



**TRIAL OF ANWAR RASLAN and EYAD AL-GHARIB**  
Higher Regional Court – Koblenz, Germany  
Trial Monitoring Report 27  
Hearing Dates: February 17 & 18, 2021

*CAUTION: Some testimony includes descriptions of torture.*

**Summaries/Highlights:<sup>1</sup>**

**Trial Day 60 – February 17, 2021**

German translations of three documents regarding the Central Crisis Management Cell (CCMC), provided by the Center for International Justice and Accountability (CIJA), were read out in court, and introduced as evidence. The judges then severed the trial.

In the trial against Eyad Al-Gharib, the prosecutors provided their closing statement. They acknowledged the bravery of survivors who testified before the German police and/or in court, despite the threats this posed on them and their loved ones. The prosecutors further concluded that the Syrian government has been conducting a widespread and systematic attack against their own people since 2011. They put Al-Gharib's acts in the context of this attack and concluded that he is guilty of aiding and abetting crimes against humanity (CAH) in form of torture and severe deprivation of liberty according to the German Code of Crimes against International Law (VStGB). Weighing in on the totality of evidence as well as mitigating and aggravating factors, they requested 5.5 years imprisonment.

**Trial Day 61 – February 18, 2021**

Al-Gharib's defense read out their closing statements. After thanking the judges for their "elegant" handling of the trial, they paid respect to all survivors as well as insiders who were willing to testify in court. They then provided two alternative statements. The first one was "hypothetically assuming that their client was found guilty". In this statement, they concluded that Al-Gharib significantly contributed to the prosecution against Raslan and called for a sentence of two years on parole. In their second alternative statement, the defense claimed that Al-Gharib acted under duress, calling for an acquittal.

<sup>1</sup> Throughout this report, [information located in brackets are notes from our trial monitor] and "information placed in quotes are statements made by the witness, judges or counsel." Note that this report does not purport to be a transcript of the trial; it is merely an unofficial summary of the proceedings. The names of witnesses have been redacted.

**Day 60 of Trial – February 17, 2021**

The hearing began at 9:40 with 6 media representatives and 13 spectators present.<sup>2</sup> Attorney Mr. Sattelmaier appeared as replacement for Plaintiff Counsel Khubaib Ali Mohammed. Plaintiff counsels Manuel Reiger and Andreas Schulz were not present.<sup>3</sup> One of the court interpreters was excused from the session.

After starting the session, Presiding Judge Kerber announced that the court would grant the prosecutors' request to sever the trial, but first the translations of three documents regarding the CCMC would be read out in court. She added that the translation of one of the documents was already on the case file, as it was part of the German Federal Criminal Police's (BKA) structural investigations. The court interpreter would translate it ad hoc in court to check the existing translation. The two other documents were already translated, and these translations would be read out by the judges.

Judge Wiedner explained that the first document was a facsimile dated April 21, 2011. He read out the translation:

[the following is a recreation of the document based on what the court monitor was able to hear in court]

*Syrian Arab Republic*

*[...]*

*Branch 294 of the Intelligence Services*

*No. 38846/294*

*Date: April 20, 2011*

*Top secret*

*Urgent*

*Circular*

*Letter 378 from April 18, 2011*

*CCMC meeting under the lead of the general secretary of the region regarding the security and political situation. Results:*

- 1. Phase of tolerance is over: The saboteurs relied too heavily on our tolerance and requested too much. They equipped themselves with arms and possess a hostile political disposition.*
- 2. Demonstrators and saboteurs need to be confronted with the following means:*
  - a) no releases and transfers to judicial bodies for detainees*
  - b) use of arms against armed people, however no civilians should be harmed*
  - c) confiscate motorcycles that are used by armed people*
  - d) arrest people without raids*

<sup>2</sup> No one requested access to Arabic interpretation.

<sup>3</sup> Presiding Judge Kerber mentioned that she only was informed about attorney Sattelmaier's appearance yesterday evening. When asked about the names of the plaintiffs that he is supposed to represent, he did not know and added that his appearance was due to an emergency on plaintiff counsel Mohammed's side. Judge Kerber added the names of the relevant plaintiffs and said that Sattelmaier would be the fifth person to substitute for counsel Mohammed.



- e) *regarding demonstrations, especially at mosques: police need to be prepared, if necessary, confrontations shall be conducted, armed forces shall be contacted for support if necessary*
3. *high committees regarding planning and conducting need to be formed for: middle region, coastal area. CCMC is responsible for Damascus city and rural Damascus.*
4. *the middle region requires special attention.*
5. *the party's apparatus has the following tasks:*
  - a) *training of [armed] forces*
  - b) *presence of the party members*
  - c) *constant availability*
  - d) *preparedness for confrontations with demonstrations*
  - e) *surveilling, flagging and arresting people*
  - f) *[...]*
6. *labor unions shall make clear that any disobedience will have consequences.*
7. *Presidents of the university shall inform their students that they are not allowed to participate in demonstrations, otherwise they will be expelled.*
8. *Regarding the role of media: civil and military media shall send their coverage in due course. They shall comment on their footage centrally and be in constant contact with security forces. Criminal and inadequate banners shall be cut from footage. The media shall further develop creative methods for dealing with hostile media. Civilians and saboteurs need to understand that this is a phase where the law has to be applied with all due force.*
9. *Special meeting of the CCMC regarding preparation and approach to Friday demonstrations required.*

*Head of the Branches of the Intelligence Services* [seal]

[signature]/4

To: *Director of the Intelligence Services for reference*  
*Deputy director of the Intelligence Services for reference*  
*Branches for reference and implementation*

Judge Kerber asked the interpreter whether the translation was correct and complete. The interpreter affirmed.

Judge Wiedner went on to read out the German translation of a facsimile dated August 11, 2011.

[the following is a recreation of the document based on what the court monitor was able to hear in court]

*Syrian Arab Republic*  
*Bureau of National Security*

*Secret*  
*urgent*

*8/8 AQ date: August 6, 2011*

*Director General of the Branches Hama, Homs, Deir ez-Zor and Dar'a*



*Regarding the meeting on August 5, 2011 of the CCMC Damascus on [unreadable] handling the crisis, dangers, insufficient coordination regarding exchange of information, continuation of events and losses.*

*The armed try to compensate for their failures by plundering and terrorizing people.*

*Request:*

*Daily joint campaigns shall be organized. The military and security forces shall participate in all these events and storm the places where saboteurs and murderers meet, and arrest them. They shall particularly arrest those who instigate demonstrations, collaborate with foreign forces and deform Syria's image abroad. [unreadable] cleansing of all sectors.*

*Members of the party and security forces shall be present everywhere.*

*Install a joint committee for every governorate to which the arrested shall be transferred.*

*Arrests shall be carried out particularly meticulously to ensure that all members of the relevant groups are spotted.*

*Daily status reports shall be sent to the Bureau of National Security.*

*The names of members of the security forces who are neglecting their duties and participating in confiscating arms shall be reported periodically.*

*All measures need to be implemented in due course to ensure peace.*

*Signed: Director of the Bureau of National Security*

Presiding Judge Kerber asked the interpreter to check the translation. The interpreter confirmed the correctness.

Judge Kerber said that a third document was already on the case file alongside its German translation, However, the interpreter was asked to translate it ad hoc, in order to confirm the existing translation.

