



# Scratching the Surface

One Year Into the Koblenz Trial



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April 2021



Syria Justice and Accountability Centre (SJAC)



The International Research and Documentation Centre  
for War Crimes Trials (ICWC)

### ***About the Syria Justice and Accountability Centre***

*The Syria Justice and Accountability Centre (SJAC) strives to prevent impunity, promote redress, and facilitate principled reform. SJAC works to ensure that human rights violations in Syria are comprehensively documented and preserved for use in transitional justice and peace-building. SJAC collects documentation of violations from all available sources, stores it in a secure database, catalogues it according to human rights standards, and analyzes it using legal expertise and big data methodologies. SJAC also supports documenters inside Syria, providing them with resources and technical guidance, and coordinates with other actors working toward similar aims: a Syria defined by justice, respect for human rights, and rule of law. Learn more at [syriaaccountability.org](http://syriaaccountability.org)*

### ***About the International Research and Documentation Centre for War Crimes Trials (ICWC)***

*The International Research and Documentation Centre for War Crimes Trials (ICWC) was founded by Professor Dieter Simon, the former director of the Max-Planck-Institute for European Legal History, and Professor David Cohen, director of the War Crimes Studies Center at the University of California, Berkeley. ICWC was established as an interdisciplinary research center at the University of Marburg in November 2003. ICWC's work focuses on collecting and documenting war crimes trials and researching and hosting regular conferences. Since 2011, ICWC has observed, documented, and evaluated proceedings of international crimes before the Higher Regional Court in Frankfurt. In this context, students of the University of Marburg receive annual training as trial observers, which is a unique project in Germany. ICWC is led by Professor Stefanie Bock and Professor Eckart Conze.*

*Cover photo: A Look into the Courtroom in Koblenz, February 2021 © AFP/Thomas Lohnes*

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Regional Higher Court Koblenz, January 2021 © SJAC

## Executive Summary

“Scratching the Surface: One Year into the Koblenz Trial” is a report by the Syria Justice and Accountability Centre (SJAC) and the International Research and Documentation Centre for War Crimes Trials (ICWC) that examines the developments and backgrounds of the trial of Anwar Raslan and Eyad Al-Gharib based upon detailed trial reporting conducted by the two organizations. The trial, which started on April 23, 2020, is the first trial against former employees of the Syrian Intelligence Services. Throughout the past year, the trial yielded insights into state-organized torture and provided many survivors the opportunity to tell their stories in court. This report highlights the following aspects of the trial:

- The Koblenz trial is an important step towards justice and accountability as it involves former members of the Syrian government, which is responsible for the majority of violations. To date, Universal Jurisdiction (UJ) cases have been limited to affiliates of non-state armed groups with few exceptions.
- Both Accused were charged with crimes against humanity. However, there are considerable differences between the two cases regarding alleged crimes and the ranks of the Accused. The decision to hold a joint trial was therefore criticized and it was eventually severed.

- Access for the public, especially the Syrian community, has been an issue from the outset of the trial. Hurdles included a lack of translation into Arabic and inadequate communication between the court and the public. The trial started in the middle of a global pandemic, leading to changes in the schedule which adversely impacted public participation.
- The Caesar Files – photos of thousands of corpses taken in Damascus hospitals– were an important body of evidence in the trial. Accompanied by detailed forensic and technical analyses, they shed light on the extent of state-coordinated torture and killings in Syria and indicated how digital evidence can be used in future trials of international crimes.
- Throughout this trial, it became clear that there was a difference in available evidence concerning the two accused. Other evidentiary hurdles included the willingness of witnesses to testify and confusion caused by the interpretation of witness testimony.
- Many witnesses expressed concerns for their safety and the safety of their families still living in Syria, but the court was reluctant to order witness protection measures.
- The court made some efforts to adapt to the unique challenges of this trial. While the proceedings were ongoing in another building, the OLG Koblenz set up a new courtroom in their former library to host this trial. Later in the year, the court started to actively engage with the audience to ensure transparency despite technical problems.

#### Recommendations:

- UJ states should consider the full range of perpetrators of atrocity crimes and pursue all those who have engaged in international crimes, including government officials.
- Prior to trial, courts seized of these types of allegations should carefully consider how to engage in public outreach to populations most affected by the alleged crimes, including through interpretation services and providing open access to court proceedings and reasoned decisions.
- Prosecutors and courts should work together to establish practical directives on the use of witness protection measures that balance the requirement of a public trial against the potential dangers faced by witnesses.
- Courts should receive additional support and capacity building to adequately address special circumstances surrounding UJ trials.





Defendants and their Counsels at the beginning of a trial day, February 2020 © Ruptly/Pool Provider

## Introduction

March 23, 2020 marked an important day in the fight against impunity for crimes committed during the Syrian conflict. [On this day](#), the Higher Regional Court (OLG) in Koblenz, Germany, opened the main trial against Anwar Raslan and Eyad Al-Gharib.

The road leading up to this trial was winding. Justice for crimes committed during the Syrian conflict is not available at the International Criminal Court (ICC) due [to deadlock in the Security Council](#). Other options to achieve accountability on an international level, such as *ad hoc* tribunals, are also not available to the victims of these crimes. Domestic prosecutions under universal jurisdiction (UJ) have [filled this vacuum](#) by bringing perpetrators of atrocity crimes committed in the

Syrian conflict to justice. Before the Koblenz trial, UJ prosecutions for Syrian crimes were focused on extremist fighters present in Germany and elsewhere. The Koblenz trial against two former government employees, therefore, marks an important precedent in international justice.

Investigations against the two defendants were [triggered by the defendants themselves](#). Raslan, who felt he was under surveillance by the Syrian Intelligence Services, approached the German police regarding his concerns. In investigating the seriousness of his allegations, the police discovered his role within the Syrian Intelligence Services. Al-Gharib spoke even more openly with the German authorities during his asylum procedures.

Both cases were transferred to the German Federal Prosecutor General, who had been conducting structural investigations into crimes arising from the Syrian conflict since 2011.

Raslan and Al-Gharib [were arrested](#) at their respective residences in Berlin and Rhineland-Palatine on February 12, 2019. Raslan’s case was therefore within the jurisdiction of the Superior Court of Justice in Berlin and the case against Al-Gharib fell within the jurisdiction of Higher Regional Court in Koblenz. When the two cases were joined on October 22, 2019, the German Federal Prosecutor General chose to file the complaint with the OLG Koblenz. The court confirmed the indictment and [ordered the opening of the main trial](#).

The [indictment](#) alleges that Anwar Raslan worked as the head of the interrogation division at the notorious Branch 251 of the General

Intelligence Directorate (GID) in Damascus (also known as the Al-Khatib Branch due to its location).

He is charged with complicity in torture, forced imprisonment, and killing as crimes against humanity, as well as killings and sexual violence under German criminal law. Eyad Al-Gharib worked at Branch 251 and Division 40, one of the most brutal sub-divisions of the GID, and was accused of aiding and abetting crimes against humanity.

One year into the trial, SJAC and the ICWC have identified several legal and policy issues as well as challenges based upon a joint project to [monitor the trial in detail](#). The following report addresses these aspects and offers proposals to ensure the proceedings in Koblenz and those that follow are transparent, inclusive, and in the interests of justice.



Read the above QR code to see key trial locations on Google Maps, or view Annexes Ia and Ib of this report





Judiciary Sign on Court Officer's Uniform, Koblenz, September 2020 © Ruptly/Pool Provider

## 1. Universal Jurisdiction - Background

The Koblenz trial<sup>1</sup> is possible because of so-called universal jurisdiction (UJ). Whereas criminal jurisdiction is generally limited to domestic affairs, this principle allows states to prosecute crimes committed abroad by foreign perpetrators against foreign victims.<sup>2</sup> Since the early 2000s, states have incorporated this principle in their national legislation and initiated prosecutions against individual perpetrators of serious crimes.<sup>3</sup>

Although recent developments show that the number of pending UJ cases are increasing,<sup>4</sup> they do not target all alleged perpetrators. Most cases focus on those affiliated with armed non-state actors or extremist groups.<sup>5</sup>

This is due to the fact that most states follow a “no-safe-haven” approach, which aims to deny refuge to perpetrators of international crimes.<sup>6</sup> In contrast, based on the “global enforcer” approach, Germany issued an arrest warrant against Jamil Hassan, director of the Air Force Intelligence Directorate,<sup>7</sup> and France issued a warrant for Ali Mamlouk, director of the General Intelligence Directorate in Syria.<sup>8</sup> Both remain in Syria and there are no prospects of bringing them to trial for the foreseeable future. The warrants, therefore, have a more symbolic value as senior officials of the Syrian government will not be extradited by their own government or by other states in which they still move freely.<sup>9</sup>

The Koblenz trial marks the first time that alleged perpetrators affiliated with the Syrian government were brought to trial for committing international crimes. Despite criticism regarding the defendants' low ranks (which will be discussed in the next section), this case could serve to bolster future UJ proceedings, particularly in the Syrian context. In addition to the Koblenz trial, several other UJ cases in Germany may help to build a legal framework for further Syrian cases.

## Yazidi Case

Only one day after the Koblenz trial started, another UJ trial commenced in Frankfurt, Germany. On April 24, 2020, the alleged former ISIS fighter, Taha Al J., was brought to trial for the first time. He is accused of genocidal killing of a five-year-old Yazidi girl, other genocidal acts, crimes against humanity, war crimes, membership in a foreign terrorist organization and terrorist killing, as well as human trafficking.<sup>10</sup> While the case itself is not directly related to Syria, it has far-reaching implications on future cases relating to the Syrian conflict. The case against Taha Al J. is the first to include charges of genocide against the Yazidi minority - a crime that has also been committed in Syria.<sup>11</sup> The judges' decision on whether ISIS crimes committed against Yazidis constitute genocide will serve as a blueprint for future UJ cases dealing with crimes committed by ISIS against Yazidis in Syria.<sup>12</sup>

As with the Koblenz trial, international lawyers have criticized the exclusion of sexual and gender-based violence in the charges.<sup>13</sup> In both cases, sexual violence was either charged under German law or as gender-based violence. For example, the human trafficking of Yazidi females by ISIS was not included in the charges.

