Datum uitspraak:	21-10-2011
Datum publicatie:	29-12-2011
Rechtsgebied:	Straf
Soort procedure:	Eerste aanleg - meervoudig
Inhoudsindicatie:	The court acquits the (main) defendant of participating in an organisation the object of which is committing terrorist offences. Besides, the court declares partially invalid the writ of summons as far as count 1.Bis concerned, which leads to partial acquittal of the defendant on those charges. The court considers legally and conclusively proved that the defendant committed charges 2, 3 and 4 and that the facts found consist of the following: with regard to count 2: Participation in a criminal organisation the object of which is to commit offences; with regard to count 3: Participation in the continued activities of an organisationproscribed by law; with regard to count 4: Complicity in repeatedly offending against the provision laid down in article 2 of the Sanctions Act 1977, committed intentionally. Custodial sentence for a term of six years. The defendant held a high position within the criminal and proscribed LTTE organisation. The LTTE used the Tamil diaspora for fundraising purposes, which funds this organisation then used to achieve its aims in Sri Lanka. The defendant was appointed as the person responsible for international finance, and kept a financial administration on behalf of the LTTE for many years with regard to a great number of countries, including the Netherlands. To this end, the defendant kept in touch with the LTTE in Sri Lanka, and also had contacts in those other countries. Even after the LTTE had been included in the European sanctions list, of which the defendant was aware, he continued his activities. With his activities the defendant participated in the criminal LTTE organisationin the Netherlands. The organisation in the Netherlands was predominantly involved in fundraising activities in support of the LTTE in Sri Lanka. To this end the organisation also had the object to compel the Tamils in the Netherlands to donate money. The defendant was aware that the LTTE had been included in the European terrorism list and that their activities were proscribed. This has not prevented the defendant from continuing in his function within the LTTE. Thus the defendant very knowingly ignored both European regulations and national legislation.Considering the seriousness of the offences proved, the pivotal role of the defendant within the organisation of the LTTE and the way in which the defendant considers his punishable conduct justifiable, a custodial sentence of considerable duration is required, amongst other things in order to prevent the defendant to offend against the law again in the future on the basis of his ideological motivation.
Vindplaats(en):	Rechtspraak.nl

Uitspraak

DISTRICT COURT OF THE HAGUE

Criminal Law Section

Three-judge section for criminal matters

Public Prosecutor's Office No. 09/748801-09

Date judgment: 21 October 2011

Judgment given after full argument on both sides

(Promiss.)

The District Court of The Hague passes the following judgment on the facts of the charge and following the examination in court in the case of the Public Prosecutor againstthe defendant:

[DEFENDANT]
born [date of birth] 1958 in [place of birth] (Ceylon),
having no fixed domicile or residence in this country,
currently detained.

The examination in court

The examination in court was held on 4 August 2010, 22 October 2010, 19 January 2011, 24 January 2011, 14 April 2011, 10 June 2011, 8 July 2011, 15 September 2011, 16 September 2011, 19 September 2011, 20 September 2011, 21 September 2011, 23 September 2011, 27 September 2011, 29 September 2011, 30 September 2011, 3 October 2011, 4 October 2011, 5 October 2011, 7 October 2011 and 21 October 2011.

The defendant, represented by defence counsels Mrs H. Seton, LL.M. and Mrs E. Kolokatsi, LL.M., lawyers in Amersfoort, appeared in court on all occasions except for 10 June 2011 and was heard.

The Public Prosecutors Messrs M.J.M. Nieuwenhuis, LL.M. and W.N. Ferdinandusse, LL.M.demanded that the defendant be sentenced on charges 1.A., 1.B., 2., 3. and 4. to a term ofimprisonment of 16 years less the period spent in pre-trial detention.

The Public Prosecutors further demanded that the items seized from the defendant according to the list of seized and not yet returned items -hereafter referred to as the list of seized items, a photocopy of which, marked A, is appended to this judgment- shall be confiscated. Alternatively, the Public Prosecutors demanded that the merchandise, propaganda materials and administration seized shall be withdrawn from circulation.

References in the judgment

In this judgment references will be made to statements made in court, official records and other documentary evidence. The references will be included in the body of the text.
If it concerns an official record made by the police it will always be an official police record ('Proces-Verbaal')drawn up by one or more competent investigative officers in accordance with statutory provisions. The reference will then be: "pv..."; on the dots the exact page number in the criminal case file where the document can be found will be stated.

If it concerns a statement obtained from the defendant in court, the reference will be "ttz ..."; on the dots the relevant trial day on which the statement was made will be specified. If it concerns another record, it will always be an attachment to an official police record drawn up by the police. The reference will be: "document ..."; on the dots the exact page in the criminal case file where the document can be found will be specified.

If it concerns an official record made by an Examining Magistrate together with one or more clerks this will always be an official record made by an Examining Magistrate in the District Court of The Hague charged with the investigation of criminal cases together with one or more clerks in accordance with statutory provisions. If it is an official record of questioning by the Examining Magistrate ("Rechter-Commissaris") than the reference shall be "rc..."; on the dots the exact page in the collection of reports of questioning made by the Examining Magistrate will be specified.

The charges

The defendant is charged - after further detailing of the charges at the court session of 19 January 2011 under article 314a of the Netherlands code of Criminal Procedure- with what is set forth in the amended charges. In charges 1. and 4. the Court introduced letters to subdivide the several items, so that the charges now read:

Count 1. The international criminal organisation

1.A. that he, at one or more times in or around the period from 10 August 2004 up to and including 26 April 2010 in [place 1] and/or [place 2] and/or [place 3] and/or [place 4] and/or [place 5] and/or [place 6], and/or elsewhere in the Netherlands and/or in Sri Lanka and/or elsewhere in the world, (as a leader and/or director) (always) together with [B] and/or [C] and/or [D] and/or [E] and/or V.

Pirabaharan (also known as V. Prabakharan) and/or V. Manivannan (also known as Castro) and/or Amirthap (also known as Amuthab) and/or another or others, but at least alone, participated (whether or not as referred to in article 140 paragraph4 of the Netherlands Criminal Code) in an organisation that has as its the object to commit terrorist crimes (as referred to in article 83 of the Netherlands Criminal Code) [case file B00] to wit:

a) having present and/or transferring one or more weapons and/or munitions of the categories II and/or III (as referred to in articles 26 paragraph 1 and 31 paragraph 1 of the Weapons and Ammunition Act) committed with the objectof committing terrorist offences and/or the object of preparing or facilitating a terrorist act (as referred to in article 55 paragraphs 1 and/or 5 of the Weapons and Ammunition Act) [case file B04] and/or
b) intentionallybringing about a fireand/or an explosion, where general danger to property and/or where the risk of grievous bodily harm or danger to another person's lifemight have been expected to ensue from the act and/or where this act results in the death of a person (as referred to in article 157 of the Netherlands Criminal Code), (to be)committed with the object of committing terrorist offences (as referred to in article 176a of the Netherlands Criminal Code) [case fileB07] and/or
c) intentionally and/or unlawfully causing a vessel to sink and/or run aground and/or be wrecked and/or destroy and/or render unusable and/or damage a vessel and/or vehicle and/or aircraft where danger to another person's life might be expected to ensue from this act and/or where this act results in the death of a person (as referred to in article 168 of the Netherlands Criminal Code), (to be) committed with the object of committing terrorist offences (as referred to in article 176a of the Netherlands Criminal Code) [case file B07] and/or
d) manslaughter (to be) committed with the object of committing terrorist offences (as referred to in article 288a of the Netherlands Criminal Code) [case file B07] and/or
e) the intentional preparation and/or promotion of and/or conspiracy to commit the aforesaid offences and/or
f) conspiracy to murder, (to be) committed with the object of committing a terrorist offence (as referred to in article 289a of the Netherlands Criminal Code) [case file B07], (article 140a of the Netherlands Criminal Code)

and/or

1.B.that he, at one or more times in or around the period from 1 October 2003 up to and including 26 April 2010 in [place 1] and/or [place 2] and/or [place 3] and/or [place 4] and/or [place 5] and/or [place 6], and/or elsewhere in the Netherlands and/or in Sri Lanka and/or elsewhere in the world, (as a leader and/or director) (always) together with [B] and/or [C] and/or [D] and/or [E] and/or V. Pirabaharan (also known as V. Prabakharan) and/or V. Manivannan (also known as Castro) and/or Amirthap (also known as Amuthab) and/or another or others, but at least alone, participated (whether or not as referred to in article 140 paragraph 4 of the Netherlands Criminal Code) in an organisation of which the object is to commit terrorist offences [case file B00] to wit:
a) recruiting others for armed combat (in Sri Lanka) without leave of the King (as referred to in article 205 of the Netherlands Criminal Code,which has come into effect 10 August 2004) and/or
b) conscripting or enlisting children under the age of fifteen years into the national armed forces or armed groups or using them to participate actively in hostilities in a non-international armed conflict (within the territory of Sri Lanka) (as referred to in article 6 paragraph 3f of the Netherlands International Crimes Act) [case file B05] and/or
c) the imprisonment or other severe deprivation of physical liberty (of Sri Lankan civilians) in violation of fundamental rules of international law, whichacts are committed as part of a widespread and/or systematic attack directed against the/a (Tamil) civilian population (in Sri Lanka), (as referred to in article 4 paragraph1e of the Netherlands International Crimes Act) [case file B05] and/or
d) having present and/or transferring one or more weapons and/or munitions of the categories II and/or III (as referred to in articles 26 paragraph 1 and/or 31 paragraph 1 and 55 paragraph 1 of the Weapons and Ammunition Act) [case file B04] and/or
e) intentionally bringing about a fire and/or an explosion, where general danger to property and/or where the risk of grievous bodily harm or danger to another person's life might have been expected to ensue from the act and/or where this act results in the death of a person (as referred to in article 157 of the Netherlands Criminal Code) [case file B07]
f) intentionally and/or unlawfully causing a vessel to sink and/or run aground and/or be wrecked and/or destroy and/or render unusable and/or damage a vessel and/or vehicle and/or aircraft where danger to another person's life might be expected to ensue from this act and/or where this act results in the death of a person (as referred to in article 168 of the Netherlands Criminal Code)[case file B07] and/or
g) manslaughter (as referred to inarticle 287 of the Netherlands Criminal Code) [case file B07] and/or
h) murder (as referred to in article 289 of the Netherlands Criminal Code) [case file B07] and/or
i) the intentional preparation of the aforesaid offences

(article 140 of the Netherlands Criminal Code)

Count 2. The national criminal organisation

that he, at one or more times in or around the period from 1 October 2003 up to and including 26 April 2010 in [place 1] and/or [place 2] and/or [place 3] and/or [place 4] and/or [place 5] and/or [place 6], and/or elsewhere in the Netherlands, (as a leader and/or director) (always) together with [B] and/or [C] and/or [D] and/or [E] and/or another or others, but at least alone, participated (whether or not as meant in article 140 paragraph4 of the Netherlands Criminal Code) in an organisation of which the object is to commit offences [case file B01], to wit:
a) inciting anotheror others orally or in writing or by image to commit any criminal offence or act of violence against the authorities (of Sri Lanka) (as referred to in article 131 of the Netherlands Criminal Code) [case file B09] and/or
b) disseminating and/or, in order to be disseminated, having in stock written matter or an image containing incitement to commit any criminal offence or act of violence against the authorities (of Sri Lanka) (as referred to in article 132 of the Netherlands CriminalCode) [case file B09] and/or
c) offending against article 2 of the Sanctions Act 1977 in conjunction with the Terrorism Sanctions Regulations 2002 [case file B02],
d) habitual laundering of money (as referred to in article 420ter and/or 420bis of the Netherlands Criminal Code) and/or
e) offending againstarticle 1 of the Betting and Gaming Act [case file B03] and/or
f) compelling another person to act, refrain from acting or submit to anything (as referred to in article 284 of the Netherlands Criminal Code) [case file B06] and/or
g) extortion (as referred to in article 317 of the Netherlands Criminal Code) [case file B06] and/or
h) the intentional preparation of the aforesaid offences;

(article 140 of the Netherlands Criminal Code)

Count 3. Participationin the continuedactivities of a proscribed organisation

that he at one or more times in or around the period from 29 June 2007 up to and including 26 April 2010 in [place 1] and/or [place 2] and/or [place 3] and/or [place 4] and/or [place 5] and/or [place 6], and/or elsewhere in the Netherlands, (as a leader and/or director) (always) together with [B] and/or [C] and/or [D] and/or [E] and/or another or others, but at least alone, participated in the continued activities of an organisation proscribed by law, to wit the Liberation Army of Tamil Eelam (LTTE), being an organisation specified in the list referred to in article 2 paragraph 3 of EC regulation no. 2580/2001of the Council dated 27 December 2001 (EC Official Journal L 344) [case file B01];

(article 140 paragraph2 and 3 of the Netherlands Criminal Code in conjunction with article 5b Corporations (Conflict of Laws) Act

Count 4. Offending against the Sanctions Act

That he at one or more times in or around the period from 29 June 2007 up to and including 26 April 2010 in [place 1] and/or [place 2] and/or [place 3] and/or [place 4] and/or [place 5] and/or [place 6], and/or elsewhere in the Netherlands, (always) together with [B] and/or [C] and/or [D] and/or [E] and/or another or others, but at least alone, (always) intentionally in violation of the prohibition underarticle 1 paragraph1 of the Terrorism Sanctions Regulations 2002 in conjunction with article 2,paragraphs1 and 2 and [article] 3 of EC Regulation no. 2580/2001 of the Council of the European Union dated 27 December 2001 concerning specific restricting measures against certain persons and entities in view of combatting terrorism (EC Official Journal L 344) [case file B02]
including (inter alia)
- the prohibition to provide to or for the benefit of the Liberation Tigers of Tamil Eelam (LTTE), being a juristic person, group or entity within the meaning of the List appended to EC Regulation 2580/2001, deposits, other financial assets and economic means, whether directly or indirectly,
- the prohibition to render any financial services for or for the benefit of that LTTE
- the prohibition to knowingly participate in activities the object or effect of which is that the aforesaid prohibitions are circumvented, directly or indirectly, and/or that the freezing of balances, other financial assets and/or economic means which are in the possession of, owned or held by that LTTE are circumvented (repeatedly)
a) participated in meetings and/or organised meetings for the purpose of generating money for the LTTE and/or
b) gave and/or lent money to and/or collected money for and/or for the benefit of the LTTE, and/or sold lottery tickets and/or organised lotteries (in pursuit of profit), and/or sold goods (in pursuit of profit), and/or
c) managed assets and/or kept a financial administration for the benefit of the LTT, and/or

d) in any other way provided, directly or indirectly, deposits and/or other financial assets and/or economic means, and/or rendered financial services for the LTTE.

(article 2 Sanctions Act 1977 in conjunction with article 1 paragraph1 Terrorism Sanctions Regulation 2002 in conj. with article 2 paragraphs 1 and 2 and article 3 of EC Regulation 2580/2001).

Some starting points for the assessment of the charges

Introduction
In count 1.A. the defendant is charged with participation in an organisation of which the object is committing terrorist offences. Whereas some of the offences specified do not constitute a terrorist offence within the meaning of the definition in article 83 of the Netherlands Criminal Code (hereinafter: CC) (e.g. in 1.A.b 'bringing about a fire or an explosion, where general danger to property and/or where the risk of grievous bodily harm might have been expected to ensue from the act'), it is clear,considering the preamble to the charge in 1.A., that the author of the charges did not mean themto form an integral part of the offence.
In count 1.B. the defendant is charged with participation in an organisation of which the object is committing crimes against humanity, war crimes and offences under ordinary law.
Count 2 of the charges concerns participation in an organisation of which the object is committing offences under ordinary law.
Count 3 concerns participation in the continued activities of a proscribed organisation.
Count 4 relates to violation of the Sanctions Act 1977 (hereafter: the Sanctions Act).

