Case Information Sheet

Taha Al-J.

NAME	Taha Al-J.
DATE OF BIRTH	XX.XX.1992
BIRTHPLACE	Iraq
NATIONALITY	Iraqi
CURRENT STATUS	Incarcerated
WARRANT OF ARREST	Issued on April 18, 2019
OPENING OF THE MAIN PROCEEDINGS	April 24, 2020
FIRST INSTANCE JUDGMENT OF NOVEMBER 30, 2021	Sentenced to life imprisonment for genocide combined with crimes against humanity resulting in death, war crimes against persons resulting in death, aiding and abetting a war crime against persons in two seperate cases and assault resulting in death
APPEAL JUDGMENT OF NOVEMBER 30, 2022	Amendment of the verdict of guilty to genocide in combination with crimes against humanity by enslavement, torture, infliction of serious bodily or mental harm, and deprivation of liberty, each resulting in death, as well as the war crime against persons by torture resulting in death

Facts (brief summary):

In its quest to establish a global Islamic caliphate, the foreign terrorist group Islamic State (IS), active in Syria and Iraq, persecuted the Yazidi religious minority, predominantly based in the Sinjar region in northern Iraq, which it considered "apostates." In order to achieve the complete annihilation of the Yazidi religion, Yazidism as such and its members, IS fighters carried out a centrally planned, organized and coordinated military attack against the group's members residing around the Sinjar area during the night of August 02 to 03, 2014. As a result, IS forced male Yezidis to convert to Islam, forced them into forced labor, enslaved Yazidi girls and women, and executed members of the religious community *en masse*.

Taha Al-J. had been in Syria since at least March 2015 and was active there as the head of the IS office for Ruqia. In June 2015, the latter purchased a Yazidi woman and her five-year-old daughter as slaves in Syria and subsequently transported them to Falluja in Iraq, where he forced them to stay in his household for several weeks. There they were subject to the instructions of Taha Al-J., who completely ruled over their lives and chastised them daily to keep them disciplined and submissive, so that they lived in constant fear of him. On an unspecified day, Taha Al-J. asked the enslaved Yazidi woman to stand barefoot on the stone floor of the courtyard in the sun. At that time, the maximum daily temperature there was between 38.1 and 51 degrees Celsius in the shade. Subsequently, Taha Al-J. also punished the enslaved five-year-old daughter of the Yazidi woman by tying her to the outer grating of the living room window located in the courtyard. The daughter was exposed to direct sunlight and could not move. After some time, the girl suffered a heat stroke, the consequences of which she had already died at the time Taha Al-J. later untied her or died in the immediate aftermath.

Proceedings in the case of Taha Al-J.:

1. Federal Court of Justice (BGH) – Detention review of April, 28, 2020 (AK 10/20)[1]
2. Higher Regional Court Frankfurt (OLG Frankfurt) – First-instance judgment of November 30, 2021 (5 – 3 StE 1/20 – 4 – 1/20)[2]
3. Federal Court of Justice (BGH) – Appeal judgment of November 30, 2022 (3 StR 230/22)[3]

[1] Federal Court of Justice - Detention review in the case of Taha Al-J.
[2] Higher Regional Court Frankfurt - First-instance judgment in the case of Taha Al-J.
[3] Federal Court of Justice - Appeal judgment in the case of Taha Al-J.

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1. Federal Court of Justice (BGH) –Detention review of April 28, 2020

The Federal Court of Justice (BGH) decided on April 28, 2020, pursuant to Secs. 121, 122 of the German Code of Criminal Procedure (StPO), that a **detention review** by the Federal Court of Justice was **not necessary** at this time.

Taha Al-J. had been in pre-trial detention continuously since October 10, 2019, initially on the basis of the warrant of arrest issued by the investigating judge of the Federal Court of Justice on April 18, 2019, and from April 3, 2020. Later he was detained due to a revised arrest warrant issued by the Higher Regional Court Frankfurt (OLG Frankfurt) by order of March 19, 2020.

