

# BOFAXE

## Germany's Commitment to International Justice

### ON THE GROUNDBREAKING FIRST TRIAL ADDRESSING GENOCIDE AGAINST THE YAZIDIS (I)

— Six years after the so-called “Islamic State in Iraq and Syria” (ISIS) began persecuting and annihilating the Yazidis, an ethno-religious minority group in Northern Iraq, the first trial of its kind addressing genocide against the group commenced in Frankfurt am Main on April 24, 2020. While the world is focusing its efforts to contain the COVID-19 pandemic, the Frankfurt judges are avidly going forward with the case against Taha Al J., showing their tenacity of what could mark the beginning for Yazidi's long-awaited prospects for justice.

After giving some background on the atrocities committed against the Yazidis, this two-part Bofax analyses why Taha Al J.'s trial represents an important commitment to international justice, why it has been challenging to prosecute cases addressing the genocide against Yazidis, and why such cases are rarely referred to the International Criminal Court (ICC).

#### ISIS atrocities against the Yazidis

In August 2014, ISIS attacked the Yazidi villages in the Sinjar region in the northern part of the Kurdistan Region of Iraq. It is estimated that around 5,500 Yazidis were killed and more than 6,000 were kidnapped in that month. The Yazidis worship a peacock deity – *Tawusi Malek* – as their guiding spirit. ISIS claimed that *Tawusi Malek* is identical to the Qur'anic Satan and justified killing and enslaving the minority group on distorted Islamic texts. The genocide committed against the Yazidis has not only primarily been accomplished through mass killings, but also by committing crimes with the overall objective of destroying the religious minority, in whole or in part, as envisaged by the drafters of the 1948 Genocide Convention and now reflected in Art. 6 of the Rome Statute.

#### The case of Taha Al J.

Taha Al J., a 37-year-old Iraqi man, appeared before the Higher Regional Court of Frankfurt (Oberlandesgericht) on Friday April 24, 2020 facing multiple charges. In the summer of 2015, he bought a Yazidi woman and her five-year-old daughter from an ISIS fighter. The purchase and subsequent enslavement by the accused took place in his house in Syria which he shared with his wife, Jennifer W., a German national. Both kept the Yazidi woman and daughter as slaves, provided them with insufficient food and prohibited them to practice their religion. One day, Taha Al J. and Jennifer forced the child outside – tied her to a window unprotected from a 50° Celsius weather – as a punishment for wetting the mattress. As a result, the child died from thirst and pain. Taha Al J. was arrested in Greece in May 2019 and extradited to Germany in October 2019. His trial is expected to last until August 2020.

#### The indictment: Germany's exercise of universal jurisdiction over international crimes

Besides other charges under the German Criminal Code, including murder (§ 211, § 129b (1) in connection with § 129a (1)) and human trafficking (§ 233 (1) (1), (3), § 232 (3) Nos. 1, 2 old version), Taha Al J. is charged with crimes under the Code of Crimes Against International Law (CCAIL) – the 2002 implementation of the Rome Statute into German criminal law. The charges include Crimes against humanity, § 7 CCAIL, war crimes § 8 CCAIL, and genocide, § 6 CCAIL. For the latter charge, the Court will have to determine whether Taha Al J. personally had the specific intent to destroy, at least in parts, the religious group of the Yazidi when he let the child die – even though ISIS has openly declared their aim to destruct the Yazidi and the Independent International Commission of Inquiry on the Syrian Arab Republic set up by the UN Human Rights Council came to the conclusion that “ISIS has committed the crime of genocide as well as multiple crimes against humanity and war crimes against the Yazidi”.

The CCAIL provides Germany with a framework for exercising universal jurisdiction. Under the principle of universal jurisdiction, Germany can prosecute the limited number of crimes contained in the law. Thus, § 1 of the CCAIL states that the law applies to all offenses against international law listed under § 6 to §12 and requires no nexus to Germany. Questions of the nationality of perpetrators or victims are important only for prosecutorial discretion. The ratio behind the principle of universal jurisdiction is that all states should be able to possess jurisdiction to prosecute those crimes that are “universally considered heinous and repugnant” (Bantekas, para. 22).

By exercising universal jurisdiction, German regional courts can make a meaningful contribution to international justice, not least by setting an example for other domestic and regional legal systems. Given the failure of other actors to prosecute ISIS crimes against the Yazidi, discussed in the next part of this Bofax, such national efforts are particularly valuable, as long as they are in line with international law, and perhaps the only way to bring the perpetrators to justice. (See for (the limits of) universal jurisdiction under international law, Bantekas, paras. 22-29).

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