In Koblenz, plaintiff counsels filed a motion requesting the legal qualification of sexual violence as a crime against humanity.<sup>14</sup> While the prosecutor acknowledged that sexual and gender-based violence has been used by the Syrian government as part of a widespread and systematic attack against the civil population, he also indicated that in this particular case, there has not been enough evidence to include these charges.<sup>15</sup>



Sign of the Higher Regional Court in Koblenz © SJAC

## Case against Dr. Alaa M.

In a third case currently under investigation by German authorities, there may be enough evidence to charge sexual violence in the form of attempted forced sterilization as a crime against humanity. The suspect, Alaa M., a former doctor at the hospital of the Military Intelligence Directorate in Homs, has been in investigative custody since June 2020.<sup>16</sup> The investigation reportedly involves sexual violence as a crime against humanity committed by a suspect who worked on the side of the Syrian government as a civilian doctor.<sup>17</sup> While the prosecutor has not yet filed the public complaint, the first and second arrest warrants against Alaa M. show that German authorities are continuing their

efforts to hold accountable perpetrators from all sides of the Syrian conflict.<sup>18</sup>

The Koblenz trial is the first step on a long road to justice and accountability for victims of the Syrian conflict. Germany and other states, especially in Europe, should take every investigation, prosecution, and trial under UJ as a learning experience to build on in future cases.

It is therefore important not only to commend this “unprecedented state torture trial,”<sup>19</sup> but also to critically assess legal as well as practical issues to further improve these mechanisms in order to hold perpetrators accountable and to ensure effective victim and survivor participation.



Political Security Check Point, Hamish Road, Barzeh, Damascus © Damascus Voice





Prosecutors discussing before the Announcement of Eyad Al-Gharib's Verdict, February 2021 © AFP/Thomas Lohnes

## 2. Two Distinct Cases – the Charges

On the first day of the Koblenz trial, the indictment was read out in court.<sup>20</sup> For over an hour, the prosecutor detailed the acts and crimes of which the two former Syrian government officials stand accused. While both Accused are charged with crimes against humanity, there are differences in the charges. This fact, along with the quality of evidence adduced, led to the eventual severance of the trial on February 17, 2021 and a judgment in Al-Gharib's case on February 24, 2021.<sup>21</sup>

The indictment<sup>22</sup> alleges that Anwar Raslan had the rank of Colonel and worked as the head of investigations at Branch 251. In this capacity, he was responsible for conducting and overseeing the interrogation of detainees.

The prosecutor charged Raslan with complicity in crimes against humanity in 4,000 cases,<sup>23</sup> including the murder of 58 people.<sup>24</sup> Raslan is further charged with rape and grave sexual assault under German law.<sup>25</sup> According to the indictment, these crimes were committed between April 29, 2011 and September 7, 2012. Al-Gharib, on the other hand, was allegedly working for Division 40, a division that cooperated with Branch 251 by arresting people and transferring them to the Branch. The prosecutor charged Al-Gharib with aiding and abetting crimes against humanity in at least 30 cases from September 2011 until October 2012.<sup>26</sup>



## Defected Mid-level Perpetrators

An apparent aspect of the indictment is the relatively low rank of both Accused. While Raslan held the rank of Colonel and led investigations at a Branch of the GID, he is more aptly described as a mid-level perpetrator. Al-Gharib's position was even lower. According to his Intelligence ID card, Al-Gharib held the rank of a Staff Sergeant.<sup>27</sup> Some have criticized the fact that 'the world's first trial on state torture' is not being tried against officials of the highest rank, and instead has proceeded against mid- and low-level perpetrators who were merely part of a larger machine.<sup>28</sup>

In criticizing the case selection, one must consider that in light of the ongoing conflict and a lack of alternative judicial fora, foreign domestic prosecutions and trials are the only available option to achieve accountability for crimes committed by the Syrian government at this time. However, such trials can only proceed against individuals whom the prosecuting state can arrest as trials *in absentia* are not permissible in most states. While arrest warrants against high-ranking officials are still pending,<sup>29</sup> UJ prosecutors have been able to secure arrests of several mid-level perpetrators.<sup>30</sup>

This trial should therefore be seen as the first step on a long road to justice and accountability for crimes committed by the Syrian government.

From the experience of international tribunals such as the International Criminal Tribunal for the former Yugoslavia, early cases often focus on low-level perpetrators who can be taken into custody by relevant authorities and subsequently face trial in person. Subsequent trials, including trials against higher-ranking perpetrators, can then build on these earlier trials.<sup>31</sup>

Another critique of the Koblenz trial is that both Accused are defectors.<sup>32</sup> Raslan even joined the opposition, although it is unclear if and to what extent he actually engaged with the opposition movement. Critics claim that prosecutions should focus on perpetrators who still identify themselves with the government and not on those who defected and opposed the government.<sup>33</sup> As noted above, this is a practical result of the fact that defected officials are present in the prosecuting states. On the other hand, defection does not foreclose criminal liability for acts committed while the official worked for the Syrian government. Nonetheless, it can be considered as a mitigating factor by judges, particularly in sentencing.

## Suspects and Insider Witnesses

Al-Gharib's defense and others also raised concerns about the differentiation between insider witnesses and suspects and the criteria used to determine if and when an insider becomes a suspect.

Early in the trial, Al-Gharib's defense claimed that he was not aware that he was questioned as a suspect and not a witness when the German police interviewed him.<sup>34</sup> He consequently incriminated himself, eventually leading to investigations against him, his arrest, and the present trial.<sup>35</sup>

During the investigations, the police also heard insider witnesses who later testified in court but did not have charges brought against them.<sup>36</sup> When confronted with questions on how decisions are made to open investigations against former Syrian government employees, the prosecutor provided an anodyne response. He indicated that criminal proceedings against individuals are only initiated when there are 'sufficient factual indications that a person was involved in a crime'.<sup>37</sup> In such cases, the prosecutor has certain discretion on whether to proceed with investigations of a suspect under German law.<sup>38</sup> It appears that once the parallels between the investigations against Raslan and Al-Gharib emerged, the investigations were joined<sup>39</sup> and it was presumed that the prosecutor had a strong case against both suspects. It begs the question as to whether it was fair to charge Al-Gharib while other insiders appeared only as witnesses. That said, the trial illustrates that German authorities must ensure they communicate clearly with witnesses about their rights and the possible consequences of providing information as to their own activities.<sup>40</sup>

## Joint Trial

The above-mentioned parallels in both cases relate to the circumstance that the alleged crimes were committed during the same time period between 2011 and 2012 and are connected to Branch 251, where "systematic and brutal torture methods" were practiced, according to the indictment.<sup>41</sup> In light of these commonalities, there are some benefits to a joint trial, as it allowed for a timely trial and obviated the need for repetitive evidence, including witness testimonies.

For example, the contextual elements of crimes against humanity, namely a "systematic and widespread attack against a civilian population,"<sup>42</sup> need only be established in this one trial. This was done through the testimonies of several experts and other witnesses who provided details of Syrian history, social aspects, and backgrounds to government violence.<sup>43</sup> Additionally, torture victims were only required to appear and testify a single time, thereby reducing the risk of traumatization. As this case was the first to discuss crimes against humanity by the Syrian government, there were no precedents to refer to, requiring an analysis of all aspects in court. The joint trial, therefore, guaranteed that both Accused received a timely trial,<sup>44</sup> reducing their time in pre-trial custody. Whether a joint trial may have prejudiced Al-Gharib as the lower-level perpetrator remains an open question.

## Eyad Al-Gharib Judgement

The trial against Eyad Al-Gharib and Anwar Raslan was severed on February 17, 2021, followed by the pronouncement of the verdict against Eyad Al-Gharib on February 24. While the trial against Raslan continues, the following section examines two important aspects that should have been considered in determining the sentence, as well as the public discussion of the Al-Gharib verdict.

### Limited Evidence

In their oral reasoning, the judges noted that a verdict against Al-Gharib was only possible due to the self-incriminating statements<sup>45</sup> he made to the German asylum authority. While there was substantial evidence to support a finding that the Syrian government has committed a widespread and systematic attack against the civilian population since March 2011, there was limited evidence as to Al-Gharib's role in arresting people, transferring them to Branch 251, and the exact number of victims. The judges found that there were 30 victims based upon Al-Gharib's statement that there were "buses" (plural) used to transport detainees. According to the judges, this meant there were at least two buses. Coupled with the fact that a witness estimated that each bus had the capacity to carry at least 15 people,<sup>46</sup> the judges concluded that Al-Gharib transported at least 30 detainees to Branch 251. Although there was factual evidence to ground this finding, it is a striking example of how little evidence there was apart from Al-Gharib's own statements. (Furthermore, plural in Arabic means at least three, meaning Al-Gharib may have been talking about three buses and at least 45 victims.)

When the prosecutors filed the case, they might have had more detailed self-incriminating statements from Al-Gharib.



Syrian Defendant Eyad al-Gharib arrives to hear his verdict, February 24, 2021 © AFP/Thomas Lohnes

However, the German Federal Court of Justice found that parts of Al-Gharib's statement to the German police were inadmissible evidence because he was not properly informed that he would be questioned as a suspect nor were the specific rights ensured.<sup>47</sup>

The eventual severance of the cases ensured that Al-Gharib's right to be tried in a timely and fair manner was upheld.<sup>48</sup> With the severance and sentencing, he is now symbolically the first person worldwide to be found guilty of aiding and abetting crimes against humanity committed by the Syrian government.

## Defecting as a Low-Level Warrant Officer

Immediately after the verdict was announced, many celebrated it as a victory over one of Bashar al-Assad's war criminals. However, Al-Gharib was merely a low-level perpetrator. Prison guards or drivers should not be immune from prosecution. International criminal law precedents support criminal liability in cases where lower-level perpetrators are part of the machinery of death and destruction. Former Nazi prison guards continue to be extradited and prosecuted in Germany where evidence is limited to their presence and employment in Nazi concentration camps.<sup>49</sup> In this case, however, the rhetoric surrounding the Al-Gharib verdict should not outstrip reality.

Al-Gharib was a low-level officer in the much larger machine of Syrian crimes.