Background
The Liberation Tigers of Tamil Eelam, hereafter referred to as LTTE, was founded in 1976 by VelluppillaiPirabaharan (also known as V. Prabakharan). Pirabaharan was the leader of the LTTE from its inception until his death in 2009. The LTTE was founded as a result of a growing feeling amongst the Tamil minority in Sri Lanka during the sixties and seventies that they were discriminated against by the Singhalese majority in Sri Lanka. Other groups came into being, but eventually the LTTE remained as the only, dominant, group.
A conflict ensued which escalated and developed into a guerrilla war between the LTTE andthe Singhalese army.
The objects of the LTTE were to attain partial or full independence for the Tamil population.
In 1990 the LTTE conquered and controlled an area in the northern and eastern part of Sri Lanka. To the local population the LTTE constituted a kind of government. For instance, the LTTE had its own armed forces, land forces, naval forces and limited air forces, its own police force and its own dispensation of justice. The LTTE forces wore uniforms and had a command structure with military ranks. Furthermore, the LTTE had a tax system of its own. Through this tax system the LTTE could keep funding armed combat against the Singhalese army.
After the United States of America and Indiahad placed the LTTE on a list of prohibited terrorist organisations, the European Union and Canada followed suit in May and June 2006.
The court considers the above to be generally known facts. They are evident from public sources included in the case file. The court brought this up during its sessions on 14 April 2011 and 15 September 2011 and this was not contested by the prosecution or the defence.

Scope of the assessment
During the examination in court the parties brought forward many matters such as atrocities, backgrounds and the complexity of the situation in Sri Lanka. The court, however, will generally refrain from judgments, particularly value judgments, about the conflict, the parties involved in the conflict or their actions. The court, as a Netherlands court of justice, must strictly judge the criminal cases against the defendant and the other defendants on the basis of the charges against the defendant and the application of Netherlands and international law.

Any assessment of the court should be regarded in that context, and any opinions about objectionable conduct of any kind will be limited to what can be proved legally and conclusively against the defendant.

Validity of the summons

The point of view of the defence
It was argued that the summons should be invalidated at least partially on a number of grounds.

The charges 1.A. and 1.B. are argued to be inconsistent because they charge the defendant with both terrorist offences and offencesunder

ordinary law, which cannot exist at the same time. In the opinion of the defence the charge under 1.B. is partially invalid owing to inconsistency with regard to the existence on the one hand of armed conflict in Sri Lanka and on the other hand recruiting for armed combat without leave of the King as referred to in article 205 CC which the organisation had as its object. The summons are argued to lack a sound factual basis because the prosecutiondid not detail the offences the organisation the defendant participated in had forits object, but instead only referred to a description of the offence and the underlying case files.

This defence was also put up with regard to charge 2. The defence further argued that charges 1.A., 1.B. and2. are partially invalidbecause the organisation in which the defendant allegedly participated is charged, without any detailed elaboration,with having as its objectthe preparation or promotion or conspiracy to commit offences (whether terrorist or not), which is insufficiently precisely defined.

In the defence's opinion counts 1.A., 1.B. and 2. are partially invalid furthermore because the prosecution also failed to name the organisation in which the defendant allegedly participated , so that the information function of the summons does not satisfy the (statutory) requirements.

Finally it was argued that counts 1.A. and 1.B. include that the offences were allegedly also committed"elsewhere in the world", which is not substantiated, so that the charges must be declared partially invalid.

The point of view of the prosecution
The prosecution argued that the writ of summons satisfies the requirements set by the law and by case law and therefore moved to reject these defences.

The point of view of the court
The defence fails to appreciate that counts 1.A. and 1.B. presenta so-called cumulative alternative charge, which offers the court the opportunity to declare either one count or both alternatives legally proved.

For that reason there is no question of inconsistency, not even by the reference in count 1.B. to recruiting persons for armed combat in Sri Lanka without leave of the King. The assertion that armed conflict and recruiting for armed conflict cannot occur simultaneously is not supported in law, as was rightfully arguedin reply by the prosecutor with reference to the conclusion of the advocate-general in the Supreme Court Judgment of 15 February 2011, LJN BO9998.

The prosecution is not bound by any legal rule to mention by namethe organisation the defendant is believed to have participated in. The charges should be read in conjunction with the case file and what was dealt with in court, and for this reason there can be no question that the defendant failed to understand that the charges 1.A, 1.B. and 2. concern the LTTE; the more so because the prosecution did state the names of the defendant's alleged co-perpetrators in the writ of summons.

Neither does the object of the organisation in which he allegedly participated need detailed elaboration in the summons according to the law or case law as 'object' besides qualitative meaning also has sufficient factual meaning. The same is true for the reference to both terroristand non-terrorist offences the organisation allegedly had for its object. The prosecution needs only refer to the description of those offences, because in charges based on articles 140 or 140a CC the focus is not on offences committed, but on offences intended. The charges are sufficiently clear, particularly because the prosecution also referredto the individual case file numbers. The court further considers that at no point it was under the impression that the defendants failed to understand what the charges against them were. On the contrary; every defendant seemed perfectly aware of the contents of the extensive case file.

The court shall not consider whether there is a case ofinvalidity of the charges where they read, in 1.A. and 1.B., "elsewhere in the world",because it will render a more far-reaching judgment and the defendant therefore has no interest that needs to be respected in law in this defence.

Motion for adjournment

The defence argued that there are three grounds for adjournment. It is the defence's view that the opinion of the Minister of the Interior and Kingdom Relations should be awaited pending the complaint filed under article 83 paragraph2 of the Intelligence and Security Services Act 2002 (hereafter:ISS) concerning the investigation of the General Intelligence and Security Service which led to the official

report issued to the National Office of the Public Prosecution Service, as this opinion is important for the assessment of the case against the defendant and his alleged co-perpetrators.
Furthermore, the defence argues that the judgment of the Court of First Instance of the European Union in Luxembourg (hereafter: the Court of First Instance) should be awaited regarding the application made in April 2011 by Mr Koppe, LL.M. on behalf of the LTTE to declare the inclusion of the LTTE in the European terrorism list unlawful. For if this Court rules that inclusion of the LTTE in that list is unlawful and should be overturned this has consequences for whether charges 2., 3. and 4. can be proved, or are punishable offences.
Alternatively, the defence requested the court to raise a preliminary question to the European Court of Justice in Luxembourg (hereafter: European Court) with regard to the applicability of counter-terrorism measures in the context of armed conflict.
Finally the defence believes the case should be adjourned in order to hear the witness [witness 1]as yet, in order to question him about his alleged plea bargain and the documentary evidence found at his place.

The opinion of het court
The court dismisses the motion for adjournment.

General Intelligence and Security Service
Even if the General Intelligence and Security Service went beyond its powers -for which the court found no evidence whatsoever in the case file- and even if the Minister does find against the General Intelligence and Security Service, this does not necessarily have consequences for this case, as a criminal court is not bound by the decision, for the General Intelligence and Security Service is not a prosecuting authority and does not carry out criminal investigations. There is therefore no reason to adjourn this case.

Proceedings Court of First Instance
Neither shall the court adjourn pending the outcome of the proceedings before the Court of First Instance in Luxembourg.
The court considers that the LTTE was included in the list referred to in article 2paragraph3 of EC Regulation No. 2580/2001. With regard to the charges the first relevant inclusion occurred by decision 2007/445/EC of the Council of the European Union (hereafter: the Council) of 28 June 2007, which decision came into force by publication on 29 June 2007. The LTTE is recorded under item 18 section 2 of that list. Since, inclusion has occurred anew at every turn and at the same ranking in the list by decisions of the Council on 20 December 2007 (2007/868/EC), 15 July 2008 (2008/583/EC), 26 January 2009 (2009/62/EC), by Council Regulation of 15 June 2009 (501/2009) and by Implementation Regulationof 22 December 2009 (1285/2009). Each time these decisions and regulations were madethe preceding decision/regulation was revoked. Inclusion on the list of the LTTE was renewed by Council Implementation Regulation of 12 July 2010 (610/2010) (as item 17), while the Implementation Regulation of 22 December 2009 was revoked. It was not until 2011 that Mr Koppe submitted his request to the Court of First Instance.

Each of the inclusions on the list relevant to the charges -so from 29 June 2007 up to and including 22 December 2009- obtained legal effect. There are no reasons to assume that the Court of First Instance will cancel with retrospective effect the decisions and regulations concerning inclusion that were revoked before the request was submitted. For owing to the decisions and regulations it was known that the LTTE was on the list and for what reasons. This was never contested, and there are no grounds to decide that this -briefly stated: in contrast to the Court's judgment of 29 June 2010, C 550/09 -was impossible(before that time). If the Court of First Instance decided to repeal, which by its nature can have no retroactive force, then this will not affect any of the inclusions relevant to the charges, so that adjournment for that purpose is irrelevant.

Prejudicial question
In view of what will be considered hereinafter about the nature of the conflict and the applicable legal rules and in the assessment of charge 1.A., the court does not find any reason to adjourn the case in order to be able to submit a preliminary question itself.

[witness 1]
Neither shall the court adjourn in order to have the witness [witness 1] heard. The defence has no interest in hearing this witness any longer now that the court will not use the documentary evidence found at his place in its finding of fact. Furthermore, a statement of this witness about his plea bargain cannot be considered relevant in any way to any decision to be taken by the court, so that the defendant is not, in reason, prejudiced in his defence if this witness is not examined.

Stay of the prosecution
The defence has demanded a stay of the prosecution. In view of what has been considered above with regard to Mr Koppe's submission to the Court of First Instance in Luxembourg there are no grounds for a stay of the prosecution, either.

Bar to the prosecution

The point of view of the defence
The defence has argued that there are a number of grounds why there is a bar to the prosecution.

The defence has argued that the start of the investigation was unlawful because the General Intelligence and Security Service (hereafter: GISS) investigated the defendants and that this investigation was wrongfully presented as an investigation into the LTTE on the basis of the so-called A task of the GISS within the meaning of article 6 paragraph 2a of the Intelligence and Security Services Act 2002 (hereafter: ISS); but that it was in fact an investigation in order to facilitate criminal prosecution, which in the defence's opinion is unacceptable. Nor can be ruled out that the GISS in its investigation co-operated with or received information from the Sri Lankan intelligence services, which should be considered a questionable source. Further, the prosecution requested the GISS, after the GISS investigation had been closed, to actively examine the DVDs made available to the GISS by the Ministry, as result of which in the opinion of the defence the boundaries between investigation and intelligence have been stretched even further.

It was also argued that there was a question of discriminatory prosecution as the investigation focussed one-sidedly on the defendants, but not on atrocities committed by the Sri Lankan regime.

Furthermore, it was argued that there is a bar to the prosecution, because there was thoroughgoing co-operation with the Sri Lankan authorities, that according to the defence have a questionable reputation as regards human rights' violations. The defence holds the position that the evidence from Sri Lanka - particularly the documentary evidence submitted by way of so-called affidavits as well as statements made by witnesses - should be considered asensuing from torture. In the opinion of the defence the importance of an absolute ban on torture is such, that this in itself justifies a bar to the prosecution. Moreover, the defence was not allowed by the Sri Lankan authorities to attend the examination of witnesses residing in Sri Lankaby the Examining Magistrate. Because the Examining Magistrate failed to do his utmost to make sure those witnesses could be heard in the presence of the defence nor took sufficiently compensatory measures, prosecution should be disallowed for this reason as well.

It is the defence's opinion that the fact that the prosecution carried out a so-called parallel investigation, by examining the witness in Norway [witness 2] just when the defence had requested to hear this witness and this was allowed, should also lead to a bar to the prosecution as the defence was side-lined by it.

Finally, it was argued that the Netherlands has no jurisdiction with regard to a criminal organisation which has for its object committing offences under ordinary law or terrorist offences abroad, particularly in circumstances that deviate considerably from Netherlands legal order, such as armed conflict and/or a non-democratic legal order where there are repression and human rights violations, which should also lead to a bar to the prosecution.

The court's opinion
The first four arguments that there is a bar to the prosecution essentially boil down to the defence's view that procedural requirements as referred to in article 359a of the Netherlands Code of Criminal Procedure (CCP) have not been complied with in the preliminary inquiry. By virtue of article 132 CCP this is understood to mean the investigation preceding the examination in court. Non-compliance with procedural requirements is understood to mean the non-observance of the written and unwritten formal rules of the law of criminal procedure. Particularly, non-compliance with procedural requirements includes, according to legal history, the violation of ethical standardsof investigation. Investigation means the investigation of criminal offences led by a Public Prosecutor for the purpose of taking decisions concerning prosecution (article 132a CCP).

Frame of reference for assessment
Article 359a CCP reads, in as far as it is relevant here:
1. The court may decide, if it emerges that procedural requirements have not been observed, which cannot be remedied and for which no legal consequences are apparent from statutory law, that:
(....);
c. there is a bar to prosecution if as a result of non-observance there can be no trialin accordance with the principles of due process.
2. When applying the first subsection, the court takesaccount the interest thebreached rule serves, the seriousness of the breach and the harm it causes.

According to legal precedent (Supreme Court judgment 30 March 2004, publ. NJ 2004,376, LJN AM2533, and recently repeated in Supreme Court judgment 20 September 2011, publ.LJN BR0554) the preliminary inquiry in article 359a CCP strictly refers to the preliminary inquiry into the defendant concerning the charges against him that the judge referred to in article 359a CCP must assess. Therefore article 359a is not applicable if the non-observance occurred beyond the context of this preliminary inquiry. This may occur if the non-observance was committed in a preliminary inquiry into a different charge than the one the defendant is charged with.
Furthermore, article 359a CCP strictly refers to irreparable instances of non-compliance. If the non-compliance is remedied or can be remedied, this article does not apply. If within the above boundaries there is question of non-compliance and there are no legal consequences in any law, the court must assess whether any legal consequences should be attached to this non-observance and if so, what legal consequence is appropriate. In its assessment,circumstances referred to in subsection 2 of article 359a CCP should be taken into consideration, for the legal consequence must be justified by these factors.
The first factor is 'the interest that the breached rule served'.
The second factor is 'the seriousness of the non-compliance'. In assessing this the circumstances in which the non-compliance occurred are important. In this, the degree of culpability of the breach may play a role.
The third factor is 'the harm that it causes'. In assessing this it is important whether and to what extent the defendant is harmed in his defence by the non-observance.
It should be noted that if it is not the defendant whose interest is prejudiced by non-observance of the requirement that is meant to protect him, as a rule no legal consequence will necessarily be attached to the breach in the case to be tried.
It must be postulated therefore - considering the factors of assessment as referred to in article 359a paragraph 2 CCP- that the legal system must be understood as follows: that non-compliance with a formal requirement within the meaning of that article does not necessarily lead to one of the legal consequences defined in that article. Article 359a CCP phrases a competence, not an obligation, and gives the court which establishes the breach of a legal requirement the opportunity not to apply any of the legal effects referred to there in the light of the aforesaid legal history, and to suffice by establishing that an irreparable non-compliance occurred. For the essence of article359a CCP is not that a breach should inevitably lead to some benefit for the defendant (comp. Supreme Court 23 January 2001, publ. NJ 2001, 327.)
A bar to the prosecution as a legal consequence within the meaning of article 359a CP only occurs in exceptional cases. This occurs only if the non-compliance concerns a serious violation of the principles of due process by officials charged with the investigation or prosecution of the case, as a result of which the defendant's entitlement to a fair trial was jeopardized, either intentionally or due to gross neglect of his interests.

The court shall assess and decide in the matter of the bar to the prosecution defences per item within the frame of reference set out in the above.

The GISS investigation
The court postulates that GISS officers are not 'officers charged with investigation or prosecution' and that the GISS does not investigate criminal offences. Therefore it is the supervisory committee of the intelligence and security services which is responsible for inspection of the work of the GISS and not the criminal courts.It has not been made plausible in any way that the prosecution service has circumvented restrictions in/to its own investigative powers or to safeguards attached to those powers by having the GISS exercise these powersregarding criminal procedure and having the results presented as an official report to the National Office of the Public Prosecution Service for Combatting Terrorism and introduced in a criminal inquiry. Neither has it been made plausible that the prosecution at any time knowingly used any information possibly obtained unlawfully by the GISS. That the GISS carried out an investigation of DVDs supplied to the Service by the Public Prosecution Service does not make any difference, as these were DVDs that had been seized lawfully, during searches conducted by several different Examining Magistrates, and there is no rule of law prevents the prosecution service to ask the GISS's assistancein examining them.
The defence must be disallowed, therefore.

Discriminatory prosecution
The court alsodisallows this defence. Quite apart from the fact that the prosecution of a foreign nationmust fail in the face of international law immunity, what prevails is that considering the right to exercise prosecutorial discretion in force/prevalent in the Netherlands, it is the Public Prosecutor who weighs the interests after the investigationpreliminary to prosecution whether anyone and if so who is prosecuted and on what charges. The way in which - in case of prosecution- this weighing of interests has been carried out is generally not to be assessed by the court. This principle is only deviated from if the prosecution service could not reasonably have arrived at a decision to prosecute or if there was a violation of the principle of due process in some other way. The defence argued that the

prosecution service violated the prohibition on arbitrariness, acted contrary to the principle of proportionality and the right to a fair trialwhen it decided to prosecute these defendants, but failed to substantiate its argument on relevant legal grounds. Neither did the court find any support for this position in the case-file. The defence is denied.

