

<b>NAME</b>	Khedr A. K.
<b>DATE OF BIRTH</b>	XX.XX.1978
<b>BIRTHPLACE</b>	Syria
<b>NATIONALITY</b>	Syrian
<b>CURRENT STATUS</b>	Incarcerated
<b>WARRANT OF ARREST</b>	Issued on July 13, 2020
<b>OPENING OF THE MAIN PROCEEDINGS</b>	December 16, 2020
<b>FIRST INSTANCE JUDGMENT OF AUGUST 26, 2021</b>	Sentenced to life imprisonment for war crimes against a person by killing in combination with murder and membership in a terrorist organization abroad

## Facts (brief summary):

The protests against the government of Bashar al-Assad, which had been smoldering in Syria since February 2011, escalated further into an armed uprising from mid-March 2011 due to violent action and finally culminated in a large-scale civil war in June 2012. During the intensively fought armed conflicts, serious violations of international humanitarian law were increasingly committed by all conflict parties. In this context, the organization Ghurabaa Muhassan initially was founded as an armed group against the Assad regime and eventually joined forces with Jabhat al-Nusra to overthrow the Assad regime and replace it with an Islamic state.

Khedr A. K. joined the Ghurabaa Muhassan in spring 2012 due to his rejection of the Assad regime. On July 10, 2012, Khedr A. K. (along with other members of the combat unit) participated in the execution of a previously captured lieutenant colonel in the Syrian army. The latter was taken to a remote location on the banks of the Euphrates and taunted on the way. Upon arrival, Khedr A. K. and other members of his

unit forced the captive to walk a short distance along the riverbank and then announced that he would die because of his affiliation with the regime. Fighters of the Ghurabaa Muhassan then shot him with machine guns.

Sami A. S., who was known as a media activist and was tasked with making propaganda footage, filmed the entire route as well as the execution and annotated the video so that it could later be used for propaganda purposes.

### Proceedings in the case of Khedr A.K.:

1. Federal Court of Justice (BGH) - Immediate appeal of November 12, 2020 (StB 39/20)<sup>1</sup>
2. Federal Court of Justice (BGH) - Detention review of February 3, 2021 (AK 1 and 2/21)<sup>2</sup>
3. Higher Regional Court Düsseldorf (OLG Düsseldorf) - First-instance judgment of August 26, 2021 (6 StS 5/20)<sup>3</sup>

### 1. Federal Court of Justice (BGH) – Immediate appeal of November 12, 2020

The Federal Court of Justice decided on November 12, 2020 that the immediate appeal of the defendant against the order of the investigative judge of September 16, 2020 is to be dismissed.

On July 13, 2020, the investigative judge of the Federal Court of Justice appointed attorney A. as public defender due to the presentation of the warrant of arrest of Khedr A. K. and Sami A. S. with the consent of the defendant. On September 4, 2020 the lawyer K. chosen by Khedr A. K. applied for the **assignment as public defender**. In the event that the court did not consider the appointment of two public defenders

<sup>1</sup> [Federal Court of Justice – Immediate appeal in the case of Khedr A. K.](#)

<sup>2</sup> [Federal Court of Justice – Detention review in the case of Khedr A. K.](#)

<sup>3</sup> [Higher Regional Court Düsseldorf – First-instance judgment in the case of Khedr A. K.](#)

to be appropriate, the public defender already appointed was to be discharged. The application was rejected. lawyer K. lodged an immediate appeal against this.

In the opinion of the court, the appeal is to be rejected, as there is no reason for the appointment of K as (second) public defense counsel or for a change of public defender. The **appointment of a further public defender** was also **not required** pursuant to Sec. 144 (1) of the German Code of Criminal Procedure (StPO). The requirements for a **change of defense counsel** pursuant to Sec. 143a, (2), Sentence 1 StPO, were also not met. A change of defense counsel on the basis of consensus could only be considered if it were cost-neutral. Although this was asserted in the original statement of claim, it was not substantiated and thus cannot be assumed in the result.