[the following is a recreation of the translation, based on what the court monitor was able to hear in court]

*Ba'ath Party*

*Syrian Arab Republic*

*379 date: April 20, 2011*

*Top secret*

*To be stored by the recipient*

*Meeting minutes of the CCMC from April 20, 2011*

*Director of the Regional Directorate of Political Security Situation*

*Results:*

- 1. Saboteurs improve their methods aimed at terrorizing civilians and destroying their trust in the Syrian state. They plan Friday demonstrations and might try to transfer their protest movement to other cities.*

2. *A new phase has to start to counter this movement. From this day on, it is an open battle that we have to win. The state needs to show its immense power.*
3. *Detailed plans need to be developed to counter possible protests, especially in Dar'a, Damascus city, Homs and rural Damascus. These plans are to be developed immediately by the Bureau of Political Security. The support of the military and armed forces is requested.*
4. *Regional armies and armed forces need to develop plans, based on the scenario that hostile activities might spread to all districts. Respective counter measures need to be enforced and coordinated. According to the changing situation, the plans require regular adjustments.*
5. *Activate military forces.*
6. *Armed forces shall produce reports on the numbers of attacks and killed soldiers. Based on these reports, it is necessary to prosecute the perpetrators and put them on trial.*
7. *Relevant methods shall be applied according to the individual situation, as declared by the joint committee.*
8. *Catch all wanted suspects, amongst them saboteurs, murderers and criminals.*
9. *The security forces shall focus on gaining information and hunting down criminals with the aim to deliver concrete results.*
10. *Dead people shall be buried without any gatherings. Families have to commit to this practice before the corpse is handed over to them.*
11. *The CCMC shall hold daily meetings.*
12. *Students who participate in demonstrations shall be un-enrolled.*
13. *The use of motorcycles is prohibited, according to an order by the Minister of Interior.*
14. *No.8 stresses the importance of media to assist the military and the administration, according to an order by the Minister of Interior.*
15. *General resolutions shall be handed to the high steering committee and the committee in Dar'a.*
16. *In accordance with a resolution by the Minister of Defense, the Minister of Interior has to be supported with any means.*
17. *The deputy regional secretaries shall coordinate the role of the party according to the overall plan and deliver reports.*
18. *We have to respect the request of the people who wish for an intervention by the state in order to win the battle that is fought against them. They and their children shall live in peace.*
19. *The people's committee shall be suspended.*

*Signed: Deputy Regional Secretary*

Once the interpreter finished his translation and the judges confirmed the correctness of the already existing translation, Presiding Judge Kerber said that two submissions were currently pending before the judges. She explained that one requested the severance of the trial, the other requested the introduction of additional evidence. Since the second request would only relate to Al-Gharib's case, the judges would first deal with the request to sever the trial. None of the parties had any comments on the prosecutors' request to sever the trial, so Judge Kerber read the judges' order regarding this request:

[the following is a summary of the court's order, based on what the trial monitor was able to hear in court]



Court Order:

*The trial against defendant Eyad Al-Gharib will be severed in accordance with §13 (3) StPO. The trial will continue under court's file number 1 StE 3/21. The file number for the trial against Raslan will stay the same as before (1 StE 9/19).*

Reasons:

*The severance of the trial is functional, since the case against Al-Gharib is ready to be decided while the case against Raslan requires further taking of evidence.*

Presiding Judge Kerber announced that the trial against Raslan will pause until Wednesday March 10, 2020. She further explained that there will be a short break in the trial against Al-Gharib to allow Raslan and his defense team to leave and to make relevant changes in the courtroom.

The proceedings in Anwar Raslan's case adjourned at 10:40 am.

The next hearing in his case will take place on March 10, 2021.

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[15 minute break]

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As the Plaintiff Counsels stayed in their seats, Judge Kerber explained that there would actually be no plaintiffs in the trial against Al-Gharib, however, to prevent further disruption, the counsels would be allowed to stay.

Judge Kerber went on to address the defense's request to take additional evidence and read out the following court order:

[the following is a summary of the court's order, based on what the trial monitor was able to hear in court]

Court Order:

*Defense Counsel Schuster's request dated February 2, 2021 to read out parts of the minutes of Al-Gharib's interview with the German asylum authority (BAMF) to prove the following facts:*

- 1. Al-Gharib first worked for the "religion" Branch of the Syrian Intelligence Services where he received a five month training on how to surveil religious meetings and events and gain relevant information.*
- 2. In this capacity, he was subordinate and had to report to the head of the Branch, Kamal Al-Ahmad.*
- 3. On the reasons for leaving the "religion" Branch, Al-Gharib told the BAMF that he did not like the office-job, so he started working in Al Zabadani. After five months, his former boss, Kamal Al-Ahmad, asked him to return to the "religion" Branch where Al-Gharib stayed for two more months. He was then transferred to the dangerous and mafiosi-like Division 40 where he worked from June 2011 until his defection in 2012.*

*Schuster's request is denied, as the facts that were supposed to be proven, are already proven.*

Reasons:

*The court already heard the BAMF employees Mr. Wöllner and the interpreter, both were present during Al-Gharib's interview with the BAMF. Several parts of the interview's minutes were read out to Mr. Wöllner who confirmed the correctness of the minutes. He further testified on the overall content and context. For these reasons, there is no doubt regarding the abovementioned facts.*

Al-Gharib's Defense Counsel Schuster thanked the judges and apologized for his "apparently incomplete transcripts."

Presiding Judge Kerber went on to explain that the judges would now read out an excerpt of Al-Gharib's register with the German Ministry of Justice (BMJV) [his criminal register] from 2019.

Judge Wiedner explained that the German Federal Criminal Police (BKA) requested information about Al-Gharib from the Ministry of Justice (criminal history). This information was provided on September 30, 2019:

[the following is a recreation of the register entry, based on what the trial monitor was able to hear in court]

*Information regarding Eyad Alghareib [Al-Gharib]*

*Born in Damascus, Syria on May 25, 1976*

*Note: The office has differing information regarding the name of the abovementioned person. To ensure uniformity, the name will be spelled as written above.*

*Number of register entries: 1*

*Date: July 24, 2018 District Court [AG] Hermeskeil*

*Legally binding since September 1, 2018*

*Matter: Bodily injury on May 26, 2018 according to §§[223 \(1\)](#), [231 \(1\)](#) StGB*

*Sentence: 20 day-rates per 5€ each*

Presiding Judge Kerber said that according to the prosecutor's office in Trier, the fees were paid. She added that the matter would say "have been dealt with".

Judge Kerber went on to explain that the interpreters also acted as experts from time to time and asked if either defense or prosecutors had request to put them under oath. None of the parties had any request or additional submissions. Presiding Judge Kerber therefore declared the taking of evidence in the trial against Eyad Al-Gharib to be completed and ordered a short break before the prosecutors would deliver their closing statement.

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[15 minute break]

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[Below is a summary of the prosecutors' oral closing statement, based on what the trial monitor was able to hear in court. Direct quotes are marked with "" and additional observations are put in square brackets]





The prosecutors first referred to the overall context in Syria:

*They opened their closing statement by saying that ever since the start of the Arab Spring, the Syrian government has been using massive violence against the civilian democratic opposition. This eventually led to an armed conflict that is still ongoing today. [Garance Le Caisne described the situation in Syria](#) “very adequately” by calling the country, ‘a land of the absent’. The prosecutors further noted that, however, not only armed non-state groups are committing crimes in this conflict. The “regime’s<sup>4</sup> will for self-preservation caused countless civilian victims and refugees.”*

*According to the prosecutors, Germany is investigating crimes committed in the context of the Syrian conflict since 2012. Nonetheless, this trial would not be one of many. It would be the first trial worldwide where employees of Bashar Al-Assad’s Intelligence Service stand accused.*

Criminal Acts and Special Remarks:

*The prosecutors further stressed that the defendant in this trial, Eyad Al-Gharib was not accused in representation of the entire regime. However, his alleged crimes could not be looked at without putting them in the context of the systematic and widespread attack of the Syrian regime against its own population.*

*The prosecutors added that “this regime is still very much in power today,” a fact that distinguishes this trial from the Nuremberg trials and the trials at the ICTY and ICTR. The effects of “the regime’s poisoned breath” were visible throughout this trial, considering scared witnesses. The prosecutors recalled many of them explaining how their families in Syria were threatened and that they were only willing to testify when anonymized. Nonetheless, the terror in Syria did not prevent the “hero” Caesar from smuggling thousands of pictures of corpses outside of Syria and unveiling how the regime tortures, kills and documents detainees. According to the prosecutors, the terror in Syria also did not prevent the victims from telling the world about their suffering. She added that it was only thanks to the courage of these people that the regime is not safe [Presiding Judge Kerber nodded acknowledging]. This trial, as the prosecutors explained, was only taking place in Koblenz because there is impunity for such crimes in Syria. The prosecutors therefore paid special gratitude to these witnesses; they “deserve our highest respect and acknowledgment.”*

*This trial has shown that unimaginable crimes can effectively be tried under universal jurisdiction, as the prosecutors further explained. In line with a [recent decision by the German Federal Court of Justice \(BGH\) \[January 28, 2021, 3 StR 564/19\]](#)<sup>5</sup> the prosecutors wanted to stress that “Germany was not, is not and will never be a safe haven for perpetrators of international crimes”. They added that this trial would not be the last of its kind, “Koblenz is only the beginning.” And concluded that there would be no limitation for crimes under international law.*

*According to the prosecutors, the trial did not show any facts that would significantly differ from the indictment. Prosecutor Polz explained that throughout the prosecutors’ closing statement, witnesses who were allowed to conceal personal information during the main trial would be named according to the trial day on which they testified [SJAC will use the respective codes from previous reports].*

<sup>4</sup> Note from the Trial Monitor: The prosecutors always use the term “regime” instead of “government”. They also stuck to this practice throughout their final statement.

