Israeli official: Dutch courts should reject war crimes case against Gantz

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Israel strongly believes that a Dutch court, which is hearing a case against Benny Gantz for alleged war crimes during the 2014 Gaza War, should dismiss the charges, Deputy Attorney-General (International Law) Roy Schondorf told The Jerusalem Post Tuesday morning as the hearing was in session.

Not yet at a trial stage, the hearing is over whether Dutch courts have the jurisdiction to hear the allegations against Israeli officials, including Gantz and former IDF Air Force Chief Maj. Gen. (res.) Amir Eshel.

Israeli soldiers and commanders may also be on the hot seat before the International Criminal Court (ICC) in The Hague, but Tuesday’s hearing – which also happens to be Election Day – is a local Dutch court proceeding that is unrelated to that.

In fact, the ICC preliminary probe of Israel’s conduct in the 2014 war is moving slowly and is not expected to come to any conclusion earlier than December, with real progress possibly even farther off.

Schondorf told the Post that, “The event that is the subject of this lawsuit was part of a large-scale military operation that came in response to a barrage of rocket attacks fired by Hamas at Israeli civilians.

“The air strike referred to in the lawsuit was directed against a structure that was being used as a military command and control center and against the military operatives who were manning it,” he said. Continuing, Schondorf explained that the air strike resulted “in the death of four military operatives affiliated with Hamas and Islamic Jihad, three of whom were members of the plaintiff’s family.”

Moreover, he said, “This event was subsequently carefully reviewed by the relevant authorities in Israel and the airstrike was found to be lawful. Israel has a robust legal system that provides various relevant mechanisms in order to address the plaintiff’s allegations and to enable him to legally challenge these findings.

“Yet, the plaintiff has chosen not to avail himself of these mechanisms. Instead, the plaintiff in this case is trying to sue former senior Israeli officials in a Dutch court, for a sovereign act undertaken in their official capacity on behalf of a foreign state,” Schondorf said.

According to Schondorf, the plaintiff is “attempting to circumvent fundamental and long-recognized principles of state immunity and is asking a Dutch court to pass judgment on an official action of a sovereign state, as well as on the adequacy of its legal system. Israel has great respect for the Dutch legal system and is confident that the Dutch court will rule that this case does not belong in Dutch courts.”

On Monday, the Palestine Justice Campaign said in a statement that the case relates to Ismail Ziada and is against Gantz and Eshel for allegedly ordering attacks that led to the killing of six members of Ziada’s family. Ziada is claiming that the IDF prosecution uses discriminatory practices against Palestinians which prevent him from receiving justice in Israel.

According to the principle of universal jurisdiction, some countries – especially in Europe – allow prosecution of foreign officials for war crimes if the local state refuses to prosecute.

All prior attempts at using universal jurisdiction against Israeli officials – sometimes described as “lawfare” – have failed with European courts, finding that they did not have jurisdiction for a variety of reasons, though some Israeli victories came only at the appeals level or from executive branch intervention.

The IDF’s general position is that it tried hard to limit civilian casualties by warning civilians to leave conflict areas, but that if Hamas embeds itself within civilian locations then the Hamas act of embedding makes those locations liable to attack – assuming the rules of proportionality are also met.

“The IDF is the most moral army in the world and I am proud to have served in it for almost 40 years and to have commanded it. As prime minister, I will continue to give my full support to the IDF in all arenas,” Gantz said in response to the case.

The Dutch court scheduled its decision for January 29. Interestingly, this means its decision will come down after the ICC Prosecution will likely be issuing a decision about similar issues.