

File no.
1 StE 3/21
3 BJs 9/19-4 Public Prosecutor
General at the Federal Court of Justice

Received by the Registry of the Court
on



KOBLENZ HIGHER REGIONAL COURT

JUDGMENT

IN THE NAME OF THE PEOPLE

In the proceedings on a crime against the security of the state

against

...,

born in Syria on ...,

last resident in ...,

currently in remand detention in ... Prison

– Counsel for the defence: 1. ...[A], *Rechtsanwalt*

2. ...[B], *Rechtsanwalt* –

f o r aiding a crime against humanity

Koblenz Higher Regional Court – 1st Criminal Division – State Security Division –

with the participation of

Presiding Judge ... at the Higher Regional Court,

Judge ... at the Higher Regional Court,

Judge ... at the Higher Regional Court,

Judge ... at the Higher Regional Court and

Judge ... at the Higher Regional Court,

serving as Associate Judges,

Senior Public Prosecutor at the Federal Court of Justice ...,

Public Prosecutor ...,

representing the Public Prosecutor General at the Federal Court of Justice,

...[A], *Rechtsanwalt*, from ...,

...[B], *Rechtsanwalt*, from ...,

acting as the Defendant's counsel for the defence,

Judicial Inspector ...,

Certifying Officer of the Court Registry,

h e l d

in its session on 24 February 2021

following the main hearing which commenced on 23 April 2020:

The Defendant is hereby sentenced to a term of imprisonment of

f o u r y e a r s a n d s i x m o n t h s

for aiding a crime against humanity in the form of torture and severe deprivation of liberty.

The Defendant is to bear the costs of the proceedings.

Provisions applied:

Section 7 (1) nos. 5 and 9 and (2) of the Code of Crimes against International Law; section 27 and section 46b of the Criminal Code

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Reasons

A. Findings

I. Findings as to the person of the Defendant

The Defendant was born in Damascus on 25 May 1976 and is a Syrian national. He grew up in eastern Syria; his hometown is the town of Muhasan in the Deir ez-Zor Governorate. The Defendant has at least four siblings – an older and a younger brother and two sisters. His father died on an unascertainable date. His mother and his younger brother are in Turkey. One of his sisters lives with her family in Greece; his other sister lives in Damascus.

The Defendant attended school in his hometown and left at the end of Year 12 without any qualifications. From 1994 to 1996 he then lived with two brothers and an uncle in Damascus, in the district of al-Midan. On 10 July 1996, aged 20, the Defendant joined the Syrian general intelligence service and served in it until he deserted in early January 2012. He continued to live in Damascus whilst serving in the general intelligence service; for some of the time he lived in accommodation provided by the intelligence service. The Defendant pursued the non-commissioned officer career path and attained the rank of sergeant major. The places and nature of his work within the intelligence service are addressed in section II. (Findings as to the substance of the case). The act which is the subject of the present proceedings occurred in September or October 2011.

The Defendant deserted on 5 January 2012 and returned to his hometown of Muhasan, where he remained for an unknown period of time; his wife and their then four children did not go with him and initially remained in Damascus. The intelligence service enquired with his wife and his brother as to his whereabouts. It was not possible to establish with any certainty either when the Defendant rejoined his family, who had also travelled to eastern Syria at an unknown point in time, or when he left Syria, and whether he left together with his family or not. At any rate, the Defendant travelled to Greece via Turkey, where, by his own account, he remained for quite some time. On 25 April 2018 he, his wife and five of their six children flew from Greece to Germany.

Entry was granted for the purpose of family reunification, since ...[C], one of the Defendant's sons who was a minor at the time, had been sent on ahead and was already in Germany.

The Defendant and his wife filed an asylum application in Germany on 9 May 2018. On 2 August 2018 he was issued with a certificate confirming permission to stay for a limited time (*Aufenthaltsgestattung*) so as to be able to undergo the asylum procedure, which has not been concluded to date. The Defendant and his family were first placed in a reception centre in ...[a]. In the summer of 2018 he was assigned an apartment at ...[b] Street in ...[c], where he lived with his wife and children – except his eldest son ...[D] – until his arrest. The Defendant and his family receive basic social security benefits (*Grundsicherung*) in Germany under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*, AsylbLG).

The Defendant is a Sunni Muslim. He has been married to ...[E], who was born on ... 1977, since 1 September 1998. The couple has six children: a son, ...[D], born on ... 1999; a daughter, ...[F], born in Damascus on ... 2001; a son, ...[C], born in Damascus on ... 2002; a daughter, ...[G], born in Damascus on ... 2005; a son, ...[H], who, according to civil status certificates issued in Syria, was born in Deir ez-Zor on ... 2014; and a daughter, ...[J], who, according to records, was born in Deir ez-Zor on ... 2015. The Defendant's eldest daughter, ...[F], suffers from muscle atrophy and is a wheelchair user.

The Defendant has a criminal record in Germany. By summary penalty order issued by ...[a] Local Court on 24 July 2018 (case no. 8143 Js 20064/18 – Cs), which became final and binding on 1 September 2018, he was sentenced to pay a fine of 20 daily rates of €5 each; the penalty has been fully enforced. The ruling had its basis in the fact that, during an argument between the Defendant's son and another child in a reception centre for asylum seekers in ...[a] on 26 May 2018, the Defendant punched the other child in the face.

In the context of the present proceedings, the Defendant was arrested and placed in remand detention on 12 February 2019 on the basis of an arrest warrant issued by the investigating judge at the Federal Court of Justice on 7 February 2019 (case no. 4 BGs 25/19). He was released from remand detention on 17 May 2019 after the

investigating judge at the Federal Court of Justice, by order of that same day (case no. 4 BGs 128/19), held that the Defendant's self-incriminatory witness statement was inadmissible and, on that basis, denied that there was a strong suspicion of an offence having been committed and thus revoked the arrest warrant. The Federal Public Prosecutor General (*Generalbundesanwalt*, GBA) filed a complaint against that order, on the basis of which the Third Criminal Panel at the Federal Court of Justice, by order of 6 June 2019 (case no. StB 14/19), set aside the investigating judge's aforementioned order and amended the original arrest warrant dated 7 February 2019 by limiting the extent of the act regarding which there was a strong suspicion of an offence having been committed. On 25 August 2019 the Defendant was then again placed in remand detention, where he has remained ever since.