Since the main hearing before the Higher Regional Court Frankfurt (OLG Frankfurt) had commenced on April 24, 2020, a detention review pursuant to Sec. 121 (3) Sentence 2 StPO was not required. The fact that the main hearing did not commence until after the expiry of the period for reviewing the detention was also not an obstacle to the suspension of the period for reviewing the detention until the pronouncement of the judgment.

2. Higher Regional Court Frankfurt (OLG Frankfurt) – First-instance judgment of November 30, 2021

Taha Al-J. was convicted of genocide, a crime against humanity resulting in death, a war crime against persons resulting in death, aiding and abetting a war crime against persons in two separate cases, and bodily harm resulting in death pursuant to Sec. 6 (1) No. 2, Sec. 7 (1) No. 3, No. 5, No. 8, No. 9, (3), Sec. 8 (1) No. 3, (4) Sentence 1, Sec. 8 (6) No. 2, Sec. 8 (1) No. 6, Sec. 8 (4) Sentence 1 and Sec. 8 (6) No. 2 and Sec. 8 (1) No. 6 of the German Code of Crimes against International Law (VStGB) to a life sentence.

In the adhesion proceedings, Taha Al-J. was also ordered to pay 50,000.00 € to the joint plaintiff and it was determined that the claim was based on an intentional tort on the part of Taha Al-J.

Both acts with regard to the criminal elements of the VStGB and with regard to the criminal elements of the StGB could be prosecuted due to the principle of international law standardized in Sec. 1 Sentence 1 of the VStGB or from an annex competence to this.

The Higher Regional Court Frankfurt was convinced that Taha Al-J. was **culpable** for **genocide pursuant to Sec. 6 (1) No. 2 VStGB** in that, with the intention of destroying the Yazidi religious group as such in whole or in part, he inflicted severe physical and psychological harm on the enslaved Yazidi woman and her daughter as members of the group.

As Yazidis, both were **members of a religious group within the** meaning of Sec. 6 (1) VStGB, since the Yazidis define themselves by a common religion and are an independent religious community.

The Yazidis held as slaves were also subjected to **severe physical or psychological harm.** The enslaved daughter was chastised daily by means of beatings over a period of several weeks. As a result, she suffered partial bruises on her back and severe pain, due to which she was unable to leave her bed for several days. She was inadequately nourished over the entire period, so that she was constantly starving. Due to the shackling under direct sunlight in the midday heat, which took place over a long time, she experienced serious physical losses. As a result of all these forms of treatment, the enslaved daughter's ability to lead a normal life was subsequently impaired, so that the expressly named threshold of Sec. 226 of the German Criminal Code (StGB) was reached with regard to the damages.

The enslaved Yazidi woman suffered severe psychological damage as a result of the overall living conditions dictated to her by Taha Al-J. and the treatment she received

during her stay in his household. In addition, she also suffered largely psychologically from the fact that she was unable to stop Taha Al-J.'s treatment of her child. She further experienced severe suffering due to the fact that Taha Al-J. did not give her any information about the whereabouts of her child in the aftermath of the bondage incident and refused to allow her to accompany him and her daughter to the hospital. Due to all these circumstances, her ability to lead a normal life was permanently impaired and consequently the expressly named threshold of Sec. 226 StGB was reached here as well.

Taha Al-J. **acted intentionally with regard to all objective characteristics of the single offense** of Sec. 6 (1) No. 2 VStGB. He also acted with the requisite **intent to destroy,** since he acted with the intention of **destroying the** Yazidi religious group as such, in whole or in part, when he inflicted the serious physical or psychological damage within the meaning of Sec. 6 (1) VStGB. It is not obstructive that Taha Al-J. acted in the spirit of the IS ideology to establish an Islamic caliphate, since the destruction of the Yazidis themselves need not have been his ultimate goal. It is sufficient if the destruction of the group represents an intermediate goal.

Taha Al-J. was also guilty of **crimes against humanity pursuant to Sec. 7 (1) No. 3** (enslavement and trafficking in human beings), **No. 5** (torture), **No. 8** (infliction of serious bodily and mental harm) and **No. 9** (serious deprivation of physical liberty) VStGB**, resulting in death pursuant to Sec. 7 (3) VStGB. The accused is guilty of** committing the respective individual offenses intentionally within the framework of a systematic and extensive attack on a civilian population and negligently causing the death of the enslaved child by committing the individual offenses.