The judges also struggled to address this fact and the consequences it has for the determination of his sentence. One of the defense's main strategies was to argue that Al-Gharib acted under duress.<sup>50</sup> The application of the duress defense has confounded jurists for decades. From the beginning of the tribunal for the former Yugoslavia, the judges were split on how it should be applied. Indeed, reasonable minds can disagree as to how much personal risk a person must take to avoid commission of a crime.<sup>51</sup> According to his defense, Al-Gharib allegedly had no choice but to follow the illegal orders of his superiors. Using this defense to request an acquittal might be too far-reaching, nonetheless, the arguments should have been considered as mitigating factors in determining the sentence.

Instead, the judges found that Al-Gharib could have pretended to be sick or injured or simply tried to escape in a big confusing crowd. They based their arguments on the testimony of one witness, a former employee of the General Intelligence Directorate, who said that he avoided participating in arrests by using illness and injuries as excuses.<sup>52</sup> However, this witness, as well as others who did not show up for work,<sup>53</sup> also stated that they were questioned by their superiors and even detained for a certain time when they were suspected of lying.



Al-Gharib would have faced imprisonment and torture <sup>54</sup> and therefore faking an injury or using other excuses to avoid participation in arrests could have put his life, limb, and liberty at risk. If Al-Gharib had disobeyed orders in the particular instance at the heart of the trial – when the ‘choleric’ Hafez Makhoul ordered Division 40 to shoot all protestors – he would have likely been shot on the spot.<sup>55</sup>

Regarding possible threats to his family in the case of defection, the judges found that Al-Gharib left Damascus without his family to hide in another city for several months. They further noted that during this time, his wife was merely questioned and his family was eventually able to join him and leave Syria. The judges added that they could not say whether Al-Gharib indeed considered defecting after he committed the offences in Fall 2011 and before defecting in January 2012. Several insiders,<sup>56</sup> witnesses,<sup>57</sup> and experts<sup>58</sup> told the court that, in Syria, one must prepare his defection secretly to not risk his own life or the lives of his family.<sup>59</sup> Thus, it is unclear what kind of evidence would have satisfied the judges to prove that Al-Gharib sought to defect.

## Final Remarks on the Al-Gharib Verdict

Eyad Al-Gharib, the lower-ranking of the two defendants was the first to be sentenced after the trials were severed. The judgment in his case is therefore the first worldwide decision against a former employee of the Syrian government (although Sweden<sup>60</sup> convicted a former member of the Syrian Arab Army). While it is indeed a landmark judgment regarding the judicial evaluation of government-led crimes against humanity in Syria, it remains important to recognize the evidentiary weaknesses relating to Al-Gharib’s self-incriminating statements and that he had limited options, as a low-level member of the Intelligence Services, to defect without risking his own or his family’s lives. As it is the beginning of a process to bring to justice perpetrators from the Syrian government, survivors should be heartened by the verdict in this case. But, it should also be a learning process for prosecuting states.



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f t i y a @SYRedCrescent

A Syrian Red Crescent COVID-19 Awareness Sign © Damascus Voice

### 3. A Trial in the Time of COVID-19

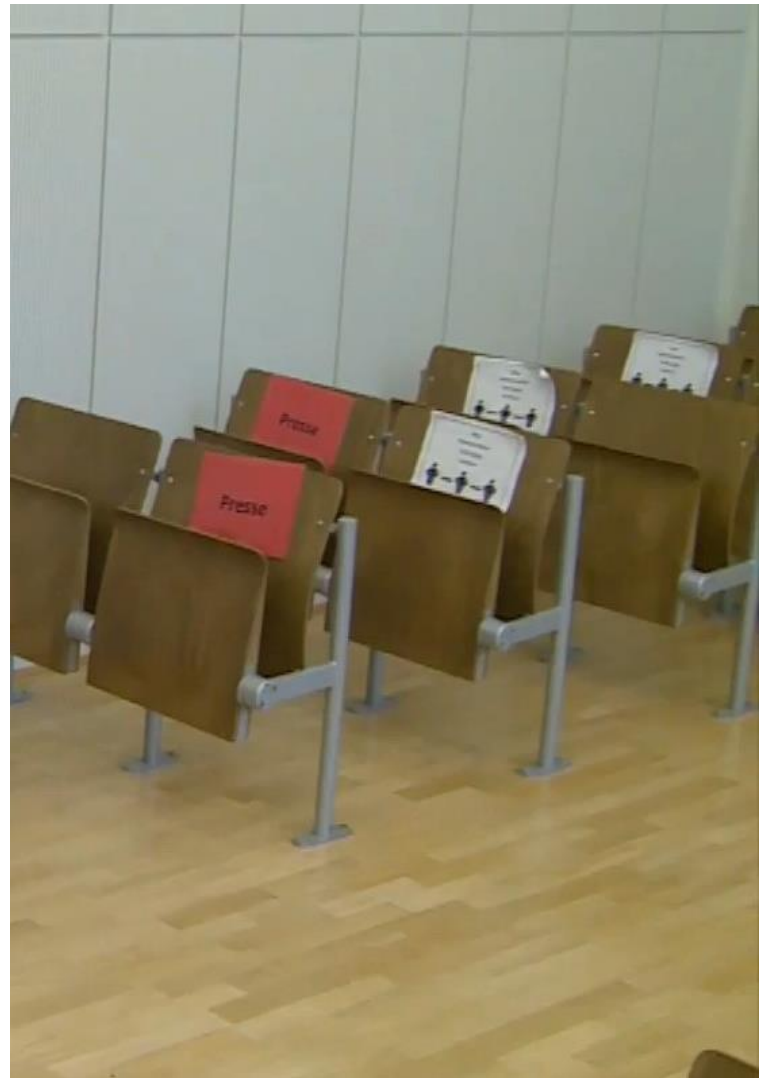
In addition to the already unique setup of the Koblenz trial with the number of parties involved and novel charges of international crimes, the trial faced additional challenges due to the global COVID-19 pandemic. The first public hearing of the trial started on April 23, 2020, as Germany was slowly exiting the first lockdown. The courtroom was retrofitted with plexiglass partitions and seats in the public gallery were limited to comply with social distancing requirements. Interest in the trial remained high in the first weeks leading to long queues in front of the court building. People lined up hours before the start of the hearing to secure a seat in the public gallery, while others were denied entry. SJAC's trial monitors have attended every single hearing and produce detailed reports based on their notes.

While the number of COVID-19 cases and restrictions in Germany decreased over the summer of 2020, public interest in the trial appeared to wane. Securing a seat was no longer an issue. This might have been due to the fact that interested Arabic-speaking observers had no way to follow the proceedings. Interpretation devices are only available to accredited journalists, following preliminary measures ordered by the German Federal Constitutional Court on August 19, 2020.<sup>61</sup> Additionally, due to COVID-19 restrictions requiring a 1.5-meter distance between people, spectators were not permitted to be accompanied by a personal interpreter. Some spectators who were accompanied by a translator received warnings from the court officers, leaving them without the option to follow the proceedings in real time.<sup>62</sup>

As the number of COVID-19 cases increased and Germany went back into lockdown at the end of 2020, the limits to participate in the trial became more pronounced. Hotel stays were only allowed for people on business trips and only obligatory travel was permitted.<sup>63</sup> The audience consequently consisted of the same people, most of whom were trial monitors from different NGOs. Travel restrictions not only affected public participation but witnesses as well. Summoned witnesses from abroad were either unable to come to Koblenz or did not feel comfortable traveling internationally.<sup>64</sup> The judges tried to compensate by summoning police investigators from the German Federal Criminal Police who led the hearing of these witnesses. While this practice complies with procedural rules, it deprives survivors of their chance to tell their story in court and limits the evidentiary value of their testimony.<sup>65</sup> Nonetheless, the judges tried their best to thoroughly schedule the hearings, considering live-video testimonies, and preparing a reserve schedule such as reading out reports and publicly taking evidence in the event of last-minute changes caused by the pandemic.<sup>66</sup>

However, not all of the COVID-19 related restrictions had negative impacts on the trial. The obligation to always wear a mask inside the court building allowed witnesses to cover parts of their face.

In light of ongoing concerns related to witness protection,<sup>67</sup> COVID-19 masks may have contributed to making witnesses feel more comfortable telling their stories and providing details. The court's ability to adapt to COVID-19 restrictions, with considerable effort and expense, permitted the trial to proceed promptly in respect of the rights of the accused.



Public gallery in Koblenz, October 2020  
© Ruptly/Pool Provider





Media gathering in front of the court, February 2021 © SJAC

## 4. A 'Public' Trial

Concerns about public access to the proceedings in Koblenz did not only arise in connection with COVID-19 restrictions. The fact that devices to follow the Arabic interpretation were left unused when many Arabic-speakers could not follow what was said in court, left many wondering about the meaning of a public trial in Germany. The same question arose regarding the absence of official transcripts, broadcasts, or recordings of the trial for those unable to travel to Koblenz.

### Legal Framework

In accordance with European<sup>68</sup> and international law,<sup>69</sup> the principle of a public trial or open justice is detailed in §169 (1) s.1 GVG Gerichtsverfassungsgesetz (German Courts Constitution Act). According to this provision, the main oral proceedings before a court, including the pronouncement of judgments and orders, are public.

It is important to note that this principle only covers access to oral hearings, and not to written court documents such as transcripts and case files.

The principle of a public trial is fundamental within the German criminal procedure code and an important cornerstone guaranteeing the rule of law and fairness of (criminal) proceedings.<sup>70</sup> The principle of publicity prohibits secret justice, especially hearings behind closed doors, which were quite common until modern times.<sup>71</sup> By requiring that hearings and the pronouncement of judgments take place before an interested audience, the principle of publicity subjects the courts to a certain degree of supervision. On the other hand, it makes it clear to the general public that there is no escaping from criminal justice.



