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Rechtsgebied:	Straf
Soort procedure:	Eerste aanleg - meervoudig
Inhoudsindicatie:	The defendant is tried for abetting genocide, attempted genocide, murder, conspiracy to genocide, incitement to genocide and war crimes, commited in Gikondo in Kigali, Rwanda. The court sentences the defendant to the maximum term of imprisonment of 6 years and 8 months.
Vindplaats(en):	Rechtspraak.nl

Uitspraak

Unofficial translation of LJN BZ4292 (summary and grounds for punishment).
Only the Dutch text of the full verdict is authentic

Summary of the verdict

1. The defendant is tried for abetting genocide, attempted genocide, murder, conspiracy to genocide, incitement to genocide and war crimes, committed in her residential environment, the neighborhood of Gikondo in Kigali, Rwanda. Chapter 1 of the judgment summarises the indictment.

2. Chapter 2 gives the legal grounds for jurisdiction of the Dutch court, even though the criminal offences are said to have been committed between 1990 and 1994 in Rwanda. It is important in this regard that the defendant obtained Dutch nationality on 7 December 2004.

3. Chapter 3 explains that the statute of limitation has expired for the charge of incitement to genocide with regard to the period before 1 October 1991. This is the result of an unfortunate legislative decision, namely that the crime of incitement to genocide was only made punishable by virtue of a provision of the Netherlands Criminal Code (article 131).

4. Chapter 4 describes how the investigation proceeded. Initially, the investigation focused on the defendant's husband who, at the time, was a member of parliament in Rwanda for the MRND, a party closely affiliated to president Habyarimana and his entourage. Later, the investigation was extended to include the defendant. After the defendant's arrest on 21 June 2010 the examining magistrate, in close cooperation with the trial judges, carried out a detailed inquiry, in close consultation with both the prosecution and the defence. The examining magistrate conducted an on the spot inspection in Gikondo, appointed experts and heard the defendant. Pièce de resistance of his investigation was the fact that he heard 71 witnesses, most of them abroad. The examining magistrate laid down these witness statements in reports which represent an almost 100% exact and verbatim recording. Chapter 4 also records what happened during the pro forma hearings and during trial.

5. Based on public sources and an expert report by Professor Doctor André Guichaoua, this chapter sketches the political-historical context of events in Rwanda from 1 October 1990 until the middle of July 1994. The expert report focuses on the increasing ethnic tensions between Hutus and Tutsis, particularly following the invasion in Rwanda by the predominantly Tutsi army of the Rwandan Patriotic Front (RPF) on 1 October 1990. Poisonous anti-Tutsi propaganda inundated the country. The report characterizes the political party Coalition pour la Défense de la République (CDR) as an extremist party of and for Hutus that incited to kill Tutsis. This was evident from their singing a song called "Tubatsembesembe" ("We will kill them all") at mass party rallies. In the course of 1993, Rwandan human rights organisations and a special United Nations observer reported massacres among the Tutsi population on a scale that could fall within the purview of the genocide convention. When the aircraft carrying president Habyarimana was brought down on 6 April 1994, this was the go-ahead for massacres against Tutsis and moderate Hutus, as well as a resumption of the armed conflict between the RPF and Rwandan government forces (FAR). It is an adjudicated fact that the mass murder of Tutsis occurred with the intent to destroy the Tutsi population as such.

6. Chapter 6 is about the defendant. As "madame deputé" she was held in high regard in Gikondo.

7. Chapter 7 describes the defendant's living environment. The expert reported how Gikondo became a hotspot of political activism by the MRND and the CDR and that the violent youth militias of these parties (Interahamwe and Impuzamugambi) were lord and master in this neighborhood.

8. The evidence gathered against the defendant consists almost entirely of witness statements. In the first place, the court takes into account the statements made to the examining magistrate that incriminate the defendant. The court wishes to emphasize that great caution is required in admitting the statements as evidence due to the lapse of time and the great differences from a political, cultural and socio-economic viewpoint between the Netherlands as it is now and Rwanda as it was then. The court will assess the statements on the basis of the following considerations: the person of the witness; the way in which the statement was obtained; the consistency of the statements made by the witness; the question whether a statement is supported by other statements obtained from other witnesses; the question whether a statement is supported by other (objective) evidence; and the plausibility of the statement.

9. Chapter 9 addresses two general meritorious defences put up by the defendant's counsel. In the first place this is the assertion of a "conspiracy" of incriminatory witnesses. In the second place, according to the defence, the implicating statements cannot be true because the defendant was friendly with Tutsis and saved the lives of a number of them. The court concludes that the first assertion does not transcend mere speculation or suggestion. With regard to the second assertion, the court points out that it has emerged from several court judgments that even notorious Hutu-extremists could have friendly relationships with individual Tutsis. Moreover, from telephone conversations intercepted in the course of the investigation, it has become clear that the defendant repeatedly commented about Tutsis in very condescending and hostile ways.

10. In chapter 10 the incriminating statements of thirteen crucial witnesses are tested against the aforesaid considerations: the person of the witness; the way in which his or her statement was obtained and the consistency of the evidence given by the witness. With regard to two witnesses the court concludes that their statements must be disregarded altogether. With regard to four more witnesses the court holds that parts of their statements must be excluded from evidence.