II. Findings as to the substance of the case

1. General political and social developments in Syria up to 2011

a) History; political and social structure

The population of Syria, which has been an independent state since the end of the French mandate in 1946, is divided into various ethnic and religious groups: Muslim Sunnis make up the largest population group (approx. 60–70% in 2011); Muslim Alawites account for another, significantly smaller, group (approx. 11% in 2011); the remainder of the population is made up of Christian, Shia Muslim, Druse, Jewish and Yazidi minorities. Since independence, the Alawite minority had grown to become the most influential political and social demographic group. The reasons for this are its early support for the French mandate and the fact that a disproportionate number of this demographic joined the Syrian Army, in which they still account for the majority of the officers. The membership of the Ba'ath Party, which was later installed as the ruling party, was also dominated by Alawites. On account of President Hafez al-Assad and President Bashar al-Assad having since appointed mainly Alawite confidants and relatives to positions of leadership, Alawites are also significantly overrepresented in the country's administration, military and business sector. Nevertheless, there are also a few Sunnis who have achieved positions of leadership, which is attributable to both their qualifications and strategic efforts to ensure ethnic and religious diversity, at least in the eyes of the general public. Examples of high-ranking Sunni functionaries include

Hasan Turkmani, who was Minister of Defence up until 2009 and subsequently a key adviser to the President (he was killed in a bomb attack in 2012); Hisham Ikhtiyar, who was Director of the General Intelligence Directorate up until 2005 and later security chief in the Ba'ath Party; and, allegedly, Ali Mamlouk, Director of the General Intelligence Directorate. President Bashar al-Assad and close family members are also married to Sunnis.

The initial objective of the Ba'ath Party, which was originally founded on an Arab nationalist programme and in opposition to the colonial powers, was to establish an Arab and socialist community in Syria, Lebanon and Iraq which was independent of other countries. Following a military coup in 1963 it became the ruling party. In 1973 the Ba'ath Party was written in to the Syrian constitution as the leading party in the Syrian state. Positions within the state leadership are reserved for its members. In 2010, two thirds of the members of the Syrian parliament belonged to the Ba'ath Party and other bloc parties. Larger organisations, business associations and trade unions are close to the Party; membership of the Party increased the chances of obtaining state concessions such as business licences, being admitted to university or promotion within the public service. The Ba'ath Party has increasingly lost its originally socialist, pan-Arab ideology in pursuit of clientelist policies which shore up the government.

Following a second coup in 1970, Hafez al-Assad, then Minister of Defence, assumed power as President of Syria, which he remained until his death in June 2000. He was succeeded by his son Bashar al-Assad, who was aged 34 at the time and is still President of Syria today. After the new president had at first publicly made a case for social change, more democracy and reforms, cautious measures relating to social liberalisation and the political opening of society (known as the "Damascus Spring") were then implemented: Political prisoners were released, for instance, independent newspapers were authorised, detention centres were closed, the founding of human rights organisations was accepted and mobile phone networks and the internet were authorised. The President also launched an anti-corruption campaign. However, as early as the summer of 2001 the Syrian government reverted to its repressive line and arrested numerous government critics. As had been the case under Hafez al-Assad, it was specifically the intelligence services which were used to enforce government

policies. In 2004, for example, the security forces cracked down on a Kurdish uprising in north-eastern Syria; 14 people died and numerous people were injured.

Following the Iraq War, Syria sought closer foreign policy ties with Iran. At the same time, the Syrian government made efforts to improve its relations with the international community.

b) Exercise of power, role of the Syrian security apparatus

aa) Following the military coup in 1963, Syria moved from being a pluralist, liberal society and form of government towards an autocratic, repressive regime which, ultimately, took on dictatorial traits owing to the, in effect, one-person rule which was upheld by violent means. The state of emergency in effect since the coup, which Bashar al-Assad did not lift until April 2011 (albeit without any noticeable actual changes), enabled bans to be imposed on assemblies, newspapers and political parties and further powers to be assigned to the security apparatus, in particular making it easier for people to be arrested and detained. The security authorities, for instance, were empowered to imprison, without a court order, any person who posed a threat to public security or order. People who were politically unwelcome were increasingly subjected to arbitrary arrest and for the most part placed in prisons run by the intelligence services.

Although torture was banned under the constitution applicable from 1973, it was an oft-deployed means of extorting information and of intimidation. People often died in detention facilities, either as a consequence of the conditions of detention and ill-treatment or by hanging, specifically of prisoners who were accused of committing assaults or attacks on members of the government or government facilities. During an incident which became known as the “Hama Massacre”, Hafez al-Assad in [1982; translator’s note: the year is missing in the source text] ordered the army to bomb the city of Hama, which was predominantly occupied by opposition groups, mainly the so-called Muslim Brotherhood; between 4,000 and 40,000 civilians died during the operation. After Bashar al-Assad came to power and the country experienced a period of political and social opening up, large numbers of political opponents were once more imprisoned from the summer of 2001 on and the President reverted to his father’s repressive policies. As had been the case under Hafez al-Assad’s rule, it was

impossible for a credible opposition movement to establish itself in time for the elections, which were at least formally conducted. Civil society and political initiatives were monitored and controlled using police state means, that is unless they were banned from the outset; human rights activists were prohibited from leaving the country. Print media and the internet were controlled and censored by the government. In the world of business, contracts and licences (e.g. for mobile networks) were awarded to a network of families who were loyal to the government or related to the President, such as those awarded to the group of companies owned by Rami Makhlouf, a cousin of Bashar al-Assad. When it came to modernisation measures and infrastructure-building, those regions were favoured which were regarded as loyal to the government or which promised the government a particularly large economic profit.

Ever since Hafez al-Assad's time in power, resistance to the government was nipped in the bud by the intelligence services, which were omnipresent in both urban areas and rural regions. The system of recruited informants which permeated the whole of society gave rise to a climate of mistrust and fear in the country.

bb) One of the key instruments of power used by the Syrian state leadership has, since Hafez al-Assad's rule, been the extensive intelligence apparatus (*mukhabarat*), which was and is responsible for surveillance of the population, for information-gathering at the political and social level and for applying repressive measures to that end, such as searches, arrests and interrogations, in some cases using the most serious of physical violence. Owing to the long-standing state of emergency, the intelligence services in effect had wide-ranging executive powers without any basis in law. Within the regime they had a great deal of authority; they were less of a subordinate part of the Syrian administrative and security apparatus and more autonomous institutions which reported directly to the head of state and directly served to secure his rule. The services' official remit includes exposing and preventing anti-government activities and combating terrorism and extremism.

The National Security Bureau (NSB) was established to control and coordinate the work of the intelligence services, which are structured much like the military. The commanders of the intelligence agencies, amongst others, hold office in the Bureau. The Central Crisis Management Cell (CCMC), which is presented in detail in the

following, was set up in March 2011. The intelligence services, whose jurisdictions sometimes overlap, are formed of

- the General Intelligence Directorate, which is directly subordinate to the President,
- the Military Intelligence Directorate, which reports to the Minister of Defence,
- the Air Force Intelligence Directorate, which also reports to the Minister of Defence,
- the Technical Intelligence Service, which is likewise assigned to the Ministry of Defence and
- the Political Security Directorate, which is subordinate to the Ministry of the Interior.