<sup>5</sup> Note from the Trial Monitor: In this decision the German Federal Court of Justice found that functional immunities (at least for mid- and low-level perpetrators) are not applicable to core international crimes.



*The prosecutors wanted to thank the Defense Counsels in particular. They defended their client with innovative ideas but never tried to re-traumatize witnesses by pressuring them or asking intimidating questions. According to the prosecutors, this was, “unfortunately, not always a matter of course.”*

*Subject Matter of the Trial:*

*The prosecutors went on to recall the very beginning of the revolution in 2011 in Dar’a, when the Syrian regime used massive violence causing many wounded and two dead. Live ammunition was used to target civilians and state-led violence was not only used from an early stage to prevent and dissolve demonstrations but to surveil and control civilians. Starting in Dara’a in April 2011, social restrictions were imposed, food was restricted, and hospitals were under surveillance. According to the prosecutors, the latter led to the setup of underground hospitals where wounded protesters received only insufficient medical treatment. The prosecutors further recalled how the flow of information was severely restricted and all [restrictive] measures were extended to other cities as well. The regime steadily increased violence. In April 2011, the CCMC gave the direct order that ‘the phase of tolerance is over’. The prosecutors recalled that following this order, military forces used deadly violence, however, even more strict measures were requested: security forces used tear gas and batons against protesters; people were forcibly displaced in prisons where they were massively tortured, humiliated, and abused.*

*The prosecutors went on by saying that detainees have been tortured in Syrian prisons already before [the revolution], however, since 2011 the quantity as well as quality of torture in Syrian prisons dramatically changed. Torture and inhumane detention condition were trivial. “To seek revenge and to suffocate” the movement from the beginning, the Syrian regime used physical and mental torture. Death rates significantly increased in detention facilities and military hospitals became a place of torture and killings. Regarding hospitals, the prosecutors referred to the situation in Al-Mazzeah, Tishreen and Harasta hospitals that became places where corpses were stored and registered before they were “disposed” in mass graves. Meticulous documentation of dead detainees was used as proof that these people were actually dead.*

*The prosecutors described the structure of the Intelligence Services in Syria, saying that it consists of the General Intelligence Directorate, The Military Intelligence Directorate, The Air Force Intelligence and the Political Security. All of them are further divided into Branches. According to the prosecutors, the central Branch in the present trial was Branch 251, also known as Al-Khatib, due to its well-known location in Damascus. This Branch oversaw Damascus, mostly related to arrests and checkpoints. It was supported by Division 40.*

*This subdivision was led by Hafez Makhoul, a cousin of Bashar Al-Assad, and “thanks to him it had a special position”, as the prosecutors further described. It was known as “clearing and punching squad”. Division 40 had its own detention facilities, however, people usually stayed there only for a very short time, before they were transferred to another Branch, usually Branch 251. The prosecutors described that people were already maltreated in Division 40 and employees of that division were selected carefully. They had to undergo a multilevel selection process, creating an “elitist circle”. Division 40 conducted “sudden arrests” at peaceful demonstrations and “started the hunt” on people fleeing the demonstrations.*

*According to the prosecutors, one had to bear in mind that no one was told why he was arrested or where he was brought. None of the arrested people were informed about their rights or presented to a judge. They further had no counsel, and no one was informed about their arrest or their whereabouts.*



*Regarding the treatment of detainees at Branch 251, the prosecutors described the following: Upon arrival at Branch 251, detainees received a so-called “welcoming party” during which they were beaten in a “wild and unleashed” manner. This procedure usually started in the yard or the way inside the building. Many times, detainees had to go through an “espalier of brutality” the moment they left the van that brought them there. It is reported that between July and September 2011, detainees were beaten on their heads with iron poles during this procedure. Once the detainees entered the building, they had to strip naked in the basement and were frisked. After that, they got their clothes back and were taken to their cell.*

*The prosecutors further recalled the massive violence which was used as means of revenge during interrogations. In general, interrogations were conducted without any specific purpose. Usually, one guard was present during interrogations and humiliated and maltreated detainees. According to the prosecutors, this included: electroshocks, beatings in the face, [Falaqua](#), [Doulab](#), [German chair](#), [Shabh](#), as well as threats and acts of sexual violence. The prosecutors concluded that detention conditions at Branch 251 were inhumane and degrading. Detainees did not receive any medical treatment. Cells were overcrowded and detainees did not have the chance to sit down, either sleeping while standing or sleeping in shifts. Food at the Branch was also insufficient, the hygienic situation was disastrous. Detainees were exposed to constant screams from torture of other detainees, many people simply lost their mind. Between April 29, 2011 and January 2012, hundreds to thousands of people were detained in Branch 251. They lived in constant fear for their lives. This fear was even worse than the physical torture. The prosecutors concluded that mere detention in Branch 251 qualified as torture.*

*Al-Gharib’s Criminal Contribution:*

*The prosecutors went on to describe the Accused’s work history: At the age of 20, Al-Gharib joined the General Intelligence Directorate as physical instructor. Since February 2010, he was a member of Branch 251. He first worked in the “Religion” Branch, in the building of Branch 251 before he worked in Al Zabadani for around one month, starting in June 2011. Because the office-job “was not really his thing” and because his superiors were apparently “perfectly satisfied” with his work, he started working at Division 40. By this time, the repression by the regime was already underway and Al-Gharib knew what the division led by Hafez Makhlof was doing. The prosecutors found that he himself was directly involved in at least one incident at the mosque in Duma in September or October 2011. 3,000 – 6,000 people were peacefully protesting with around 250 members of Division 40 present when Hafez Makhlof opened fire on the demonstrators from a car and gave the order to shoot at everyone; if one loves the president. The prosecutors explained that at least three people died right away, two were deadly wounded. Al-Gharib and his colleagues were told to catch the people who were fleeing and when they “opened the hunt” they arrested at least 30 people. According to the prosecutors, Al-Gharib and his colleagues forcibly put these people in buses and took them to Branch 251. He was on the bus where his colleagues beat up the detainees. At Branch 251, the detainees received the ‘welcoming party’; 30 civilian victims were gravely mistreated as a consequence. The prosecutors concluded Al-Gharib knew and recklessly accepted that these people were systematically tortured. Al-Gharib knew that the Branch was a mechanism to intimidate the people. He was aware of that and accepted it.*

*However, the prosecutors stressed that Anwar Raslan was the one accused of overseeing and ordering torture at Branch 251. The evidence available for Al-Gharib on the other hand could only prove his involvement in one crime on a single day in September or October 2011. The case against Al-Gharib was a mere snapshot, according to the prosecutors. Nonetheless, in evaluating the evidence in his case, one must also examine the evidence that proves a widespread and systematic attack against the civilian population, as the prosecutors further explained. The prosecutors described that this attack was carried out on the streets as well as in the basement of Branch 251.*



*According to the prosecutors, in determining Al-Gharib's criminal responsibility, one must only look at the evidence against him and ignore everything else.*

*The prosecutors further recalled how the past 60 days of the trial "clearly" showed that at least since April 2011, the Syrian regime has been conducting a widespread and systematic attack "against actual and alleged members of the opposition." The prosecutors referred to several experts such as [Ms. Thurmman](#), [Mazen Darwish](#), [Anwar Al-Bunni \(P2\)](#), [Christopher Engels](#), numerous witnesses as well as the [Human Rights Watch \(HRW\) report "We've never seen such horror"](#) who confirmed that [attack against actual and alleged opposition members]. According to the prosecutors, the attack started on April 29, 2011 latest, when the CCMC orders from April 20, 2011 were already carried out. 200 people who died in Dara'a shortly after this date, would prove the execution of this plan.*

*Regarding the existence and tasks of the CCMC, the prosecutors referred to testimonies from [Mazen Darwish](#), [Anwar Al-Bunni \(P2\)](#), [P10](#) and [Christopher Engels](#). The minutes of a CCMC meeting dated April 20, 2011 would also provide further information about discussions during meetings of the CCMC. The wording of this minutes as well as the other two CCMC documents that were just read out in court would "cause one to shiver", as prosecutors Polz recalled. Witness [name redacted] testimony, that was [introduced by Criminal Chief Inspector \(CCI\) Deußing](#) as well as [P16's testimony](#) would also confirm the execution of the CCMC's plans. The prosecutor referred to [name redacted] statement when he called the situation an "orgy of violence" and when [P16 testified](#) about her arrest on trial day 34, she mentioned that continuous assaults and screams were "normal" at Branch 251. The prosecutors concluded that overall, the CCMC's instructions were "carried out properly" and the "hunt against the opposition was started".*