11. In chapter 11 the court first establishes that the defendant was a member of the CDR at the time. Important evidence for this is an intercepted telephone conversation in which the defendant told a friend about her CDR-membership. From witness statements it further emerges that it was generally known in the neighborhood that the defendant was a member of the CDR. The court furthermore concludes on the basis of eleven witness statements that the defendant often acted as animatrice at CDR rallies both in and nearby her compound, during which rallies people were incited to hatred and called upon to kill Tutsis. The defendant led those present at the rallies - often underprivileged youths from the neighborhood - in singing Tubatsembesembe. Regularly, random Tutsi local residents were threatened after the rallies. The defendant also actively recruited youths for the Impuzamugambi. The argument put up by the defence that the witnesses have not testified uniformly about this is rejected, particularly because of the multitude and diversity of CDR activities that apparently occurred in the defendant's street for a long time. This chapter also scrutinizes those witness statements which according to the defence exonerate the defendant from any involvement in CDR activities. The court concludes that none of these statements impairs the evidential value of the incriminatory evidence. The court does not adopt the prosecution's conclusion that during public rallies people were incited to attack specific Tutsi-individuals. Neither does it find legally and conclusively proved that certain Tutsis were earmarked as special targets at closed meetings, which the defendant allegedly attended. The court finds that there is no evidence that the defendant was responsible for drawing so-called "hit lists". Nor does the court share the prosecution's conclusion that the defendant should be regarded as the "general-mother" of the CDR youth in Gikondo, giving orders to local militia leaders.

12. In chapter 12 the court qualifies leading the crowds in the singing of "Tubatsembesembe" at public rallies as incitement to genocide. Tubatsembesembe means: "We will kill them all". In the political context of the day, there is no doubt whatsoever that the defendant had the intent to destroy the Tutsi population in her living environment as such. The incitement was direct and occurred in public. According to previous decisions of the International Criminal Tribunal for Rwanda the Tutsi population is a protected group within the meaning of the Genocide Convention. It follows that all legal requirements for incitement to genocide are fulfilled.

13. In view of the charges to be discussed hereinafter, chapter 13 sets out what the legal requirements are for the following forms of criminal liability: co-perpetration, abetting and complicity.

14. On 22 February 1994 many Tutsis in Gikondo became victims of an outburst of violence following the killing of Martin Bucyana, chairman of the CDR and a friend and neighbor of the defendant's. In chapter 14 the court acquits the defendant of involvement in this massacre. The fact that the defendant had incited youths to killing Tutsis during the animations is in itself insufficient to hold the defendant criminally liable for the violence committed on 22 February 1994. Incitement to a criminal offence is not equivalent to being a co-perpetrator of a criminal offence which is subsequently committed. There is insufficient evidence that there was a close and intentional cooperation between the defendant and the actual authors of the attacks. The requirements for abetting and complicity have not been fulfilled either.

15. On 9 April 1994, a massacre occurred at the Pallotti Church in Gikondo. In chapter 15 the defendant is acquitted of this charge. It is repeated that inciting to commit an offence just before it is committed is not equivalent to being a co-perpetrator of the offence. There is no evidence of close and intentional cooperation with the killers, nor of abetting or complicity to the massacre.

16. Between 8 and 11 April 1994 some Tutsis had hidden on the ceiling of the home of [Witness 1]. Armed militias searched the dwelling for hidden Tutsis on three occasions, without success. [Witness 1] stated that the militia members did so with the defendant's permission. In chapter 16 the court concludes that this witness's statement is very reliable. However, because this statement is not corroborated by evidence from any other source, the defendant must be acquitted of this charge pursuant to article 342 sub 2 of the Netherlands Code of Criminal Procedure, the so-called unus testis nullus testis (one witness is no witness) provision.

17. In chapter 17 the defendant is also acquitted of involvement in the murder of [Victim A] as charged. This [Victim A] had sought refuge in the home of another resident of Gikondo. Militia members found him there and killed him. The defendant's involvement allegedly consisted of having ordered his murder after another local resident had betrayed [Victim A] to her. The court does not consider this legally and conclusively proved.

18. In chapter 18 the defendant is also acquitted of conspiracy to genocide. There is insufficient legal and conclusive proof that she "agreed" with another person or other persons to commit genocide.

19. In chapter 19 the defendant is acquitted of the war crimes as charged. The charges include threats and outrages upon the personal dignity of Tutsi fellow local residents during the aforementioned animations. The court holds that there is no sufficiently close correlation (nexus) between the defendant's activities and the armed conflict between the Rwandan government forces and the RPF. It has been established that the defendant was an ardent CDR propagandist and that the CDR was ideologically closely connected to the FAR. This single fact is insufficient to establish a close correlation between the defendant's activities and the armed conflict. The court repeats that, contrary to what the prosecution has argued, the defendant was not the

“general-mother” of the Impuzamugambi.

20. The defendant committed the serious offence of incitement to a punishable offence, i.e. genocide, several times. This offence can be fully imputed to her.