Each of the intelligence services is divided into branches, which are usually assigned a three-digit number; some branches have sub-branches, which are assigned two-digit numbers. Most of the services have a network of regional offices which covers the entire country. The General Intelligence Directorate, the Military Intelligence Directorate and the Air Force Intelligence Directorate, for instance, have both central organisational units and regional units with branches and field offices in each province. Besides the branches which are assigned administrative tasks, those which are responsible for undercover investigations and those responsible for gathering information on social media, the General, the Military and the Air Force Intelligence Directorates at any rate have branches with executive powers which can take direct and violent action against people and institutions. Although they are not part of the military, their members, particularly those at the management level, have military titles. The individual services and their branches are generally headed by generals and sub-branches by officers of the rank of colonel and lieutenant-colonel.

The level of control exercised by the intelligence services ranged from monitoring public spaces and public events to observing political organisations, universities, businesses and religious communities to conducting surveillance of individual public servants and religious dignitaries. The General Intelligence Directorate focused on monitoring the Syrian population, primarily in the Damascus region. The Military Intelligence Directorate was officially responsible for ensuring the security of the armed forces – including as part of foreign intelligence activities – and the Political Security

Directorate for political and religious surveillance. The Air Force Intelligence Directorate was linked to the Syrian Air Force by name only. It derives its name from the fact that Hafez al-Assad was a member of the Air Force and he eventually turned it into his personal security agency; it was responsible for securing air traffic and, primarily, for controlling the opposition. Further, the intelligence services were all tasked with “counterterrorism” and countering opponents of the regime.

The intelligence services had their own detention facilities, including in their regional field offices, in which those arrested were held, including for longer periods, without formal proceedings, and in which interrogations were conducted and torture was used to extort information. This was generally done before prisoners were transferred to normal detention facilities such as the civilian prison in Adra or the military prison in Mezzeh. Methods of torture (which were even given their own names) had already been systematically used whilst Hafez al-Assad was in power. They included hitting a person all over the body with cables or sticks; hitting or whipping the soles of the feet (*fallaqa*); forcing someone into a car tyre and then hitting them whilst thus immobilised (*dulab*); beating a person who was shackled to a wooden board (“Flying Carpet”); hanging a person up by the hands so that their toes barely touch the floor, thereby applying violence to the person thus incapacitated (*shabeh*); shackling a person to a chair which has a moveable backrest and whose movement causes the spine to be overstretched (“German Chair”); burning, chemically burning or scalding body parts; electric shocks; means of humiliation; refusing to allow a person to go to the toilet; and sleep, water and food deprivation. Time and again prisoners died as a result of such ill-treatment and general conditions of detention.

The picture which emerges in terms of the period up until the start of the protests in the spring of 2011 is that the intelligence services used targeted arrests and abuse to move against prominent members of the opposition, the press or groups regarded as critical of the state, for example the Muslim Brotherhood or politically active members of the Kurdish community. It is only in the period after this that a move towards a wide-ranging and extensive approach to dealing with large parts of the civilian population is discernible.

cc) The Syrian Army is a conscript army. Elite units responsible for securing existing power structures of which particular mention should be made include the Republican Guard, which is directly subordinate to the President, and the 4th Division, of which the President's brother, Maher al-Assad, was commander, at any rate in 2011.

dd) Besides the intelligence services and regular armed forces, the Syrian regime also drew on paramilitary units and pro-government militias to exercise control over the population. Particular weight was not, however, attached to their activities until the start of the protest movement and unrest in the spring of 2011. Special mention should be made of the "*shabiha*" (the name derives from the Arabic word *shabbiha*, meaning "phantoms, ghosts"), initially a loose network of people close to the regime who regarded themselves as the unofficial arm of the state and evolved into a kind of shadow economy with organised crime-like structures serving their own enrichment. They were under the protection of the aforementioned Rami Makhoul, a cousin of President Bashar al-Assad. Following the onset of the unrest in the spring of 2011, the *shabiha* played a key role in implementing measures to stifle the uprising and persecuting opposition forces.

2. Start of the conflict in Syria and its course from early 2011 to mid-2012

a) "Arab Spring", gathering momentum of civil-society protest in Syria

Beginning primarily in Tunisia, from late 2010 onwards a civil-society pro-democracy movement gathered increasing momentum in North African countries and countries in the Middle East. It became known in the media and academic circles as the "Arab Spring", or "Arabellion". Social media posts, demonstrations and other types of rallies were used in these countries, some of which were under autocratic rule, to protest against political and social ills, corruption and mismanagement; this led to some political changes in these countries. The political slogan used across all the countries affected was "The people want to bring down the regime". Both the regime in Syria and independent observers considered it unlikely that these protests would cross over into Syria.

However, sympathy for the protest movement did also grow in Syria. Increasing support for ideas which were critical of the government was already being voiced on

the internet in early 2011. Encouraged by developments in other Arab countries, the willingness to publicly criticise the Syrian government subsequently grew; key groups involved in this were made up of established members of the opposition, parts of the younger, internet-savvy generation, who were able to access information critical of the government despite the informational restrictions, and economically disadvantaged demographic groups who were not benefitting from the clientelist system of government. Owing to the government's increasing use of force, the number of those who turned against it grew in the further course of the conflict, in particular amongst the relatives of those who were arrested or of other victims of previous protests. Mosques attended by Sunni Muslims came to symbolise the movement and served as the starting point for demonstrations, especially following Friday prayers, which are mandatory for practising Muslims. As the security authorities focused their activities on these times and places, the repressive measures turned further parts of the Sunni majority population against the Syrian regime and the predominantly Alawite security forces, since from that time on the measures also appeared to be sectarian.

b) Course of the conflict

aa) The first small-scale rallies against corruption and poverty and for more democratic rights were held across parts of Syria in February 2011. These gatherings were peaceful, and the security forces did not initially intervene. In early March 2011 a group of 10- to 15-year-old children wrote anti-government graffiti on the walls of houses in Daraa in south-western Syria. They used slogans such as "The people want the regime to fall", which had already been used in other countries. The children were arrested. When they were released from prison a few days later and exhibited obvious signs of torture, the incident attracted the attention of both national social media and the international press, which led to a wave of demonstrations across various parts of the country.