Co-operation with the Sri Lankan authorities

The court agrees with the prosecution and the defence that it cannot be ruled out thatin the period prior to the finding and subsequently seizing of evidence, which was only submitted to the Netherlands investigative officers after an international request for legal assistance to that effect, serious human rights violations were committed by the Sri Lankan authorities in the area where the evidence was found, and that it is possible theymay have included torture or torment. It has, however, not been made plausible that the contents of the evidence were obtained by means of torture or torment, nor has any evidence been produced of a relation between torture or torment and the submission of that evidence.

The same is true of statements obtained from witnesses who were heard in the presence of a Netherlands Public Prosecutor or Examining Magistrate in Sri Lanka.

The court, together with the prosecution and the defence, deplores that the Sri Lankan authorities did not allow them to attend the examination of witnesses by the Examining Magistrate in Sri Lanka. However, the Examining Magistrate tried his utmost to realise this attendance, and consequently explained clearly why, regrettably, he did not succeed. Subsequently, the Examining Magistrate offered sufficient compensatory measures by giving the prosecution and the defence the opportunity to submit written questions. The Examining Magistrate carefully motivated why he did not pose all questions submitted to him.

There is no question that officers charged with the investigation or prosecution seriously violated the principles of due process, as a result of which intentionally or with gross neglect of the defendant's interests in his right to a fair trial are infringed on. The defence is therefore denied.

Parallel investigation

At the pro forma hearing of 14 April 2011 the court consideredthat it was generally undesirable, with respect to witnesses already admitted by the Examining Magistrate or the court, that witnesses who are going to be heard by the Examining Magistrate are heard before that time in a parallel investigation. The witness [witness 2] was heard as an already admitted witness in a parallel investigation. Apart from whether this is desirable, there is no specific rule that is incompatible with such an examination of a witness, whereas it has not been made plausible, generally, that the examination of this witness occurred for the preconceived purpose of harming the defendant's interests. This defence is therefore also denied.

No jurisdiction

The court does not share the view of the defence in its unsubstantiatedassertion that the prosecution has no jurisdictionwith regard to an international criminal organisation,the object of which is committing terrorist offences as in charge 1.A., or a national criminal organisation as in charge 2, the object of which is committing offences under ordinary law (abroad or in the Netherlands), particularly if there are circumstances very deviant from Netherlands legal order, such as an armed conflict and/or a non-democratic legal system with repression and human rights violations, as this assertion does not find any support in law.

With regard to the international criminal organisation as referred to in count 1.B., the object of which is committing crimes against humanity, war crimes within the meaning of the ICA and offences under ordinary law, which according to the charges were apparently committed in Sri Lanka during an armed conflict, the court will explain its judgment hereinafter.

Nature of the conflict and applicable legal rules

The charges 1.A. and 1.B. are based on articles 46, 83,83b, 140 and 140a CC. The text of these articles of law is appended to this judgment and marked B.

Pursuant to the framework decree of the Council of 13 June 2002 on combatting terrorism (2002/475/JBZ) the Netherlands incorporated the relevant rules in its national law. The offences referred to in count 1.A. concern the rules described in the framework decree. Included in the preambles that resulted in this framework decree item 11reads:

"This framework decree is not applicable to acts by armed forces during armed conflict as defined in and subject to international humanitarian law, nor is it applicable to acts undertaken by the armed forces of a state in the discharge of their official duties in as far as they are subject to other provisions of international law."

On 27 December 2001 the Council adopted EC regulation no. 2580/2001 concerning specific restrictive measures against certain persons

and entities for the purpose of combatting terrorism. This regulation concerns taking measures to prohibit funds and other financial assets or economic resources from being made availablefor the benefit of such persons and entities, and to prohibit financialor other related services from being rendered for thebenefit of such persons and entities (preamble 4 of the regulation). Article 2 of this regulation contains the list of persons and entities against whom such measures are taken. On 27 December 2001 the Council adopted a Common Position on the application of specific measures to combat terrorism. Since 26 May 2006 the Common Position of the Council includes in the list of persons and entities the "Liberation Tigers of Tamil Eelam (LTTE)". The 24 incidents leading to the inclusion in the list of the LTTE occurred in the period from 12 August 2005 up to and including 12 June 2010 (document A08-0573/0574). Until the application to the Council dated 11 April 2011 made by the LTTE, established in Herning, Denmark by Mr Koppeas their authorized representative in orderto strike LTTE from the list and rule that EC regulation no. 2580/2001 does not apply to the LTTE, no legal remedy was instituted against inclusion of the LTTE in the list.

The legal history of the International Crimes Act (hereafter: ICA) mentions, inter alia:
Explanatory Memorandum:
Page (hereafter: p.) 12:
"Establishing the existence of armed conflict requires analysis of the actual situation, based on the nature andscope of the hostilities, their purpose as well as the grounds the acts are based on.
...
This analysis is harder to make in case of a non-international armed conflict, for it would be undesirable if persons disagreeing with their governmentcould bring acts allowed as act of war, but punishable under the legal system applicable under normal circumstances, out of the range of applicable criminal law by expressing ideological or other aims. Conversely, it would be just as undesirable if a state by denying an armed conflict did not feel impeded by the applicable rules of humanitarian laws of war when fighting their opponent in a civil war. Protocol II and the Statute of the International Criminal Court contain some reference points for weighing and assessingwhether a situation is a non-international armed conflict."

p. 13:
"From the above it is clear that armed or other acts committed by groups within the context of for instance (organised) crime are not easily qualified as non-international armed conflict, although this depends on the aims of these groups. Legitimate hostilities committed by liberation fighters within a context of the right to self-government, however, can of course give rise to such a qualification. "

Interim report of the standing committee for justice (First Chamber):
p.4
"The Explanatory Memorandum also observes that armed or other acts committed by groups within the context of for instance organised crime do not easily qualify as non-international armed conflict. Considering the situation dragging on in Colombia for years, members of the CDA parliamentary party asked whether this was not an example of a country that has within its territory an organisation, the FARC, which owing to connections with the drugs trade and other forms of organised crime in the region, particularly the Caribbean, does qualify as an organisation whose acts fall within the scope of article 6 of the present legislative proposal."

Explanatory Memorandum:
p. 5:
"The members of the CDA parliamentary party wonder what significance utterances of international or regional organisations can have in the decision that an armed conflict exists. The government thinks that such utterances are obviously an important indication of how the international community views the conflict, however, such utterances are not final and it is the authority dealing with it that has to form its own opinion. The only exception to this position could be the utterances of the Security Council under Chapter VIII of the UN Charter.
The members of the CDA parliamentary party wonder whether the FARC in Colombia qualifies as an organisation whose acts could fall within the scope of article 6. The government is still of the opinion that armed or other acts of groups committed within the context of organised crime are not easily qualified as non-international armed conflict. With regard to the situation in Colombia the government further considers it ill-advised to give its opinion on specific situations at the moment. "

For the assessment of the charge under 1.A. and 1. B. therefore the nature of the conflict between the armed forces of the Singhalese government and the armed forces of the LTTEis important; in principle this needs to be determined independently by a Netherlands court.In this respect, a Netherlands court is not bound to what the Council has decided in this matter.
The court finds it important to observe at this point already that this is not true for the charges under 3. and 4. because they concern

Netherlandslaw, where the prohibitory provision has been made directly dependent on what the Council decides."

The armed forces of the LTTE were comparable to those of the government. Combat did not bear the marks of internal disorder and tension, like riots, isolated and sporadically occurring acts of violence and other acts of a similar nature that are not considered as armed conflicts.
So this was an armed conflict.

As established before the object of the LTTE was to attain the entire or partial independence of the Tamil population, and the LTTE held an area with population which they effectively controlled, had their own armed forces, their own judiciary and their own tax system. Really, it bore all the marks of an independent state, except relevant international recognition as such.
The conclusion is that this was a non-international armed conflict, unless if - as argued by the defence- the then Sri Lankan government is one of the "racist régimes" within the meaning of article 4 paragraph4 of the Additional Protocol of 8 June 1977 (hereafter: Protocol I) to the Geneva Conventions of 12 August 1949.

Article 1 paragraph 4 of the Protocol reads:
"The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

In 2006 the Netherlands Red Cross published a translation.

Protocol I does not give a definition of a "racist regime". Neither do the Conventions themselves, or the comments. Some clarification can be found, however, on the web page of the International Committee of the Red Cross, in the explanation to this article at the end of paragraph 112 where it reads:
"finally, the expression "racist regimes" covers cases of regimes founded on racist criteria. ... The third implies, if not the existence of two completely distinct peoples, at least a rift within a people which ensures hegemony of one section in accordance with racist ideas."

International law does provide for "racial discrimination". It includes all forms of distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic originwhich has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (Article 1, paragraph 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965).

Not every instance of racial discrimination by a state can lead to the conclusion that there is a racist régime within the meaning of article 1 paragraph 1 of Protocol I, however. The contracting parties with this provision had a higher threshold in mind.

In 1973, some years before Protocol I was adopted, the General Assembly of the United Nations adopted Resolution 3103 (XXVIII), entitled "Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist regimes". This resolution puts a racist régime within a context of apartheid and racial oppression. This is clear from the preamble, which reads:
"Stressing that the policy of apartheid and racial oppression had been condemned by all countries and peoples, and that the pursuing of such policy has been recognized as an international crime"; and also from the circumstance that in that same session of the General Assembly the International Convention on the Suppression and Punishment of the Crime of Apartheid was adopted.

Although the case file does contain evidence that Tamils were discriminated against in Sri Lanka, the defence did not substantiate sufficiently that the state of Sri Lanka could be considered a racist regime, nor has this been made plausible in any other way. Although some supervisory authorities of UN conventions did establish there was racial discrimination against Tamils (see for instance the concluding observations of the UN Committee on the Elimination of all Forms of Discrimination against Women in 2001, A/57/38 paragraph 268, and the concluding observations of the UN Committee for the Elimination of All Forms of Racial Discrimination 2001, A/56/18 paragraphs 332 up to and including 338), the conclusion that there was a "racist regime" is not drawn. Protocol I is not applicable, therefore.

As a result the common article 3 of the Geneva Conventions of 12 August 1949 as well as the Additional Protocol II of 8 June 1977

(hereafter: Protocol II) are applicable to the conflict and the combat engaged in. The government of Sri Lanka ratified the Conventions on 28 February 1957. It did not ratify Protocol II and has not become a party to it, but is bound by it because the provisions it contains have since become international customary law. The LTTE, was and is bound by these rules also. This is supported by uncontested public sources, which show that the LTTE on 24 February 1988 made a statement at the headquarters of the United Nations and the International Red Cross that it accepted the Geneva Conventions and the additional Protocols (see the memorandum submitted to the court by Mr Buruma on 14 April 2011, which is in the case file).
The Netherlands ratified the Geneva Conventions on 3 August 1954 and both Additional Protocols on 26 June 1987.

Assessment of charge 1.A.

Consequence of the applicable rules of law
Considering that count 1.A. concerns charges which are all related to the non-international armed conflict there can be no question of participation in an organisation, the object of which was to commit terrorist crimes. Although it is possible that incidentally certain violent actions carried out by members of the LTTE bear all the marks of a terrorist crime, and at the same time are not or insufficiently related to armed conflict (such actions have not been established on the basis of the case file), so that such actions may constitute terrorist crimes, but such incidental actions do not entail that the LTTE should be considered a terrorist organisation for that reason alone. If this were otherwise then the rights conferred by the Geneva Conventions and Protocol II could be withheld from persons wrongfully. The defendant must therefore be acquitted of count 1.A. of the summons.

Assessment of charge 1.B.

Validity of the summons
The parts of count 1.B. , with the exception of a.(recruiting others for armed combat (in Sri Lanka) without leave of the King) and d. (having present and/or transferring one or more weapons and/or munitions of the categories II and/or III)
concern crimes against humanity, war crimes within the meaning of the ICA and offences under ordinary law,which according to the summons were committed in Sri Lanka during the armed conflict.
With respect to parts a. and d. the summons are not substantiated as far as the phrase "elsewhere in the world" is concerned, because in this manner it cannot be tested whether these parts meet the requirement of double punishability. In this respect the charges are invalid, which leads to invalidity of the charge in question.

A bar to the prosecution
The court needs to test whether there is no bar to the prosecution with regard to the other parts. Relevant to this is, in the first place, the provision in article 6 of Protocol II.

Article 6 of Protocol II
Article 6 paragraph 1 and 2, preamble and under b of Protocol II read:
"Article 6. Penal prosecutions
1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.
2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.
In particular:
...
(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
...".

The Netherlands Red Cross published a translation in 2006.

The Commentary on the Additional Protocols of 8 June 1977 of the Geneva Conventions of 12 August 1949 of the International Committee of the Red Cross reads on this subject:
"Sub-paragraph (b) - The principle of individual responsibility
4603 This sub-paragraph lays down the fundamental principle of individual responsibility; a corollary of this principle is that there can be no collective penal responsibility for acts committed by one or several members of a group. This principle is contained in every national legislation. It is already expressed in [p. 1399] Article 33 of the fourth Convention, where it is more elegantly worded as follows: "No

protected person may be punished for an offence he or she has not personally committed." The wording was modified to meet the requirement of uniformity between the texts in the different languages and, in this particular case, with the English terminology ("individual penal responsibility"). Article 75, paragraph 4(b), of Protocol I, lays down the same principle."

The Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in armed Conflicts, Geneva (1974 - 1977), Volume VII, records the discussion(in paragraphs 56 through 102 on pages 92 through 97) of article 6 of Protocol II (in the draft still article 10) and the implications of this provision for the various national legislations. The current article 6 was subsequently accepted in consensus. The Netherlands has given a motivation of its vote only with regard to article 5 of the draft (see page 101).

The court infers from this that the states participating in the conference, including the Netherlands, understood that article 6 paragraph 2,preamble and paragraphb, of Protocol II may infringe national legislation with regard to the possibility to prosecute certain offences, and that this impediment to prosecution has been accepted.

This provision entails that a person can be prosecuted for offences related to the armed conflict if he committed them in person or in some form of participation, including so-called command responsibility, but that he cannot be prosecuted for offences where this is not the case.

In count 1.B. the defendant is not charged with committing the offences it details in person or in some form of participation. In principle therefore, there is an impediment to prosecute under article 6, paragraph 2, preamble and paragraph b of Protocol II.
The prosecution rightly argued that membership of a criminal organisation is an individual responsibility, with which prosecution under article 6 paragraph 2 of Protocol II is, literally, not incompatible. Sanctioning prosecution on the grounds of article 140 CC concerning an organisation which has the object to commit offences (so strictly on the basis of the individual decision to become or remain a member of such an organisation) which offences are related to a non-international armed conflict, without any further individual responsibility for committing these offences being required, would, however, constitute circumvention and therefore an infringement of the aforesaid impediment to prosecution in article 6 of Protocol II. Such an infringement is unacceptable.

With respect to parts a. and d. this is different in so far as these were committed in the Netherlands, as the Netherlands was not a party to this armed conflict in any way and these are offences that affect legal order in the Netherlands immediately.

The court also looked into whether, pursuant to Netherlands legislation in the ICA or by virtue of the Rome Statute of the International Criminal Court in conjunction with legal precedents of international tribunals, there could be grounds for the conclusion that, in spite of the absence of individual penal responsibility, crimes relating to a non-international armed conflict can be prosecuted.