## **2. Federal Court of Justice (BGH) – Detention appeal of February 3, 2021**

The Federal Court of Justice has ruled that the pre-trial detention of Khedr A. K. and Sami A. S. shall continue beyond six months. The two defendants were still **urgently suspected** of the crimes with which they were charged. The killing of the Lieutenant Colonel of the Syrian Army (who is a person to be protected under international humanitarian law, as he did not directly participate in hostilities) was committed in connection with a **non-international armed conflict** pursuant to Sec. 8 (1) No. 1, (6) No. 2 German Code of Crimes against International Law (VStGB). The direct act of killing was attributed to Khedr A. K. as a co-perpetrator pursuant to Sec. 25 (2) of the German Criminal Code (StGB) in conjunction with Sec. 2 VStGB, since the guarding in the immediate vicinity constituted an essential contribution to the crime. The act equally constituted murder due to ulterior motives and an act of participation in the terrorist organization Jabhat al-Nusra.

The reason for detention was the **risk of absconding** pursuant to Sec. 112 (2) No. 2 StPO, as well as **serious crime**. The incentive to flee could not be

invalidated by mitigating circumstances. Khedr A. K. and Sami A. S. had both lived in Germany for only a few years, did not pursue a permanent occupation and had close relations abroad. Although both suspects initially remained in Germany even after becoming aware of the preliminary investigation, it is highly probable that they would have fled the country if they were released. The particular difficulties and the scope of the investigation had not yet allowed a verdict to be reached and justified their continued detention.

### **3. Higher Regional Court (OLG Düsseldorf) - First-instance judgment of August 26, 2021**

On August 26, 2021, the Higher Regional Court Düsseldorf sentenced Khedr A. K. to life imprisonment for war crimes against a person by killing (Sec. 8 (1) No. 1 VStGB) in combination with murder (Sec. 211 (2) Alt. 4 StGB) and membership in a terrorist organization abroad (Sec. 129a (1) No. 1, Sec. 129b (1) Sentence 1 and 2 StGB).

The armed conflicts between the Syrian state army and opposition groups were in any case a **non-international conflict** within the meaning of Sec. 8 (1) VStGB during the time where the crime was committed. The decisive factor here was the use of armed force, which had already been going on for some time in Syria between the Syrian state army and opposition armed groups and had affected a large part of the country. Pursuant to **Sec. 8 (6) No. 2 VStGB**, Lieutenant Colonel F. was a **person protected by international humanitarian law**, since at the time of his execution, as an unarmed and shackled prisoner, he was not directly participating in the hostilities and was under the control of the opposing party to the conflict.

Khedr A. K. was to be **attributed the killing** of F. by several shots because of **co-perpetration pursuant to Sec. 25 (2) StGB, Sec. 2 VStGB**. Khedr A.K. cooperated with the other participants on the basis of a **joint decision to commit the crime**.

Although he did not have the decisive directive for the course of events at the scene of the crime and it could not be established that he had directly shot at the victim, his actions nevertheless represent an **essential contribution**. He stayed permanently in the immediate vicinity of the victim, gave him instructions to move on and thus built up a threatening backdrop, which made an escape attempt or resistance seem hopeless.

At the same time, the killing of F. constituted murder pursuant to Sec. 211 (2) Alt. 4 StGB since Khedr A. K. acted with **ulterior motives**. The act equally constituted participation in Jabhat al-Nusra as a terrorist organization abroad, to which Ghurabaa Muhassan was affiliated at the time of the crime.

Khedr A. K. was sentenced to life imprisonment. The court examined the prerequisites for mitigating the sentence pursuant to Sec. 46b (1) Sentence 1 No. 1 StGB but rejected them. The information provided by the defendant prior to the opening of the main proceedings was of little value. Considering the seriousness of the offenses and the seriousness of his guilt, a shift in the range of punishment could not be considered.