The Facebook page on which [the Appellant] intentionally posted communications was a public page, accessible to all. The communications were therefore addressed to the general public.

44. The aim of the communications was that the general public should give money or other financial support to Jahbat al-Nusra and Islamic State via two named financiers. The communications must be seen as public appeals as defined in section 3 of the Recruiting Law.

45. The communications, which must be read together and seen in the context in which they were published, are public appeals to provide financial support for the purpose of supplying Jahbat al-Nusra and Islamic State with weapons at the front to avenge a chemical attack carried out by the Syrian government's side in the conflict.

46. Both Jahbat al-Nusra and Islamic State are classified as terrorist organisations and carry out regular and systematic acts of terror against civilian populations as part of their military actions. Moreover, it is not disputed that they were also actively involved in a non-international armed conflict with the Syrian government and its allies at the time to which the conviction relates.

47. When funds are sent to groups such as Jahbat al-Nusra and Islamic State, it is not possible to distinguish the financing of weapons for the front from financial support for weapons used in other military actions carried out by these organisations, which often involve acts of terror against civilians. The public appeals to give money or other property to Jahbat al-Nusra and Islamic State to enable them to buy weapons must therefore be seen as public appeals to commit particularly serious crime in the form of financing offences. There was a significant risk that such crimes could be committed as a result of the appeals; and the offence cannot be regarded as minor. Military actions carried out by non-government combatants in non-international armed conflicts are not exempted from the definition of crimes in this case (see p. 35). Objectively speaking, [the Appellant] therefore committed the offences with which he was charged in the part of prosecution under review.

48. [The Appellant] was certainly aware of Jahbat al-Nusra's and Islamic State's systematic acts of terror and military actions. By posting the communications, he intended to persuade the general public to give money or other property to organisations including those mentioned above, to fund

the purchase of weapons to be used to avenge a chemical attack against civilians. He must also have been aware that this was not a specific purchase of weapons for the various parts of the organisation's military campaign. His intention was therefore to appeal to the public to finance particularly serious crime, including attacks against civilians. [the Appellant] must therefore be convicted of offences under section 3 of the Recruiting Law.

49. The penalty for this offence is not high enough to justify imposing a prison sentence. However, as with many other offences under terrorist legislation, a prison sentence must generally be imposed for offences under section 3 of the Recruiting Law on account of their nature (see p. 42). The Supreme Court agrees with the view of the lower courts that the sentence must be six months' imprisonment. For this level of penalty, very special reasons are required for a decision not to impose a prison sentence on account of the nature of the offence. There are no such reasons. The judgment of the court of appeal must therefore be upheld.

50. [The Attorney] must be awarded the compensation sought. In the light of the outcome of the case, [the Appellant] must repay the State for the public funds provided for his defence, with due consideration for his financial circumstances.

The decision was made by Supreme Court Judges [...], [...], [...] and [...] (rapporteur) Reporting judge referee: [...]