*Regarding the role of the Intelligence Services in the widespread and systematic attack, the prosecutors recalled the testimonies of several witnesses: [Ms. Thurmman](#), [Christopher Engels](#), [Riad Saif](#), [Mazen Darwish](#), [Anwar Al-Bunni \(P2\)](#), [P10](#), [P3](#) and [CCI Deußing](#). The special function of Branch 251 was described by [CCI Deußing](#) and [Al-Gharib's own statements with the BAMF and BKA](#). Explanations regarding Division 40 were provided to the court by [P21](#), [P5](#), [P20](#), [P24](#), [P16](#) and the defendant himself during his [hearings with the BAMF and BKA](#). According to [P5](#), only those in excellent physical and mental shape, with relevant professional references who were unconditionally loyal were selected to work at Division 40, as the prosecutors recalled. [P5](#) did not make it to Division 40. The prosecutors concluded that Al-Gharib was apparently even better suited than him.*

*According to the prosecutors, there could be no doubt that the Syrian regime has been conducting a widespread and systematic attack against the opposition civilian population. The [German Federal Court of Justice has already confirmed that](#) previously. Regarding killings of civilians by the regime, the prosecutors mentioned that this was confirmed in court by [Ms. Thurmman](#), the [HRW report](#), [Mazen Darwish](#), [P15](#) and [P19](#). The prosecutors added that "industrial scope" of these killings was impressively proven by the Caesar files and the analyzes thereof provided by [Prof. Dr. Rothschild](#), [CCI Deußing](#) and [Garnace Le Caisne](#). CCI Deußing explained in his analysis of the Caesar files that the corpses were "carelessly and disrespectfully thrown" thrown in some backyard, "without any protection against the sun and scavengers". This practice was commonly used at least since May 2011, according to [Deußing and Le Caisne](#). The latter confirmed this by recalling Caesar's biography.*

*The prosecutors regretted the court being unable to hear Caesar or Sami. Nonetheless, one could say that with this trial, the two of them finally achieved their goal, as prosecutor Polz concluded. The "apocalyptic extent" of crimes against humanity committed by the Syrian regime would be proven through these files. According to the prosecutors, there would be no doubt about the authenticity off the photos. According to [Prof. Dr. Rothschild](#), 6,627 out of 20,948 photos showed signs of massive violence.*



The prosecutors found people were systematically mistreated and medical treatment was obviously not provided. Based on these photos, a natural cause of death was precluded. Between 2011 and 2013, at least 6,627 people were “brutally murdered” and taken to the hospitals Al-Mazzeah and Tishreen. The prosecutors recalled how [P23](#) and the defendant Al-Gharib himself spoke about people being killed and detainees that died during the ‘welcoming party’. [P3](#) and [P14](#) confirmed as insiders that detainees were “hastily buried” in mass graves. [P3](#) further explained that two mass graves were dug up exclusively to bury the corpses from the General Intelligence Directorate. [Z300719](#) also confirmed the existence of mass graves. These testimonies were corroborated by [Criminal Inspector Knappmann on trial day 54](#), according to the prosecutors. Knappmann presented and analyzed open-source satellite images which showed mass graves close to Damascus. On one image, one could even identify an excavator used to dig the graves. Although these images are dated 2014 and later, it would not be surprising that there are no images particularly from 2011 for two reasons: First, in 2011 mass graves were not yet needed on such a large scale. Second, there would only be limited availability of such images, that further only show one particular area. The prosecutors further found the existence of mass graves was also mentioned in the [HRW report](#).

The targeted and large-scale killings of oppositionists would therefore be part of a systematic and widespread attack by the Syrian regime.

[Prosecutor Polz requested a short break for the interpreters and to open the windows.]

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[15 minutes break]

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[Prosecutor Polz continued reading out the statement.]

#### Torture and deprivation of liberty

The prosecutors recalled that throughout the trial, many witnesses testified about torture and the inhumane conditions at Branch 251. On [days 16 and 17](#), for example, an insider testified amongst others about “welcoming parties” at Branch 251. Defendant Al-Gharib himself told the BAMF in May 2018 that detainees were beaten on their heads. When he was questioned by the BKA, he provided even more detailed descriptions, explaining that detainees were beaten with metal poles. Al-Gharib himself said that the screams of torture even reached the cafeteria at Branch 251.

The prosecutors further said that many former detainees and victims testified about torture. However, these testimonies would only be a glimpse of what has been going on and is practiced until today. [P1](#), [P16](#), [P23](#), [P11](#) and [P26](#) all described the setup of Branch 251 coherently as well as its location, that was also known among the public, due to its location in the well-known district Al-Khatib. Further, all the witnesses described the underground prisons at Branch 251. On [day 34](#), [P16](#) also explained that there were no legal proceedings to examine the rightfulness of detentions and family members were never informed about their loved ones being arrested and detained. The prosecutors mentioned that they would have liked to ask [name redacted] - whose testimony was [introduced by CCI Hörl \[day 57\]](#) - about how exactly he was arrested when he voluntarily followed a summons of Division 40. However, he was not willing to testify in court due to serious concerns about his and his family’s safety. Nonetheless, testimonies about constant torture and inhumane and degrading conditions at Branch 251 were corroborated by many other testimonies, according to the prosecutors: [P1](#) described his own arrest and detention, how he had to endure the infamous “welcoming party” before he was taken to overcrowded collective cells and tiny solitary cells. He further testified about the inedible food and how guards put a baton in his anus.



[P11](#) confirmed this image by testifying about what he himself as well as his inmates had to endure. [P12's](#) testimony about detainees being blindfolded, forced to sleep in shifts and not being able to tell night from day due to constant light in the cells, further corroborated these accounts. The experiences of [P16](#) and [name redacted] [\[day 57\]](#) were also the same.

The prosecutors recalled [P23](#) further telling the court how the 10<sup>th</sup> division of the General Intelligence Directorate was responsible for bomb attacks and how they knocked out people's teeth. According to the prosecutors, all witnesses spoke of "torture minions" at Branch 251 from their own experience as well as what they saw on other detainees. A lack of medical treatment at Branch 251 was also described by all witnesses. When detainees were transferred to a hospital "it was not an act of charity", as the prosecutors concluded. The prosecutors found that the only aim was to "finish" the 'patients' – "if one would call them patients at all". The prosecutors further recalled that the only reason one of the witnesses made it out of the hospital was because his condition was bad enough so that it could be used as a warning to others, when he was thrown on the streets and left to die. [P26's testimony](#) also corroborated these accounts regarding medical treatment.

Regarding the credibility of witness testimonies, the prosecutors mentioned that usually, the credibility of every testimony must be assessed individually. However, in this trial there would not have been a single sign that any of the witnesses did not say the truth or tried to falsely accuse the defendant. Every single detail of the testimonies was coherent. According to the prosecutors, certain difficulties remembering particular instances were only due to the natural refusal to relive these memories. One could see the horror on every witness's face. The prosecutors found that "these people survived Branch 251; they were not rescued." Nonetheless, there would have been no exaggerations, and all testimonies were corroborated by other evidence.

The prosecutors went on to recall [day 2 of the trial](#) when CCI Deußing spoke about torture being a common practice in Syrian prisons since at least 1976 and confirmed that during the structural investigation that his office has been conducting regarding crimes committed in the Syrian conflict, all witnesses provided the same description of torture, particularly Falaqa being a prominent method used at Branch 251. The so-called Caesar Files and particularly the forensic analysis thereof provided by [Prof. Dr. Rothschild](#) would be further proof of torture at Branch 251, according to the prosecutors. The prosecutors stressed that this forensic analysis found recurring common findings regarding systematic torture used by all Branches. Rothschild mentioned that it looks like "every employee has a standardized kit of torture tools". He further put his and his colleagues' findings in relation to witness testimonies and confirmed the plausibility thereof. General descriptions of torture used by the Syrian intelligence Services were also provided by [Mazen Darwish](#) and [Anwar Al-Bunni \(P2\)](#). The latter received the human rights award from the German Association of Judges and the German-French human rights award, as the prosecutors mentioned. Al-Bunni provided insights in his own experience as well as those of his clients and mentioned the "incredible number" of 73 years as the sum of all the years that he and his family had to spend in prison. The [HRW report](#) also described unlawful displacement and several instances of sexual violence by the Syrian Intelligence Services. The prosecutors concluded by saying there were absolutely no doubts about this additional evidence. The totality of evidence would "sadly" prove the existence of "a torture machinery of industrial dimension".

