

Criminal proceedings against IS returnee for crime against humanity to detriment of Yazidi woman and girl concluded by final decision

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Decision of 7 March 2024 (3 StR 498/23)

The Federal Court of Justice has dismissed the accused's appeal on points of law (Revision) against the judgment handed down by Munich Higher Regional Court on 29 August 2023, in which the 32-year-old was sentenced to an aggregate term of imprisonment of 14 years after the case was referred back for a new decision. The Higher Regional Court had, by judgment of 25 October 2021, originally found the accused guilty of the crime against humanity of enslavement resulting in death committed concurrently with further crimes as well as participation as a member of a foreign terrorist organisation and had sentenced her to an aggregate term of imprisonment of 10 years. In response to the Federal Public Prosecutor's appeal on points of law, the Federal Court of Justice had quashed the majority of the sentence imposed in that judgment, holding that the Higher Regional Court had erred in law when it assumed a less serious case of the crime against humanity of enslavement resulting in death. Since the Federal Court of Justice had dismissed the accused's appeal, the verdict of guilty had already become final and binding (see Press Release No. 48/2023, available in German only).

1. As a result, the findings relating to the acts committed as established in the original judgment were binding on the court which was required to give a new decision after the case was referred back. According to those findings, in late August 2014, when she was aged 23, the accused, who was born and converted to the Islamic faith in Germany, travelled to an area in Syria which at the time was controlled by the Islamic State (IS) group and joined the terrorist organisation. Before an IS court in the city of Raqqa she married a male member of the terrorist organisation who was working for the group and has since been convicted by final judgment (see Press Release No. 11/2023, available in German only). Shortly before their marriage the man had bought a Yazidi woman and girl – the private accessory prosecutor and her daughter, who was a small child at the time – who had been taken prisoner during an IS attack on the Sinjar region.

The accused moved to Fallujah in Iraq together with her husband and the Yazidi woman and girl. The couple, who were married in an Islamic ceremony, held the "house slaves" prisoner there for around one-and-a-half months in the summer of 2015. The accused instructed the

private accessory prosecutor to run her household. She and her husband demanded that the private accessory prosecutor and her daughter observe Islamic practices by praying several times a day and gave the child a Muslim name, which her mother also had to use when addressing her. The husband regularly abused both the Yazidi woman and girl as a form of punishment and discipline, sometimes of his own accord, sometimes following complaints from the accused.

One day in early August 2015, the accused's husband tied the five-year-old girl to the metal bars on the outside of a window in the courtyard of his house during very hot weather so that she was exposed to direct sunlight and her feet did not touch the ground. The accused did not intervene, not even when she realised that the girl's life was in danger. The girl died as a consequence of being shackled to the window bars and strung up. At the point at which the accused accepted that the child would die it would, however, no longer have been possible to save her life. On the day on which the incident occurred, or shortly thereafter, she pointed a pistol at the private accessory prosecutor's head when she was crying about what had happened to her child and threatened to shoot her dead if she did not stop.

2. The Higher Regional Court has now sentenced the accused to an individual term of imprisonment of 13 years for the crime against humanity of enslavement resulting in death committed concurrently with other crimes. It based this sentence and the other term of imprisonment of two years and six months – which had already been finally determined in the original proceedings – for the separate offence of participation as a member of a foreign terrorist organisation on the aggregate sentence of 14 years.

3. The Third Criminal Panel, which has jurisdiction for crimes against international law, dismissed the accused's appeal against points of law for being manifestly ill-founded because a review of the judgment revealed no error in law to her disadvantage. It held that no objections could be raised regarding the chosen range of punishment and the sentence imposed by the Higher Regional Court for the crime against humanity of enslavement resulting in death. The Higher Regional Court had, the Third Criminal Panel held, demonstrated without erring in law that this was not a less serious offence and thus based its determination of the sentence on the rule set out in section 7 (3) alternative 1 of the Code of Crimes against International Law (Völkerstrafgesetzbuch), which provides for a term of imprisonment of life or a determinate sentence of between 10 and 15 years. The fixing of the aggregate sentence (section 54 of the Criminal Code (Strafgesetzbuch)) did not raise any legal concerns either. The proceedings have thus been concluded with final effect.

Munich Higher Regional Court – 9 St 3/23 – judgment of 29 August 2023

Lower court

Munich Higher Regional Court – 9 St 3/23 – judgment of 29 August 2023

Relevant legal provisions

Section 7 Crimes against humanity

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population,

...

3. traffics in persons, particularly in women or children, or whoever enslaves a person in another way and in doing so arrogates to himself a right of ownership over that person,

...

shall be punished, in the cases referred to under numbers 1 and 2, with imprisonment for life, in the cases referred to under numbers 3 to 7, with imprisonment for not less than five years, and, in the cases referred to under numbers 8 to 10, with imprisonment for not less than three years.

(2) ...

(3) Where the perpetrator causes the death of a person through an offence pursuant to subsection (1), numbers 3 to 10, the punishment shall be imprisonment for life or for not less than ten years in cases under subsection (1), numbers 3 to 7, and imprisonment for not less than five years in cases under subsection (1), numbers 8 to 10.

(4) In less serious cases under subsection (3) the punishment for an offence pursuant to subsection (1), numbers 3 to 7, shall be imprisonment for not less than five years, and for an offence pursuant to subsection (1), numbers 8 to 10, imprisonment for not less than three years.

(5) ...

Section 54 Fixing of aggregate sentence

(1) If one of the penalties for the individual offences is imprisonment for life, an aggregate sentence of imprisonment for life is imposed. In all other cases, the aggregate sentence is fixed by increasing the most severe individual sentence incurred and, in the case of different kinds of penalties, by increasing the sentence which is most severe in nature. The person of the offender and the individual offences are considered in their totality.

(2) The aggregate sentence may not exceed the sum of the individual sentences. In the case of determinate sentences of imprisonment, it may not exceed 15 years and in the case of a fine 720 daily rates.

(3) ...

Karlsruhe, 20 March 2024