ICA
The legal history of the ICA reads, inter alia:
Explanatory Memorandum
p. 5:
"Furthermore, inclusion in our own Netherlands description of offenceswas not opted for, because this would entail the risk that Netherlands legislation would deviate from the internationally applied interpretation of the crimes. This is undesirable. A Netherlands court therefore should, for the interpretation of descriptions of offences (both objective and subjective) and for determining the boundaries of penal responsibility look at relevant international legislation, as laid down, inter alia, in article 9 of the Rome Statute of the International Criminal Court and the Elements of Crimes laid down in article 9 of the Rome Statute of the ICC, which serve as an aid to the interpretation of the crimes..."
p. 25:
"Notwithstanding a few exceptions the general rules of general criminal law also apply in trying international crimes (see also article 91 CC), with particular reference to rules pertaining to the principle of legality, attempt and preparation, participation, concurrence, ne bis in idem, limitation, etc.
...
Generally, these rules of the Statute have a similar effect and they intend to protect the same interests and rights as the counterparts in our Criminal Code. In part they are worded differently, and the criteria and boundaries can differ slightly. We will address the similarities and differences between the principles in the Statute and the general principles of Netherlands criminal law summarily here. ..."
p. 26:

"Article 25 paragraph 3 of the Statute contains offences pertaining to participation and incompleteness which could lead to individual penal responsibility before the International Criminal Court. They include:
...
d. knowingly contributing to the commission of crimes by a group;
What is explicitly not meant here -and even intentionally avoided by the authors of the Statute - is generally penalising mere conspiracy to commit an offence in the Statute (in the Netherlands the provision is comparable to article 140 paragraphs 1 and 3 CC; prosecution of such acts may sometimes be based on a form of participation such as, for instance, complicity) (underscoring by the court);
..."
p. 29
"The principle of complementarity requiresthat states enable their authorities to prosecute and try the offences described in the Statute themselves. In the opinion of the government this principle does not require that they in trying them set the same conditions and requirements (in formal or material law) as the Statute contains for trial by the ICC. This seems undesirable; it would not be practical and lead to unnecessary insecurities if a Netherlands court in trying international crimes had to apply definitions of participation and grounds for exemption from criminal liability that are slightly different from the definitions it is used to working with. Neither is a direct invocation of a provision in part 3 of the Statute without regard to the relevant Netherlands provisions by a defendant in a Netherlands criminal case possible, in the opinion of the government.
...
This does not affect that the Netherlands provisions in the context of international crimes may, as was said before, be interpreted or included slightly differently. This is at the court's discretion."
p. 38/39:
"Article 2
...
The second paragraph extends the judicial competenceto include a number of offences, committed abroad, which are closely connected to an offence described in paragraph 2 (incitement to such an offence, offer to participate, handling stolen goods). These now also include article 140 CC, participation in an organisation the object of which is the commission of offences as described in paragraph 2. When a crime against humanity committed abroad by any individual can be prosecuted here, it is the opinion of the government that the same shouldapply for participation in the commission of such a crime by being a member of a criminal organisation. Furthermore, the new provisions concerning money laundering have been included in paragraph 2 (article 420bis through 420quater; ...)."
p. 41:
"What should the phrase 'a widespread or systematic attacks against a civil population' be taken to mean? ... It is required that the defendant should be aware of the attack against the civilian population."

Memorandum in response to the report:
p. 13:
"Article 2 second paragraph does not offer a ground for independent judicial competence, but extends the grounds for judicial competence contained in paragraph 1 to include a number of offences under ordinary law which are closely connected to an international crime (such as, for instance, incitement to commit a crime against humanity). The conditions upon which jurisdiction can be exercised remain the same, however (i.e. with regard to a., that the defendant is in the Netherlands, and with regard to b., that the victim is a Dutch national)."

Explanatory Memorandum:
p. 1 /2:
Furthermore, there is no impediment whatsoever to a Netherlands court to take into account the adjudication of other national courts. As regards the Elements of Crimes: in this respect they can be a source of orientation for Dutch courts.
...
It should be noted that the Elements of Crimes to the ICC are no more (but also no less) than aids in the interpretation and application of the descriptions of the offences in the Statute... ."

Netherlands legislation in the International Crimes Act clearly did not adopt the doctrine of Joint Criminal Enterprise (JCE). Also, the purpose of reference to article 140 CC in article 2 of the ICA is only to extend Netherlands jurisdiction, and not to formulate a new penal provision.

Rome Statute of the International Criminal Court

"Article 25. Individual criminal (penal) responsibility
1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
...
d. in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
i. be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
ii. be made in the knowledge of the intention of the group to commit the crime;
... . "

In "Commentary on the Rome Statute of the International Criminal Court", edited by Otto Trifterer, second edition, Kai Ambos:
pp. 744 / 747:
A. Introduction/General Remarks
"Thus, in contrast to the ILC Draft Codes of Crimes against the Peace and Security of Mankind and the Statutes of the ad hoc Tribunals, paragraph 3 distinguishes between perpetration (subparagraph (a)) and other forms of participation (subparagraphs (b) and (c)), with the latter establishing different degrees of responsibility. This approach confirms the general tendency on comparative criminal law to reject a pure[ly] Unitarian concept of perpetration (Einheitstätermodell) and to distinguish, at least on the sentencing level, between different forms of participation.
Subparagraphs (d), (e) and (f) provide for expansions of attribution: contributing to the commission or attempted commission of a crime by a group, incitement to genocide, attempt.
Thus, in sum, article 25 para. 3 contains, on the one hand, basic rules of individual criminal responsibility and, on the other, rules expanding attribution (which may or may not still be characterized as specific forms of participation). Grossomodo, an individual is criminally responsible if he or she perpetrates, takes part in or attempts a crime within the jurisdiction of the Court (articles 5 - 8). It must not be overlooked, however, that criminal attribution in international criminal law has to be distinguished from attribution in national criminal law; while in the latter case normally a concrete individual result caused by a person's individual act is punished, international law creates liability for acts committed in a collective context and systematic manner; consequently the individual's own contribution to the harmful result is not always readily apparent.
B. Analysis and interpretation of elements
I. Paragraph 1
As far as the jurisdiction over natural persons is concerned, paragraph 1 states the obvious. Already the International Military Tribunal found that international crimes are "committed by men not by abstract entities". However, the decision whether to include "legal" or "juridical" persons within the jurisdiction of the court was controversial. The French delegation argued strongly in favour of inclusion since it considered it to be important in terms of restitution and compensation orders for victims. The final proposal presented to the Working group was limited to private corporations, excluding states and other public and non-profit organizations. Further, it was linked to the individual criminal responsibility of a leading member of a corporation who was in a position of control and who committed the crime acting on behalf of and with the explicit consent of the corporation and in the course of its activities. Despite this rather limited liability, the proposal was rejected for several reasons which as a whole are quite convincing. The inclusion of collective liability would detract from the Court's jurisdictional focus, which is on individuals. Furthermore, the Court would be confronted with serious and ultimately overwhelming problems of evidence. In addition, there are not yet universally recognized common standards for corporate liability; in fact, the concept is not even recognized in some major criminal law systems. Consequently, the absence of corporate criminal liability in many states would render the principle of complementarity (article 17) unworkable.
...
III. Paragraph 3
The chapeau repeats paragraph 2 and serves as an introduction to the modes of participation and commission set out in subparagraphs (a) to (f)."
p. 757:
" (d) "In any other way contributes" tothe (attempted) commission ...
"by a group ... acting with a common purpose."
The whole subparagraph (d) is an almost literal copy of a 1998 Anti-terrorism convention and present a compromise with earlier

"conspiracy" provisions, which since Nuremberg have been controversial."
p. 760:
"(ii) "in the knowledge of the intention of the group"
Alternatively ("or"), the participant must know the intention of the group to commit the crime, i.e., he or she must know that the group plans and wants to commit a crime. The question is whether positive knowledge with regard to the specific crime is required or whether it is sufficient that the participant is aware that a crimewill probably be committed. The latter requirement was considered sufficient with regard to aiding and abetting by a Trial Chamber of the ICTY but this precedent is only applicable to subparagraph (c) not to (d) (ii). The subparagraph under examination clearly requires "knowledge of the intention ... to commit the crime", i.e., the participant must be aware of the specific crime intended by the group."

Article 25 paragraph 3d of the Statute of the International Criminal Court uses the legal concept of the JCE. This was developed in case law of the International Tribunal for the prosecution of persons liable for serious violations of international humanitarian law, that have been committed in the territory of former Yugoslavia since 1991 (hereafter: ICTY), and particularly in the judgment of 15 July 1999 in the case against Tadic (grounds 227, 228 and229). This case law on JCEwas developed further and the subject under discussion in ICTY judgments in the cases against Kvocka (2 November 2001 grounds 307, 308 and 309; 28 February 2005 grounds 77, 29 through 83 and 86), Krnolejac (15 March 2002 grounds79 through 83; 17 September 2003 ground 97) and Brdanin (3 April2007 grounds 427 through 431). In these judgmentspersonal involvement of the defendant in the charges against him was always required and exemption from prosecution under article 6 paragraph 2 preamble and under b of Protocol II was not a matter for discussion.

In the above it is has already been considered with regard to charge 1.B. under the provisions of article 6 paragraph 2 preamble and under b of Protocol II that there is in principle an impediment to prosecute, with the exception of parts a. and d. in as far as they are committed in the Netherlands, and c. in as far as it is not related to the armed conflict. The court has no reason to arrive at a different conclusion in view of the other considerations. The prosecution will therefore be barred from prosecuting the charges of 1.B., with the exception of parts a. and d. in as far as they are committed in the Netherlands, and c. in as far as it is not related to the armed conflict.

Acquittal
With regard to parts a. and d. of count 1.B., in as far as they are committed in the Netherlands, the court found no legal and conclusive proof, so that the defendant must be acquitted of these charges.

In as far as charge 1.B.c. concerns crimes against humanity the following applies. Such a crime can also be committed without relation to an armed conflict, so the prosecution does have a case to answer. As appears from the case file and the explanation given by the prosecutor at trial this part of the charge concerns a. the assumed use by LTTE of child soldiers, b. their assumed use of a human shield and c. the alleged demanding of a financial contribution if anyone wished to enter or exit the territory controlled by the LTTE. With respect to participation in an organisation the object of which is to commit such crimes proof is required that there is not "just" a question of using child soldiers or a so-called human shield (these are war crimes subject to the impediment to prosecution under article 6 paragraph 2 preamble and under b of Protocol II) or of demanding a financial contribution in case of entering or leaving. With respect to all three categories there should at least be question of a conflict with the fundamental rules of international law and commission as part of a widespread or systematic attack on the civil population, in this case the Tamil civilian population of Sri Lanka. The court found insufficient legal and conclusive proof of this, so that acquittal of this charge should also follow.

Regarding the evidence

The defence alternatively invoked article 359a paragraph 2 under b CCP and argued that the evidence resulting and ensuing from the investigation by the GISS, including the result of searches and the interception of telecommunications, should not be admitted as evidence as the GISS investigation was unlawful.

Exclusion of evidence can be up for discussion only if the evidence was obtained through breach of procedural rules in the preliminary inquiry. Such a breach has not been made plausible, as has been explained already in the assessment of the defence that prosecution should be barred with regard to the GISS investigation.

The defence also argued that the evidence seized in Sri Lanka, as well as the statements obtained from the witnesses detained there [witness 3], [witness 4], [witness 5], [witness 6] and [witness 7] should be excluded as evidence as human rights were seriously violated by the Sri Lankan authorities when obtaining this evidence, and as the witnesses were likely to have been tortured prior to their being

examined. With regard to witnesses [witness 8], [witness 9], [witness 10], [witness 11] and [witness 12], referred to by the defence as witnesses for the Sri Lankan government, it has been argued that their statements shouldnot be allowed as these witnesses may be prejudiced and therefore unreliable.

With respect to the evidence seized in Sri Lanka the exclusion of evidencecan only come up for discussion if the evidence was obtained through breach of procedural rules in the preliminary inquiry. Such a breach has not been made plausible, as has been explained already in the assessment of the defence that prosecution should be barred with regard to the gathering of evidence in Sri Lanka.

The court will disregard the statements made by the witnesses [witness 8], [witness 9], [witness 10], [witness 3] and [witness 7], so that this defence needs no discussion as far as these witnesses are concerned. The court observes with regard to the witnesses [witness3] and [witness 7] that it agrees with the prosecution and the defence that there is evidence that these witnesses made statementsunder pressure of earlier torture, so that this precludes the use of these statements. The court will attach no other consequences to the aforesaid evidence.

That the witnesses [witness 4], [witness 5] and [witness 6] were allegedly tortured before being examined was substantiated insufficiently and has not been made plausible in any other way, so that the court can use their statements.

The court will also use the statements obtained from [witness 12] and [witness 11], as the defence has only uttered the suspicion that these witnesses are prejudiced, which can hardly serve as a well-founded substantiation of a defence of [questionable] reliability.

The further assessment of these five statements are a matter of assessment of the evidence. In doing so, the court will exercise due care as the defence has not been able to examine these five witnesses directly.

Alternatively, the defence argued that the statements of the witnesses [witness2], [witness 3] and [witness 4] should be excluded as evidence as these witnesses have been heard in a parallel investigation, which constitutes a violation of the general principles of due process. The court will not use the statements of [witness 13] and [witness 14] inevidence, so that the defence needs no discussion as far as these witnesses are concerned.

The court dismisses the defence with regard to the statement obtained from [witness 2] on the grounds as discussed above in the assessment of whether prosecution should be barred on the grounds of parallel investigation, and will not exclude this statement as evidence therefore.

It has also been argued that the documentary evidence seized from [witness 1] should be excluded as the defence has not been able to test its authenticity. Under the heading 'adjournment' the court already explained that it will not use these documents as evidence, so this defence needs no discussion.

This defence was also put forward with regard to the documentary evidence seized from [witness 15]. The court denies the defence: the mere fact that the defence has not been able to test the authenticity of these documents does not lead to exclusion as evidence, the less so sinceit has not been argued in any way that there are breaches of procedural requirements attached to the (seizing of) these documents and the court has found no evidence of this in the case file.

With regard to the reports and statements obtained from the witnesses [witness 16] and [witness 17] it has been argues that they should not be allowed to contribute to the finding of fact as -briefly stated- these witnesses are guilty of excessive conjecture and drawing unverifiable conclusions when examined and in their statements.

This defence needs no discussion as the court will not use thesereports and statements as evidence. It should be noted, however, that contesting the reliability of documents and statements in principle cannot lead to the conclusion they should be excluded from evidence, as the reliability in principle does not concern the legality of the evidence. Evidence can however be unreliable to the extent where it is no longer sufficiently conclusive and therefore unsuitable as evidence.

Evidence pertaining to count 2

The liberation tigers of Tamil Eelam (LTTE)
In as far as relevant for the assessment of the charges the international structure of the LTTE was organised as follows.

Leadership
The witness [witness 2] states (rc 819): "Prabhakaran was the leader of the LTTE".

The witness [witness 6] states in answer to the question put to him by the Examining Magistrate "Who was in 2003 or preceding years the military leader of the LTTE?" (rc 1294): "Prabakaran. ... Where Prabakaran was, headquarters were." To the question by the Examining Magistrate whether this was still the case after 2003, the witness answers (rc 1295): "This has always been the case."

The witness [witness 11] answers to the question put to him by the Examining Magistrate "Who was the leader of the LTTE until 2009?" (rc 1348): "Vellupillai Prabakaran. ... He was in control of everything. He is the only person. There is no central committee or advisory committee."

The court concludes on the basis of the above that the LTTE was organised centrally and that Prabhakaran was its leader.

Political wing
The witness [witness 2] states (rc 822): "Tamilselvan was the one who led the peace negotiations."

The witness [witness 4] states (rc932): "I am trying to explain that I have worked in Wanni region. In Wanni the political wing had various shops and agencies. It was my duty to examine the accounts there." In answer to the question by the Examining Magistrate "Tamilsevan was the head of the political wing of the LTTE?", this witness states (rc 935): "That is correct."

The witness [witness 6] states (rc 1294): "Tamilselvan had the political division."

The witness [witness 11] states (rc 1349): "For the military division I was responsible, Tamilselvan for the political."

The court concludes on the basis of the above that the LTTE had a political wing, of which Tamilselvan was the leader.

Foreign relations
The witness [witness 2] states (rc 820) that he also knows a man called Manivannan, who is nicknamed Castro.

The witness [witness 5] states (rc 1151): "As to foreign divisions there were several different divisions, such as finance and propaganda. The person responsible for them was Castro."

The witness [witness 6] states (rc 1291): "Castro was the person responsible for the international division. ... Before 2003, too. We then had an office in Madras, Chennai. At the time Castro was responsible for everything."... (rc 1304): "Castro ... is also called Mannivanam."

The witness [witness 6] states (rc 1294): "Castro had the foreign divisions." In answer to the question by the Examining Magistrate "What kind of division was that?" this witness answers (rc 1304): "There are many people living abroad. It concerned the making of propaganda, convincing people of the political situation in Sri Lanka and also raising funds."