In response to the imprisonment and ill-treatment of these children, protests were held in Damascus on 15 March 2011 in the historic Al-Hamidiya Souq (covered market). These were followed over the next few days by a silent rally attended by some 150 people, around 30 of whom were arrested. On Friday, 18 March 2011, protesters gathered in Daraa, Baniyas, Homs and Deir ez-Zor following midday prayers and held

demonstrations. These were already considerably bigger, and were met with violence on the part of the security forces who were drafted in. The consequence was that hundreds of people were injured and at least two people died. Rallies were regularly held thereafter, mainly on Fridays, which grew to number several thousand people, especially in the cities of Damascus, Homs, Daraa and Douma. The security forces responded by firing teargas and live ammunition. On 23 March 2011 the security forces used firearms against demonstrators in Daraa who had assembled at the city's Al-Omari Mosque; a number of people died, though it was not possible to determine exactly how many. Following Friday prayers on 25 March 2011, a demonstration held at the Umayyad Mosque in Damascus was violently broken up. A likewise as yet undefined number of demonstrators were killed on 1 April 2011 in the Damascus area as well as in Douma to the north-east of the capital when the security forces fired their guns at them. Numerous other demonstrators were also arrested.

The overwhelming majority of the demonstrations and rallies were peaceful. The usually unarmed demonstrators carried palm and olive branches, for instance, as a sign of their peaceful intentions. Some, though, also threw stones. There were arson attacks against buildings linked to the government, for example an office belonging to the Ba'ath Party, during riots in Daraa.

bb) The Syrian regime pursued various strategies in parallel in response to the growing number of protests.

(1) Official statements released by the government and printed in pro-government newspapers claimed that the protests were in fact uprisings which were being controlled from abroad and sought to destabilise the Syrian state. Throughout the whole of 2011 there were repeated denials that demonstrators had been killed by the security forces. To disinform the (global) public, press events were used to present members of the security forces, who had allegedly been injured, in hospital. The aim was to suggest that it was the demonstrators who were resorting to violence.

(2) At the same time, Bashar al-Assad appeared to reach out to the protesters by announcing reforms and having some of the members of the security forces' leadership replaced. In early April 2011 the state of emergency was lifted and the order given to release imprisoned demonstrators. Further, legislative amendments were made to

meet the demands of some population groups. For instance, stateless Kurds were granted Syrian nationality and the ban on teachers wearing the full-face veil was lifted. In the period which followed, the Syrian government also adopted a conciliatory tone and announced – including in response to international protests in the face of the violence perpetrated against the civilian population – that it wanted to enter into dialogue with the opposition and had plans to draft a new constitution. In late July and early August 2011, Bashar al-Assad did in fact enact laws allowing other political parties alongside the Ba'ath Party and granting greater freedom of expression in the media.

(3) On the other hand, and unbeknownst to the general public, as from late March 2011 the conditions were being put in place at the highest governmental level permitting security personnel to use more force, both in quantitative and qualitative terms. An ad-hoc body comprising the highest-ranking security force leaders was set up, for instance, in response to the situation escalating in March 2011. The Central Crisis Management Cell (CCMC) reported directly to President Bashar al-Assad. Its permanent members included the Deputy Head of the Ba'ath Party Regional Command, Mohammed Said Bekheitan, the Minister of Defence, the Minister of the Interior and the heads of the various intelligence services, as well as, on a rotating basis, other government representatives. The CCMC was the highest governing body, even above the military and intelligence services, and set general policies on dealing with future protests by means of orders issued centrally to all the security forces. Its orders and instructions were mainly organisational in nature and encompassed the intelligence services and Ba'ath Party structures. The aim was, from mid-April 2011 at the latest, to violently suppress the protest movement through armed intervention on the part of the security forces in order to prevent the destabilisation and possible overthrow of the regime.

(a) The CCMC met several times in April 2011. At one such meeting on or shortly before 18 April 2011, the following decision was taken after the “security situation” and the “political situation” were discussed:

1. The phase of tolerance and meeting of demands is over, as the saboteurs and conspirators have relied too much on our policy to that effect, they have raised the ceiling of their demands, stepped up their hostile courses of

action, used all the means of agitation and weapons available and fomented sectarian conflicts.

2. Various strategies must be applied to confront the demonstrators, those who pose a threat to security and the saboteurs, including the following:

a) No release of any arrested persons whatsoever and their handover to the judicial authorities.

b) An armed response to those who take up arms against the state, though care is to be taken not to endanger civilians.

c) Instructions to be issued to seize unregistered motorcycles and registered motorcycles used by armed individuals as a means of agitation or as a means of transport (the regions and details to be coordinated with the Ministry of the Interior).

d) The arrest of known offenders without any raids, their imprisonment and handover to the judicial authorities.

e) Mechanisms for dealing with rallies:

- The police, backed by the security apparatus, are to be prepared and equipped to deal with demonstrations. Likewise, the Party and organisations are to be prepared to confront demonstrations, where necessary and as the situation requires.

- The Armed Forces are only to be involved in an emergency and only to deal with predetermined tasks.

- Tasks, competences and mechanisms for cooperation between the various agencies are to be precisely determined.

3. In the regions, supreme bodies comprising a leader, a high-ranking military officer and a security officer are to be established for planning, implementation and leadership purposes. All the military, security and party agencies within their region will be subordinate to them. They include

- a body for the central region.

- a body for the coastal region.

- the central crisis management agency to take on this task in Damascus and Rif Dimashq [note by the Division: the governorate which encompasses the region around Damascus].

4. Preferential treatment is to be given to the central region, whilst the remaining regions must be pacified.

5. The Party apparatus (Party organisations, popular organisations and professional trade unions) is assigned the following role:

- Training of designated forces to confront demonstrators and in the use of weapons.
- Continuous, rotating presence at the various Party headquarters.
- Holding ready limited reserves within the Party apparatus and its organisations which can be enlarged in each governorate depending on the situation.
- Involvement in confronting hostile demonstrations.
- Organising supportive rallies, as and when required and depending on the situation in each governorate.
- Monitoring the situation in the population and reporting suspects and agitators, possibly also arresting them and handing them over to the security authorities and Army.
- Structuring trained forces into units which have a leadership to ensure that their interventions are structured and organised.

6. A meeting is to be held with the trade unions at which they are to be told what their tasks are and they are to be informed that anyone who does not comply will be held accountable under the Trade Unions Act and other general legislation.

7. University presidents are to be notified that students are to be informed that rallies at universities are prohibited by law and anyone who does not comply will be expelled.

8. The role of the media:

- Civilian and military media delegations are to be deployed at the scenes of the protests and are to film events there so that the recordings made can be swiftly broadcast – following editing and the addition of the relevant commentary by a specialised media agency, preferably one acting with the involvement of the political administration of the Armed Forces. There is to be ongoing coordination with the security authorities and the Armed Forces.
- Banners, terms and phrases shown in the broadcast footage are to be reviewed and that which is insalubrious is to be deleted; concepts and terminology referring to offences under the criminal law are to be used.
- The use of creative methods when responding to hostile media which are backed by audio-visual documentation.
- Explanation of cases which are to be regarded as unlawful.
- It is to be made clear to both citizens and the saboteurs that we are on the cusp of a period in which the law must be precisely and unrelentlessly

applied to maintain the safety and security of the state, its citizens and public order.

- The main focus is to be placed on unmasking the saboteurs and their condemnation by all sections of the population.

