

EXECUTIVE SUMMARY

Audio recording of the al-Khatib trial

In July 2021, twenty-three German and international academics, research institutions and human rights organizations, together with the European Center for Constitutional and Human Rights, sent a motion to the Higher Regional Court of Koblenz, Germany, requesting to produce audio recordings of the so-called al-Khatib trial.

While the court in response to previous requests for audio recordings was concerned that recordings might negatively influence witness testimonies and on this basis denied the recordings, the motion requests the court to produce audio recordings only after the taking of evidence has been concluded. More concretely, the motion aims at closing statements of the parties to the proceedings, the potential last word of the accused and the announcement of the verdict to be recorded.

Paragraph 169(2) of the German Courts Constitution Acts (*Gerichtsverfassungsgesetz*, GVG) allows for audio recordings of court proceedings “for academic or historical purposes if the relevant proceedings are of paramount significance for the contemporary history of the Federal Republic of Germany.” According to the legislative materials trials are considered historic if they have a political background, receive large public attention or if future generations will deem details of the trial significant.

The trial against Anwar R and Eyad A is set against the background of the Syrian revolution and conflict, both of which significantly influenced international and German domestic politics for nearly a decade. The quest for accountability is part of the international and domestic political agenda. Hence, the trial’s political background is indubitable. Given the repeated calls for truth-finding in the Syrian conflict, the details of the events at trial will have significance for future generations; not least because the secret service for which both defendants worked played a central role in the oppression of the Syrian opposition and the Syrian conflict. This significance also explains the exceptionally large public attention for the trial. The trial is also of historical significance for the Federal Republic of Germany since pursuing accountability for Syrian atrocities is a core political goal of the federal government, especially in light of Germany’s history of mass atrocities during the Nazi era. Not least, a significant Syrian diaspora settled in Germany, forms part of German society and has a large interest in accountability and truth.

With the requirements of Paragraph 169(2) GVG met, it remains within the court’s discretion to produce audio recordings. When exercising this discretion, however, the court must attach significant weight to the great academic and historical interest, since audio recordings would constitute valuable, irreplaceable sources for academic research.

This way, recordings will in any case not have any negative impact on witness testimonies, nor will they add to the danger of witnesses testifying in a public trial. The law stipulates that recordings cannot be used by any court and that they remain sealed in the national archives generally for at least 30 years. The general term of protection may be shortened, e.g. for scientific research, only under strict circumstances. Even if despite these strong safeguards con-

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cerns over negative influence of recordings on a witness persist, Paragraph 169(2) GVG allows for the court to prohibit recordings partly if legitimate interests of parties to the proceedings, third parties, or ensuring the proper course of proceedings so demand. Through this, the court could counter concerns without refusing to record the proceedings altogether.