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Judgement

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Criminal proceedings against Twana H.S. and Asia R.A. on suspicion of genocide and others

Today, on the 62nd day of the trial, the 8th Criminal Division of the Munich Higher Regional Court sentenced the two defendants to life imprisonment (Twana H.S.) and a juvenile sentence of 9 years and 6 months (Asia R.A.) for genocide, crimes against humanity, war crimes, and other offenses.

In his opening remarks, Presiding Judge Philipp Stoll noted that the Court had spent over a year hearing a case involving events that took place eight years ago in a mud-brick house on the edge of the Syrian desert. He attributed this to the principle of universal jurisdiction, which applies to crimes under international law. Thanks to the principle of universal jurisdiction, international law - which is currently facing significant challenge - can be enforced in a German courtroom. This is done, in particular, in the interest of the victims of crimes under international law. The so-called Islamic State (ISIS) - according to Stoll - is a religiously motivated, particularly powerful terrorist organization. The massive crimes committed by ISIS must not be allowed to happen again. We must not remain indifferent when, anywhere in the world, a belief that targets an entire people takes hold.

Stoll also made it clear, however, that the two defendants were not being convicted on behalf of ISIS, but for their own actions only. The two defendants had committed the most serious crimes, which affect the international community as a whole.

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Regarding the historical context, the Court stated that ISIS had committed genocide against the Yazidi ethnic group. The August 2014 raid on the Sinjar region was a logistically planned military operation in which men were murdered and girls and women were enslaved. Family members were separated. The intention was to exterminate the Yazidis.

The two defendants lived in ISIS-controlled territory from 2015 to 2017, first in Iraq and then in Syria. The defendant H.S. served as a fighter for ISIS, a fact of which the co-defendant was also aware. They kept firearms on hand in the house they shared. The co-defendant, who managed the household for the defendant H.S., had “wanted” a slave girl. The victim, Akhlas, was subsequently taken in by the defendants when she was no more than 6 years old. The defendants treated the girl as their property. She was forced to clean and wash dishes, was kept locked up, and was only allowed to leave the house when accompanied. She was given too little to eat and was not allowed to speak her native language.

To further alienate her from her own people, the defendants gave her a different name. The victim was systematically overwhelmed. Threats and violence characterized the atmosphere. She was psychologically tormented, verbally abused, and insulted.

When the defendant H.S. expressed a desire for a “second wife” in 2017, the co-defendant refused to give her consent. However, the defendants agreed to acquire another Yazidi slave. This is how the then-12-year-old joint plaintiff came to live in the defendants’ household. She, too, had been abducted during the ISIS raid on the Sinjar region, separated from her family, and subsequently bought and sold multiple times by ISIS members.

Both girls were raped by the defendant H.S.. During one of the assaults on Aliya, she was first forced to clean the room together with the defendant R.A. She was then made to wear makeup by the defendant R.A. before the defendant H.S. tied her up, played music with Salafist chants, and then raped her.

The defendants committed these acts because the two girls were Yazidis and, in accordance with IS ideology, they wanted to destroy - at least in part - the social existence of the Yazidi religious community, represented by the two victims. Both defendants were aware that the girls would be ostracized from their ethnic group if they had sexual intercourse - even if forced through rape - with a non-Yazidi.

Both girls were sold by the defendant H.S. in late November 2017. To this day, they continue to suffer severely from the consequences of the crime, which manifest themselves, among other things, in post-traumatic stress disorder.

The defendants did not address the charges during the trial. However, the Court was convinced of the evidence of the crime based on a comprehensive review of all the witnesses and experts heard during the trial. In reaching its decision, the panel relied in particular—though not exclusively—on the testimony, which spanned several days, of the joint plaintiff and other Yazidi female witnesses. Philipp Stoll highlighted the courage of these witnesses, who had travelled from other continents to testify. Of particular significance was also the testimony of a woman who had returned from ISIS and had witnessed both girls being held as slaves in the defendants' household. Finally, the Court considered as circumstantial evidence the fact that the defendant R.A. asked the victim for “forgiveness” during the trial. In addition, she had commented on the charges to the psychiatric expert.

From a legal standpoint, the court classified the acts as genocide, crimes against humanity involving enslavement, torture, sexual violence, infliction of severe psychological harm, deprivation of liberty, and persecution, as well as war crimes against persons through cruel or inhuman treatment and sexual violence, and (aggravated) sexual abuse of children - including two cases of aggravated sexual abuse (in which the defendant R.A. acted as an accessory) - and membership in a terrorist organization abroad.

In determining the sentence, the court saw no reason to deviate from the life imprisonment prescribed for genocide.

In the case of the female defendant, the court - having consulted a psychiatric expert - ultimately applied juvenile criminal law; given the defendant's complicated life story, marked by numerous overwhelming situations - including the early death of her mother, her father's incarceration, and an early first marriage - it could not be ruled out that, at the time the offenses began, she was still more akin to a juvenile.

This is also evident from the fact that the defendant R.A. has now, at any rate, shown some sign of remorse and insight. In light of the dramatic injustice of the crimes and the serious consequences for the two victims, a juvenile sentence of 9 years and 6 months - which is at the very upper limit of the maximum possible 10 years - is appropriate, despite the defendant's lack of prior convictions.

Finally, the presiding judge noted that the German legal system assumes that everyone is responsible for their own convictions, and that this also applies to the two defendants.

Stoll expressed his hope that the testimony of the Yazidi witnesses in court would help them come to terms with the crimes psychologically. The panel also hoped that the criminal trial would contribute to historical reconciliation and restore self-confidence and hope to the Yazidi people.

The verdict is not yet final. The defense, the Federal Prosecutor's Office, and the joint plaintiffs each have the right to appeal to the Federal Court of Justice, which must be filed within one week from today.

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Judge at the Higher Regional Court