9. A special assembly of the Central Crisis Management Cell is to be held to make preparations for confronting any demonstrations on Friday.

(b) The CCMC met again on 20 April 2011 and, according to the minutes of the meeting, “continued to assess the security situation”. The following was determined and agreed upon:

1. The facts show that persons who carry out demonstrations, rallies, murders, killings and acts of sabotage are further refining their methods and plans in order to terrorise citizens and force them to join them. They are using all the methods known to them to destroy citizens’ trust in the state and its abilities to fight these individuals. They are planning to hold demonstrations in several towns and cities on Friday. It is likely that they will attempt to widen their demonstrations to include other towns and cities and to foment sectarian discord.

2. It is necessary to launch a new phase to combat the conspirators and to use force against them from now on. It is important to win the battle and to demonstrate the state’s strength and capabilities.

3. Detailed plans are being prepared to counter likely armed and unarmed demonstrations and rallies, in particular in the regions of Daraa, Damascus, Rif Dimashq and Homs. These plans will be drawn up today and tomorrow under the supervision of the National Security Bureau. The Armed Forces are asked to provide the necessary support with the agreement of Army command (as per instructions issued).

4. The General Command of the Army and the Armed Forces must put forward comprehensive plans. These plans are being drawn up on the basis of a scenario in which the demonstrations and hostile actions will continue to spread across all the provinces. All measures will be taken and cooperation with the enforcing agencies will be put in place to be able to carry out these measures in full or in part, depending on the prevailing situation.

5. Some military units will be mobilised as per instructions issued.

6. The Armed Forces will publish a statement concerning the murders and killings of members of the military which is to mention that the offenders will be pursued by all available means and tried in court so that they receive their just punishment.

7. Depending on the situation, all the methods and means detailed will be applied where a region is encircled, raids are carried out against suspects or a hostile demonstration is combated. (Pursuant to the instructions issued during the meeting.)

8. Suspects are to be arrested who, based on instructions from abroad, have participated in acts of sabotage, killings, the planning of serious crimes and inciting discord.

9. The security authorities will focus on investigations, interrogations and tracking in order to obtain documented results and to present them in the media.

10. The deceased are to be buried without assemblies and demonstrations. The relatives of the deceased must commit to this before the corpses are released to them.

11. The Central Crisis Management Cell to meet on a daily basis.

12. Students who take part in demonstrations will be exmatriculated pursuant to university rules and regulations.

13. According to the instructions of the Minister of the Interior, bicycles may not be taken into towns and cities.

14. Emphasis is hereby put on item no. 8 of the minutes of the last meeting concerning the role of the media and coordination with the political administration of the Armed Forces, the Office of Moral Guidance in the Ministry of the Interior.

15. The supreme leadership committees and the governor of Daraa will be notified of the general situation and decisions taken.

16. In accordance with the proposal made by the Minister of Defence, the Ministry of the Interior will receive all the support it needs.

17. The Deputy Regional Secretary of the Ba'ath Party will coordinate the role of the Party and its organisations in the plans drawn up. He is to pass on instructions to the Party and its organisations in line with applicable provisions.

18. Emphasis is to be put on the citizens' demands that the state take action against the conspirators and win the battle so that citizens and their children are protected and can continue to go about their everyday life in safety.

19. The people's committees are to be dissolved.

(c) Notwithstanding the linguistic smokescreen of bureaucratic, trivialising phrases which give a semblance that the rule of law applies, these decisions contain clear instructions to use force, including lethal force, against protesters with the full

participation of governmental authorities, security forces and the Ba'ath Party's apparatus. Given the CCMC's status and that of its members, the decisions were binding on all security organs across the whole of Syria and were passed down the chain of command to those security forces which implemented them.

The objective of these decisions was to crush the protests at all cost using the force of arms in order to stabilise the regime and to stop participants and permanently deter the population as a whole from engaging in any further activities. Despite the wording used in the meeting held on 18 April 2011 (see 2 b) of the minutes cited in the above) – that attention was to be paid to ensuring that no civilians came to any harm – the order was given to use the force of arms and it was not only accepted that demonstrators (who were regarded as non-civilian insurgents) would be killed and injured, the purpose was that this was to act as a deterrent. It is likewise clear from these decisions that, according to the will of the state leadership, the objective behind the further strategy adopted vis-à-vis the civilian population was to nip future protests or uprisings in the bud by force. This encompassed the persecution, arrest, torture and killing of those people who allegedly took part in protests or who were only allegedly linked to such protests. In actual fact, and authorised by the state leadership, the decisions acted as a licence for the security forces to take violent action against the alleged opponents of the regime without prior verification of any suspicion and without judicial proceedings.

The instructions were passed on and interpreted in this sense. The military, intelligence services and other parts of the security apparatus were instructed across the respective hierarchical levels and acted accordingly from that point on. Based on the decisions taken by the CCMC, a more systematic approach was thus adopted, meaning that protest rallies were broken up, including with the use of a considerable degree of armed force, and as many as possible of the surviving demonstrators were arrested and taken in waiting vehicles to detention facilities operated by the intelligence services, where they were detained for various lengths of time and subjected to ongoing ill-treatment, in some cases leading to death. Demonstrators who fled the violence were pursued by the security forces and arrested. A large number of people were also arrested and abducted at the many checkpoints which were set up across the country and during large-scale raids, some of which covered entire city districts.

Sometimes people who were entirely uninvolved were caught up in these measures. The aim of the subsequent torture and ill-treatment by the security authorities was, first, to gather information, in particular about organisations and further planned protests, and, second, to intimidate the population and punish those arrested.

(d) Further meetings of the CCMC were subsequently held, though both their subject matter and the content of any further decisions adopted cannot be established. At a meeting held on 5 August 2011 the order was given to “organise daily campaigns to be carried out jointly by the military and security authorities concerning security sectors deemed by them to be of security-related priority”. “All the security branches” were required to participate in such measures “in order to storm the places where those who committed the crimes of sabotage, murder and attacks against citizens and their property and against state institutions are being sought”. These people were to be arrested; individual areas were to be “cleansed” of those who were wanted. The orders issued on 5 August 2011 also related to the fact that the results of investigations, in particular information about searches, were to be submitted to the Head of the National Security Bureau on a daily basis. Further, the names were to be reported of any members of the security forces who “acted negligently when confronted with the armed gangs or whose weapons were taken off them”.

cc) The predominantly peaceful demonstrations continued in April 2011 and the number of participants successively increased, to which the state responded with increasing violence. The demonstrations regularly, but not always, took place on a Friday; in most cases there were fatalities. The security forces were henceforth instructed to use firearms to break up the demonstrations, and they used live ammunition against civilians without warning. The security forces also responded violently during funerals held for activists who had died, which took on the guise of rallies. Neither when applying physical violence or using their firearms, nor when arresting people was any distinction drawn between whether the civilians present were protesting activists, devout mosque-goers or grieving relatives attending a funeral. In addition, some of the demonstrators who were injured by the security forces were denied medical assistance in that ambulances were prevented from attending to them and medical staff were (also) shot at. In Daraa and in Homs, security forces were posted at the entrance to hospitals to stop alleged opponents of the regime entering.