In this respect, opening the trial to the public provides the basis for the trust individuals and society have in the independence of courts and the observance of the rule of law in judicial proceedings.<sup>72</sup> This is all the more true in criminal proceedings since they also serve to restore legal order. The public may only be excluded from the hearing in exceptional circumstances if provided by law.<sup>73</sup> In any case, the judgment must always be pronounced in public.<sup>74</sup> Unlawfully excluding the general public from a hearing constitutes an absolute ground for appeal.<sup>75</sup>

### Lack of freely accessible interpretation of the Koblenz trial

As a notable portion of the interested audience did not speak the official language of the court, many considered the absence of Arabic interpretation contradictory to the principle of a public trial. Journalist and regular spectators, however, are not participants in the proceedings. The interpretations of the court-appointed interpreters are only transmitted directly to the parties of the proceedings via headphones.<sup>76</sup> Normally, the representatives of the Arabic-language media could call in a whispering interpreter at the same time.<sup>77</sup> This is currently not possible due to the already mentioned COVID-19 measures. Media representatives, therefore, requested access to the audio track of the court interpretation.

After the court denied the request, a constitutional complaint was filed.<sup>78</sup> To date, this has not yet been decided. However, the Federal Constitutional Court issued a preliminary ruling that grants access to the court interpretation system to accredited journalists, at a charge if necessary.<sup>79</sup> While this decision is a first step in the right direction, it ultimately leaves two matters unaddressed.<sup>80</sup> First, journalists will be charged for interpretation in addition to the cost of their travel and accommodation. Second, due to the limited subject matter of the constitutional complaint, NGOs such as SJAC continue to be excluded.

### Exclusion of Those Unable to Travel to Koblenz

The majority of the interested Syrian community is unable to travel to Koblenz and unable to participate or observe the proceedings. Notably, the German concept of open justice only requires that all persons interested may come to court and have the possibility to follow the proceedings on site.<sup>81</sup> Sound and television recordings of the proceedings are, in principle, not permitted, meaning that an extension of the on-site-public by broadcasting the trial is not possible.<sup>82</sup> This is meant to protect the parties to the proceedings – especially their privacy rights – and to prevent disproportionate pressure on the courts. The court may also import further restrictions on the principle of publicity due to limited space and the factual circumstances on site.

In Koblenz, the number of spectator seats is severely limited due to COVID-19 protection measures. In practice, this has prevented public participation only on a handful of days when media attention was at its height. However, if a criminal proceeding is of “outstanding contemporary importance for the Federal Republic of Germany”, the Court may permit an audio-recording of the trial for academic purposes in accordance with §169 (2) s.1 GVG. To present, this relatively new provision is rarely used and is limited to producing archived material for later research and not to satisfy information needs of the public.<sup>83</sup>

Efforts to have the Koblenz trial recorded have so far failed. The court questioned whether the proceedings met the threshold of outstanding contemporary significance for the Federal Republic of Germany as they concern crimes allegedly committed in Syria. This, however, ignores that the Koblenz trial is a striking example of how Germany takes part in the global fight against impunity for international crimes. The trial is therefore of utmost importance for the history and development of the German legal system as well as others. The court further feared that some witnesses might feel threatened by a recording and change their testimony as a result. However, if the witnesses had a reasonable fear of retaliation for their testimony, witness protection measures could have been offered in particular cases.

Furthermore, the opposite concern is equally present that a witness might change his or her testimony knowing that it would not be subject to public scrutiny.

## Special Public Interest in the Koblenz trial

The above-mentioned reasoning of the judges regarding the historical importance of the trial, as well as the absence of Arabic-interpretation for the audience, points to the court’s general misconception of the Koblenz trial. The proceedings in Koblenz are regular criminal proceedings, despite the fact that they relate to a foreign country and are based on the principle of universal jurisdiction.<sup>84</sup> The central question the judges must answer is whether the two defendants are guilty of the crimes for which they are charged.<sup>85</sup>

One must not ignore, however, the overall context in which the trial takes place. Conflicts such as the Syrian civil war traumatize not only the individual victims but also society as a whole and will continue to do so for decades. At the conclusion of the conflict – and in the case of Syria while the conflict is still ongoing – it requires a reappraisal and healing process in which the past can be dealt with collectively.<sup>86</sup> In this transitional phase, societal structures must also be (re-)built to enable sustainable peace. This healing process is generally referred to as transitional justice.<sup>87</sup>

It includes the independent and systematic clarification of events, the identification and sanctioning of those responsible for international crimes, the rehabilitation of victims, and, if possible, compensation.<sup>88</sup> Criminal proceedings against high-ranking regime actors can send an important message to the international community, even before the end of the conflict. If the Accused are convicted and sentenced, the court sends a message that there is no safe haven for such perpetrators. This is also an important sign to the Syrian community, which has been dispersed abroad as a result of flight and expulsion. Criminal proceedings alone though cannot bring about healing and are only a small part of this larger process.<sup>89</sup> Even the most severe punishment of an individual can never make up for the injustice inherent in a crime under international law.<sup>90</sup> Once the conflict has been settled, however, the criminal judgment may add to social stabilization, particularly through its symbolic power.<sup>91</sup>

For criminal proceedings abroad to make a meaningful contribution to this transitional justice process, the affected society must first become aware of them.<sup>92</sup> It must be able to follow the trial and participate in it. Only when the affected parties feel that they are involved and that the events are being dealt with by an impartial authority can the verdict be accepted and contribute to overcoming the conflict in society as a whole.

Broad-based communication about the criminal process is thus essential. In addition, this is the only way to overcome skepticism that may exist regarding the question of what political interests the prosecuting state may have of its own and whether all relevant facts are taken into account. Such concerns are often highly pronounced among those affected by international courts. For national trials in a distant state (such as Germany in this case) that has little to do with the conflict, this must apply in the same manner. The population's trust in such a process can only be gained and maintained through regular, understandable, and in-depth reporting.

Against this background, free access to the proceedings for the public, including non-native German speakers is extremely important. Considering the abovementioned prohibition of recording or streaming from the courtroom, it becomes clear how difficult it is to facilitate such coverage. Interested Arabic speakers have no direct opportunity to follow the proceedings in court. They are therefore dependent on Arabic-language reporting, which is limited. Such reliance is therefore neither in the interest of the affected society nor of the prosecuting state and courts. For UJ proceedings to meet their full potential, they must be shared not only with the state in which they take place but with the broader interested public, including those most affected by the international crimes.



Satellite Image of the Branch 251 Building in Damascus, May 2012 © Google Earth 2021

## 5. The Caesar Files and Digital Evidence

Digital evidence was an important part of the trial in Koblenz, particularly the so-called “Caesar Files.” Since the turn of the 21st century, courts have confronted questions surrounding a new realm of digital evidence that emerged from evolving technologies and accessibility to the internet. Thanks to smartphones, video recorders are at anyone’s fingertips, as are cameras and audio recorders. As a result, telecommunications data, including call data records, telephone intercepts, emails, social media posts, and records of financial transactions are all available in criminal investigations to corroborate witness testimony and to strengthen prosecutions.<sup>93</sup> Digital evidence has been particularly valuable for trials involving international crimes, including the Koblenz trial.

Historically, perpetrators have attempted to destroy documentation that exposed their *mens rea* (intention) or *actus reus* (conduct) by the time a conflict ended.<sup>94</sup> Thus, the significance of having a digital history of violations that may amount to criminal liability lies in the ability to preserve material in real-time. Citizens and organizations now have the power to ensure that evidence does not disappear. Moreover, digital evidence also assists in the verification process of other evidence.

However, the use of digital evidence also poses new challenges for prosecutors and judges. One challenge faced by prosecutors is authentication, the process by which documentary evidence and other physical evidence is proven to be genuine.<sup>95</sup>