The prosecutors recalled defendant Al-Gharib himself describing on different occasions that he worked for the Intelligence Services for more than 16 years. According to the prosecutors, however, he did not really like his office job, it was "not his thing", so he started working at the "religion" Branch before he joined the "mafiosi-like" Division 40. The prosecutors found Al-Gharib's relevant descriptions at the migration office to be plausible. These descriptions were further detailed during his questioning by the BKA. Regarding the admissibility of these statement, the prosecutors referred to their [statement from June 3, 2020](#).

*On August 16, 2018, Al-Gharib was questioned by Criminal Chief Inspector Deußing and Higher Criminal Inspector Frey. The prosecutors explained that both were heard as witnesses in court since the defendant decided to stay silent. Both confirmed Al-Gharib's version of not liking the office job and then joining the "religion" Branch. They also confirmed him saying that he was involved in an incident with at least 30 civilian victims. According to the prosecutors, there was no reason to doubt these descriptions made by Al-Gharib to the BKA. They would present a continuation of and additional details to his previous statements with the BAMF. The prosecutors further found there were no issues with the interpreter and the minutes of the police questioning were re-translated to Al-Gharib. The admissibility of these statements would further be supported by a [decision from the German Federal Court of Justice](#) to uphold Al-Gharib's arrest warrant, as the prosecutors concluded.*

*Regarding Al-Gharib's professional path with the Intelligence Services, the prosecutors referred to the testimony of Al-Gharib's cousin [P6](#). In addition, [P3's](#) testimony would also leave no doubt about the correctness of Al-Gharib's own descriptions. The prosecutors concluded by saying that [Al-Gharib's military ID card shown in court on trial day 56](#) further confirmed his employment at the General Intelligence Directorate.*

*In sum, the prosecutors found that Eyad Al-Gharib voluntarily joined Division 40, the "catching squad of Branch 251", at a time when the regime took massive action against demonstrators and oppositionists. He joined the division because "he was bored" at his previous job at a time when the repression by the regime was already well under way. According to the prosecutors, Al-Gharib knew this from his work surveilling mosques and religious events and he knew about the kind of work at Division 40 from his own year-long employment at the General Intelligence Directorate. He was aware of the systematic and massive torture. He also did not care about people dying from torture and violence. His only wish was "to do something exciting".*

Prosecutor Polz requested a break before continuing with the legal evaluation.

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[65 minute lunch break]

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### Legal Evaluation

*The prosecutors started the legal evaluation of the abovementioned findings by explaining that the trial was a trial under so-called universal jurisdiction, as provided under [§1 VStGB](#). As the requirements of this article would be met, the prosecutors found the court to have jurisdiction over this case. The prosecutors went on to recall the indictment which detailed that the Syrian regime from April 29, 2011 latest started a widespread and systematic attack against the civilian population. As set out in [§7\(1\) VStGB](#), such an attack could be committed against any civilian population. The necessary requirements would be the widespread or systematic character of the attack. According to the prosecutors, the requirement of "widespread" would be the quantitative component and measured in number of victims as well as the size of the territory where the attack is committed. The "systematic" requirement would be the qualitative component and measured by a certain degree of organization.*

*Regarding the concrete situation in Syria, the prosecutors found the regime targeted actual and alleged oppositionists, persecuting, and intimidating them. The Intelligence Services played a central role in this. At least since April 29, 2011, when more than 200 people died at a demonstration in Dar'a one could say that the regime's targeting of oppositionists qualified as a widespread and systematic attack. The regime started to persecute alleged and actual members of the opposition across its state territory, causing a high number of victims.*



*Until September or October 2011, hundreds to thousands of people died through the Intelligence Services. The prosecutors therefore found the requirements of [§7\(1\) VStGB](#), the existence of a widespread and systematic attack, to be met.*

*The prosecutors went on to explain that Al-Gharib was accused of aiding and abetting crimes against humanity under [§7\(1\) Nr. 5 VStGB](#), meaning torture. According to the prosecutors, international jurisprudence details the duration and consequences of acts to qualify as torture. According to this jurisprudence, various acts qualify as torture: pulling of teeth, rape, beatings, pouring acid over someone's body, dunking someone under water, suffocation, forcibly administering psychotropics and psychological violence. It would thereby not be relevant if lasting damage was caused. The prosecutors concluded that evidence in the present trial proved that it had consequences to oppose the regime. There could be no disagreement that these "awful" acts qualify as torture. In accordance with [jurisprudence from the ECtHR](#), the mere fear of torture, from a certain degree on, can also qualify as torture itself. In light of this, the prosecutors found there would be no doubt that during the entire time that the trial deals with – April 2011 until January 2012 – the mere stay at Branch 251 would be torture. This would be supported by numerous witnesses' testimonies. The hygienic conditions at the Branch also contributed to this fact. People further lost their sense of time as the light was either constantly switched on or detainees had to sit in the dark all the time. Detainees were afraid to talk to each other because they were afraid of spies being amongst them. This was a mere demonstration of power by the General Intelligence Directorate. Female detainees were sexually harassed and threatened to be raped. Referring to several witness testimonies, the prosecutors concluded the guards at Branch 251 wanted to break the detainees. One survivor told the court that "to die became a wish". Others described the psychological consequences of psychological torture at Branch 251. One could assume that these consequences are even worse than physical injuries, as the latter heal over time. In sum, the prosecutors found Branch 251 to be a "perfectly running torture machine" and from April 2011 on, the mere stay at the Branch qualified as torture.*

*The prosecutors went on to explain that the defendant was further accused of aiding and abetting severe deprivation of liberty according to [§7\(1\) Nr.9 VStGB](#), adding that deprivation of liberty is legally qualified as "severe" when it is a particularly long period of time or a very drastic measure. Although this usually must be determined on a case-by-case basis, the prosecutors found in the present case, one could say that the treatment of detainees in Branch 251 was severe. They based this finding on "coherent testimonies describing violence, a lack of judicial remedies, no information about one's rights, no information of the relatives about a person's whereabouts; detainees simply disappeared." The brutal measures used during interrogations in the Branch would further qualify as severe human rights violations. For these reasons, the prosecutors found detentions at Branch 251 to qualify as severe deprivation of liberty.*

*Regarding Al-Gharib's contribution to these crimes as an aider and abettor according to [§27 StGB](#), the prosecutors stressed that there were no indicators to believe that the arrest of thirty civilians in which Al-Gharib was involved in September or October 2011, was lawful.*

*Although the defense team introduced the defense of duress in an "innovative way," the relevant requirements of [§35 StGB](#) are not met, according to the prosecutors. They recalled that ever since the Nuremberg Trials, no trial regarding international crimes was conducted without dealing with duress as a defense. As in all these trials however, this defense would not be relevant in the present trial. The requirements of duress, imminent threats against one or one's family's live, limb or liberty that could have not been avoided other than by following criminal orders, were not given in the situation at the core of this trial. In this situation, the arrest of thirty civilians in September or October 2011 at a demonstration, it would be questionable according to the prosecutors, that the defendant had no other options but to follow illegal orders.*



The situation was very unclear and Al-Gharib had the opportunity to withdraw from the situation. He himself described that he successfully avoided shooting at people. The prosecutors further described there were around 250 members of Division 40 and around thousand members of the security forces present, causing a big unclear crowd. A lesser means for Al-Gharib would have been to either escape, pretend to fall down or fake a serious injury. The prosecutors referred to German domestic jurisprudence: In 1951 the German Federal Court of Justice found that when one is facing imminent threats to life limb or liberty, he is not obliged to make heroic moves, nonetheless one can neither follow illegal orders because it is the easiest or most convenient way [BGH 26.11.1951, 1 StR 27/50, para.4]. In a decision regarding Nazi perpetrators, the Court found in 1971 that one has to make every effort, including certain risks, to try to escape the imminent threats for his life, limb and liberty [BGH 12.10.1971, 5 StR 103/71, paras 13ff.]. More recently, the Regional Court in Munich found that in a similar situation, one must flee [LG München II 12.5.2011 1 Ks 115 Js 12496/08, p. 366]. In Al-Gharib's case it was not unreasonable neither impossible for him to act differently than to follow orders: Al-Gharib knew about everything that was happening with protesters on the arrests and in detention. The prosecutors also recalled [witness P6 \[day 18\]](#) telling the court that Al-Gharib told him about this already in March 2011. Al-Gharib could have fled at this point. Instead, he moved from an office job to an operational job in May 2011 "because he was bored". When he was assigned to a "beating squad" in July 2011, he could and should have left. According to the prosecutors, he consequently caused the situation of duress himself. His claims that his family was in danger and it was not safe for them to flee or him to leave them behind, would also be disproved by facts: When he defected in January 2012, he first moved to another city without his family. The prosecutors described this as a time when the regime was even more suspicious and the danger for his family was even greater. In fact, Al-Gharib could have left earlier, according to the prosecutors. They therefore found the requirements for duress as defense not to be met.