On 22 April 2011 at least 100 civilians were shot and killed by government forces during demonstrations held across various parts of the country; numerous others were injured. The demonstrations were broken up by security forces; numerous arrests were made. A few days later the city of Daraa was surrounded, besieged and finally stormed by government forces, which included army tank units and snipers. Numerous people died in the city, which had its supply of water, food and health care cut off; there were also fatalities during demonstrations outside the city and when citizens from the surrounding area attempted to bring water and food to the civilians in the besieged city. Despite holding up placards to indicate that they only wanted to provide help, the security forces deployed there used live ammunition without warning to shoot at the helpers and demonstrators. A total of at least 200 people died. In late April the security forces carried out other operations in other parts of the country during which there were fatalities. Numerous arrests were made in the city of Douma during extensive raids.

In the following months the protest movement grew to a six-figure number of active participants, as a result of which the extent of state repression also increased. In July 2011 alone a four-figure number of civilians died at the hands of the state. The security forces on the one hand focused on those towns and cities which were regarded as the opposition's strongholds. In late July 2011, for instance, government forces stormed the city of Hama, resulting in the deaths of several hundred people. In September 2011 the city of Douma was surrounded by the military and its infrastructure (i.e. electricity and water supplies and food transports) was disrupted; numerous arrests were made, too. The security forces also erected increasing numbers of checkpoints to conduct identity checks; they had lists of the names of people who were to be arrested. Firearms were from then on used against demonstrators, and members of the opposition were also subjected to arbitrary abuse at these checkpoints.

The security forces had orders to break up gatherings of more than eight civilians by force of arms. Searches specifically targeted the leaders of the protest movement. The extensive waves of arrests led to massive overcrowding in state detention facilities, in which detainees were subjected to arbitrary violence and torture, sometimes leading to death. Conditions in the prisons run by the intelligence services were characterised by a lack of water and food, sleep deprivation and catastrophic hygiene conditions.

dd) As of September 2011 the protests, which had up until then been peaceful, became increasingly more combative. The Free Syrian Army (FSA) was founded; the majority of its initial members were soldiers who had deserted the regular army. Members of the opposition forces subsequently carried out isolated attacks against government buildings. From early 2012 onwards there were armed clashes between government forces and militant opposition groups. At the same time, civilians continued to hold mass demonstrations which were entirely peaceful but which the security forces nevertheless continued to move against using firearms and physical violence. *Shabiha* militias were increasingly drawn on to combat the demonstrations. Large numbers of demonstrators were still being killed and arbitrarily arrested. The situation escalated to such an extent that soldiers who refused to shoot at unarmed demonstrators were themselves shot dead by intelligence service staff “in the second row”. Defectors and others who refused to obey orders were arrested.

There was a short period of détente in early 2012. After the Arab League had exerted diplomatic pressure on Syria in late 2011 by threatening to suspend its membership, the Syrian government agreed to implement measures which the League had proposed. In December 2011 the Arab League sent around 160 observers to Syria. At the turn of the year the Syrian government withdrew its military, including tanks and heavy weapons, from Syrian towns and cities and released around 3,500 prisoners. Nevertheless, civilians were still being killed by government forces at demonstrations held during this period.

The biggest demonstration to be held in the Syrian capital since the start of the conflict was held in the Mezzeh district of Damascus in February 2012. The security forces deployed there shot dead at least one person and used teargas and stun grenades to disperse the demonstration. Dozens of demonstrators were arrested. In February 2012 Syrian troops also attacked the city of Homs. Numerous civilians, including journalists, died. The government ascribed a massacre of civilians in Homs to armed terrorist groups; opposition activists, by contrast, claimed that the Syrian Army and pro-government militias were responsible. In March and April 2012, 95 civilians died as a result of acts of violence committed by government forces in Idlib, where numerous arbitrary arrests were also made. More than 100 civilians were killed by pro-government militia in Houla on 31 May 2012. At least 55 people were killed in the

village of Al-Qubeir near Hama following an act of violence by an armed pro-government group. At the end of July 2012, the Syrian Army or pro-government forces began shooting at civilians wanting to cross the Jordanian border; at least one person died. In late August 2012 more than 200 civilians were discovered in the suburb of Darya in Damascus; they had been shot dead by security forces during house raids.

As the conflict developed, it became increasingly militarised. The Syrian Air Force, for instance, bombed districts of Damascus and other cities in the area around the capital which were more oppositional or were occupied by members of the Free Syrian Army; cluster and incendiary bombs were used, too. From mid-2012 onwards the fighting escalated on both sides to such an extent that the conflict can be regarded as a civil war from then on. Notwithstanding this, there were still peaceful oppositional structures and civil protests in regions controlled by the Syrian state.

c) Involved state actors and institutions, strategy and victims

aa) Following the outbreak of the conflict, the Syrian regime availed itself of the same institutions and forces which it had already had at its disposal before then; they were merely increased in number. General military and paramilitary units, in particular the *shabiha* militia, were deployed. The intelligence services made up a substantial proportion of the security forces used to combat the protest movement; as a direct instrument for securing power, their remit did not change in the early days of the conflict. After the start of the clashes, the intelligence services' activities focused on this domestic task. The General Intelligence Directorate, the Military Intelligence Directorate and the Air Force Intelligence Directorate in particular were used as operational forces. It was above all Branches 215, 227, 291 and 235 ("Palestine Branch") of the Military Intelligence Directorate which were involved in crushing the protest movement, as were the "Mezzeh Airport" and "Bab Touma" Branches of the Air Force Intelligence Directorate. Branch 285 and Branch 251 were operative branches within the General Intelligence Directorate; the latter is of relevance in relation to the Defendant's concrete contribution to the act which is the subject of the present proceedings (see 3., p. 33, below for details).

The General Intelligence Directorate and the Military Intelligence Directorate each had between 8,000 and 10,000 full-time employees. The Political Security Directorate and

the Air Force Intelligence Directorate both had between 5,000 and 6,000 full-time employees. It is not possible to reliably establish how many forces were deployed in the context of individual operations against demonstrations. However, an at least three-figure number of military and intelligence service forces were typically deployed to cordon off roads, to fire tear gas and live ammunition at demonstrations, subsequently to go into the demonstration armed with striking implements, to injure and arrest demonstrators and take them to detention facilities. At the same time, adjoining streets were searched for those who were fleeing or who were suspected of having participated in the demonstration – often merely on the basis of their age and place of residence.