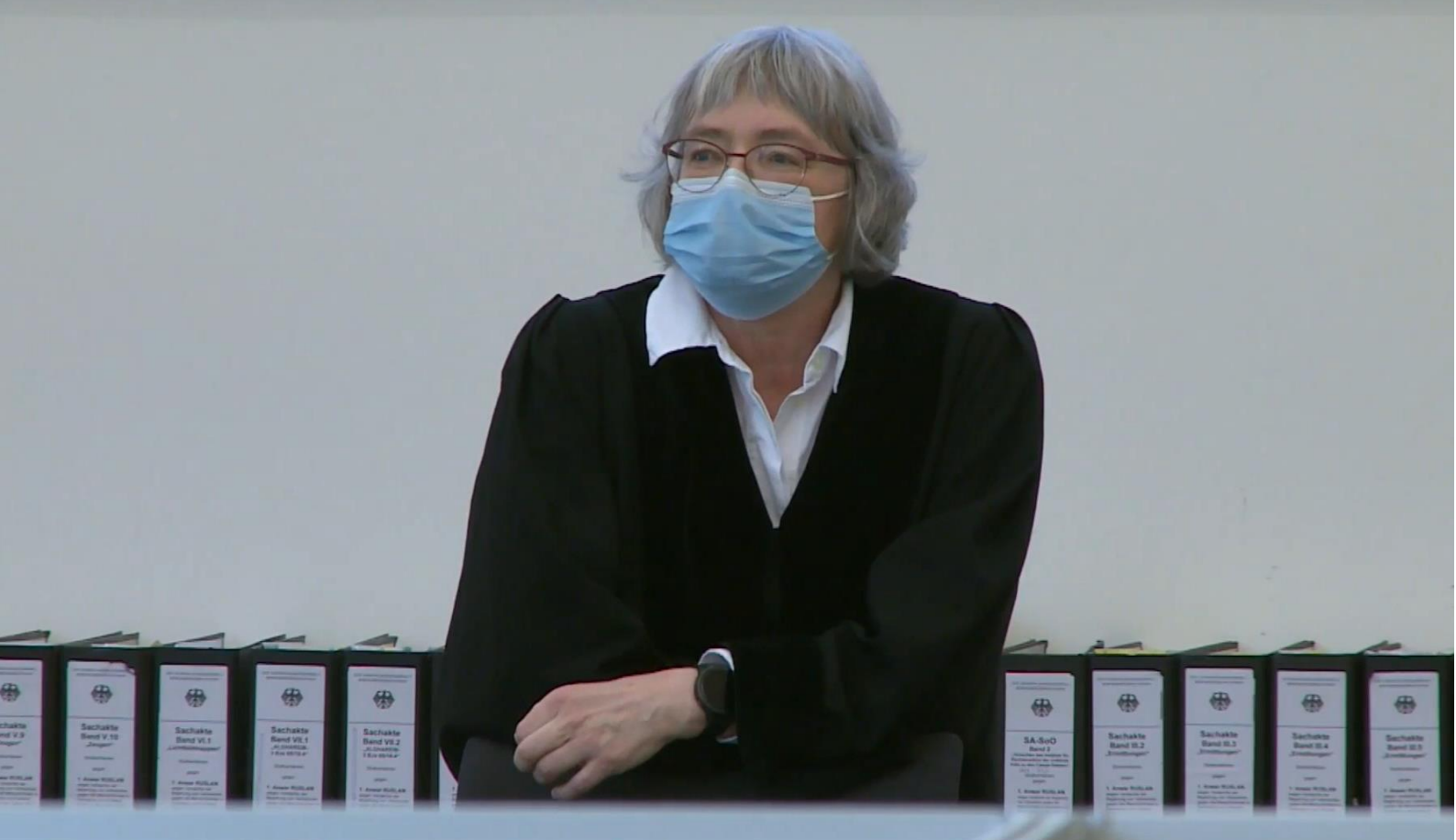


Courts are particularly concerned about the authentication of digital evidence, which can be manipulated. Another burden pertains to hearsay. Since digital evidence is removed from its originating source and is not live testimony, it is considered to be a statement made outside the court, nonetheless aimed to prove the truth. Therefore, this kind of evidence cannot be further tested in court. Methods to allow for an examination and validation of this evidence are witnesses that testify on how the evidence was obtained.<sup>96</sup> Additionally, the chain of custody of evidence is also a concern for prosecutors.<sup>97</sup> This refers to the movement and location of physical evidence from the time it is obtained until the time it is presented in court.

Consideration of these factors was particularly important in terms of the “Caesar Files” – a compilation of thousands of photos of corpses in Syrian government detention facilities. The photos were first introduced on trial day 28 by Garance Le Caisne, a French journalist who testified about her meeting with the former Syrian military photographer “Caesar” and provided details on the origin, content, and structure of the files.<sup>98</sup> The photos were further corroborated by a chief criminal inspector for the German police who testified about the technical aspects of the photos, detailing digital and physical origins and storage of the photos, and directly attributing them to the Syrian government with the help of additional satellite images.<sup>99</sup>

A forensic expert, Professor Dr. Rothschild, provided a detailed analysis regarding signs of torture and abuse on the thousands of corpses.<sup>100</sup> It was his testimony, in particular, accompanied by his clear and comprehensive presentation, that shed light on the stories behind the photos and put them in the context of the stories of survivors and victims that the court had already heard. Based on the testimonies of these experts, the judges were able to obtain insight into the Syrian government’s practice of documenting corpses of tortured civilians, ensuring that the evidence before them was authentic. In a personal note, the Presiding Judge noted that she was forever impacted by the images in the Caesar Files.<sup>101</sup> This evidence has thus been invaluable for documenting the atrocities committed in Syria and for advocacy on behalf of other victims of the conflict, including those involved in the Koblenz trial.

Without the risks taken by people like Caesar to smuggle evidence out of Syria, as well as the work of organizations dedicated to preserving such evidence, prosecutors might not be able to surpass the evidentiary hurdles associated with trying complex international criminal cases in domestic courts. Undoubtedly, the Koblenz trial will set an important precedent for the way in which digital evidence is used during UJ cases in Germany and throughout the world.



Presiding Judge Kerber standing in front of the Court's Files, observing the Parties, October 2020 ©Ruptly/Pool Provider

## 6. Evidentiary Challenges

While much has been written about evidentiary limitations in the case against Eyad Al-Gharib,<sup>102</sup> there are more general concerns relating to difficulties in obtaining and understanding evidence in the Koblenz trial. These aspects not only relate to difficulties in obtaining evidence due to the geographic distance between the crime scene and prosecuting authorities, but also to the multilingual nature of the trial.

Given that the evidentiary hearings are still in progress, the following observations are no assessment of the final evaluation of evidence by the court.

Only after the release of the judgement will it become clear how the court dealt with the below-mentioned aspects and considered the evidence presented at trial.

### Language Barriers

By the time of the pronouncement of the Eyad Al-Gharib verdict, a total of 54 witnesses had been heard in court. They consisted of survivors, insider witnesses, and experts. Many of them, particularly survivors and insiders, did not speak the language of the court, which is German.

In accordance with German law, multiple interpreters were present on each day of the proceedings to interpret statements, questions, testimonies, etc. into Arabic, German, and if necessary, French or English.<sup>103</sup>

As a rule, everything that happens in court has to be translated. Nevertheless, the details of what is a lawful interpretation process and which criteria must be met remain subject to debate.<sup>104</sup> Interpretations can easily give rise to confusion. Translation always involves a certain level of interpretation, which can lead to the contents of the witness statements being (unwittingly) altered. An example of this can be found in Trial Report 16, which describes several misunderstandings that arose between the judges and witnesses due to translation.<sup>105</sup> Additionally, to assure impartiality the interpreters assigned in the trial are non-Syrians. This, however, leads to further problems related to specific Arabic dialects of the witnesses or a lack of contextual understanding.<sup>106</sup>

Misunderstandings between judges and witnesses can further arise from cultural differences. As has been seen in other proceedings with a foreign connection, the strictly predefined procedural framework offers little

scope for eliminating existing cultural barriers between the witnesses and German lawyers and judges.

Especially in the case of grave international crimes, the latter must always demonstrate a high degree of sensitivity. Even when the court is assisted by experts, communication between the judges and foreign witnesses remains difficult and misunderstandings arise, which must be taken into account in the weighing of evidence.

## Apprehensive Witnesses

Moreover, the process of gathering evidence may also be affected by a witness' fear of retaliation or revenge. This fear will naturally lead to a change in the witness' testimonial behavior, as was the case with P3.<sup>107</sup> P3 was, apparently, intimidated and reported threats against his family. He nevertheless was encouraged to testify in court publicly. His testimony entailed several inconsistencies which were examined by the judges and the prosecution. Many of the witnesses in Koblenz have consistently expressed serious concern for their own and their families' safety. Although the court-ordered protective measures like the non-disclosure of personal data of certain witnesses,<sup>108</sup> such data



Interpreter sign © Ruptly/Pool provider

was repeatedly disclosed by different parties during the proceedings.<sup>109</sup> In one case, disclosure of protected data was also caused by the behavior of the witness him or herself.<sup>110</sup>

Nonetheless, the court must take the witness' concerns seriously not only in ordering protective measures but also in evaluating their testimonies.

## Evaluating Evidence under German Law

Although trials under universal jurisdiction apply substantive aspects of international criminal law, the procedures used are those imposed by the domestic law of the prosecuting state.<sup>111</sup> Thus, the procedural framework in the Koblenz Trial is the German Code of Criminal Procedure (StPO) which contains several basic principles for conducting criminal proceedings. One guiding principle of German criminal procedure is the maxim of *ex officio* investigations, meaning that the court has the duty to ascertain the truth by extending the taking of evidence to all facts and means of proof that are relevant to the decision.<sup>112</sup>

German procedural law further allows for four means of evidence: witnesses, experts, documentary

evidence, and inspections. Per the principle of immediacy, the evidence most closely related to the incident in question must be presented in a direct and unmediated way during the main trial.<sup>113</sup>

The court must decide on the result of the evidence taken according to its free conviction gained from the hearing as a whole.<sup>114</sup>

The judges took the above-mentioned difficulties relating to interpretation, cultural-based misunderstandings, and fear of witnesses into consideration in their judgment against Eyad Al-Gharib. The court stated that it considered all witness testimony to be credible and heavily relied on Arabic documents, which were translated by external translators and the accuracy of these translations was confirmed by the court-appointed interpreters during the trial.<sup>115</sup> In this judgment, the judges further stressed the importance of expert statements from non-German speakers in determining the overall political, social, and legal situation in Syria before and after March 2011.<sup>116</sup> It remains to be seen how the court will eventually weigh the evidence when passing its judgment in the case against Anwar Raslan.





The Witness Stand in Koblenz, January 2021 © Ruptly/Pool Provider

## 7. Witness Protection

Witness testimonies are of tremendous importance for truth-finding, which is one of the main tasks of criminal trials. This can also be seen by the amount of time the court in Koblenz has spent on hearing witnesses throughout the first year of the proceedings. In light of the ongoing conflict and the fact that the Syrian government – which is responsible for the crimes against humanity at heart of this trial<sup>117</sup> – is still in power, many witnesses found themselves exposed to threats and danger. Several witnesses therefore requested not to reveal their identity or expressed a wish to cover their faces when testifying in court. Some of these requests were granted<sup>118</sup> while others were denied.<sup>119</sup>

### Objectives of Witness Protection

Witness protection measures are designed to secure witnesses, their families, and close contacts from threats to their lives, bodily integrity, and liberty. At the same time, witness protection is crucial to ensure the truth-finding function of criminal trials. Only when witnesses feel safe and secure, can the court be assured that they have no reason to withhold information to protect themselves or their loved ones. In this vein, protective measures ensure that powers of recollection are not compromised by inner discomfort caused by fear.<sup>120</sup>

Thus, the unreasonable refusal of protective measures can increase the likelihood of false testimony and reduce the probative value of witness testimony. Effective witness protection is therefore in the best interest of witnesses and the fair and effective administration of justice.

## Witness Protection available in Germany

German law allows for a wide range of protective measures to ensure unimpeded witness testimony. Depending on the concrete nature and severity of the danger the witness is facing, German law allows a witness to conceal information on his or her identity in court.<sup>121</sup> If relevant for the assessment of the testimony, the witness might, however, be required to state in what capacity he or she obtained knowledge of the facts they are indicating. This limitation of information primarily protects the witness from revealing personal data to the public. The parties to the trial generally know the information from court documents. Mistakes do occur, however. For example, in the Koblenz trial, Raslan's defense counsel accidentally revealed personal information of a witness that was granted anonymity by the court.<sup>122</sup>

A witness may further request to cover his or her face.<sup>123</sup> This measure is more severe than a limitation of (publicly shared) information, as the parties and the judges can no longer observe the witness' demeanor and reactions.