The prosecutors went on to explain that [§3 VStGB](#), which describes that one acts without guilt when acting upon orders and not realizing that the order is illegal or it is not manifestly illegal, would not be applicable to crimes against humanity. The facts in this case would also not support this justification: Recalling that Al-Gharib himself told the BAMF and the BKA that he felt that this was wrong, the prosecutors concluded that Hafez Makhoul's orders to shoot at demonstrators were obviously illegal.

According to the prosecutors, Al-Gharib consequently aided and abetted crimes against humanity in the form of torture and severe deprivation of liberty according to [§7\(1\) Nos 5+9 VStGB](#), in one instance.

### Sentence

The prosecutors went on to point out that the witnesses heard in the trial represented a much bigger number of victims. For the first time, crimes against humanity committed by the Syrian regime were on trial. Nonetheless, it would be against the foundations of a state based on the rule of law [Rechtsstaat] to hold the defendant accountable for all this, as the prosecutors explained. In accordance with [§264 StPO](#), one can only be held accountable for his individual culpable acts. The prosecutors, however, described that it cannot be ignored that without people like him, crimes against humanity could not be committed to the extent that they are. Al-Gharib was a "cog in a big machinery." One can therefore not ignore the overall brutality. The prosecutors concluded by finding the excessive repression by the regime was solely aimed at taking revenge, exterminating and deterring people from opposing the regime.

Regarding the determination of sentence, the prosecutors first explained that [§7 VStGB](#) provides for a sentence of no less than five years for torture and no less than three years for severe deprivation of liberty.



*The range of imprisonment therefore ranges from five to fifteen years. The requirements of a less serious offence which would lower the sentence were not given. According to the prosecutors, the mere brutality of torture as well as the “overall injustice” would forbid such a practice.*

*The prosecutors went on to explain that the sentence could be lowered if the defendant had substantially contributed to the detection of a criminal offense by providing information to the authorities, as provided in [§46b \(1\) S.1 No. 1 StGB in conjunction with §49 StGB](#). In the present case, the defendant did indeed accidentally incriminate himself when questioned by the BAMF and BKA, however, he did not contribute to the detection of crimes. The prosecutors deplored the fact that after his second arrest, Al-Gharib did not take the chance to contribute to the detection of criminal offences. The sentence of an aider and abettor is to be mitigated according to [§27 \(2\) StGB in conjunction with §49 \(1\) StGB](#). This would in Al-Gharib’s case lead to a range of sentence between two years and eleven years and three months imprisonment. However, the prosecutors found that in determining the sentence, one has to take into account the “overall injustice” of the widespread and systematic attack.*

*The prosecutors listed the following aggravating and mitigating factors in determining Al-Gharib’s sentence:*

*Aggravating factors: At the beginning of the conflict, Al-Gharib himself initiated his transfer from an office job to an operative job. He knew from his year-long employment at the Intelligence Services about the activities of his new place of work. He further knew about Hafez Makhoul’s special standing and competencies, as well as his violent character. At the time, the offence at the heart of this trial was committed, he was already working at this Division for around 8 months and stayed there for two more months afterwards. At least 30 people were arrested during this incident.*

*Mitigating factors: He defected from the regime in 2012 during the most brutal phase. He further stressed his secession and condemnation for Bashar Al-Assad and those most responsible in a [handwritten statement](#) that he wrote in November 2020. However, upon request, the guards at the German prison where the defendant is in trial detention, did not recognize any tears or particular mental turmoil. The prosecutors believe that he did indeed condemn the regime.*

*The prosecutors found that committing crimes by following orders could not be used as justification or a defense in this case. They further recalled Al-Gharib voluntarily incriminating himself during his questionings by the BAMF and BKA. It was not at least to himself that prosecutions against him were initiated.*

*The defendant’s tendency towards physical violence would still be visible according to the prosecutors. This particular hardship would therefore entail an [aggregated sentence](#).*

#### Request

*After weighing in on all evidence and conducting a thorough legal evaluation, the prosecutors requested a sentence of 5 years and 6 months imprisonment and to uphold the arrest warrant against the defendant.*

The trial adjourned at 3:15 pm.

The next hearing will take place on February 18, 2021.



### Day 61 of Trial – February 18, 2021

The hearing began at 9:30 with 7 media representatives and 6 spectators present.<sup>6</sup> Since there were no plaintiffs in the case against Eyad Al-Gharib, Dr. Oehmichen was the only plaintiff counsel present, taking notes as a spectator.

After starting the session, Presiding Judge Kerber immediately handed over to the defense to deliver their closing statement.

[The following is a recreation of the defense’s closing statement, based on what the court monitor was able to hear in court.]

#### Context:

*[Defense Counsel Linke started the statement by citing [Martin Luther King Jr.’s iconic “I have a dream speech”](#). He went on to say that he had a dream - past tense. He had hoped that the atrocities committed by the Nazis would never be repeated, that humanity learned from this cruelty. However, history taught better. He recalled the 1972 Bangladesh war, the atrocities committed by the Khmer Rouge in the 1970s, the start of the war in Rwanda in 1994, as well as the Yugoslav war. Defense counsel Linke concluded by saying that today, he would be disillusioned considering that humanity learned nothing at all from these past atrocities. The so-called “regime” of Bashar Al-Assad “cowardly” kills its own civilian population and commits “targeted torture”. It would be unbelievable that “sick minds” continue to come up with even worse cruelties. Linke recalled that during the 30-year-war, people were tortured with the so-called ‘Swedish drink’, nowadays in Syria, people would be tortured by using Falaqa. The Syrian regime could be put in line with previous perpetrators of atrocities crimes. Linke stressed that those most responsible for the crimes committed in Syria must stand trial just like all the perpetrators before them.*

*Having said that, and “assuming that *alea iacta est* (the die has been cast) in Eyad Al-Gharib’s case,” he went on to explain that he would need to make examinations regarding the determination of sentence. He referred to the June 2019 decision of the [German Federal Court of Justice, finding Al-Gharib’s self-incriminating statements to be admissible evidence](#); and the Court’s [January 2020 decision, confirming that so-called ‘functional immunity’ does not apply to crimes against international law](#). Linke said for these reasons, he would have to make relevant determinations regarding an appropriate sentence for Eyad Al-Gharib. Assuming, that he committed unlawful acts, Linke would need to examine aggravating and mitigating factors. He concluded that in this case, he would provide the following “hypothetical” closing statement:*

<sup>6</sup> No one requested access to Arabic interpretation.

