

NAME	Eyad Al-Gharib
DATE OF BIRTH	May 25, 1976
BIRTHPLACE	Damascus, Syria
NATIONALITY	Syrian
CURRENT STATUS	Incarcerated
WARRANT OF ARREST	Issued on February 7, 2019
OPENING OF THE MAIN PROCEEDINGS	March 6, 2020
FIRST INSTANCE JUDGMENT OF FEBRUARY 24, 2021	Sentenced to 4 years and 6 months imprisonment for aiding and abetting a crime against humanity and aggravated deprivation of liberty
APPEAL JUDGMENT OF APRIL 20, 2022	Rejection of the appeal

Facts (brief summary):

Since April 29, 2011, the Syrian security authorities have attempted to violently put down the protest movement that emerged against the regime of President Bashar al-Assad as part of the so-called "Arab Spring." For this reason, demonstrations across the country were broken up by live firearms, and a large number of actual or alleged demonstrators were arrested, mistreated, tortured or killed. The declared goal was, on the one hand, to obtain information about additional opposition members and, on the other hand, to intimidate the population in order to prevent further protest actions. The Syrian general intelligence service played a decisive role in this.

Eyad Al-Gharib joined the Syrian General Intelligence Service on July 10, 1996, at the age of 20, and served there until early January 2012, reaching the rank of Sergeant Major until his desertion on January 05, 2012. As of 2010, Eyad Al-Gharib was assigned to Branch 251 of the General Intelligence Service. In September or October 2011, about 1,000 security forces, including Eyad Al-Gharib as a member of subdivision 40 of division 251 of general intelligence, were deployed to combat

a peaceful demonstration in the city of Douma. The members of this subdivision were ordered to shoot, pursue, and arrest the demonstrators. In the process, several died, and another 30 demonstrators were arrested and taken to the headquarters of Division 251 in Damascus. During the journey as well as afterwards, the detainees were systematically physically abused and tortured for several days with beatings, sometimes with the aid of metal pipes and other tools. In addition, they were subjected to the worst possible conditions of detention (no daylight, extreme confinement, insufficient food supply, etc.) as well as an extremely stressful psychological situation.

Proceedings in the case of Eyad Al-Gharib:

1. Federal Court of Justice (BGH) - Appeal of June 6, 2019 (StB 14/19)¹
2. Federal Court of Justice (BGH) - Detention review of October 9, 2019 (AK 54/19)²
3. Federal Court of Justice (BGH) - Detention review of December 17, 2019 (AK 59 and 60/19)³
4. Federal Court of Justice (BGH) - Detention review of April 7, 2020 (AK 6 and 7/20)⁴
5. Higher Regional Court Koblenz (OLG Koblenz)- First instance judgment of February 24, 2021 (1 StE 3/21)⁵
6. Federal Court of Justice (BGH) - Appeal judgment of April 20, 2022 (3 StR 367/21)⁶

¹ [Federal Court of Justice – Appeal in the case of Eyad Al-Gharib.](#)

² [Federal Court of Justice – First Detention Review in the case of Eyad Al-Gharib.](#)

³ [Federal Court of Justice – Second Detention Review in the case of Eyad Al-Gharib.](#)

⁴ [Federal Court of Justice – Third Detention Review in the case of Eyad Al-Gharib.](#)

⁵ [Higher Regional Court Koblenz – First-instance judgment in the case of Eyad Al-Gharib.](#)

⁶ Full text not available yet (as of December 20, 2023).

1. Federal Court of Justice (BGH) – Appeal of June 6, 2019

On June 6, 2019, the Federal Court of Justice decided in accordance with Sec. 304 (5) of the German Code of Criminal Procedure (StPO) that, on appeal by the Attorney General, the **order of the investigating judge** of the Federal Court of Justice of May 17, 2019 (Case No. 4 BGs 128/19) **is to be set aside**.

Eyad Al-Gharib was arrested and remanded in custody on February 12, 2019, based on an arrest warrant issued by the investigating judge of the Federal Court of Justice on February 7, 2019 (Case No. 4 BGs 25/19). On May 17, 2019, the arrest warrant was revoked "for reasons of expeditiousness without conducting" the requested detention examination by the above-mentioned order of the same date, and Eyad Al-Gharib was released from pre-trial detention. The reason for this was the assumption of a prohibition of utilization with regard to a self-incriminating witness statement of Eyad Al-Gharib by the deciding investigating judge of the Federal Court of Justice and the related denial of the existence of an urgent suspicion of a crime.