This is, however, of importance in assessing the credibility of the testimony.<sup>124</sup> The decision to grant this type of anonymity is within the discretion of the court which must consider the severity of the danger the witness is facing. An abstract feeling of unease is not sufficient to justify obscuring a witness' face.

A further method to grant witnesses a safer environment to testify is the exclusion of the public.<sup>125</sup> This method is rarely granted. It allows the witness to testify in a less stressful setting and is typically used for under-aged witnesses and victims of sexual offenses. The exclusion of the public does not, however, spare the witness from testifying in front of the alleged perpetrator.

If there is a danger that a witness will not tell the truth when examined in the Accused's presence, the court may order the Accused to leave the courtroom during the examination.<sup>126</sup> As will be detailed below, this measure must be balanced carefully against the fair trial rights of the accused. A less restrictive measure is the possibility of questioning the witness in a separate (possibly secret) room while live-streaming the testimony in court by audio-visual transmission.<sup>127</sup> This measure ensures that a witness can testify in a safer setting, while also ensuring the right of the accused to "ask or have asked questions" (Article 6(3)d ECHR).

Audio-visual transmissions might also be used to question witnesses who cannot come to the court in person for other reasons, such as health issues<sup>128</sup> or due to long and economically unreasonable travel.<sup>129</sup>

In addition to these general measures, particularly vulnerable witnesses, especially victims, can be offered additional protection within a formal witness protection program even before the public trial. This intense form of witness protection is very rarely used and subject to strict regulations, set forth in the German Code for Witness Protection Harmonization (Zeugenschutz-Harmonisierungsgesetz – ZSHG). In accordance with this law, particularly vulnerable witnesses who are of outstanding importance for a criminal trial may be admitted into a witness protection program which provides them with, amongst others, a secure place of residence or even a temporary new identity. Besides a concrete and severe danger to the person to be protected, the evidence produced by or with the help of this person must be indispensable to the investigation or trial.<sup>130</sup> Protective measures can be taken during the investigation phase and endure throughout the trial. This means that the identity of the witness is concealed from an early point on, their personal information cannot be found in court documents, and is therefore unknown to the accused and oftentimes even the court.

The decision for this kind of protection program lies in the discretion of an autonomous public authority, the so-called “*Zeugenschutzdienststelle*,” in consultation with the Office of the Public Prosecutor. As a general rule, witnesses can only benefit from this protection until the end of the trial. After pronouncement of sentence, victim-witnesses have (as a matter of principle) merely the right to be informed of certain prison policies or privileges.

## Balancing Witness Protection and an Effective Defense

When deciding on protective measures, competent authorities must balance the security needs of the witnesses with the rights of the accused, namely the right to an effective defense including the right to examine or have examined witnesses testifying against them, as provided by Article 6(3)d ECHR. Among the fundamental rights of the accused is the right to know who raised what accusation against them which implicates the right to know the identity of witnesses. Moreover, in light of thoroughly assessing a testimony and the credibility of the witness, it is essential to ask questions and to observe facial expressions. Exclusion of the public is an obvious limitation on the right to a public trial. While the exclusion of the accused him or herself conflicts with the right to be present, the usage of anonymous testimony limits the right to confrontation.<sup>131</sup>

This shows that all protective measures – if granted too generously – may constitute a breach of the accused’s rights, and amount to an absolute ground of appeal.<sup>132</sup> The court therefore must carefully weigh the concerns of endangered and/or intimidated witnesses against legitimate interests and rights of the accused. Eventually the court must carefully assess when restrictions on the rights of the accused are strictly justified.<sup>133</sup> Incriminating testimonies that can only be tested to a limited extent by the defense due to protective measure, therefore have a lower probative value which weakens the prosecution’s case.<sup>134</sup>

Against this background, it is also in the best interests of witnesses that protective measures are used with great care. Providing testimony is particularly stressful for victims. If protection measures restrict the fair trial rights of the accused, the relevant testimony must not be relevant for the judgment “solely or to a decisive extent,” as the European Court of Human Rights ruled.<sup>135</sup>

Thus, the above-mentioned measures of witness protection must be limited to the most vulnerable witnesses who are facing severe and concrete endangerments. For other witnesses understandably feeling threatened and overwhelmed in the face of the court and the accused, measures of psychosocial support<sup>136</sup> might be the better alternative.

In the Koblenz proceedings, certain witnesses were permitted to be accompanied by someone to provide emotional support during their testimony. However, when this person must disclose their identity to a full courtroom, witnesses might again feel unsafe.<sup>137</sup> There were also examples during this trial where there was no apparent support for obviously stressed and frightened witnesses in cases where they were not granted any protective measures. This begs the question of whether witnesses were adequately informed of their right to protective measures and whether they should have been offered more liberally by the prevailing authorities.





Cars driving out of a tunnel in Damascus, 2021 © Damascus Voice

## Conclusion

Following multiple UJ trials against alleged affiliates of armed non-state groups, the Koblenz trial is the first against former officials of the Syrian government. While it raises hopes for more such trials to follow, it also raises concerns regarding the ability of German courts and authorities to effectively contribute to transitional justice in Syria and adequately address the needs of Syrian victims. Based on SJAC's detailed trial monitoring, this report provides an interim assessment of the world's first trial on Syrian state-organized torture. While cognizant of the need to respect the independence of an ongoing trial, it identifies certain aspects that require careful consideration and an adjustment of policies for future trials.

The German Federal Prosecutor General as well as the Federal Criminal Police should be commended for the allocation of significant resources to address war crimes and other crimes under international law.<sup>138</sup> However, the German judiciary would benefit from increased financial resources, additional capacity-building related to international crimes, transitional justice and transparency and outreach as proposed since the commencement of the first UJ trials in Germany.<sup>139</sup> While one might argue that courts have a limited mandate to determine the culpability and sentence of accused persons, universal jurisdiction involves international justice and implicates a broader set of objectives.

These cases deal with particularly grave and horrific crimes<sup>140</sup> as well as the traumatization of entire societies. Where UJ aims to provide a venue to fight against impunity, the special needs of the survivor community require a more nuanced and generous understanding of judicial mandates.

First, such needs include effective witness protection. This is particularly relevant in cases where (former) supporters of the perpetrators still hold a powerful position. During the Koblenz trial, the court was slow to adopt a policy of granting witness protection by allowing not only insider witnesses to conceal personal information to protect themselves and their families in Syria.<sup>141</sup>

Second, affected societies require effective participation. This relates to direct participation of victims as plaintiffs which is an opportunity taken by several survivors in the Koblenz trial. But effective participation should also include access of the general public as well as Syrians who may not have a direct linkage to the case as victims. Their effective participation is intrinsically linked to the availability of interpretations into a language they understand. In Koblenz, only court-accredited Arabic speaking journalists are allowed to use the court's interpretation devices. Victims and other Arabic speaking audience members, however, have to watch the proceedings without understanding a word.<sup>142</sup>

Simply interpreting the verdict at the end of the trial, as done in the trial against Eyad Al-Gharib is not enough to create transparency.

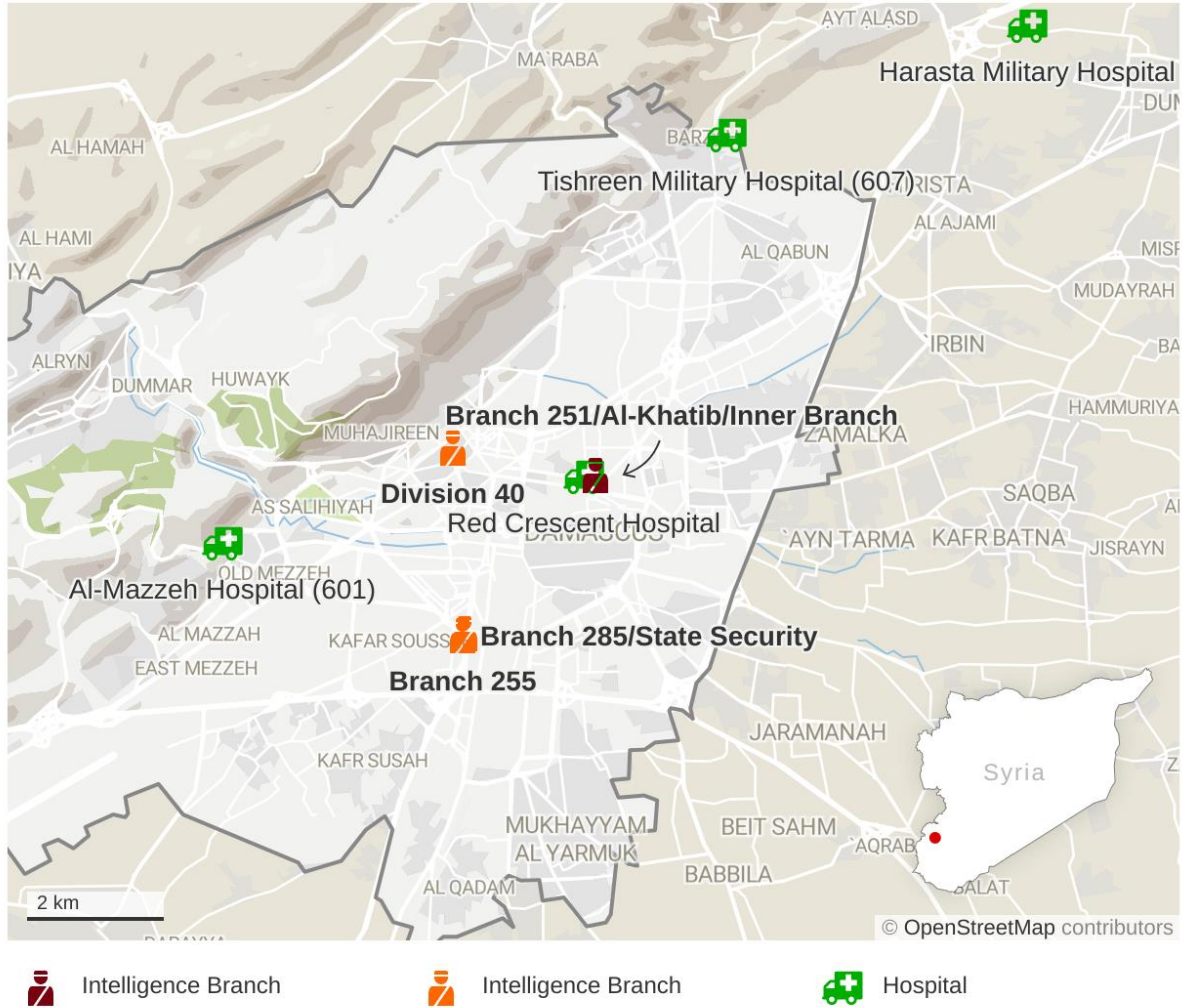
Third, courts hearing UJ cases should allocate resources for public outreach. Neither the court, nor the Federal Prosecutor General have been providing any information to the public in English or Arabic. Not only must justice be done, but it must also be *seen* to be done. Communication with the Syrian community is crucial for them to actually see the perpetrators being held accountable through a fair and impartial trial. This visibility relates to the need of the affected society to heal, but also to set the framework for a just and peaceful future.