21. [Witness 6] submitted a claim for compensation to the amount of Euro 2,500. The claim concerns non-material damages as a result of counts 2 and 6 of the indictment. In chapter 21 the court does not allow the claim because the defendant is acquitted of these charges.

22. Until 1 October 2003 incitement to genocide was penalized by a term of imprisonment of not more than five years. As the defendant has committed this offence several times, a term of imprisonment of 6 years and 8 months can be imposed on her. There are no personal circumstances to state as grounds for mitigating the sentence. Mindful of the fact that this punishment does not do justice to the gravity of the charges which have been legally and conclusively proved, the court sentences the defendant to a term of imprisonment of 6 years and 8 months.

Grounds upon which the punishment is based

1. The prosecution has demanded life imprisonment. The prosecution’s intention was to secure convictions for (almost) all charges, namely: genocide, committed several times; being a co-perpetrator to attempted genocide, committed several times; being a co-perpetrator to murder; complicity to genocide; incitement to genocide and war crimes.

2. The court only found that there were conclusive legal grounds to prove that the defendant had committed the serious offence of incitement to genocide. The demand made by the prosecution for life imprisonment cannot therefore be a guide to the court for imposing a punishment on the defendant.

3. In sentencing, the court will take into consideration the seriousness of the charges that have been legally and conclusively proved, the circumstances in which the offences have been committed, the intended objects of the sentence and the defendant’s personal circumstances.

4. Between April and July 1994 hundreds of thousands of Tutsis and moderate Hutus were ruthlessly slaughtered during the genocide in Rwanda. Approximately 75% of all Tutsis in Rwanda were killed during this short period. The genocide shocked humanity, particularly with regard to its large scale, the short time span in which the genocide took place and the manner in which these mass murders occurred. The genocide did not erupt out of the blue. During the years preceding the genocide, preparations had been made. Hutus had been systematically incited to form hatred and to cause violence against Tutsis. The defendant embraced this extreme racist ideology, propagated it and contributed to the violent climate as much as she could within her own sphere of influence. The incitement to genocide constituted an important, if not indispensable chain in a sequence of events, which eventually led to the genocide.

5. The defendant committed the offence of incitement to genocide over a long period of time and did so repeatedly. During public rallies she called upon mostly underprivileged youths to kill Tutsis. She did this with the intent to destroy the Tusti population in her neighborhood, as is already clear from the song she led: Tubatsembesembe, which means “we will kill them all”. As a result, her Tutsi fellow local residents lived in mortal fear for a number of years. Out of the Tutsis who had once lived in her neighborhood, only a few survived the genocide.

6. Incitement to genocide is an international crime. It is one of the most serious crimes both in the Netherlands and in the international legal order. The court had to contend with an unfortunate legislative decision, namely that the crime of incitement to genocide was only made punishable by virtue of a provision of the Netherlands Criminal Code (article 131), and was as a result punishable by a term of imprisonment of not more than five years. With the coming into force of the International Crimes Act, the law now provides for a maximum prison sentence of 30 years for this offence. The court is legally bound, however, by the maximum penalty that was in force at the time the offences had been committed.

7. As the defendant committed incitement to genocide several times, a maximum term of imprisonment of 6 years and 8 months can be imposed according to article 57 of the Netherlands Criminal Code.

8. The sentence in this case is primarily in relation to the extreme gravity of the offence. Considering the universal nature of the offences, the sentence is also in relation to the damage the defendant has inflicted to the international legal order, and to highlight the importance of the humanitarian standards that are at issue. The sentence in this case should also serve as a deterrent effect on others who may contemplate committing such heinous crimes.

9. There is not a likely risk that the defendant will commit similar offences in the future, in light of the special circumstances of the crime. The court does not, however, believe that this factor should lead to a reduction of the sentence.

10. The court finds no reason not to impose the maximum sentence on the defendant by virtue of either her personality or her personal circumstances. The offence can be fully imputed to her. At the time the offences were committed, the defendant was an educated woman. She had been raised in a wealthy and prominent family and had attended university. The defendant, contrary to many of her compatriots, was not illiterate and/or economically dependent. The defendant should and could have known better and could have made different choices, as others had. The fact that she has never before been in trouble with the law in the Netherlands is of no consequence whatsoever. Similarly, the facts that the defendant is 66 years of age and that the offences were committed some twenty years ago also do not justify a reduction of the sentence.

11. The defendant expressed negative views about Tutsis and still maintained contacts with Hutu extremists until just before her arrest. These facts can only be interpreted as evidence that she still adhered to the anti-Tutsi ideology. During the trial, the defendant has not expressed a trace of insight, repentance or regret. The court strongly holds it against the defendant that she takes no responsibility for the offences she has committed and the harm she has caused. During the trial, the defendant remarked to the witness Eugénie, who herself had scarcely survived the genocide and whose husband was killed during it: “but

you’re not dead, are you?” This cold and callous reaction illustrates that the defendant has no empathy whatsoever for survivors of the genocide, for which she is co-responsible.

12. Mindful of the fact that this punishment does not do justice to the gravity of the charges, the court sentences the defendant to the maximum term of imprisonment of 6 years and 8 months