The IS attack on the Yazidis in the Sinjar region was **both** a **systematic and widespread attack on a civilian population**. The Yazidi population residing in the Sinjar area in August 2014 constituted a civilian population because they were a larger group of people who had a common distinguishing characteristic on the basis of which they were attacked as a collective.

The actions of the IS in the Sinjar region on August 2 and 3, 2014, and in the period that followed, also constituted an attack on this same civilian population, since the IS organization, through its members, repeatedly committed individual offenses under Sec. 7 (1) VStGB as part of the overall events. In that, among other things, Yazidi men and women from the Sinjar region were killed *en masse* and girls and women were enslaved by usurping property rights and were severely deprived of their physical freedom.

The attack was also widespread and systematic, as the action resulted in at least a four-digit number of casualties, and the use of force was organized with resources planned on a general staff basis in terms of fighters, weapons, accommodation in group-shelters, etc.

Taha Al-J. knowingly and wilfully **committed the single offense of enslavement** and the **special offense of trafficking in human beings pursuant to Sec. 7 (1) (3) VStGB by purchasing the** two Yazidis in exchange for payment and by subjecting them to the living conditions dictated by him (free performance of household chores, daily chastisement, confinement, etc.) in Falluja and assuming ownership rights.

Furthermore, by knowingly and wilfully inflicting substantial physical and mental suffering on the enslaved mother and daughter in his custody, as described in more detail above, he also **committed the single offense of torture pursuant to Sec. 7 (1) No. 5 VStGB.** As already discussed in the context of Sec. 6, (1), No. 2 of the VStGB, the materiality threshold of suffering within the meaning of Sec. 7, (1), No. 5 of the VStGB was also reached, as this threshold must be set even lower. Whether a purpose of torture that goes beyond the general subjective prerequisites is required can be left open, since such a purpose was present in the mind of Taha Al-J. His actions were justified by the fact that he wanted to keep the two Yazidis submissive and discipline them.

Taha Al-J. thereby also **committed the single offense of inflicting serious physical and mental harm pursuant to Sec. 7 (1) No. 8 VStGB.** The above statements on Sec. 6 (1) No. 2 VStGB apply accordingly.

Ultimately, Taha Al-J. also knowingly and wilfully committed **the single offense of aggravated deprivation of physical liberty pursuant to Sec. 7 (1) No. 9 VStGB by** preventing the two Yazidi women from leaving his household in Falluja without his permission for a period of several weeks in violation of a general rule of international law, so that they lived there locked up. This single offense was also committed against the daughter by tying her up in the sun without her being able to move.

There was also a **functional connection in objective terms** between the individual acts that were carried out and the overall crime, since they were a direct continuation of the attack on the civilian population of the Sinjar area and thus formed part of the overall crime.

With regard to the **overall act and the given functional connection, Taha al-J. also acted intentionally,** since he considered it at least possible that members of the IS, within the framework of their military actions in the Syrian and Iraqi civil war against those members of the group of the Yazidis in the Sinjar region, had purposefully and deliberately carried out a multitude of systematic measures resulting from the military actions of August 2 and 3, 2014, which he also approved of.

Taha Al-J also **fulfilled** the **qualification** of **death under Sec. 7 (3) VStGB in** that the enslaved daughter died because of his causal individual acts and the heatstroke associated with them. In this respect, **he acted negligently**. The death of the child as a result of the bondage under direct sunlight in the midday heat due to heat stroke was foreseeable and Taha al-J. could also have recognized this.

Taha Al-J. was also guilty of a **war crime against persons resulting in death pursuant to Sec. 8 (1) No. 3, (4) Sentence 1, (6) No. 2 VStGB** (torture) in **conjunction**

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with aiding and abetting a war crime against persons in two separate cases pursuant to Sec. 8 (1) No. 6, Sec. 8 (6) No. 2 and Sec. 2 VStGB, Sec. 27 (1) StGB (aiding and abetting expulsion/forced transfer).