The witness [witness 11] states (rc 1349): "Besides, we had a worldwide coordinating centre and its leader was Castro." ... "Castro had an office,it brings together learned youths, and they are sent abroad, like diplomats."... (rc 1356): "Castro's other name is Manivannan."

The court concludes on the basis of the above that the LTTE had a foreign department, of which Manivannan, also known as Castro, was the leader.

Structure in Sri Lanka
The witness [witness 2] states (rc 819): "LTTE over there was a kind of government on its own. They had their own police force, legal system and welfare arrangements."... (rc 821): "LTTE had its own military force. But it was a kind of civil administration which implemented measures."

The witness [witness 6] states (rc 1294): "In 2003 the peace negotiations started. From the Wanni they then had direct contact with the

outside world and as a result could carry out activities directly. They were then able to do everything directly and did not need me. ... There were many divisions. I heard. ... intelligence service, political division, foreign departments, the sea tigers, Imbram Ani military division, the finance division, TRO, the propaganda division, customs/police, tax department, air wing, military wing, artillery wing, mortar wing, pistol gang, and there are more."

The witness [witness 11] answers to the question by the Examining Magistrate "Which divisions has the LTTE included since the year 2000?" (rc 1348): "A military divisions, a political division, an intelligence service, Black Tigers, Sea Tigers, artillery brigade, financial section and TRO." ... (rc 1350): "I had about 30,000 fighters under me. For a longer period we had 30,000. There were not so many in the beginning. The numbers increased gradually. When I branched off, this was their number. Within the forces there were different regiments. I can name the most important ones: Jentham [Jeyanthan], Charles Anthony, Sothia [Sothiya], a women's wing, Malathi, Siruthaikal "leopard" and Anbarasi, another women's wing and many more besides.The first four were the most important ones. There were many smaller divisions besides, but they were not significant. Also, there was a department of civilians, the border division. Every civilian had to guard the border for one week, but they also received military training. There were approximately 10,000 civilians."

The witness [witness 12] states (rc 1370): "Prabakaran is the leader. They also had headquarters. It included a finance division, the intelligence service, the political wing, the development organisation. After 1994 they also had a police force, courts, media and various combat divisions. There were many divisions. ... They also had a naval division. I know there were about 35 divisions, including medical facilities.

The court concludes on the basis of the above that the LTTE - in the territory controlled by it in Sri Lanka- had a more comprehensive structure, with its own police force, intelligence service, courts, divisions for welfare/development and finance, and armed forces with an elaborate organisation including, at least, naval forces and an artillery division.

TCC

The witness [witness 18] states, in summary (pv B02-791 through B02-793): "It is correct that I founded the TCC, together with two or three others. This was to help people. The LTTE was waging a war for the liberation of the Tamils, and we, the TCC, supported this course. I am now talking about the period prior to 1998. There was a central figure in France, he was the person responsible for all TCCs in Europe. With all TCCs I mean all organisations supporting the LTTE from Europe at the time. Funds were raised, propaganda distributed, demonstrations held, cultural programmes organised. One of the rallies organised was heroes day, to honour fighters that were killed. The cultural programmes are social happenings. People think the person responsible in France received his orders from the LTTE in Sri Lanka. I myself think so too. The TCC, TRO and the TKCO are Tamil organisations founded in the Netherlands to support the LTTE.

The witness [witness 6] states, stated briefly (rc 1305): "Prabakaran asked my in the mid '80s and '90s to go abroad and try and win people's confidence. I met sympathisers abroad. They allegedly started divisions after that. At the start there were no foreign LTTE departments, just Tamil organisations. In the course of time the Tigers went abroad themselves to found such things. Many people travelled to Sri Lanka from abroad in 2003. They all spoke to Prabakaran. They swore to Prabakaran they'd help him. Afterwards they returned abroad, and allegedly founded something. From then onwards some people underwent military training. " (rc 1306): "It is correct that since the '90s it has beena duty of the International Secretariat to start Tamil organisations in as many countries as possible. In some countries this was successful. There existed some Tamil organisations abroad already. These organisations they brought under the International Secretariat. Many countries had TRO divisions, schools, temples. Until 2003 there were Tamil organisations operating in approximately 20 countries. They included Canada, Australia, the US, the UK, Switzerland, France, Germany, Denmark, Norway, Finland, the Netherlands, Malaysia, the Middle East, Italy, the Lebanon. In some of these countries they operated under the name of TCC, the Tamil Coordinating Committee, and in some countries as TRO. The organisations in these countries were under the immediate coordination of the International Secretariat."

The court concludes on the basis of the above that the LTTE had a worldwide network of organisations the object of which was supporting the LTTE. The Netherlands TCC was one of those organisations.

The role of the defendants within the organisation

[defendant]

The written statement by the defendant [defendant] submitted at the hearing of 15 September 2011, which statement was read out loud by

the presiding judge in its entirety on 15 September 2011 -and is therefore accepted as a statement made by the defendant at trial - and subsequently made available to the defence and the prosecution in photocopy, includes, inter alia (ttz 15-0-2011 - written statement page 1):
"The EU listing surprised me, I could not believe it."... (ttz 15-09-2011 - written statement page 4): "Around 2002/2003 I was approached by Joseph, a former friend of mine in Sri Lanka. I used to live in the same village as he did. He asked me if I was prepared to help him to make a positive contribution to my people in Sri Lanka. I agreed to do it then. From that moment I got the name [defendant] also (alias defendant)."... (ttz 15-09-2011 written statement page5): "In the period 2002 through 2009 I visited Sri Lanka on a number of occasions. I met Joseph there and Joseph showed me round projects that received the money of the instructions/transfer informationI passed on. They were all humanitarian projects. During one visit Joseph introduced me to Prabakharan via someone he knew.This person had proposed this to him and was a confident of Prabakharan's. During one of my visits I also had an interview with Mannivanan once. ... In summary, my duties boiled down to the following. Joseph would instruct me from Sir Lanka to pass on to country A that a certain amount of money needed to be transferred or taken to country B or person B. Joseph would give me information on the country from which the money was to be paid, the name of the person who was to receive it as well as, if the money was to be paid through the bank, the account number of the receiver of the money. For the verification of my own duties I would subsequently receive a statement from country A showing they had carried out Joseph's instruction I had passed on to them correctly. I would then include this in my administration which I sent on to Joseph once a month. ... In confirmation I made sure I was sent monthly surveys of the relevant countries showing that my assignments had been carried out. I kept a close eye on this and I regularly made phone calls to see to this."

The witness [witness 5] states, in summary (rc 1161): "I saw [defendant] or [defendant] in the Wanni in 2003, in Castro's office, together with Castro. He had something to do with international finance." (rc 1162): "Castro then told me that [defendant] would send money to me that I was to look after."

A letter dated 16 November 2003, signed by V. Manivannan reads (document B00-3628): "I hereby inform you that Mr [defendant][defendant] has been appointed as the Director of the finance for foreign branches by the National Leader."

On a USB flash drive belonging to the defendant [defendant], seized in his dwelling in [place 3] computer files named Parthy, Yarl, LG, KilyenKalai were found. In these files under 'income' various country names are listed, showing next to them a currency and amounts. The country names include: Norway,Sweden, Finland, Denmark, Great Britain (London), the Netherlands, Germany, France, Switzerland, Italy, Canada, the United States and Australia (pv B02-2218).

The defendant [defendant] stated at trial (ttz 19-09-2011): "It is correct that I kept the administration of various countries, including that of the Netherlands. ... It is correct that the countries concerned were the ones found on the USB flash drive found at my place." (ttz 20-09-2011): "It is true that the financial orders that I kept account of were not carried out if I did not pass them on. In my time there was no one else in my position. I myself was not an important person, but my position was key to having the instructions carried out."

On 12 and 13 January 2008 an LTTE workshop was organised in Germany for Germany, the Netherlands, France and Belgium, in which all those responsible, financially or otherwise, and all important workers and activists participated. This is apparent from a document dated 31 January 2008 with the header "Person responsible/leader of international relations, Liberation Tigers of Tamil Eelam, Tamil Eelam"(document B00-2154). According to the document the gathering was held as planned and had been successful. The workshop was held by Mr [defendant] and Mr [.....].

About this gathering the defendant [defendant] himself, living in [place 3], stated (pv C01-490): "I did not attend the entire meeting. I was merely told by Joseph that I had to go there for two reasons. First and foremost because I was not presented with accounts from these countries, but if I went there I could meet them and bring it up with them."

On the computer of defendant [E], seized in his dwelling in [place 5] spreadsheets with financial surveys were found. The same spreadsheets were also found on the defendant's USB flash drive[defendant], seized in his dwelling in [place 3] (pv B02-1590).

From computer files found on a USB flash drive seized from the defendant [defendant] it emerges that the total income according to the administration kept by the defendant in the period January 2005 through July 2009 amounted to € 136,024,702 (pv B02-2570).

From the above evidence, seen in conjunction, it emerges that the defendant held a high position within the LTTE. He was in close contact with Castro, was appointed by him as the person responsible for international finance, acted as such during an international

meeting and kept an actual financial administration. The defendant stated that he kept this administration for his personal friend Joseph, not for the LTTE. The court found no evidence of Joseph´s existence. Even if it is true that the defendant carried out his activities on account of a personal friendship, the defendant still actually kept a financial administration for the LTTE, knowing the LTTE was included in the EU sanctions list.

For, pursuant to article 1 paragraph 3 of EC Regulation no. 2580-2001 the following falls within the scope of the definition of ´financial services´:

"(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;"

The passing on of payment orders, in a position that was key to carrying out these instructions constitutes at least the transferring of financial information and is therefore a financial service within the meaning of EC Regulation 2580/2001.

[D]
From an excerpt of the Chamber of Commerce concerning the Stichting[=Foundation] Tamil Coordinating Committee- the Netherlands in [place 4] it turns out that the defendant [D], living in [place 4] has been registered as its secretary since 1999 (pv A01-0180).

The authorities in Sri Lanka submitted documents to the investigating team from Castro's administration. These documents concern a meeting which took place in Sri Lanka in 2003, and include, inter alia, LTTE registration forms (pv B00-2339). The heading of these forms reads: "international contact point, liberation tigers of Tamil Eelam, information on overseas assistant". One of these LTTE registration forms concerns the defendant [D] (document B00-2353). The form also specifies [D']s nickname as "[D]".

This registration form concerning the defendant [D] relates, inter alia, that Castro was his immediate superior (document B00-2359 and B00-2351).

As considered above on 12 and 13 January 2008 an LTTE workshop was organised in Germany for Germany, the Netherlands, France, and Belgium in which all those responsible, financially or otherwise, important workers and activists participated.

Defendant [D] is also mentioned in the above document (document B00-2155) as "leader/responsible (meant is: the division) , [D]". It records what the defendant [D] said during the meeting: "He said that up to and including October 2007 fundraising had not gone well at all, but that in the months of November and December it had. There had been several reasons for this, he had gone on to say. (The groups had accounted for this by saying that the areas for collection were too large, distances too great, and travelling there and back too problematic.) When the workers got extra assistants fundraising improved towards the end of the year, he said. So far only four out of the total of eight groups had received such support. Brother [D] intended to arrange extra assistants for the other four groups. Brother [D] hoped to achieve the target amount in 2008."

From the above evidence, seen in conjunction, it turns out that the defendant [D] was a leader of the TCC. He was addressed as such by others and also conducted himself as such. Considering that the defendant [D] was in contact with Castro, actively participated in meetings which were clearly organised by, amongst others, the LTTE, and filled out an
LTTE registration form, the court concludes that the defendant [D] was also a member of the LTTE.

[B]
The witness [witness 19] states, summarily (rc 161): "I knew the leaders of the TCC. I do not know whether they are registered, but I know [D], [.....], [B], [E], [nickname C] and [.....]." (rc 162): "I knew these people worked for the TCC because some of them told me. [.....] and [B] told me they worked for the TCC."

On 4 November 2007 a memorial meeting took place in [place 1] to commemorate six LTTE fighters who had died, including P. Tamilselvan, the political leader of the LTTE. A DVD of this meeting (pv B02-00083) shows the defendant [B] making a speech. When the defendant [B] comes on for his speech a Tamil text is shown. This text is translated as
follows: "Mr [B], deputy commander in the Netherlands, Report of the national leader".

As stated above, the authorities of Sri Lanka submitted documents to the investigation team from Castro's administration. These documents include, inter alia, LTTE registration forms (pv B00-2339). The heading of these forms reads: "international contact point, liberation tigers of Tamil Eelam, information on overseas assistant". One of these LTTE registration forms concerns the defendant [B] (document B00-2390).

This form dated 19 March 2004 relates, inter alia, that [B], living in [place 3] was the person responsiblein his district for the organisation of art and cultural events and educational activities (document B00-2397 and B00-2388 and document B00-2386).

In the document concerning the meeting in Germany, referred to above, the defendant [B] is also mentioned (document B00-2155) as "deputy leader of the Netherlands branch, Mr [B]". It describes what the defendant [B] said during the meeting: "He said that at first he had had trouble approaching fellow countrymen on thesubject of the "National Duty Fund" because in his district a number of people had already been recruited for the credit fund. Very slowly, he told us, he succeeded in persuading people, so that he could enlist 80 people in his "alagu" for the fund. The assistants who had come via international relations to support him (i.e. the people who had been sent by [.....]) had helped him greatly in achieving this. He further said that the majority people in his district had paid through the bank. In his area/district very little per "alagu" was asked as contribution to the "National Duty Fund"."

From the above evidence, considered in conjunction, it turns out that defendant [B] was deputy leader of the TCC. He does not view it this way himself, but his actual description of his role corresponds with that of a deputy leader. He was also addressed as such by others, and conducted himself at meetings as someone with authority within the organisation. As defendant [B] also actively participated in meetings which were clearly organised by, amongst others, the LTTE and had filled out an LTTE registration form, the court concludes that defendant [B] was also a member of the LTTE.

[C]
From an excerpt of the Chamber of Commerce of the StichtingTamil Coordinating Committee- the Netherlands it emerges that the defendant [C], living in [place 6], has been registered as its chairman since 2005 (pv A01-0180).

As stated above, the authorities in Sri Lanka submitted documents to the investigating team from Castro's administration. These documents concern a meeting which took place in Sri Lanka in 2003, and include, inter alia, LTTE registration forms (pv B00-2339). The heading of these forms reads: "international contact point, liberation tigers of Tamil Eelam, information on overseas assistant". One of these LTTE registration forms concerns defendant [C] (document B00-2412). The form also specifies [C']s nickname as "[nickname C]".

This document dated 3 January 2004 relates, inter alia, that defendant [C] was responsible for propaganda and sports, on the board of the music department and responsible for fundraising (document B00-2415 and B00-2411). The form dated 12 October 2003 relates amongst other things, that [D] was his immediate superior (document B00-2402 and B00-2409).

In the document concerning the meeting in Germany on 12 and 13 January 2008 the defendant [C] is also mentioned (document B00-2155) as [nickname C], responsible for propaganda/distribution and sports." It describes what defendant [C] said during the meeting: "He apologized for the fact that he had not realised the prescribed target amount. He said he was to blame for this personally. (As they had promised the people never to visit them in their homes again, he did not know how to collect funds.) He had failed to undertake anything as a result, but assured he would realise the target amount for the year ahead. Another reason was that he had not had anyone to motivate him in his activities, as brother [D] was not in the Netherlands. Although Mr [B] was also responsible, he had often been en route himself to raise funds. Therefore he had not been able to obtain advise from [B], nor to ask him for support."

From the above evidence, considered in conjunction, it turns out that defendant [C] had a leading positionwithin the TCC. He represented the TCC both formally and in actual fact. As the defendant [C] also actively participated in meetings which were clearly organised by, amongst others, the LTTE and had filled out an LTTE registration form, the court concludes that defendant [C] was also a member of the LTTE.

[E]
From an excerpt of the Chamber of Commerce of the Stichting Tamil Coordinating Committee- the Netherlands in The Hague it emerged that the defendant [E], living in [place 5], has been registered as a board member (pv A01-0180).

On the computer of defendant [E] seized in his dwelling in [place 5] spreadsheets with financial surveys were found. These same spreadsheets were also found on the USB flash drive of the defendant [defendant], seized in his dwelling in [place 3] (B02-1590).

The authorities in Sri Lanka submitted documents to the investigating team from Castro's administration. These documents concern a meeting which took place in Sri Lanka in 2003, and include, inter alia, LTTE registration forms (pv B00-2339). The heading of these forms reads: "international contact point, liberation tigers of Tamil Eelam, information on overseas assistant". One of these LTTE registration forms concerns defendant [E] (document B00-2372).

