

Press release issued by the Registrar

Decision on admissibility

[Van Anraat v. the Netherlands](#)
(application no. 65389/09)

Application inadmissible
unanimous

Dutch Businessman Properly Convicted as Accomplice in Iraqi Mustard Gas Attack

The applicant, Frans Cornelis Adrianus van Anraat, is a Netherlands national who was born in 1942. He is currently serving a sentence of imprisonment in Zoetermeer Prison (the Netherlands).

Principal facts

Adrianus van Anraat was a businessman. Between April 1984 and August 1988 he bought and then supplied to the Iraqi Government more than 1100 metric tons of the chemical thiodiglycol – which is used to produce the chemical commonly known as mustard gas. After 1984 he was the Iraqi Government's sole supplier of the chemical.

Mustard gas is known to have been used by the Iraqi military against Iranian armed forces and civilians during the Iran-Iraq War (1980-1988) and in attacks against the Kurdish population of northern Iraq. One such attack, carried out on the town of Halabja in March 1988, killed thousands of civilians and injured thousands more. Among those later considered primarily responsible were Saddam Hussein, President of Iraq from 1979 to 2003, and Ali Hassan Abd al-Majid al-Tikriti, Secretary General of the Ba'ath Party in northern Iraq from 1987 to 1989, nicknamed "Chemical Ali".

Mr van Anraat was tried in the Netherlands for supplying chemicals including thiodiglycol to Iraq as well as materials and advice for the manufacture of chemical weapons, in violation of international law. The charges referred to several provisions of domestic legislation, including section 8 of the War Crimes Act (section 8).

He was convicted by the Netherlands Court of Appeal of being an accessory to war crimes proscribed by section 8; that is to violations of the "laws and customs of war" committed by Saddam Hussein, Ali Hassan al-Majid al-Tikriti and another/others in a) a non-international or international conflict, as regards gas attacks on the Kurdish population of northern Iraq in Halabja and elsewhere and b) in an international conflict, as regards gas attacks on Iran and in border areas of Iraq adjoining Iran. The Court of Appeal defined "laws and customs of war" as customary international law, in particular the prohibition of the use of chemical weapons, poison or poisonous weapons, the use of asphyxiating or poisonous gases, the prohibition of the infliction of unnecessary suffering and the prohibition of attacks targeting civilians and combatants indiscriminately; the court cited the Geneva Gas Protocol of 1925

and the four 1949 Geneva Conventions. Mr van Anraat was sentenced to 17 years' imprisonment.

The applicant lodged an unsuccessful appeal on points of law with the Supreme Court.

The Procurator General to the Supreme Court submitted an advisory opinion, to which Mr van Anraat responded, with a new argument, that Saddam Hussein and Ali Hassan al-Majid al-Tikriti were protected by the principle of sovereign immunity as members of the government of a sovereign State. Since they were beyond the jurisdiction of the Netherlands courts, he should not have been tried as an accessory.

On 30 June 2009 the Supreme Court dismissed the appeal on points of law.

Complaints, procedure and composition of the Court

The applicant complained under Article 6 (right to a fair hearing) of the European Convention on Human Rights that the Supreme Court had failed to answer his argument that, since Saddam Hussein and Ali Hassan al-Majid al-Tikriti were beyond the jurisdiction of the Netherlands courts, he ought not to have been convicted as their accessory. He also complained under Article 6 or Article 7 (no punishment without law) of the Convention that section 8 of the War Crimes Act, in referring to international law, did not comply with the requirement that criminal acts be described with sufficient precision (*lex certa*).

The application was lodged on 4 December 2009.

The decision on admissibility was given on 6 July 2010 by a Chamber composed as follows:

Josep **Casadevall** (Andorra), **President**,
Elisabet **Fura** (Sweden),
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (Netherlands),
Ineta **Ziemele** (Latvia),
Ann Power, **judges**,

and also Santiago **Quesada**, **Section Registrar**.

Decision of the Court

Article 6

Jurisdiction of the Netherlands Courts

The Court noted that Mr van Anraat's argument about sovereign immunity was not contained in his statement of grounds of appeal; it was made for the first time in his written response to the Procurator General's advisory opinion, at the final stage of the proceedings before the Supreme Court gave judgment. It was not a requirement of "adversarial proceedings" for a defendant to be allowed to submit fresh arguments that had no bearing on any point contained in the advisory opinion itself. In the circumstances of his case, with the applicant making use of the opportunity offered to submit an entirely new argument at the latest possible stage of proceedings, Article 6 § 1 did not compel the Supreme Court to provide a reasoned response.

In addition, had Mr van Anraat wished the Supreme Court to reconsider or refine its case-law, there had been nothing to prevent him from raising that issue sooner.

The Court therefore declared that complaint manifestly ill-founded.

Article 7

Legal certainty

The applicant argued: that the Supreme Court ought not to have found that the vagueness of section 8 was “inevitable”, that “customs of war” was too general and imprecise a term and that the 1925 Geneva Protocol no longer reflected the reality of contemporary warfare. He submitted that the use by Iraq of mustard gas as a weapon of war could not be seen as morally or legally different from the use of napalm (an incendiary weapon) by United States forces during the Vietnam War and that it was insignificant in comparison with the possession of nuclear weapons by a small number of States and their actual use in anger in 1945. In those circumstances, he argued, he could not have been expected to realise at the time of the Iran-Iraq war that his business activities were illegal.

The Court noted that incendiary and nuclear weapons were subject to separate regimes not relevant to Mr van Anraat’s case; his comparison of mustard gas with napalm and nuclear weapons was therefore irrelevant to the case before the Court. The Court could consider only whether the applicant was held guilty of a “criminal offence” on account of acts which constituted a “criminal offence under national or international law” at the time when they were committed.

The Court found that, at the time when the applicant supplied thiodiglycol to the Iraqi Government, a norm of customary international law existed prohibiting the use of mustard gas as a weapon of war in an international conflict.

When the applicant was committing the acts which ultimately led to his prosecution, there was nothing unclear about the criminal nature of the use of mustard gas either against an enemy in an international conflict or against a civilian population in border areas affected by an international conflict. Therefore, the applicant could reasonably have been expected to be aware of the state of the law and, if need be, to take appropriate advice.

The Court therefore declared that complaint manifestly ill-founded.

The decision is available in English. This press release is a document produced by the Registry; the summary it contains does not bind the Court. The decision is accessible on its internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.