From the start of the demonstrations in February 2011, which were initially held only sporadically, the intelligence service branches sought to establish how and by whom the protests were being organised; participants were arrested and interrogated under torture to that end. They continued to carry out the tasks previously assigned to them, that is intimidating and pursuing opposition forces, but these were now deliberately extended to encompass those who organised and supported the protest movement in the streets and on social media. From late April 2011 at the latest, the involved security forces within the military or militarised structures were instructed to coordinate their actions against the demonstrators. Further, members of the intelligence services in particular were involved in conducting raids and house searches and making arrests. Moreover, the intelligence services set up a growing number of checkpoints in inner cities and along thoroughfares in rural areas at which people were likewise searched and arrests were made.

At the start of the conflict the Syrian Army was between 200,000 and 300,000 people strong and had an additional 300,000 reservists; the majority were conscripts. In the period up until the spring of 2012 some 60,000 soldiers deserted the army by fleeing abroad or later joining the Free Syrian Army because they objected to the attacks against the civilian population. Higher-ranking, often Alawite, officers generally stayed on in the regular Syrian Army. The Republican Guard, which was deployed to protect the government in the area around Damascus, and the 4th Division, which was subordinate to the President's brother, Maher al-Assad, were regarded as elite units loyal to the regime and were mainly made up of Alawites. They were the two preferred

units when it came to suppressing the protest movement and were involved in making arrests, carrying out house raids and injuring and killing demonstrators. A distinction must be drawn between them and the regular army units whose soldiers, including conscripts, were deployed to attack unarmed demonstrators on the pretext that they were combating Salafists, terrorists and criminals. This led to increasing numbers of people deserting and defecting. In the second half of 2012, pro-government militias which had already provided support to the armed and intelligence forces in 2011 were incorporated into the new National Defense Forces (NDF).

The Military Police were primarily responsible for administrative tasks, such as photographing and documenting those who died. For example, from March 2011 at the latest the Military Police's photographic service was instructed to systematically record those demonstrators or prisoners who were killed. It was this work which resulted in the creation of 26,938 image files which were smuggled out of the country by a military photographer who deserted (known as "Caesar") and which contained photographs of a total of 6,821 corpses. Most of the people in the photographs, the majority of whom showed signs of emaciation and ill-treatment, had died in the intelligence service branches in the period between May 2011 and August 2013 and were photographed by the Military Police's photographers shortly after they died. The Military Police were, however, also responsible for transporting prisoners from prison to court and for the military field courts (which were also responsible for passing sentence on political prisoners). Following brief sham trials, these courts imposed penalties, usually based on confessions extorted under torture, which could go as far as the death penalty.

bb) From March 2011 onwards, the security authorities arrested large numbers of people in the course of violently breaking up demonstrations, during house searches and raids and at checkpoints. Those arrested were usually carried off to detention centres in buses and then detained there for various lengths of time – from a few days to years – without an arrest warrant or other formal proceedings.

The Syrian regime used existing civilian, military and intelligence service prisons as detention facilities. They were significantly overcrowded owing to the large numbers of people being detained there. Prisons such as Tadmur Military Prison, which had closed sometime around 2001, were reopened. Important bigger prisons included the civilian

prison in Adra, to which prisoners were transferred for long periods of detention, and a prison in Saydnaya operated by the military. Further, the intelligence services ran a large number of prisons, including facilities in the provinces, which formed a network across the whole of the country. These facilities served as reception centres for those who were arrested. However, people were sometimes detained there for months or even years. The General Intelligence Directorate at any rate had prisons in Branches 251 and 285. Of the remaining intelligence services, it was above all the Military Intelligence Directorate and the Air Force Intelligence Directorate which were involved in arresting, torturing and killing actual or alleged opponents of the regime – the former in Branch 235, also known as the “Palestine Branch”, which had become notorious amongst the population. The Military Intelligence Directorate operated a total of 10 detention facilities, including five in Damascus. The Air Force Intelligence Directorate was responsible for at least two prisons. The Political Security Directorate operated a prison in the Mezzeh district of Damascus.

The conditions of detention in the facilities operated by the intelligence services were characterised by a shortage of food and medical assistance, overcrowding and the resulting insufficient opportunity to exercise and lack of places to sleep, catastrophic hygiene conditions owing to pest infestation and insufficient opportunity to wash or change one’s clothing, the arbitrary use of violence and enormous mental stress on account of the uncertainty as to one’s fate and constantly hearing the screams of other prisoners who were being abused in neighbouring rooms by day and by night. Prisoners were regularly and systematically tortured during their interrogations in the intelligence services’ facilities. Those torture methods were applied which had already been “trialled” within the Syrian intelligence apparatus before the start of the conflict: Prisoners were physically restrained – sometimes in a car tyre (a technique known as *dulab*) or on a board (known as the “Flying Carpet”) – and then beaten all over their body with or without an implement, especially the soles of the feet (known as *fallaqa*), they were hung up by the wrists (known as *shabeh*) and their body and spine were overstretched (known as the “German Chair”). They were also subjected to electric shocks, burning and scalding, their fingernails and toenails were extracted; other methods which were down to the sadistic ingenuity of those carrying out the measure were sometimes used as well. Sexual violence against both men and women was

widespread; it especially served to humiliate the victim and could go as far as rape. Whilst at the start of the conflict torture was primarily used to extract information, from May 2011 onwards the detention facilities were less interested in gathering intelligence and more in breaking actual or alleged members of the opposition, deterring them from engaging in further activities and thereby stifling the protest movement.

The detention facilities in the Greater Damascus area included the military hospitals in Tishreen (also known as “607”), Harasta and Mezzeh (also known as “601”). Prior to the conflict, they had only ever been used to treat soldiers and their relatives. When the protest movement started the military hospitals began to be repurposed and were then also used to house and ill-treat alleged opposition patients. Initially, the focus was still on treating these people, too, but from April 2011 the security forces and medical staff themselves increasingly began massively abusing the injured prisoners or demonstrators who were admitted. From 2012 the military hospitals had a twofold remit: Besides units which provided conventional treatments which were reserved for those loyal to the regime, there were customised wards in which the admitted prisoners were shackled to hospital beds and tortured – in some cases to death. As a result, the civilian population sometimes dreaded the military hospitals more than the prisons operated by the intelligence services.

cc) At the same time, the military hospitals formed an important part of the infrastructure for dealing with corpses. From March 2011 they continuously served as a collection point for deceased prisoners, who were documented by military physicians and photographers. The corpses of those prisoners who died in prisons and intelligence service facilities or who were killed on the street were taken to the military hospitals. The corpses – most of them naked or only clad in their underwear and bearing traces of malnourishment and/or torture – were amassed there together with the corpses of those who died in the military hospitals and were temporarily put in cold storage. As the number of corpses exceeded the capacities of the cold storage facilities, the bodies were soon simply laid out in large halls or courtyards. The dead were bureaucratically recorded: Numbers designating the place of detention and death (generally the figure assigned to the intelligence service sub-branch) and a prisoner number were either written on a note which was stuck to the corpse or written onto the corpse’s skin using a felt marker. A forensic expert employed by the hospitals wrote a

brief report which generally recorded a false natural cause of death such as heart failure or respiratory arrest, issued the death certificates and himself included an additional registration number on the note or the deceased's body. Military photographers from the Military Police were then called in to take several photographs to document each of the corpses. The photographs and reports were then placed together in a dossier. This documentation system was to serve the purpose of government-internal checks, specifically to make it possible to trace the fate of each prisoner and ensure that they were not released following payment of a bribe.