Finally, a consistent set of criteria must be used to distinguish between those most responsible for atrocity crimes and those who have relevant inside information who may testify against them. Prosecution of lower-level perpetrators may limit opportunities for transitional justice by forcing insider witnesses into hiding and preventing them from participating in justice measures.

The Koblenz trial is an important step to hold perpetrators on all sides of the Syrian conflict accountable for their actions. It is a significant building block for more comprehensive justice and provides an important learning opportunity for future processes.

# Annex I a: Important Places

## Koblentz Trial - Map

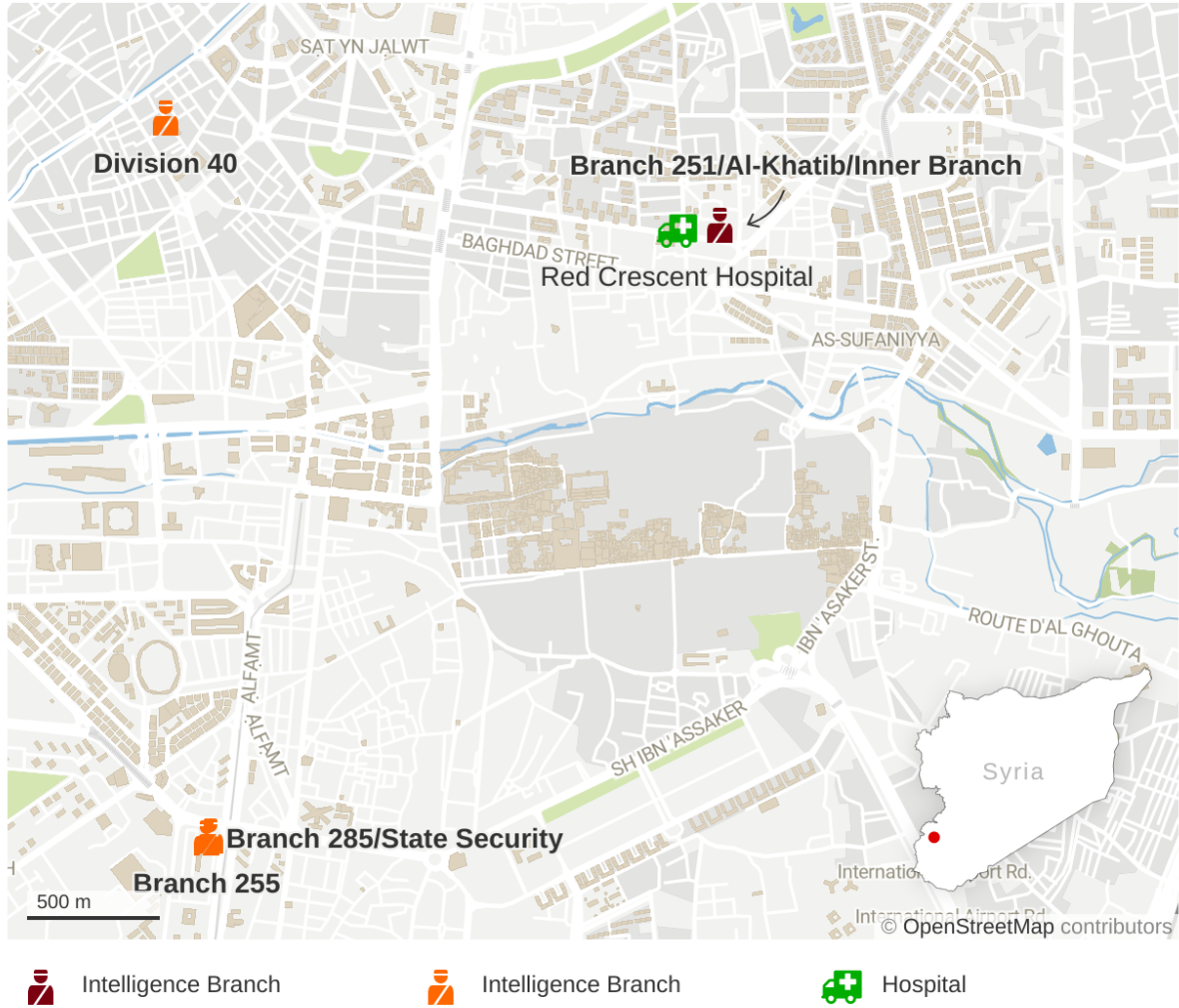


Source: Syria Justice and Accountability Centre (SJAC) • Created with Datawrapper



# Annex I b: Important Branches

## Koblenz Trial - Map



Source: Syria Justice and Accountability Centre (SJAC) • Created with Datawrapper



# ANNEX II: Witness Summaries

 Witness     Expert     Plaintiff

## Mr. Deußing

*Witness, Expert*

Testified on [April 24](#), [May 27](#), [September 2](#), [October 29, 2020](#) and February 3, 2021.

Criminal Chief Inspector at the German Federal Criminal Police (BKA) leading structural investigations into crimes arising from the Syrian conflict since 2011. Testified about investigations, arrests, searches, exhibits and witness interviews relevant to the cases of Anwar Raslan and Eyad Al-Gharib. He also provided a very detailed analysis of the Caesar Files in trial week 16.

## Ms. Drechsler

*Witness*

Testified on [April 29](#), 2020.

Officer at the German Ministry of Foreign Affairs who testified on the background of Raslan's asylum procedure in Germany.

## Mr. Wöllner

*Witness*

Testified on [May 18](#), 2020.

Officer with decision-making power at the BAMF who testified on Al-Gharib's interview when applying for asylum in Germany.

## Ms. Thurmann

*Expert*

Testified on [April 28](#), 2020.

Ethnologist, formerly worked for the BKA and conducted research on the MENA region. She testified on Syrian history and background of the uprising in 2011. Her expertise was questioned several times, particularly by the defense.

## Mr. Pütz

*Witness*

Testified on [May 18](#), 2020.

Caseworker at the BAMF who testified on Al-Gharib's interview when applying for asylum in Germany.

## Ms. Zensius

*Witness*

Testified on [May 18](#), 2020.

Social worker in Zweibrücken, Germany. She testified about Al-Gharib's involvement in several fights at the refugee shelter.

## Ms. Becker

*Witness*

Testified on [May 19](#), 2020.

Founder of an NGO for Syrian refugees. She testified about her meeting with Raslan during which he expressed concerns about being under surveillance by the Syrian Intelligence Service.

## Ms. Bohlmann

*Witness*

Testified on [April 29](#), 2020.

Officer at the Federal Office for Migration and Refugees (BAMF) who testified on Raslan's asylum-seeking process in Germany.

## Ms. Huss

*Witness*

Testified on [April 29](#), 2020.

Officer at Foreigners' Registration Office who spoke about administrative aspects of Raslan's residency permit in Germany, such as his language certificates and how much social support he received.

## Ms. Müller-Durmann

*Witness*

Testified on [May 19](#), 2020.

Police Officer from Berlin who spoke about Raslan's concerns about being under surveillance by the Syrian Intelligence Service.

## Mr. Abdullah

*Witness*

Testified on [May 18](#), 2020.

Interpreter working at the BAMF who testified about Al-Gharib's interview with the office.

### Mr. Schmidt

*Witness*

Testified on [May 28](#), 2020.

Criminal Officer at the Federal Criminal Police (LKA) in Berlin. He testified about his questioning of Raslan.

### Mr. Frey

*Witness*

Testified on [May 27](#), [June 25](#), [September 3](#), 2020, and [January 14](#), 2021.

Criminal Inspector at the BKA who testified on exhibits, investigations, and arrests in Al-Gharib's case.

### Ms. Krüger

*Witness*

Testified on [May 28](#), 2020.

Police Officer from Berlin who testified about her hearing with Raslan during which he mentioned several incidents when he felt monitored by the Syrian Intelligence Service in Germany.

### Mr. Holtzky

*Witness*

Testified on [May 29](#), 2020.

Police Officer from the BKA who interviewed Raslan as a witness on Syrian Intelligence Services.

### Firas Al-Fayyad (P1)

*Plaintiff, Witness*

Testified on [June 3+4](#), 2020.

Syrian movie director who testified about his own experiences of torture, mistreatment, and interrogations during his detention at Branch 251 and the conditions in this Branch.

### P3

*Witness*

Testified on [June 24+25](#), 2020.

Former employee of the General Intelligence Directorate. He testified about his work at Branches 295 and 255. He told the court that he saw charts documenting corpses while working at Branch 255.

### Anwar Al-Bunni (P2)

*Witness, Expert*

Testified on [June 4+5](#), 2020.

Syrian lawyer who testified about his own experience at Adra prison, his clients' experiences at Branch 251, as well as women's experiences at Branch 251 including sexual assaults.

### Mr. Knappman

*Witness, Expert*

Testified on [June 25](#), 2020, and [January 7](#), March 14, 2021

Criminal Inspector at the BKA who he testified about his interviews with several witnesses and the office's investigations into mass graves in Syria.

### P4

*Witness*

Testified on [July 1](#), 2020.

This 30-year-old Syrian witness testified about his experience of torture at Branch 251 and the overall detention conditions at this Branch.

### P5

*Witness*

Testified on [July 2+3](#), 2020.

Former security guard at Branch 251. He testified about his daily work there and the structures and hierarchies at the Branch.