The form dated 15 October 2003 states, inter alia, that the defendant [E] is a propaganda man and that his immediate superior is [D] (document B00-2378/2379 en B002369/2370).

In the document concerning the meeting in Germany on 12 and 13 January 2008 defendant [E] is also mentioned (document B00-2156) as "the person responsible for finance, [E]". It records what defendant [E] said during the meeting: "When I asked the workers about their weekly, or respectively, monthly revenue, they always told me to get in touch with brother [D] (to get information about this). This was for instance what brother [nickname C] answered when I asked him about his revenue. When brother [D] is abroad, the workers believe they do not have to answer to me, brother [E]. The activists/workers always answer that they sent an e-mail message to brother [D]. Some of the workers report to [D], others to me, and a third group to [B]."[E] went on to say that fundraising through Thettam (a credit fund), "Life Force Fund", went very well in the absence of [D]. But in 2007 everything was different. [E] said they did not know why. Furthermore, brother [E] said: "When [D] is not in this country (the Netherlands), I am not in touch with the workers because they do not want to talk to me. They keep saying they reported everything to [D]. I do not know how I can work in these circumstances." If he failed to realise the target amount due to lack of the workers' support, [E] said, he would borrow money to supplement the remainder (i.e., that part of the target amounthe had not been able to raise) in the context of the fundraising project for the "National Duty Fund". He had borrowed €10 (possibly €10,000 is meant) in order to pay/settle the target amount."

From the above evidence, considered in conjunction, it turns out that defendant [E] had a leading position within the TCC. He kept its financial administration for the Netherlands. Others reported income and expenditure to him, and he in turn reported the income and expenditure to the person responsible for international finance of the LTTE, the defendant [defendant]. As defendant [E] also actively participated in meetings which were clearly organised by, amongst others, the LTTE and had filled out an LTTE registration form, the court concludes that defendant [E] was also a member of the LTTE.

The object of the organisation

Count 2 paragraph c: offending against the Sanctions Act
Pursuant to United Nations (Security Council) Resolution 1373 of September 2001 Common Position 2001/931 and EC Regulation 2580/2001 were drafted within the EU. Attached to the Regulation is the EU list of terrorist organisations, which since 29 May 2006 has included uninterruptedly, as considered above already, the Liberation Tigers of Tamil Eelam - 'LTTE'. EC Regulation 2580/2001 prohibits any acts serving to directly or indirectly supporting the organisations included in the EU list financially or economically. Any acts contrary to EC Regulation 2580/2001 are prohibited by the Sanctions Regulation against Terrorism 2002 and made punishable as an economic offence under the Sanctions Act in conjunction with article 1, preamble and under 1° of the Economic Offences Act.

The grounds for inclusion in the list were sent to the LTTE by the Council of the European Union on 29 June 2007 (document A08-290). Since then the abovementioned acts have been punishable offences.

The witness [witness 6] states (rc 1294): "Castro had divisions abroad". In answer to the question put to him by the Examining Magistrate: "What kind of division was that?" this witness answers (rc 1304): "Many people are living abroad. It was concerned with making propaganda, persuading people of the political situation in Sri Lanka and, besides, fundraising."

In October 2003 a meeting took place in Sri Lanka. In defendant [E]'s dwelling in [place 5] a DVD of this meeting was found. It shows, amongst other things, a speech delivered by Prabakharan, in which the latter says (pv B04-279): "Now I'll get to the crux of the matter as far as fund raising is concerned, and how we can reach our people. I hope to talk about this with you. ... owing to your fund raising abroad, I believe they were funds raised in [the past] five years, amounting to over 4 billion, we bought arms for that money from overseas, which arms we have deployed for this fight." (pv B04-282): "Fundraising amongst our people should be done on holidays or in a period of combat, otherwise they will think that we only come up to them regularly because of the money. This alone is insufficient to

wage a war. What I recommend you to do is the following: suppose you have 1,000 families at your disposal, then we must approach them through propaganda. If we do that, this could weld together a shared bond and could inspire a feeling of participation with us. Suppose you could transfer 10 million a month to us for the purpose of trade, although this amount is a little exaggerated, then relations between the people and us would improve."

In the dwelling of defendant [D] in [place 4] a letter was found from defendant [nickname C] in [place 6] (the court understands [C]), dated 17 February 2007, containing a list of names and telephone numbers of people who are not willing or able to pay a contribution (B02-228).

On 27 November 2007 a heroes' day was organised in the Merwestein hall in [place 2]. A DVD of this meeting shows defendant [E] acting in a play. It also shows some people in the audience with a boxcollecting money (pvB02-1726 and B02-1727). On the computer of defendant [E], seized in his dwelling in [place 5] spreadsheets containing financial surveys were found. These spreadsheets were also found on the USB flash driveof defendant [defendant], seized in his dwelling in [place 3] (B02-1590). The spreadsheet for November 2007shows that heroes' day 2007 yielded a positive result to the amount of € 14,252.92 (B02-1584).

On 12 and 13 January 2008 a workshop was organised in Germany for Germany, the Netherlands, France and Belgium in which all those responsible, financially or otherwise, and important workers and activists participated. This is clear from a document dated 31 January 208 with the header "Person responsible/leader of international relations, Liberation Tigers of Tamil Eelam, Tamil Eelam"(document B00-2154). According to the document it turns out that defendants [defendant], [D], [C], [B] and [E] attended this meeting and that they discussed fundraising in the Netherlands.

On 27 November 2009 a heroes' day was organised in the Maresca hall in [place 1]. Defendant [D] delivered a speech (pv B02-1744) and the defendant [E] was also present (pv B02-1743). During this meeting amongst other things books, maps, shawls, flags, belts and umbrellas were sold (pv B04-1741).

On a USB flash drive of defendant [defendant], seized in his dwelling in [place3], a document was found named "financial activity plan"2010" of the LTTE (pv B02-115). It reads: "Right now we are faced with a serious financial crisis. Loans we have taken out must be repaid without exception. Therefore it has become imperative that we engage in fund raising activities. On behalf of our liberation organisation we ask you to lend a helping hand and give generous financial support."

Considering the above the court concludes that from the start fund raising was one of the objects why the LTTE organised internationally. This fund raising did in effect occur in the Netherlands and continued unabatedly, even after the inclusion of the LTTE in the sanctions list in 2007 and after the death of leader Prabhakaran in 2009. Fundraising activities took place during meetings and by asking people to make a contribution. The court therefore concludes that the charge of offending against article 2 of the Sanctions Act in conjunction with the Terrorism Sanctions Regulation 2002, as one of the crimes the commission of which was the object of the organisation, can be legally and conclusively proved.

Count 2 paragraphe: offending against the Betting and Gaming Act
The witness [witness 20] states, in summary (pv B03-595 and 596): "I bought lottery tickets, for 1 or 2 Euros apiece. The tickets are sold for sports [events] and sometimes door-to-door. They are to cover the expenses of arbiters and such things. The lottery is held on heroes' day. Because I participated in heroes' day [D] asked me to keep tabs on who had sold what and I was to pass this on to him. Information about the lottery books, how much a person had or had not sold. I was to record that, my wife did. I told her what to write down. You could win a laptop computer or a bike, those kinds of things.

In a registered office of the TCC in The Hague four lottery tickets were seized for a lottery that took place in 2003 (pv B03-0015).

In the Netherlands administration, seized in both the dwelling of defendant [E] in [place 5], and the dwelling of defendant [defendant] in [place 3], there is an entry for 31 October 2007 of € 6,100 with a description reading: "Given the lottery revenue to Sencholai"(pv B03-359).

The defendant [defendant] stated in court (ttz 21-09-2011): "If lottery revenue information was passed on to me, I would register it in my administration and pass it on. This did not occur monthly, but once in a while."

On behalf of the defendants [C], [D] and [B] it was argued that no permit was required to organise the lotteries because they allegedly fell within the scope of the exception in article 7c of the Betting and Gaming Act. The court dismisses this defence as this exception applies only to small lotteries organised by Netherlands associations. Neither the LTTE nor the TTC is an association under Netherlands law.

Considering the above the court concludes that the charge of offending against the Betting and Gaming Act, as one of the crimes the commission of which was the object of the organisation, can be legally and conclusively proved.

Count 2 under f: compulsion
In the TCC premises a letter was found dated 11 February 2007 from [D](the court understands: [D]) to those responsible for the districts (document A06-2879, document B02-640). In this letter [D] writes that they should e-mail immediately the names, addresses and telephone numbers of the people in their district who paid no contribution whatsoever to the Chencholai and Arivucholai homes stating the reason why they did not contribute. In the said property another letter was found from [name] (the courts understands: [C]) to [D] containing names and telephone numbers of people from the centre of the Netherlands who did not contribute and were not prepared to contribute (document B02-232). Furthermore, a list of names and addresses of many Tamil families in the Netherlands and Belgium was found, with entries behind some of the names reading"no pay" or "negative" (document A06-2832 in conjunction with A06-2842 through A06-2875).
[Witness 21], living in [place 4] stated, in summary (pv B06-210): that her husband in Sri Lanka was taken by the LTTE (pv B06-211). Her son is [son witness 21] (pv B06-212): [witness 15] sometimes asked her for money. It was for orphans. He threatened her and told her that she was a Tamil and had to pay for the elderly and the orphans. She would not enter Sri Lanka again if she did not pay. She felt this was very threatening. There was no regular frequency to contributing. Sometimes they came on a monthly basis, sometimes theystayed away longer. It was not on a voluntary basis. She was afraid she really could not return to her country of origin. They came round for a larger amount once, for € 2,500. He recorded it, but she never paid. She had to pay this sum or she could not enter Sri Lanka. She paid € 30 in the name of her son (the court understands: [son witness 21] because he would never pay himself and had had an argument with them before; in order to protect him and enable him to return to Sri Lanka one day. (pv B06-213): [Witness 15] told her clearly he was a Tiger and worked for the LTTE. He also said that he could pass on information to the LTTE in Sri Lanka so that she could not enter the country anymore. People who refused to give money were enemies of the LTTE according to him.

On 26 April 2010 a search (pv B06-0184) was carried out of the property of [witness 15] in London. A letter was found (document B 06-188) dated 15 March 2007 reading: "[son witness 21], 20-10-1983 from [place 4] wants to have the future wife selected for him to come over. They went there for a pass. They told [him] they can only give it [to him] once they had an answer from us. [son] and the mother of [son] came to see us. Their contribution for 2004-2005, totalling € 500, I received. In 2006 there was no contribution. I met them for 2007. They wrote to me they'd pay € 60 a month. I received € 60 for one month. In my opinion, if € 2,500 is asked, we'll get it. Sincerely, [witness 15]."

[Witness 22, living in [place 5] stated summarily (pc B06-274) that the people coming door-to-door put him under serious pressure. They told him he let down his country. With they he means the people coming round the doors; [.....], [E] and a few others. (pv B06-275): If he wanted to visit his brother in Sri Lankahe needed a number. There is a check point of the LTTE in Omantha and there you need a number. He had to pay first, then he'd be given a number. He transferred money to the TCC. By then a large sum had already been requested once for the "incessant waves [project]" . He could not pay it and agreed to pay in instalments. Photograph 1 [E] shows [E]; he lives in [place 5]. Until the LTTE lost he was convinced he needed a number to be able to enter Sri Lanka, and if not that they would keep him detained near Omanthauntil payment was received. [.....] talks as if he wants to hit [you]. He would sometimes call and ask if the money was there. If the witness said it was not, [.....] would say he only needed to make one phone call. The witness believed that he could expect trouble in Sri Lanka. (pv B06-276): [.....] was the person responsible in his district.
[Witness 23], living in [place5] stated summarily (pv B06-291) that she paid because they had explained to her that she could not travel to Sri Lanka if she did not pay. She could not do without the money because her husband had been out of work for months. She was talking about 2005. (pv B06-292): She paid € 500 to [.....]. When she was paying € 25 a month to the TCC three of them came to her house. When she was in Sri Lanka in 2005 the LTTE held her passport for three days to check whether she had paid. She was worried whether her passport would be returned to her. At the time she met people who were crying and who told her they could not pay and had not seen their passports for a week. This witness stated before (pv B06-286) that she had only paid because otherwise she would not be able to visit her sick father in the area controlled by the LTTE.

[Witness 24], living in [place 7] stated summarily (rc 712) that she was approached for money on three occasions, in 2010, in 2009 and

once before then. It was [.....] who approached her. He said that his name was [.....] and that he was responsible for fund raising in [place 7]. He said he belonged to the Tamil Tigers, but also said "the LTTE". (rc 713): The first time [.....]came round, and after that [.....]. She knows [.....] from the time she had a shop in Amsterdam. His name is [.....]. (rc 714): [.....] said he was a person responsible on behalf of the Tigers. He told her: "I have got some stuff, you must buy something. If you do not buy anything you will be in trouble later." She had to give at least € 50. He was going to give the money to the leader. This was Prabhakaran, he mentioned the name. (rc 715): He said: "You know about the Tigers, don't you?" She had heard the Tigers were dangerous. After that [.....] got in touch with her on the phone and told her: I am going to abduct your children. (rc 717): The persons coming round to her place were never alone. (rc 718): [.....] and [.....] were angry. Everyone had paid already. He said: "In [place 7] only three persons have not paid any money."[.....] told her: he was going to abduct children. She had also been told by people in Germany that children were being kidnapped. (rc 719): He said: "Your children". (rc 720): He told her that [.....] had not paid and that he had hit [.....]. (rc 721): [.....] threatened her on the phone because she had not paid any money.

On the basis of these statements and documentary evidence, seen in conjunction, the court concludes that aninsinuative appeal was made by the people collecting door-to-door for the LTTE (including the TCC and other sub-organisations) to the Tamil community in the Netherlands to contribute financially to the activities and/or aims of the LTTE (and sub-organisations). People were visited repeatedly by two or three members of the organisation even if they had indicated they were not prepared to contribute or could not do without the money. There was a minimum one was expected to pay. Exact records were kept of who had and who had not paid, and these records were also passed on to Sri Lanka. During door-to-door visits people were given to understand that if they did not pay they could not enter the area controlled by the LTTE in Sri Lanka or could expect trouble there. On one occasion threats to abduct children were made. Many victims were afraid of the LTTE because of what they themselves, or relatives of theirs, had experienced in Sri Lanka. By all these means the victims were influenced and worked on to a degree where there is question of compulsionunder threatof some offence within the meaning of article 284 CC. This conduct led to such mental pressure that the victims could not put up resistance to it and eventually gave in and paid, for many of the victims wanted to keep their options open of visiting the country of their origin, or still had relatives living there about whose wellbeing they were concerned. They feared this option would be withheld from them if they did not pay. This fear was taken advantage of.
Considering the above the court concludes that the charge of coercion as one of the crimes the commission of which was the object of the organisation, can be legally and conclusively proved.

Count 2 paragraph d: money-laundering
As described above the organisation had the object of obtaining money by offending against the Sanctions Act, by organising lotteries in contravention of the Betting and Gaming Act and by compulsion (coercion). The object of the organisation was therefore obtaining money through the commission of crimes.

On a USB flash drive of the defendant [defendant], seized in his dwelling in[place 3], a letter was found from defendant [E] dated 22 March 2008, in which he writes about the functioning of an individual named [.....] (pv B01-124): "But from my experience he was a faithful and quick worker. Particularly in mattersof money he could be trusted. In my financial division I made use of Mr [.....] in order to readily get all the money in possession of [nickname C]. Moreover I used him for the transportation of large sums of money. [D] knew about this."

The witness [witness 25] states (pv B02-334): "When I get these CDs and DVDs delivered at home by these people, I keep them at my place until the time there is a meeting or some kind of event. Then I take the products along to the event and sell them to the people attending. We do have set prices for the items, but if the people want to pay more that is fine, too. Because the people know where the money is going and what it is for they often pay more. ...Yes, I do make a profit of course, but I have my expenses, such as petrol for my car. The profit is not for me, obviously, but for the aforesaid cause. We send the money to the LTTE because if we send the money to the Sri Lankan government it does not get to the people. ... The money (the profit) I would give in person to someone else, in cash, and he would send the money to Sri Lanka."

From 5 December 2006 up to and including 19 October 2009 a total of € 116,276.63 was paid into the account of the TCC as donations. The bank account was linked to the address [address] in [place 5], the dwelling of defendant [E] (pv B02-596 and B02-597). In this same period 44 cash withdrawals took place from this account totalling € 79,260. The card holders to this bank account are the defendants [E] and [D] (pv B02-597 and B02-598).