### Closing statement:

*Linke started his “hypothetical” closing statement by thanking judges, in particular Presiding Judge Kerber, for her “elegant” handling of this trial. The judges as well as the prosecutors created a very cooperative atmosphere that helped conduct this trial in a smooth and uncomplicated manner. He went on to point out that the trial and consequent sentence would be complete “virgin territory”. This case was nothing like a regular criminal trial, e.g. dealing with drunk-driving. The court in Koblenz was the first world-wide to determine the sentence for a former employee of the Syrian Intelligence Services. In determining the sentence, the prosecutors tried to navigate through a “sentencing haze” the previous day. Nonetheless, their request has a certain “anchor-effect” on the judges. Linke referred to studies showing that the prosecutors’ request for sentence has certain effects on the judges by setting a general “anchor” to which the judges usually stick. He further said that in an “hypothetical closing statement”, the defense would point out this anchor to the judges and request them to not be affected by the mark regarding length of sentence, set by the prosecutors the previous day.*

### Determination of Sentence:

*Turning to the prosecutors, Linke mentioned that based on their year-long experience, a confession by the defendant is usually “worth one third”. Assuming the requested 5.5 years, 66 months, are two thirds, the full sentence would be 99 months, meaning eight years and three months. Linke questioned the prosecutors actually requesting eight years and three months imprisonment given that Al-Gharib would have not incriminated himself during the BAMF interviews, and instead any other witness came forward incriminating him. Linke said Al-Gharib had an “entirely clean slate”, aggravating the sentence due to particular hardship would not be necessary and the requested sentence would therefore be “exorbitantly high”. In such a case, the prosecutors would have most likely requested 5 years and 5 months imprisonment as well. However, in the present case, Al-Gharib delivered a far-reaching confession with the BAMF. The sentence therefore needs to be reduced to 44 months, meaning 3 years and 8 months. Nonetheless, this would still not be the correct sentence, as the prosecutors applied the wrong margin of sentence. Linke again stressed that the above-mentioned considerations would be part of the defense’s closing statement, assuming that Al-Gharib was to be found guilty.*

### Margin of Sentence:

*In determining the length of sentence, the prosecutors allocated 5 to 15 years imprisonment for committing torture as crime against humanity and 3 to 15 years for committing severe deprivation of liberty as a crime against humanity. Linke explained that while they correctly applied the higher sentence due to the fact that more than one violation of [§7\(1\) VStGB](#) occurred, they erred in applying 5 to 15 years assuming that the defendant was the direct perpetrator. According to Linke, Al-Gharib only aided and abetted these crimes [§§27\(1\) and 29 StGB](#). According to German law, the sentence would have to be reduced to 2 to 11.25 years imprisonment.*

*Linke further alleged that the prosecutors ignored that Al-Gharib contributed to the detection of crimes. In accordance with the [decision by the Federal Court of Justice](#), Al-Gharib’s questioning with the BKA would only be admissible evidence until page 13 of the transcript; before he started incriminating himself without being informed that he will be questioned as a suspect.*





*While parts of this questioning are inadmissible in Al-Gharib's case, they would be admissible evidence in the case against Anwar Raslan. Linke mentioned the prosecutors themselves relied on these parts in their indictment. By providing many details about Branch 251 and Raslan's role, Al-Gharib significantly contributed to the detection of crimes committed by Raslan. Linke described that the prosecutors considered issuing an arrest warrant against Raslan only after Al-Gharib provided this information during his BKA questioning. Al-Gharib therefore significantly contributed to the discovery of crimes. The sentence would therefore require further reduction ([§§ 46b and 49 StGB](#)) to 6 months to 8.7345 years imprisonment, as Linke concluded.*

*He went on to explain that an "hypothetical closing statement" would now request further reduction of the sentence based the defense's detention complaint dated September 17, 2020 and the judges' respective decision dated October 19, 2020. The latter detailed that a sentence for Al-Gharib in the form of imprisonment would most likely significantly extend the time he had already spent in detention. At this point [September 17, 2020], Al-Gharib had been in detention for more than one year and seven months. Following this reasoning, a sentence would therefore entail at least one year and seven months imprisonment. Nonetheless, in determining the sentence, one also has to consider the defendant's behavior after the commission of the alleged crimes ([§46\(2\)StGB](#)).*

*Linke found that in light of this, one had to acknowledge that Al-Gharib provided an extensive confession – pp.1 to 12 of the BKA's questioning – at the earliest stage possible. And to consider Al-Gharib's reaction to the Caesar Files. The files, in particular [Prof. Dr. Rothschild's forensic examination](#) thereof, were crucial evidence in the trial. Linke referred to the videos that were taken by the U.S. when they entered the concentration camps at the end of World war two. These videos show piles of corpses and just like the Caesar Files, one wonders how men can do such things to men. Linke described how he felt paralyzed and was unable to talk to his client during the break, on the day the Caesar Files were shown in court. Linke further described how, after the hearing, he was wandering around Koblenz, constantly asking himself how Al-Gharib was able to do such things. However, Linke came to the conclusion that Al-Gharib did not kill those people himself. He acted as an aider and abettor of torture. Linke further described how the following day [after the Caesar Files were shown in court], the interpreter told the defense team how shocked Al-Gharib was during the presentation of the files and the forensic analysis. The defense then told Al-Gharib to write down his feelings. He did so and the [handwritten statement was later introduced as evidence](#). This statement would show how shocked and distressed Al-Gharib was, said Linke. Al-Gharib said that he 'constantly had to think about all the innocent victims'. [Al-Gharib started crying at this point. His defense counsel Schuster handed him a tissue] Linke went on to explain that Al-Gharib was only waiting for the right time to defect. His handwritten statement detailed the three options he had. In caring about the safety of his wife and kids, one of them disabled, he chose the third option: waiting for defection until it is safe for all of them to leave.*

*Linke once again referred to the fact that this would only be an "hypothetical closing statement". He pointed out that when Al-Gharib continued his duties, one must not ignore his intentions. He did not want people to be tortured, he just wanted his family to be safe. According to Linke, it would simply be "improper" of the prosecutors to say that Al-Gharib joined Division 40 because he 'was bored' by his desk-job. First, he joined the "religion" Branch before he went to Division 40, Second, he did not apply for that position, he was transferred. Al-Gharib never wanted people to be tortured, he even sympathized with demonstrators.*





*He did not have the mindset of a “torture minion” but of a father who was deeply concerned about his family’s safety. His handwritten statement was further an attempt to apologize to all the victims. As far as the prosecutors doubt Al-Gharib’s emotions after he saw the Caesar files, it remained unclear to Linke, whom exactly the Prosecutors contacted at the prison and whether this person was actually trusted by Al-Gharib so that he would have openly shown his emotions to him.*

*Linke again referred to the judges’ order to uphold Al-Gharib’s detention, reasoning that he would be sentenced to at least one year and 7 months imprisonment. He mentioned that this order was issued in October 2020. However, the Caesar Files were shown in court on November 3, 2020 and Al-Gharib’s handwritten statement was submitted to the court in late November. The judges’ considerations regarding Al-Gharib’s sentence surely changed in light of these developments. Linke concluded that his “hypothetical closing statement” would therefore conclude by requesting a sentence of no more than 2 years on parole.*

*However, he stressed that the abovementioned was only an “hypothetical closing statement” and the actual statement, which Defense Counsel Schuster will deliver, would request an acquittal of the defendant Al-Gharib.*

\*\*\*

[15 minute break]

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General Remarks:

*Defense Counsel Schuster first mentioned that the following statement would be relatively short, to avoid any repetitions. Witnesses who were allowed to conceal personal information on the day they testified in court would be named after the day of trial on which they testified, in accordance with the prosecutors’ practice from the previous day.*

*Schuster started by saying crimes against peace, war crimes and crimes against humanities are crimes committed against the fundamental elements of humanity. It is a single perpetrator against the entire of mankind. Schuster referred to a statement from [Dr. Friedrich Kaul](#) – hoping it would be eligible to quote him<sup>7</sup> – who said during the ‘Auschwitz trials’ that mankind cannot and must not allow such atrocity crimes to be committed again. According to Dr. Kaul, every individual must stand up to such crimes, one could not use superior orders or duress as justification or defense for their participation in such crimes. Schuster said the request to stand up to atrocity crimes would not be unrealistic per se, explaining that people like Anwar Al-Bunni and Mazen Darwish indeed stood and stand up to such crimes.*

<sup>7</sup> There has been some dispute about whether Dr. Kaul’s involvement in the Auschwitz trials was due to his background as persecuted Jew or rather a propaganda act by the German Democratic Republic to propagate a reputation as fighter for the rights of Nazi victims. He has also been criticized for his close cooperation with the governments and Ministry for State Security in the GDR.



Schuster explained it would be necessary to point this out, not only to acknowledge Al-Bunni's and Darwish's efforts as colleagues. However, one also had to acknowledge that duress can – and in the case of Eyad Al-Gharib should be used as defense. Schuster found the requirements of [§35 \(1\) S.1 StGB](#) to be met in Al-Gharib's case.