### P6

*Witness*

Testified on [July 6](#), 2020.

Cousin of Eyad Al-Gharib who spoke about his relation to his cousin and that Al-Gharib was supportive of the demonstrations and warned friends if they were about to be detained.

### P7

*Witness*

Testified on [July 29](#), 2020.

The 30-year-old witness who testified about his experiences of mistreatment and torture at Al-Khatib and Kafar Souseh Branches and detention conditions at these Branches.

### Mr. Brücken

*Witness*

Testified on [July 2](#), 2020.

Criminal Officer with the French Police who testified about the questioning of P5.

### Kathrin Mittendorf

*Witness*

Testified on [July 2](#), 2020.

Officer with decision-making powers at the BAMF who spoke about P5's asylum-seeking process.

## P8

*Witness*

Testified on [July 30](#), 2020.

The 39-year-old witness who testified about his own experiences of mistreatment and torture at Branch 251 and Kafar Souseh Branch. He told the court about people dying in detention.

## P9

*Witness*

Testified on [July 31](#), 2020.

Former employee of the Syrian government who testified about his detention and told the court that Raslan might have been the one who interrogated him during his detention.

## P10

*Witness*

Testified on [August 12+13](#), 2020.

Former employee at the Syrian Intelligence Service with over 20 years of experience. He testified about the structure and hierarchy of the Syrian Intelligence Services as well as common torture methods.

## P11

*Plaintiff, Witness*

Testified on [August 19](#), 2020.

The plaintiff testified about his experiences of mistreatment and interrogations as a detainee at Branch 251 and Kafar Souseh. He said that he would still recognize the voice of his interrogator at Branch 251.

## P12

*Plaintiff, Witness*

Testified on [August 20](#), 2020.

The witness, a Syrian software engineer, testified about his detention at Branches 251 and 285. He told the court about overcrowded cells and torture and said he would be able to identify the person who violently interrogated him at Branch 251 by his voice.

## Riad Seif (P13)

*Witness*

Testified on [August 26+27](#), 2020.

Prominent Syrian figure of the Syrian opposition who testified about his background and role in the opposition as well as his relationship with Raslan from whom he had hoped to get information about the government.

## Mr. Lindemann

*Expert*

Testified on [September 2](#), 2020.

Criminal Inspector at the BKA who testified on his analysis of a HRW report titled "Torture Archipelago" that was conducted prior to Raslan's arrest.

## Mr. Schneider

*Witness*

Testified on [September 3](#), 2020.

Chief Inspector at the BKA who testified on Al-Gharib's stay at a clinic in Zweibrücken where the investigative judge ordered to uphold the arrest warrant against Al-Gharib.

## P14

*Witness*

Testified on [September 9+10](#), 2020.

Insider witness who testified about his work at a burial site and the existence of mass graves where corpses from several Intelligence Service prisons were buried.

## Mazen Darwish

*Witness, Expert*

Testified on [September 15](#), 2020.

Director of the SCM who provided background on the history of Syria and events leading to the uprising in 2011. He further provided additional documents to the court on Branch 251 and spoke about the legal system in Syria as well as his own experiences in detention.

## P15

*Witness*

Testified on [September 16](#), 2020.

The 50-year-old witness who testified about two phone calls he had with Raslan, whom he also met twice. He further told the court about the search for his cousin who was detained in Branch 251 and notes of compassion from Raslan.

## P16

*Witness*

Testified on [October 1](#), 2020.

This female witness who testified about her experiences of being beaten at Branch 251 and shared stories of other female detainees being raped. She also told the court about a meeting she had with Raslan after he defected. According to her statement, he was the interrogator at Branch 251.



**P17**

*Plaintiff, Witness*

Testified on [October 6](#), 2020.

The Syrian author who described the search for his brother, who was arrested at Branch 251, as well as his own detention with the Syrian Intelligence Services.

**Ms. Le Caisne**

*Witness, Expert*

Testified on [October 27](#), 2020.

French journalist who provided background on the Caesar files and testified about her interviews with Caesar, the military photographer who leaked thousands of photos of corpses from the prisons of the Syrian Intelligence Services.

**Mr. Engels**

*Expert*

Testified on [November 17+18](#), 2020.

Director of Investigations and Operations at CIJA. He testified about the structure of the Syrian Intelligence Services and handed in documents that CIJA obtained from Syria (he also explained how CIJA obtained them).

**P21**

*Witness*

Testified on [December 1+2](#), 2020.

Former employee of the Syrian Intelligence Services with over 30 years experience. He testified about his work at Branch 255 where he saw lists of dead people and orders to 'extend interrogation methods' coming from Branch 251.

**P18**

*Witness*

Testified on [October 7](#), 2020.

Testified about the search for his cousin who was arrested and detained at Branch 251.

**Professor Dr. Rothschild**

*Expert*

Testified on [November 3](#), 2020.

Forensics professor at the University of Cologne. He provided a detailed forensic analysis of the Caesar photos.

**P19**

*Plaintiff, Witness*

Testified on [November 19](#), 2020.

Female survivor who was detained by the Syrian Intelligence Services several times. She testified about her detention at Branches 251 and 285 where she was beaten and experienced sexual harassment.

**Ms. Hille**

*Witness*

Testified on [December 2](#), 2020.

Caseworker at the BAMF who interviewed P21 during his asylum-seeking procedure in Germany. She further explained how information about witnesses of war crimes is forwarded to her office.

**Mr. Reuter**

*Witness, Expert*

Testified on [October 8](#), 2020.

German journalist who testified about the situation in Syria in 2011 and 2012 based on his experiences. He further spoke about two interviews he had with Raslan, who seemed to have a photographic memory.

**Mr. Horl**

*Witness*

Testified on [November 4](#), 2020, and January 27, 2021

Criminal Inspector at the BKA who testified about a CV that was found during the search of Raslan's flat in Berlin and witness interviews.

**P20**

*Witness*

Testified on [November 25 +26](#), 2020.

Former detainee of the General Intelligence Directorate at Branches 251 and 285. He testified about being tortured on the way to the detention facilities and identified Raslan as the interrogator who slapped and kicked him in the stomach during an interrogation.

**P22**

*Plaintiff, Witness*

Testified on [December 9](#), 2020.

Syrian doctor who was detained at Branch 251 and Kafar Souseh. He said that most of the wounds of the detainees were caused outside the branch. He described his own experiences being tortured as well as collective punishment of detainees. According to this witness, conditions at Branch 251 were better than at the detention facility in Kafar Souseh.

### P23

*Witness*

Testified on [December 10](#), 2020.

Testified about being detained at Branch 251 and transferred to Harasta hospital where he and other patients were tortured, many of whom died.

### P24

*Witness*

Testified on December 16, 2020.

Female detainee at Division 40 and Branch 251 who testified on detention conditions and other detainees being tortured. She did not suffer sexual violence.

### P25

*Plaintiff, Witness*

Testified on [January 6](#), 2021.

Testified about his detention at Branches 251 and 285 and his experiences being tortured. According to this witness, conditions at Branch 251 were worse than at Branch 285. He testified that children and elderly people were also in detention.

### P26

*Witness*

Testified on [January 13](#), 2021.

He spoke about his two detentions at Branch 251 where he witnessed constant torture, overcrowded cells, bad food, and inadequate hygienic facilities.

### P27

*Plaintiff, Witness*

Testified on January 28, 2021.

He testified about his detention at Branch 251 where he had to endure torture during interrogations and harsh beating upon his arrival. He further heard other detainees, including women, being tortured.

### P28

*Plaintiff, Witness*

Testified on March 10, 2021

He described the generally bad conditions in Branch 251 and mentioned torturing methods such as dripping hot melted plastic on one's head and back. Further described psychological and physical traumas he is suffering from his detention.

### P29

*Witness*

Testified on March 11, 2021.

He testified that he was tortured and sexually harassed on the way to Branch 251. According to him, food at the Branch was sufficient.

### P30

*Plaintiff, Witness*

Testified on March 17, 2021.

He described the bad conditions in Branch 251 where he saw people being tortured with electric shocks and appliances on the wall, possibly used to hang people. He testified about a fellow detainee who was tortured with the *German Chair*.

### P31

*Witness*

Testified on April 7 + 8, 2021.

He identified Raslan as a higher-ranking employee at the Branch and testified about constant torture during interrogations, overcrowded cells and inadequate hygienic conditions at the Branch.

### P32

*Plaintiff, Witness*

Testified on April 14 + 15, 2021.

She spoke about her and her sister's detention in Branch 251 and identified Raslan as a high-ranking employee at the Branch. She also testified on experiencing sexual violence during detention.

## Citations

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- <sup>5</sup> See SJAC’s [Annual Report 2021](#), [p18](#).
- <sup>6</sup> Máximo Langer, “Universal Jurisdiction Is Not Disappearing: The Shift from ‘Global Enforcer’ to ‘No Safe Haven’ Universal Jurisdiction,” *Journal of International Criminal Justice* 13, no. 2, May 1, 2015, at pp. 245–56, <https://doi.org/10.1093/jicj/mqv009>.
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- <sup>8</sup> Emmanuel Jarry, “France Issues Arrest Warrants for Senior Syrian Officials,” *Reuters*, November 5, 2018, <https://www.reuters.com/article/us-syria-crisis-france-idUSKCN1NA11L>.
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- <sup>14</sup> See SJAC’s [Trail Report #18](#).
- <sup>15</sup> See SJAC’s [Trial Report #22](#).
- <sup>16</sup> Christopher F. Schuetze and Ben Hubbard, “Syrian Doctor Accused of Torture Is Arrested in Germany,” *The New York Times*, June 22, 2020, <https://www.nytimes.com/2020/06/22/world/europe/syria-doctor-torture-germany.html>.
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- 24 §211 StGB.
- 25 §177 (1) Nr.1, (2) Nr.1, (3) Nr.1 StGB [old version].
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 141 See the different Trial Reports at SJAC, "Trial Monitoring," Syria Justice & Accountability Centre, accessed January 25, 2021, <https://syriaaccountability.org/updates/>.



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<sup>142</sup> SJAC, “PRESS RELEASE: Syrian Journalist and Human Rights Organization Secure Access to

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