From the above it turns out that the organisation transported the money it had raised in cash, by making use of couriers. This took place

during a protracted period of time and through many transactions. From what was consideredin the above with regard to the Sanctions Act it follows that the organisation had the funds that had been raised for the LTTE and which for that reason alone constituted the proceeds of crime available on a structural basis. The court concludes on these grounds that the organisation had the object of habitually having available or concealing the transportation of the funds constituting the proceeds of crime.

Count 2 paragraphs a, b, g and h
The statements and acts in the case file, in view of the context of commemoration in which they were made and in the light of the right to free speech as protected under article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), offer insufficient evidence that the organisation referred to in count 2 had as object -stated briefly- incitement or distribution for the purpose of incitement. The defendant will therefore be acquitted of counts 2 a. and b.

With regard to extortion in count 2 g the court concluded it could not be sufficiently legally and conclusively proved, so that the court will acquit the defendant of this part of the charge.

With respect to count 2 h the court concludes no chargecan be legally and conclusively proved that is penalized by a custodial sentence of eight years or more, so that the defendant must be acquitted of count 2 h as well.

Conclusion with regard to criminal organisation
On the basis of all the above the court concludes it can be legally and conclusively proved that the liberation tigers of Tamil Eelam was one worldwide organisation with a structural and enduring collaborative arrangement of which the TCC and the defendant formed a part. Besides other aims the LTTE also had the object of fund raising in contravention of the Netherlands Sanctions Act. In order to raise funds the LTTE offended against the Betting and Gaming Act and compelled people unlawfully to pay money. Furthermore, the LTTE habitually had available and concealed the transport of funds that were the proceeds of crime. The LTTE had all these offences as objects. Even after the death of the leader Prabhakaran the organisation continued to exist for these purposes and to carry out its activities.

The evidence with regard to count 3
On the basis of United Nations Resolution 1373 of September 2001 the EU drafted Common Position 2001-931 and EC Resolution 2580-2001. Attached to this [latter] Resolution is the EU list of terrorist organisations, which has included uninterruptedly since 29 May 2006, as considered in the above, the Liberation Tigers of Tamil Eelam - 'LTTE '. Pursuant to article 5b of the Corporations (Conflict of Laws) Act the LTTE from that moment on was prohibited by law in the Netherlands and not authorized to perform juristic acts.

The grounds for inclusion in the list were sent to the LTTE by the Council of the European Union on 29 June 2007 (document A08-282). Since then participation in the continued activities of the LTTE within the meaning of article 140 paragraph 2 CCP has been a punishable offence.

From an excerpt from the Chamber of Commerce dated 22 September 2009 it emerges that the Stichting Tamil Coordinating Committee-the Netherlands in The Hague has been registered uninterruptedly since 1985 (pv A01-180). Defendant [D] has been a board member of this association since 1 Jun 1998. Defendant [E] has been a board member since 10 February 1989 and [C] since 1 January 2005 (document C30-0009).

On 4 November 2007 a memorial meeting took place to commemorate the death of six LTTE figthers, including S.P. Tamilselvan, the political leader of LTTE. A DVD of this meeting (pv B02-00083) shows that defendant [B] delivers a speech. When the defendant comes on to make his speech a Tamil text appears on screen. The text was translated as follows: "Mr [B], deputy leader in the Netherlands, Report of the national leader."

The DVD of this meeting also shows that the defendant [C] introduces the speakers. When [C] comes on screen for the first time a Tamil text appears. This text is translated as follows: "[Nickname C], head of propaganda in the Netherlands."

On 27 November 2007 a heroes' day was organised in the Merwestein hall in [place 2]. A DVD of this meeting shows defendant [E] acting in a play. It also shows people going round in the audience with a box collecting money. (pv B02-1726 and 1727). On the computer of defendant [E], seized in his dwelling in [place5], spreadsheets constituting financial surveys have been found. The same spreadsheets were also found on a USB flash drive of defendant [defendant], seized in his dwelling in [place 3] (B02-1590). The

spreadsheet for November 2007 shows that heroes' day 2007 yielded a positive result to the amount of € 14,252.92 (B02-1584).

On 12 and 13 January 2008 a workshop was organised in Germany for Germany, the Netherlands, France and Belgium in which all those responsible, financially or otherwise, as well as important workers and activists participated. This is clear from a document dated 31 January 2008 with the header "Person responsible/leader of international relations, Liberation Tigers of Tamil Eelam, Tamil Eelam"(document B00-2154). According to the document it turns out that the defendants [defendant], [D], [C], [B] and [E] attended this meeting and that they discussed fundraising in the Netherlands.

About this meeting the defendant [defendant] himself stated (pv C01-490): "I did not attend throughout the meeting. I was only told by Joseph that I should go there for two reasons. First, because I was not given calculations by thos countries, and if I went there I could meet and discuss this with them."

On 27 November 2009 a heroes' day was organised in the Maresca hall in [place 1]. Defendant [D] delivered a speech (pv B02-1744) and defendant [E] was also present (pv B02-1743). During this meeting amongst other things books, maps, shawls, flags, belts and umbrellas were sold (pv B04-1741). After [D] had delivered a speech a collection was held in the audience (pv B02-00093).

On a USB flash drive of the defendant [defendant], seized in his dwelling in [place3], a document was found named "financial activity plan "2010" of the LTTE (pv B02-115). It reads, inter alia: "Right now we are faced with a serious financial crisis. Loans we have taken out must be repaid without delay. It has become imperative,therefore, that we engage in fund raising activities. On behalf of our liberation organisation we ask you to lend a helping hand and give generous financial support."

The defendant [defendant] stated at trial (ttz 19-09-2011): "It is correct that I kept the administration of various countries, including that of the Netherlands. ... It is correct that the countries concerned were the ones found on the USB flash drive found at my place." (ttz 20-09-2011): "It is true that the financial orders that I kept account of were not carried out if I did not pass them on. In my time there was no one else in my position. I myself was not an important person, but my position was key to having the instructions carried out."

In the assessment of count 2 the court already concluded on the basis of the evidence referred to there that the LTTE, of which the TCC was one of the sub-organisations, was a criminal organisation and that the defendant together with other persons participated in this organisation. The court repeats this conclusion here and refers to what it already considered in the assessment of count 2. From the above evidence including that further referred to with regard to count 2, it emerges that the defendant even after 29 June 2007 carried out activities for the LTTE together with the defendants [D], [B], [C] and [E], including, amongst other things, actively participating in meetings, fundraising and keeping a financial administration for the LTTE. The activities still took place in 2007, 2008 and 2009 and it has not been made plausible at all that the defendantceased them. On the contrary, it follows from the financial activity plan for 2010 that the activities continued uninterruptedly.
The court therefore concludes that charge 3 can be legally and conclusively proved.

The evidence with regard to count 4
Pursuant to United Nations (Security Council) Resolution 1373 of September 2001 Common Position 2001/931 and EC Regulation 2580/2001 were drafted within the EU. Attached to this Regulation is the EU list of terrorist organisations, which since 29 May 2006 has included uninterruptedly, as considered above already, the Liberation Tigers of Tamil Eelam - 'LTTE'. EC Regulation 2580/2001 prohibits any acts serving to (directly or indirectly) supporting the organisations included in the EU list financially or economically. Any acts contrary to EC Regulation 2580/2001 are prohibited by the Sanctions Regulation against Terrorism 2002 and made punishable as an economic offence under the Sanctions Act in conjunction with article 1, preamble and under 1° of the Economic Offences Act.

The grounds for inclusion in the list were sent to the LTTE by the Council of the European Union on 29 June 2007 (document A08-282). Since then the abovementioned acts have been punishable offences.

In October 2003 a meeting took place in Sri Lanka. In the defendant [E]'s dwelling in [place 5] a DVD of this meeting was found. It shows, amongst other things, a speech delivered by Prabakharan, in which the latter says (pv B04-279): "Now I'll get to the crux of the matter as far as fund raising is concerned, and how we can reach our people. I hope to talk about this with you. ... owing to your fund raising abroad, I believe they were funds raised in [the past] five years, amounting to over 4 billion, we bought arms for that money from overseas, which arms we have deployed for this fight." (pv B04-282): "Fundraising amongst our people should be done on holidays or in a period of combat, otherwise they will think that we only come to them regularly because of the money. This alone is insufficient to

wage a war. What I recommend you to do is the following: suppose you have 1,000 families at your disposal, then we must approach them through propaganda. If we do that, this could weld together a shared bond and could inspire a feeling of participation with us. Suppose you could transfer 10 million a month to us for the purpose of trade, although this amount is a little exaggerated, then relations between the people and us would improve."

On 4 November 2007 a memorial meeting took place in [place 1] to commemorate the death of six LTTE fighters, including S.P. Tamilselvan, the political leader of LTTE. A DVD of this meeting (pv B02-00082) shows that the defendants [D], [C] and [B] are present. [C] introduces various speakers and [D] and [B] deliver a speech. On the computer of defendant [E] , seized in his dwelling in [place 5], spreadsheets with financial surveys have beenfound. The same spreadsheets have been found on a USB flash drive of the defendant [defendant],seized in his dwelling in [place 3] (B02-1590). The spreadsheet for November 2007 shows that this memorial day 2007 yielded a positive result to the amount of € 1,361.50 (B02-1584).

On 27 November 2007 a heroes' day was organised in the Merwestein hall in [place 2]. A DVD of this meeting shows defendant [E] acting in a play. It also shows people going round in the audience with a box collecting money. (pv B02-1726). On the computer of defendant [E], seized in his dwelling in [place 5], spreadsheets constituting financial surveys have been found. The same spreadsheets were also found on a USB flash drive of the defendant [defendant], seized in his dwelling in [place 3] (B02-1590). The spreadsheet for November 2007 shows that heroes' day 2007 yielded a positive result to the amount of € 14,252.92 (B02-1584).

On 12 and 13 January 2008 an LTTE workshop was organised in Germany for Germany, the Netherlands, France and Belgium in which all those responsible, financially or otherwise, as well as important workers and activists participated. This is clear from a document dated 31 January 2008 with the header "Person responsible/leader of international relations, Liberation Tigers of Tamil Eelam, Tamil Eelam"(document B00-2154). According to the document it turns out that the defendants [defendant], [D], [C], [B] and [E] attended this meeting and that they discussed fund raising in the Netherlands.

On a USB flash drive of the defendant [defendant], seized in his dwelling in [place 3], a document was found named "financial activity plan "2010" of the LTTE (pv B02-115). It reads, inter alia: "Right now we are faced with a serious financial crisis. Loans we have taken out must be repaid without delay. It has become imperative, therefore, that we engage in fund raising activities. On behalf of our liberation organisation we ask you to lend a helping hand and give generous financial support."

A letter dated 16 November 2003 and signed by V. Manivannan reads (document B00-3628): "I hereby inform you that Mr [defendant] has been appointed as the Director of the finance for foreign branches by the National Leader."

On a USB flash drive belonging to the defendant [defendant], seized in his dwelling in [place 3] computer files named Parthy, Yarl, LG, Kilyen Kalai were found. In these files under 'income' various country names are listed, showing next to them a currency and amounts. The country names include: Norway, Sweden, Finland, Denmark, Great Britain (London), the Netherlands, Germany, France, Switzerland, Italy, Canada, the United States and Australia (pv B02-2218).

The defendant [defendant] stated at trial (ttz 19-09-2011): "It is correct that I kept the administration of various countries, including that of the Netherlands. ... It is correct that the countries concerned were the ones found on the USB flash drive found at my place." (ttz 20-09-2011): "It is true that the financial orders that I kept account of were not carried out if I did not pass them on. In my time there was no one else in my position. I myself was not an important person, but my position was key to having the instructions carried out."

On the computer of defendant [E], seized in his dwelling in [place 5], spreadsheets with financial surveys have been found. The same spreadsheets have been found on a USB flash drive of the defendant [defendant], seized in his dwelling in [place 3] (B02-1590).

From computer files found on a USB flash drive seized from defendant [defendant] it turns out that the total income according to the administration of defendant [defendant] from January 2005 up to and including July 2009 amounted to € 136,024,702 (pv B02-2570).

In the assessment of count 2 the court already concluded on the basis of the evidence referred to there that the defendant [defendant] kept a financial administration for the LTTE. The court repeats this conclusion here and refers to what it already considered in its assessment. The defendant [defendant] held, as turns out from the above evidence including that further referred to with regard to count 2, even after 29 June 2007 a high position within the LTTE as the person responsible for international finance. The defendant [defendant] thus offended against the Sanctions Act. The LTTE also had, as was already considered above, a worldwide network of organisations

resorting immediately under the International Secretariat and whose object it was to support the LTTE financially. The Netherlands TCC was one of those organisations. Fundraising did in fact take place in the Netherlands, as is clear from the abovementioned evidence, and continued uninterruptedly even after inclusion of the LTTE on the sanctions list in 2007 and after the death of the leader, Prabhakaran, in 2009. The defendant [defendant] received the financial surveys of the TCC from defendant [E]. In this manner, too, the defendant acted in contravention of the Sanctions Act, together with defendant [E].

Charges legally and conclusively proved
Owing to the aforesaidimport of the evidence referred to above -all evidence, in part or in whole used to prove that to which it relates according to its contents- the facts and circumstances they describe are established as fact. On these grounds the court has come to the conclusion and finds legally and conclusively proved thatthe defendant committed count 2, 3, and 4, in the sense that the court considers the following proved -while correctingany typing and grammatical errorsthat may be in the charges by which the defendant is not harmed in his defence. The court also considered the words "committed intentionally" to have been omitted apparently in charges 2 c) and e), as they would not otherwise constitute an offence, and the author of the writ of summons, considering the preamble to this count, intended charge the defendant with offences. Neither does this correction harm the defendant in his defence.
The charges believed to be legallyand conclusively proved, then, are:

2.
That he in the period from 1 October 2003 up to and including 26 April 2010 in [place 1] and [place 2] and [place 3] and [place 4] and [place 5] and [place 6], and elsewhere in the Netherlands, always together with [B] and [C] and [D] and [E] and others participated in an organisation of which the object is to commit offences, to wit:
c) offending against article 2 of the Sanctions Act 1977 in conjunction with the Terrorism Sanctions Regulations 2002, committed intentionally
d) habitual laundering of money (as referred to in article 420ter and/or 420bis of the Netherlands Criminal Code) and
e) offending against article 1 of the Betting and Gaming Act, committed intentionally
f) compulsion, as referred to in article 284 of the Netherlands Criminal Code);

3.
That he, in the period from 29 June 2007 up to and including 26 April 2010 in [place 1] and [place 2] and [place 3] and [place 4] and [place 5] and [place 6], and elsewhere in the Netherlands, always together with [B] and [C] and [D] and [E] and others participated in the continued activities of an organisation proscribed by law, to wit the Liberation Army of Tamil Eelam (LTTE), being an organisation specified in the list referred to in article 2 paragraph3 of EC regulation no. 2580/2001 of the Council dated 27 December 2001 (EC Official Journal L 344);

4.
That he, in the period from 29 June 2007 up to and including 26 April 2010 in [place 3] and [place 5] always together with [E] and others always intentionally in violation of the prohibition under article 1paragraph1 of the Terrorism Sanctions Regulations 2002 in conjunction with article 2 paragraphs 1 and 2, as well as article 3 of EC Regulation no. 2580/2001 of the Council of the European Union dated 27 December 2001 concerning specific restricting measures against certain persons and entities in view of combatting terrorism (EC Official Journal L 344)
including, inter alia
- the prohibition to provide to or for the benefit of the Liberation Tigers of Tamil Eelam (LTTE), being a juristic person, group or entity within the meaning of the List appended to EC Regulation 2580/2001, deposits, other financial assets and economic means, whether directly or indirectly,
- the prohibition to render any financial services for or for the benefit of that LTTE
- the prohibition to knowingly participate in activities the object or effect of which is that the aforesaid prohibitions are circumvented, directly or indirectly, and/or that the freezing of balances, other financial assets and/or economic means which are in the possession of, owned or held by that LTTE are circumvented

(repeatedly)

d) rendered financial services for the LTTE.

Punishability of the charges proved and of the defendant

The defence argued that the defendant should be acquitted because of the absence of unlawfulness to the charges,because the activities the LTTE undertook were in the context of humanitarian support, so these acts do not constitute punishable offences.
It has also been argued that the defendant is not punishable because there was a state of emergency; for there was a great need of humanitarian support for the Tamil population in Sri Lanka, and because it was impossible for the defendant to support the Tamil population in Sri Lanka without making available funds to the LTTE indirectly.