On appeal by the Attorney General, the court overturned the aforementioned order and amended the original arrest warrant by limiting the scope of the offense in respect of which there was urgent suspicion. Eyad Al-Gharib was subsequently remanded in custody again on August 25, 2019, as in the opinion of the court the conditions for ordering and executing pre-trial detention were met.

Eyad Al-Gharib was **strongly suspected of** aiding and abetting the crime against humanity in combination with 30 separate cases of aiding and abetting dangerous bodily harm pursuant to Sec. 7 (1) No. 5 VStGB, Secs. 223 (1), 224 (1) No. 2, No. 4, 27 (1), 52 StGB. The urgent suspicion was based in objective and subjective terms essentially on the statements made by Eyad Al-Gharib during his police interrogation as a witness on August 16, 2018. In addition, the urgent suspicion was based on his further statements in the context of his hearing by the BAMF for the asylum procedure on May 9, 2018.

The prohibition on the use of evidence assumed by the investigating judge of the Federal Court of Justice pursuant to Sec. 136 (1) Sentence 2 in conjunction with Sec. 163a (4) Sentence 2 StPO did not apply comprehensively. Sec. 163a (4) Sentence 2 StPO did **not apply comprehensively**, but only to part of this statement. The interrogating police officers were only required to switch from questioning witnesses to questioning suspects after Eyad Al-Gharib had stated that, as an employee of Department 251 of the Syrian General Intelligence Service, he had been involved in arresting fleeing demonstrators and citizens and transporting them to the headquarters of Department 251 in Damascus and that he had known about the mistreatment, torture and killing of prisoners. The **information** he had provided **up to that point was** therefore **usable**.

The court affirmed that there was a **risk of absconding** pursuant to Sec. 112 (2) No. 2 StPO, since Eyad Al-Gharib had to expect a severe prison sentence in the event of his conviction. Although his family was living in Germany at the relevant time, they had only entered the country a few years ago and Eyad Al-Gharib had numerous connections abroad.

Ultimately, the Senate was also of the opinion that the renewed execution of **pre-trial detention was not disproportionate to the** importance of the case and the expected punishment (Sec. 120 (1) Sentence 1 StPO).

2. Federal Court of Justice (BGH) – Detention review of October 9, 2019

The Federal Court of Justice decided on October 9, 2019, pursuant to Secs. 121, 122 StPO, that the **pre-trial detention of Eyad Al-Gharib shall continue** as the conditions for ordering pre-trial detention and its continuation beyond six months were met.

With regard to the details of the charges, the **urgent suspicion** and the **existence of a reason for detention**, the Senate referred to the decision of June 6, 2019.

The special conditions for the continuation of pre-trial detention beyond six months, were present in the opinion of the court, since the **special difficulty and the special scope of the investigations had not yet permitted a verdict** and the proceedings had been **continued since** February 12, 2019, in a **manner satisfying the acceleration requirement**.

Ultimately, the **pre-trial detention was still not disproportionate** to the importance of the case and the punishment to be expected in the event of a conviction (Sec. 120 (1) Sentence 1 StPO).

3. Federal Court of Justice (BGH) – Detention review of December 17, 2019

Also within this decision, the Federal Court of Justice decided on December 17, 2019, pursuant to Secs. 121, 122 StPO, that the **pre-trial detention of Eyad Al-Gharib shall continue** as the requirements for the continuation of pre-trial detention beyond nine months were met.

With regard to the prerequisites of the existence of an **urgent suspicion of a crime** and the **existence of a reason for arrest**, the senate referred to the appeal decision of June 6, 2019 (cf. above) and, in addition, to the application for an arrest warrant filed by the Attorney General on January 23, 2019. In this regard, it was not considered decisive for the question of detention that Eyad Al-Gharib was no longer charged with - ideally competing - participation in simple or dangerous bodily injury as well as criminal liability under Sec. 7 (1) No. 9 of the German Code of Crimes against International Law (VStGB), because the Attorney General had eliminated these from criminal prosecution pursuant to Sec. 154 (1) No. 1 StPO. The crime under Sec. 7 (1) No. 5 VStGB weighed more heavily than the above-mentioned offenses in any case.

The conditions for the continuation of pre-trial detention beyond nine months, were in the view of the court, since the **particular difficulty and the special scope of the**

investigation had not yet allowed a judgment and the proceedings were still sufficiently promoted after the Senate decision of September 5, 2019.