During the period of the crime, there was a **non-international armed conflict within the** meaning of Sec. 8 (1) VStGB, as the fighting in Syria in 2015 between the Syrian state army and opposition groups (in particular the IS) involved armed combat of a certain duration.

The enslaved Yazidi women also constituted **persons to be protected under international humanitarian law within the** meaning of Sec. 8 (6) No. 2 VStGB, since they did not directly participate in the hostilities and were under the control of IS and thus of the opposing party.

By committing the acts against the two Yazidis, Taha Al-J. also **committed the single offense of torture pursuant to Sec. 8 (1) No. 3 VStGB**, in that he knowingly and willingly treated them in a cruel and inhumane manner by inflicting considerable physical and mental suffering or damage. In this regard, reference is made to the above statements on Sec. 7 (1) No. 5 VStGB.

Taha Al-J. committed the single offense of Sec. 8 (1) No. 3 VStGB in **connection with the conflict**, since the existence of the conflict was of essential importance for his ability to commit the offense, his decision to commit the offense, and the manner and purpose of committing the offense. The capture of the two Yazidis in the course of the established attack made the individual act possible in the first place, and the conflict had a significant influence on the manner of commission (purchase and slaveholding).

Taha Al-J. **acted intentionally with** regard to all prerequisites of the offense, both with regard to those of the individual offense and with regard to the prerequisites of the offense that are independent of the individual offense.

By committing the single offense of Sec. 8 (1) No. 3 of the VStGB, Taha Al-J. negligently caused the death of the enslaved daughter, which is why he met **the qualification of the consequence of death within the meaning of Sec. 8 (4) VStGB.** The above statements on Sec. 7 (3) StGB apply accordingly.

By his actions and by transporting the two Yazidis from Syria to Iraq, he also aided and abetted a war crime against persons pursuant to Sec. 8 (1) No. 6, (6) No. 2, Sec. 2 VStGB, Sec. 27 (1) StGB in two separate cases.

The **main intentional unlawful act was** the forcible transfer of Yazidi girls and women by members of the IS from the ancestral Sinjar region to other areas of Iraq or Syria for the purpose of the slave trade, which constituted the objective elements of Sec. 8 (1) No. 6 VStGB.

Taha Al-J. objectively promoted this main act in the sense of **providing assistance,** since the transfer of the two Yezidi women from Syria to Falluja in Iraq, which was carried out through him, represented a deepening of the expulsion or transfer practice.

He **also acted intentionally** with regard to the intentional unlawful principal offense as well as with regard to his rendering of assistance.

3. Federal Court of Justice (BGH) –Appeal judgment of November 30, 2022

During the hearing on November 30, 2022, the Federal Supreme Court, upon the appeal of Taha Al-J., **amended the verdict of** the Higher Regional Court Frankfurt, in **the verdict of guilt. This was done to the effect that** he was guilty of genocide in combination with the crimes against humanity by enslavement, torture, and infliction of serious bodily or mental harm and deprivation of liberty, each resulting in death, as well as the war crime against persons by torture resulting in death.

After conducting the comprehensive review required in response to Taha Al-J.'s factual complaint, the court came to the conclusion that the verdict of guilt was to be changed, since there was no criminal liability for aiding and abetting the war crime against persons through expulsion in two separate cases and for bodily injury resulting in death.

The conviction on these points had to be dropped in the opinion of the chamber, since Taha Al-J., on the one hand, **did not aid and abet** the above-mentioned main offense of the IS members and, on the other hand, the **bodily injury resulting in death played a tangential role to the** crimes against humanity resulting in death and the war crime against persons resulting in death by **way of concurrence of laws.**

In the view of the court, aiding and abetting could not be assumed because the Higher Regional Court did not make any findings to support this assessment. The transfer of the two Yazidi women from Syria to Iraq did not constitute a suitable contribution to aiding and abetting by deepening their expulsion, since their expulsion had already been completed after the IS members had taken them to Syria. The repatriation to Iraqi territory by Taha Al-J. did not deepen the displacement. No other suitable actions of contribution were apparent beyond this.

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