The court dismisses these defences. Is has not been made plausible that the defendant made use of the opportunity under article 6 of EC Regulation 2580/2001 to request authorisation for -stated in summary- the release of frozen assets orthe making available of deposits, other financialassets or economic means to the LTTE. Further, it has not been made plausible that the LTTE has applied for such an exemption. As this opportunity has not been availed of first, it cannot be maintained that there is an absence of material unlawfulness or that there is an emergency.

As no other grounds for exemption from criminal liability have been made plausible either, the charges declared legally and conclusively proved constitute criminal offences and are punishable, and, therefore, the defendant is punishable.

Grounds for the sentence

The court does not follow the defence in its argument that the charges proved constitute two or more offences arising from the same action. The situation in hand entails -briefly stated- participation in a criminal organisation, participation in the continued activities of a proscribed organisation and offending against the Sanctions Act. These offences can be considered in isolation, and each charge in itself constitutes a separate offence of a distinct nature, so that simultaneity is not material, even if the offences may occur very easily at the hands of the same perpetrator within a certain period of time.

The sentence mentioned below corresponds with the seriousness of the offences committed, the circumstances in which they were committed and is based on the nature and personal circumstances of the defendant as have become manifest at the examination in court.

The court acquits the defendant of the charge penalized by themost severe punishment, to wit participation in an organisation the object of which is the commission of terrorist offences. Further, the prosecution is barred from prosecuting parts of count 1.B., and for the remainderof that count acquittal will ensue. For this very reason the sentence that will be imposed will be lighter than that demanded by the prosecution.

In sentencing the court particularly takes the following in consideration. The court has established that thedefendant held a high position within the criminal and proscribed LTTE organisation. The court also established that the LTTE used the Tamil diaspora for fundraising purposes, which funds this organisation then used to achieve its aims in Sri Lanka. The defendant was appointed as the person responsible for international finance, and kept a financial administration on behalf of the LTTE for many years with regard to a great number of countries, including the Netherlands. To this end, the defendant kept in touch with the LTTE in Sri Lanka, and also had contacts in those other countries. Even after the LTTE had been included in the European sanctions list, of which the defendant was aware, he continued his activities. Without the defendant's activities the many millions of Euros found in the defendant's administration would not have become available to the proscribed organisation, the LTTE. For the functioning and continuation of this organisation the defendant was indispensable and played a key role. For this purpose it was not necessary that the defendant had funds or assets of his own or otherwise available to him.

With his activities the defendant participated in the criminal organisation of the LTTE in the Netherlands. This organisation in the Netherlands was predominantly involved in fundraising in support of the LTTE in Sri Lanka. To this end the organisation also had the object to compel the Tamils in the Netherlands to donate money. It counts strongly against the defendant that from an ideological motivation for the struggle for independent Tamilterritory in Sri Lanka he lost sight of the liberty of his fellow Tamils here in the Netherlands. Many Tamils fed Sri Lanka as a result of armed combat that had already been going on for years, and had come to find a safe and quiet existence in the Netherlands. The manner in which the organisation disturbed this by imposing financial obligations on these people and keep them involved in the struggle therefore, counts strongly against the defendant.

The defendant was aware that the LTTE had been included in the European terrorism list and that their activities were proscribed. This

has not prevented the defendant from continuing in his function within the LTTE. Thus the defendant very knowingly ignored both European regulations and national legislation. These regulations are of great international significance as its purpose is joint enforcement or the restoration of international peace and security or the promotion of the international legal order or combatting terrorism. By offending against these regulations for a prolonged period of time the defendant contributed substantially,just because of his indispensible role, to (the advancing) destabilisation and danger in Sri Lanka.

The court has no evidence that the defendant in carrying out the proscribed acts was governed by personal gain. The defendant stated throughout that he had done this in order to help the Tamil population in Sri Lanka. The defendant came to the Netherlands as a refugee and stated that he lost many relatives, including his mother, as a result of the struggle in Sri Lanka. The defendant stated that he wants to be there for his people because of everything his people have lost in the struggle. He regards his people as relatives. The defendant seems to justify his punishable conduct by this ideological motivation.

Although the court understands that the personal losses suffered by the defendant may have left their marks on him until the present day, it cannot and should not be accepted that the defendant places his own motives outside the law or finds a justification for them in it. Punishment in cases like these must set a clear example. It must not only be impressed upon the defendant that his acts are punishable and deserve punishment, it must be clear to others as well that ideological motives may not be a reason to set aside the norm.

Considering the seriousness of the offences proved, the pivotal role of the defendant within the organisation of the LTTE and the way in which the defendant views his punishable conduct justifying it, a custodial sentence of considerable duration is required, amongst other things in order to prevent the defendant to offend against the law again in the future on the basis of his ideological motivation.

Pre-trial detention

As a custodial sentence of considerable duration is in order, particularly based on the defendant's role and the scope of the offences, termination or suspension of the pre-trial detention is not appropriate after weighing the interests of criminal procedure against the personal interests.

Items seized

It has been established concerning the red USB flash drive referred to in 32 seized from the defendantand belonging to him that it was used to commit the offence against the Sanctions Act. The court will therefore confiscate this USB flash drive.

Of the other documents and data carriers seized from the defendant it has not become sufficiently clear to what extent they should be considered as private administration and to what extent as 'business'. Neither is clear, therefore, which items are susceptible to confiscation. Considering the absence of sufficient clues and the large numbers of seized items, the court cannot within reason arrive at the conclusion that these items shouldbe confiscated or withdrawn from circulation.
With regard to the cash seized from the defendant the court considers, that, added up, it does not constitute an amount from which it can only follow that it cannot be the defendant's private money, whichconclusion also follows from the number and the seize of the denominations.

The court will therefore order the return to the defendant of the other seized items according to the list of seized items, as the interest of prosecution no longer opposes this.

Relevant articles of law

The sentence below is based on:
- articles 47, 57, 140 of the Netherlands Criminal Code;
- articles 1, preamble and paragraph1°, 2 and 6 of the Economic Offences Act;
- articles 2 and 3 of the Sanctions Act 1977;
- article 1 of the Sanctions Regulation Terrorism 2002
- article2 of EC Regulation 2580/2001 of the Council of the European Union of 27
December 2001 concerning specific restricting measures against certain persons and entities in view of combatting terrorism (EC Official Journal L 344 of 28.12.2001);

- Council Decision 2007/445/EG of the Council of the European Union;
- Council Decision 2007/868/EG of the Council of the European Union;
- Council Decision 2008/583/EG of the Council of the European Union;
- Council Decision 2009/62/EG of the Council of the European Union;
- Resolution 501/2009 of the Council of the European Union;
- Resolution 1285/2009 of the Council of the European Union.

The decision

The court,

Declares invalid the writ of summons with regard to counts 1.B a. and d. where the phrase 'elsewhere in the world' is concerned;

Declares there is a bar to the prosecution of 1.B.a (where it concerns offences not committed in the Netherlands), 1B.b, 1B.c (where it relates to armed conflict), 1B.d (where it concerns offences not committed in the Netherlands) and 1B.e, 1.B.f,1.B.g, 1.B.h and 1.B.i;

Declares not legally and conclusively proved that the defendant committed the offences referred to in 1.A. and 1.B.a (where committed in the Netherlands), 1.B.c. (where there is no relation to the conflict) and 1.B.d. (where committed in the Netherlands)and 2 paragraphs a, b, g and h and acquits the defendant thereof ;

Declares legally and conclusively proved that the defendant committed the offences he is charged with in counts 2, 3 and 4 and that the proven facts constitute:

With regard to count 2:
Participation in an organisation the object of which is to commit offences;

With regard to count 3:
Participation in the continued activities of an organisation proscribed by law;

With regard to count 4:
Complicity in offending against the provision laid down in article 2 of the Sanctions Act 1977, committed intentionally, repeatedly;

Therefore declares the charges proved and the defendant punishable;

Does not declare legally and conclusively proved the other, or any other, charges and acquits the defendant of them;

Sentences the defendant to:

A term of imprisonment of six years;

Orders that the time spent in custody and remand by the convict beforethis sentence was enforced will be deducted wholly, in as far as this time has not been deducted from any other sentence already;

Declares confiscated:
The red USB flash drive referred to as item no. 32 in the list of seized items appended to this judgment;

Orders the return of the other items on that list of seized items.

This sentence was passed by:
Mr R.A.C. van Rossum, presiding judge
Messrs G.H.M. Smelt and M.T. Renckens, judges
in the presence of Messrs F.A. Haijer and N. Bouda, clerks
and pronounced in open court on 21 October 2011

B

The text of articles 46, 83, 83a, 140 and 140a of the Netherlands Criminal Code.

Article 46 of the Netherlands Criminal Code

From 1 January 2002 up to 1 February 2006:

1. Preparation to commit a serious offence which, by statutory definition carries a term of imprisonment of not less than eight years, is punishable, where the perpetrator intentionally obtains, manufactures, imports, transits, exports or has at his disposal , objects, substances, information carriers, concealed spaces or means of transport clearly intended for the joint commission of the serious offence.
2. In the case of preparation, the maximum principal penalty prescribed for the serious offence is reduced by one half.
3. In case of serious offences carrying a sentence of life imprisonment, a term of imprisonment of not more than ten yearsshall be imposed.
4. The additional penalties for preparation are as for the completed serious offence.
5. By objects are meant all things and all property rights.

From 1 February 2006 up to 1 February 2007:

1. Preparation to commit a serious offence which, by statutory definition carries a term of imprisonment of not less than eight years, is punishable, where the perpetrator intentionally obtains, manufactures, imports, transits, exports or has at his disposal , objects, substances, information carriers, concealed spaces or means of transport clearly intended for the joint commission of the serious offence.
2. In the case of preparation, the maximum principal penalty prescribed for the serious offence is reduced by one half.
3. In case of serious offences carrying a sentence of life imprisonment, a term of imprisonment of not more than fifteen years shall be imposed.
4. The additional penalties for preparation are as for the completed serious offence.
5. By objects are meant all things and all property rights.

From 1 February 2007 to this day:

1. Preparation to commit a serious offence which, by statutory definition carries a term of imprisonment of not less than eight years, is punishable, where the perpetrator intentionally obtains, manufactures, imports, transits, exports or has at his disposal , objects, substances, information carriers, concealed spaces or means of transport intended for the joint commission of the serious offence.
2. In the case of preparation, the maximum principal penalty prescribed for the serious offence is reduced by one half.
3. In case of serious offences carrying a sentence of life imprisonment, a term of imprisonment of not more than fifteen years shall be imposed.
4. The additional penalties for preparation are as for the completed serious offence.
5. By objects are meant all things and all property rights.

Article 83 of the Netherlands Criminal Code

From 1 January 1988 until 10 August 2004

repealed.

From 10 August 2004 to 1 February 2007:

A terrorist crime is understood to mean:

1°. any of the crimes described in Articles 92 to 96, 108, paragraph two, 115, paragraph two, 117, paragraph two, 121, 122, 157, section 3°, 161quater, section 2°, 164, paragraph two, 166, section 3°, 168, section 2°, 170, section 3°, 174, paragraph two, and 289, as well as in Article 80, paragraph two, of the Nuclear Energy Act, if the crime has been committed with a terrorist objective;

2°. any of the crimes which carry prison sentences by virtue of Articles 114a, 114b, 120a, 120b, 130a, 176a, 176b, 282c, 289a, 304a, 304b, 415a and 415b, as well as Article 80, paragraph three, of the Nuclear Energy Act;

3°. any of the crimes described in Articles 140a, 282b, 285, paragraph three, and 288a, as well as in Article 55, paragraph five of the Weapons and Ammunition Act, Article 6, paragraph four, of the Economic Offences Act, Article 33a of the Explosives for Civil Uses Act and Article 79 of the Nuclear Energy Act.

From 1 February 2007 to this day:

A terrorist crime is understood to mean:

1°. any of the crimes described in Articles 92 to 96, 108, paragraph two, 115, paragraph two, 117, paragraph two, 121, 122, 157, section

3°, 161quater, section 2°, 164, paragraph two, 166, section 3°, 168, section 2°, 170, section 3°, 174, paragraph two, and 289, as well as in Article 80, paragraph two, of the Nuclear Energy Act, if the crime has been committed with a terrorist objective;
2°. any of the crimes which carry prison sentences by virtue of Articles 114a, 114b, 120a, 120b, 130a, 176a, 176b, 282c, 289a, 304a, 304b, 415a and 415b, as well as Article 80, paragraph three, of the Nuclear Energy Act;
3°. any of the crimes described in Articles 140a, 282b, 285, paragraph three, and 288a, as well as in Article 55, paragraph five of the Weapons and Ammunition Act, Article 6, paragraph four, of the Economic Offences Act, Article 33b of the Explosives for Civil Uses Act and Article 79 of the Nuclear Energy Act.

Article 83a of the Netherlands Criminal Code
From 10 August 2004 to this day:

A terrorist objective is understood to mean the objective to cause serious fear in part of the population in a country and/or to unlawfully force a government or international organisation to do something, not to do something, or to tolerate certain actions and/or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation.
Article 83b of the Netherlands Criminal Code
From 1 April 2010 to this day:

A serious offence for the preparation or facilitation of a terrorist crime is understood to mean any of the crimes described in Articles 131, paragraph two, 132, paragraph three, 205, paragraph three, 225, paragraph three, 285, paragraph four, 311, paragraph one, section 6°, 312, paragraph two, section 5°, 317, paragraph three in conjunction with 312, paragraph two section 5°, 318, paragraph two, 322a, 326, paragraph two and 354a.

Article 140 of the Netherlands Criminal Code
From 26 February 1999 to 10 August 2004:

1. Participation in an organisation that has as its object the commission of serious offences is punishable by a term of imprisonment of not more than six years or a fine of the fifth category.
2. Participation in the continued activities of a juristic person that has been proscribed in a final judgment and consequently has been dissolved is punishable by a term of imprisonment of not more than one year or a fine of the third category.
3. With respect to the founders, leaders or directors the term of imprisonment may be increased by one third.
4. Participation as described in the first paragraph is understood to mean the giving of financial or other material support to and/or the raising of funds or recruiting of persons for the benefit of the organisation referred to in that paragraph.

From 10 August 2004 to 1 February 2007
1. Participation in an organisation that has as its object the commission of serious offences is punishable by a term of imprisonment of not more than six years or a fine of the fifth category.
2. Participation in the continued activities of a juristic person that has been proscribed in a final judgment and consequently has been dissolved is punishable by a term of imprisonment of not more than one year or a fine of the third category.
3. With respect to the founders, leaders or directors the term of imprisonment may be increased by one third.
4. Participation as described in the first paragraph is understood to mean the giving of financial or other material support to and/or the raising of funds or recruiting of persons for the benefit of the organisation referred to in that paragraph

From 1 February 2007 to this day
1. Participation in an organisation that has as its object the commission of serious offences is punishable by a term of imprisonment of not more than six years or a fine of the fifth category.
2. Participation in the continued activities of a juristic person that has been proscribed in a final judgment or is proscribed by law or with respect to which an irrevocable declaratory judgment has beenpronounced within the meaning of article 5a paragraph one of the Conflict of Laws Corporation Act is punishable by a term of imprisonment of not more than one year or a fine of the third category.
3. With respect to the founders, leaders or directors the term of imprisonment may be increased by one third.
4. Participation as described in the first paragraph is understood to mean the giving of financial or other material support to and/or the raising of funds or recruiting of persons for the benefit of the organisation referred to in that paragraph.

Article 140a of the Netherlands Criminal Code
From 10 August 2004 to 1 February 2006:

1. Participation in an organisation that has as its object the commission ofterrorist crimes is punishable with a term of imprisonment of notmore than fifteen years or a fine of the fifth category.
2. Founders, leaders or directors are punishable with lifeimprisonment or a term of imprisonment of not more than twenty years or afine of the fifth category.
3. Article 140, paragraph four, applies by analogy.

From 1 February 2006 to this day:
1. Participation in an organisation that has as its object the commission of terrorist crimes is punishable with a term of imprisonment of not more than fifteen years or a fine of the fifth category.
2. Founders, leaders or directors are punishable with life imprisonment or a term of imprisonment of not more than thirty years or a fine of the fifth category.
3. Article 140, paragraph four, applies by analogy.