Ultimately, in the opinion of the Senate, **pre-trial detention** was still **not disproportionate** to the importance of the case and the punishment to be expected in the event of a conviction (Sec. 120 (1) Sentence 1 StPO).

4. Federal Court of Justice (BGH) – Detention review of April 7, 2020

On April 7, 2020, the Federal Court of Justice ruled pursuant to Secs. 121 and 122 StPO that the **pre-trial detention of Eyad Al-Gharib shall continue** as the requirements for the continuation of pre-trial detention beyond twelve months were met.

With regard to the prerequisites of the existence of an **urgent suspicion of a crime** and the **existence of a reason for detention**, the court referred to its decision of December 17, 2019, and to the court decisions and application documents referred to therein, together with the indictment of the Attorney General.

The conditions for the continuation of pre-trial detention beyond twelve months, were present in the opinion of the senate, as the **particular difficulty and the special scope of the averments had not yet permitted a verdict** and therefore justified the continued execution of pre-trial detention. The proceedings were also sufficiently supported after the Senate resolution of December 17, 2019.

Ultimately, in the opinion of the Senate, the **pre-trial detention was not disproportionate to the** importance of the case and the expected punishment (Sec. 120 (1) Sentence 1 StPO).

5. Higher Regional Court Koblenz (OLG Koblenz) – First-instance judgment of February 24, 2021

Eyad Al-Gharib was sentenced to four years and six months imprisonment for aiding and abetting a crime against humanity in the form of torture and serious deprivation of liberty pursuant to Sec. 7 (1) No. 5 and No. 9, (2) VStGB, Secs. 27, 46b of the German Criminal Code (StGB).

The Syrian regime's actions constitute both an **extended and systematic attack against the civilian population within the** meaning of Sec. 7 (1) VStGB from the end of April 2011 at the earliest and thus at the time of the crime. This results from the extended and violent action by security forces against peaceful demonstrators and other (alleged) opposition members in order to maintain the power of the existing government under the leadership of Bashar al-Assad. The target of these attacks was a broad majority of civilians who had joined the opposition - either actually or only presumably - or who were critical of the Syrian government. The systematic approach results from the central control of the violent actions of the security forces by the Senate as a collective in a management body set up specifically for this purpose.

The demonstrators and members of the opposition who were arrested and taken to Department 251 were tortured within the meaning of Sec. 7 (1) No. 5 VStGB and severely deprived of their freedom within the meaning of Sec. 7 (1) No. 9 VStGB as part of the above overall offense. In this regard, Eyad Al-Gharib aided and abetted.

The **single offense of Sec. 7 (1) No. 5 VStGB was realized in** that all prisoners were already excessively beaten upon their arrival and subsequently subjected to further physical abuse within the ward. In addition, they were subjected to inhumane conditions of detention as well as to a frightening, gruelling uncertainty about their own impending further treatment, which meant that for each victim of the crime, suffering was clearly surpassing the materiality threshold.

The detention also **constituted a single offense under Sec. 7 (1) No. 9 VStGB**, in that the demonstrators were severely deprived of their physical freedom in violation of a general rule of international law. The required severity of the deprivation of liberty results, on the one hand, from the unlawful and unfounded order of detention, whereby the opposition members were not informed of the duration of the detention, which was therefore unforeseeable for them. On the other hand, it results from the inhumane general conditions of detention, which were characterized by massive violence and torture.

The **individual acts** committed **also functionally fit into the overall crime** in that they were connected in terms of subject matter, time, and place.

Eyad Al-Gharib **aided and** abetted the crime just described **pursuant to Sec. 27 StGB**. He aided and abetted **the main offense** by actively supporting the arrest and transfer of the demonstrators to Department 251, which made the realization of the individual offenses possible in the first place.

The Senate denied the existence of a **culpable state of necessity within the meaning of Sec. 35 StGB for** lack of the prerequisites. A subjective state of emergency in the sense of a situation of compulsion could not be recognized. Furthermore, from an objective point of view, there was no unreasonableness of acting in accordance with the norm, since Eyad Al-Gharib had the possibility of refraining from committing the crime. In this regard, in view of the seriousness of the offense, increased demands were to be placed on the defendant about his consideration of avoiding the offense.

6. Federal Court of Justice (BGH) – Appeal judgment of April 20, 2022

Note: A copy of the judgment has been requested but has not been sent to date⁷.

⁷ as of December 20, 2023.