#### Duress:

According to Schuster, there was absolutely no doubt that at the time when Al-Gharib allegedly committed the crimes he is charged with, there was a state of emergency and duress in Syria. The Syrian Penal Code provides that traitors shall receive the death sentence. The regime created an aura of fear, which was confirmed by all witnesses and several reports that were read out in court. Schuster referred to the HRW report “We’ve never seen such horror” that detailed this aura of fear, as well as the COI report dated November 2011, which was also read out in court. According to Schuster, former employees of the Intelligence Service, like [P5](#) and [P21](#) further explained that the mere suspicion of disloyalty was reason enough to discipline members of the Intelligence Services. Witness [P3](#) made similar accounts. All these coherent descriptions would be sufficient to conclude that there was not only a general state of emergency but imminent threats to life, limb, and liberty of employees of the Intelligence Services. Schuster said [CCI Deußing and HCI Frey](#) also confirmed that. In examining the imminent threats for the defendant Al-Gharib, it would also be important to mention Hafez Makhlof. [P5](#) and [Anwar Al-Bunni \(P2\)](#) called him a ‘choleric person’ and [Mazen Darwish](#) said that he was ‘untouchable’. Schuster recalled that on the day when Al-Gharib committed the alleged crimes, Hafez Makhlof was present at this particular demonstration. He was the one starting to shoot at protestors, simply for fun. He was also the one who gave orders to shoot at the protestors. There would be no doubt that in disobeying these orders, one would have had to fear for his life. He would have either been executed or interrogated and then killed. According to Schuster, Al-Gharib was even more endangered because he was a Sunni. Schuster concluded that Hafez Makhlof was unbound by law, if the prosecutors claim anything different, it would be mere cynicism.

Schuster further explained that even if Al-Gharib would have found a way to disobey orders to shoot and arrest protestors, he would not have been able to avoid the situation in the van when bringing detainees to Branch 251. There was only a very small number of people in that van and, according to various witness statements, the procedure of insults, beatings, and violence was a well-established routine that no one could escape. Al-Gharib therefore must have feared for his life, if he did not obey this violence. Regarding the above-mentioned statement from Dr. Kaul, Schuster stressed that according to the German Constitution, no one is obliged to give his own life or limb; not even if a high number of other life's are at risk. Al-Gharib was under no obligation to risk his own life and limb in disobeying orders, not even due to his year-long employment with the Intelligence Services, as the prosecutors claimed.

#### Role and Importance of the Intelligence Services:

Schuster explained that the defense would not intend to minimize the brutality of the Syrian Intelligence Services, however, it would still be important to examine their role in society. According to Schuster, the Intelligence apparatus in Syria is simply disproportionate. There would be one member of the Intelligence Services per 153 civilians. This rate would be higher than the rate of bakery shops per person in Germany.



*Military and Intelligence Services are the only ways for people in Syria to make a decent living, especially when they are Sunnis. This was also the case for Al-Gharib, said Schuster. Al-Gharib's father died when he was only four years old, and the family did not have the means to allow him to continue his education after primary school. Nonetheless, Al-Gharib like every child in Syria was indoctrinated by the Syrian curriculum regarding loyalty to the regime. This eventually led Al-Gharib to join the Intelligence Services. His decision to do so does not therefore exclude the existence of imminent threats to his life, limb, and liberty, and him acting under duress.*

*False portrayal of Al-Gharib by the prosecutors:*

*Schuster stressed that Al-Gharib told the BAMF and BKA that he was transferred to Division 40, passive voice. He did not join the Division voluntarily as the prosecutors claimed. The judges dismissed the defense's [see above, day 60] request to take further evidence on this, reasoning that it already has been proven that Al-Gharib said that he was transferred. Schuster said that in claiming anything different, the prosecutors would intentionally distort the facts to paint the picture of Al-Gharib as a man of conviction. According to Schuster, the prosecutors also incorrectly evaluated [P5's](#) testimony regarding the selection procedure for Division 40. The situation that he described happened before 2010. Al-Gharib was only transferred in 2011. At this time, Division 40 simply needed more people to deal with the demonstrations and due to Al-Gharib's background as Sunni, he was no longer eligible for the "Religion" Division. However, the prosecutors did not mention these facts. Schuster added that even at this point, employees of the Intelligence Services were executed due to alleged disloyalty.*

*Considering that in July 2011, Al-Gharib was 34 years old, had four children and his wife was just pregnant with their fifth child, Schuster questioned why anyone in this situation would voluntarily join a division like Division 40. After 14 years of working with the Intelligence Services, Al-Gharib was still a staff sergeant/sergeant [Feldwebel]<sup>8</sup> without any prospects of being promoted, just like the witnesses [P5](#) and [P3](#) described as well. In light of this, one could not claim that Al-Gharib was a man of conviction, as the prosecutors stated in their closing statement.*

*Schuster explained Al-Gharib was under no obligation to accept imminent threats to his life, limb and liberty, not even in light of the gravity of crimes that he was aiding and abetting. A contrary position would also not be supported by jurisprudence from the German Federal Court of Justice that found even in case of a large-scale mass-murder involving thousands of victims, one cannot weigh any person's life against the life of many. The only relevant examination would be to determine if there was a situation of emergency, putting someone under duress. In this context, Schuster pointed out several differences between Nazis allegedly acting under duress, and members of the Syrian Intelligence Services claiming to have acted under duress: Nazis did not have to fear general collective penalties such as imprisonment of entire families. In Syria however, the regime is using families of alleged traitors to put them under pressure. Already in cases where there is a mere suspicion against anyone, their families are threatened. Z280716 told the court about this and [Le Caisne](#) and [P21](#) also elaborated on the dangers a defection is posing on the entire family of the defector. Further, the policy of granting witness protection showed that the judges themselves acknowledged the existing imminent threats against life, limb and liberty for insider witnesses. Schuster said the same would be true for Al-Gharib and his family.*

<sup>8</sup> Note from the Trial Monitor: The translations of ranks are based on what has been said in court in German. The German terms are then translated to US and UK rank, according to the [official NATO code](#).



*His wife was also interrogated by the Intelligence Services, although she did not testify about this, one can imagine from the testimonies of other witnesses in this trial, how harsh this interrogation was for her.*

*According to Schuster, even if one would affirm the reasonableness of accepting imminent threats to one's own life in not participating in atrocity crimes, one could not say that it is reasonable to accept these threats for one's family. Such a conclusion could not even be made based on Dr. Kaul's postulate. Schuster concluded the requirements for [§35\(1\) S.1 StGB](#) [duress] are therefore met in Al-Gharib's case. As Al-Gharib himself explained in his handwritten statement, he had the choice between following orders and consequently participating in these crimes or endanger his and his family's life, limb, and liberty.*

Acquittal:

*Schuster described international criminal law and universal jurisdiction to be extraordinary developments in light of the atrocities in the history of mankind. He added that the present trial achieved that the widespread and systematic attack that the Syrian regime has been committing since 2011, is the subject matter of a fair and impartial trial. The trial also provided many witnesses the chance to tell the world about their suffering and give a face to the many more victims. According to Schuster, this is alone would already be worth a lot. It would, however, be wrong to think that a sentence for Al-Gharib would be the only reasonable outcome for this trial. Schuster explained that one had to be cautious of the Syrian community worldwide and the signal a conviction of Al-Gharib would send to them, especially to defectors. Without them it would be impossible to investigate and prosecute perpetrators of the crimes committed in Syria. Schuster further questioned what kind of signal a conviction would send to those still working for the Syrian Intelligence Services. Their only choice would then be limited to either continuing to participate in these crimes or to defect and be convicted.*

*Schuster mentioned the present trial caused discussions even within the Syrian opposition, as [P24](#) explained to the court. While it might be morally demanded to defect, it would be in fact an active act of opposing the regime. Unlike the Nazis, Al-Gharib was only able to flee by risking his own and his family's lives. In January 2012, when Al-Gharib defected, the regime was very much in power. According to Schuster, it would simply be immoral to question Al-Gharib's responsibility by claiming that he defected five months too late.*

*Schuster went on to explain that while the Syrian regime is still in power and the conflict entered into its eleventh year, the present trial "unfortunately" could not contribute to transitional justice, unlike the ICTY or the Nuremberg trials. Nonetheless, for the abovementioned reasons, Al-Gharib should not be found guilty of the crimes he was accused of.*

*Schuster concluded by saying that in light of the judges' decision and reasoning to uphold Al-Gharib's detention, the defense was convinced that his conviction was already decided. And while one says that judges should close their ears after the taking of evidence, in order not to be confused, Schuster said he hoped he and his colleague were able to raise some doubts regarding Al-Gharib's culpability. Schuster requested an acquittal of Al-Gharib.*



Presiding Judge Kerber asked the defendant Al-Gharib whether he wants to make use of his right to provide final remarks. Al-Gharib answered that he had nothing to say in addition to what his defense counsels just said.

The trial was adjourned at 11 am.

The next hearing will take place on February 24, 2021. On this day, the judgment for Eyad Al-Gharib will be handed down.