At the start, at least 10 corpses a day were recorded in this way in Damascus alone, but that figure soon rose to at least 50 a day. After being catalogued in the manner described, the corpses were transported in refrigerated vehicles and trucks, sometimes on semitrailer trucks, from the collection points in Damascus and Rif Dimashq to mass graves dug specifically for this purpose in the surrounding region (Najha and al-Quteifa). After their origin had been documented once more by administrative officials recruited to that end, the deceased were then tipped into the graves. This treatment of the killed civilians began in May 2011 at the latest when the numbers of victims of the conflict rose significantly.

dd) Given the lack of reliable counts, the dynamic developments and the lack of neutral observers, it is not possible to determine precisely how many civilians died, were injured, imprisoned or suffered harm in another way during various phases of the conflict on account of state measures carried out by the Syrian security authorities. The Division bases its assessment, in the Defendant's favour, on figures which are at the lower end of the available estimates. According to these estimates, at least 2,000 civilians died between the start of the conflict and July 2011 and at least 5,000 civilians died in the period between the start of the conflict and December 2011. By May 2012 more than 10,000 people had died during the unrest. Multiples of these numbers of people were abducted from demonstrations, checkpoints, from work, their home or from hospital and taken to prisons operated by the intelligence services, where they were systematically subjected to, in some cases, the most serious abuse using the established torture methods. The number of dead continued to increase throughout 2012 as the conflict continued.

d) Summary

As has been established (see II. 1., p. 8), the foundation for the Syrian regime's course of action against the growing protest movement after February 2011 had already been laid in the 1970s on the basis of the established autocratic political system in Syria which was backed by an extensive and repressive security apparatus. The political leadership had sufficient forces at its disposal within the army, intelligence services and paramilitary units so as to be able to take violent action across the whole of the country against citizens who were critical of the government. The political system was geared to just that; it had for decades already been oppressing the political opposition and, in isolated cases, imposing violent "penal measures" to which a large number of people fell victim. Extrajudicial detention facilities were available across the country, and methods for controlling business and society and the police-state persecution and torture of individual activists were trialled.

As has also been established (see II. 2., p. 14), the protest movement was met with tried and tested repressive measures as soon as the "Arab Spring" crossed over into Syria in February 2011, although the security authorities initially limited themselves to violently dispersing demonstrations and making arbitrary arrests in what were, at that time, still isolated incidents. In late April 2011 at the latest the protests spilled across the whole of the country, and rallies were at any rate held in the provincial capitals. At the same time, the measures applied by the security authorities were massively extended both in terms of quality and quantity in that they were able to "break up" demonstrations by violent means, that is including the fatal use of firearms, and to make extensive arrests, up to thousands per day, and then to subsequently torture those detained in the various detention facilities. Checks and arrests were also made at the countrywide network of checkpoints; entire urban districts which were regarded as oppositional were violently brought under control by being sealed off and raided. Violence was not only used in isolated and random cases, but also as part of a wide-ranging strategy aimed at bringing the Syrian civilian population into line and "educating" it to be loyal to the government. This use of violence was organised and planned on the basis of the decisions taken in April by the highest executive body (the CCMC), which was established to that end; the decisions relating to the use of force, the making of arrests and the ill-treatment of those detained were implemented by

being passed down the government hierarchy as far as those who were required to execute the relevant measures.

In anticipation of its legal assessment (see C. 1., p. 174), taking the above findings as a whole the Division sees a wide variety of facts and circumstances which constitute an attack against the Syrian civilian population such that they were linked to the killing, extralegal deprivation of liberty and torture of a large number of civilians. This attack served to shore up the Syrian government and was used as a means of retaining power and suppressing anti-government political endeavours. In the light of the centralised decisions adopted by the CCMC, this attack was also both systematic and widespread as of late April 2011 at the latest.

3. Branch 251 and Sub-branch 40 of the Syrian General Intelligence Directorate

a) Before the conflict began, the remit of the General Intelligence Directorate (also known colloquially as “State Security”) encompassed counterintelligence, surveillance of the Syrian population at home and abroad, monitoring the Syrian business sector, fighting corruption and surveillance of foreign institutions in Syria. As from the spring of 2011 its focus turned to “counterterrorism”, which was interpreted to mean the suppression of oppositional groups and groups critical of the regime. The agency initially had between 10,000 and 30,000 full-time employees. The Directorate was divided into 12 central units in Damascus – a central branch and 11 special branches – plus 13 regional branches. Branches subordinate to the General Intelligence Directorate included Branch 251, which is the subject of the present proceedings, and a training academy in Najha, a suburb of Damascus, analysis, technology and counterintelligence branches, and a central investigation branch (also known as “Branch 285”). The latter was located in the centre of Damascus, in the district of Kafr Sousa. From 16 July 2005 to 24 July 2012 the General Intelligence Directorate was headed by Major General Ali Mamlouk and then from 24 July 2012 by Major General Dib Zaitoun.

Branch 251 was one of the branches of the General Intelligence Directorate based in Damascus with responsibility for the “internal security” of the governorates of Damascus and Rif Dimashq. It had between 2,500 and 3,000 employees. After the outbreak of the conflict it was in effect responsible for combating protests in this area,

for carrying out the majority of the waves of arrests in Damascus and Rif Dimashq and putting up road blocks in these areas. Branch 251 is located in the built-up city centre of Damascus, on Baghdad Street close to the Red Crescent Hospital. It covers an extensive area which is bounded either by walls or road blocks and includes a spacious garden area and car park. Because it is located in the al-Khatib district of the city it is also known informally to locals as the “Al-Khatib Branch”. Branch 251 essentially comprises two at least three-storey buildings on either side of an inner courtyard which house offices and interrogation rooms.

In 2011 and 2012 at any rate there was a prison in the basement of one of the buildings belonging to Branch 251 which had several communal cells measuring between 10 and 40 square metres plus small single cells measuring no more than 1 by 2 metres. There were also recreational rooms for the prison guards, interrogation rooms and an open interrogation area in the basement. In early 2012 the prison was extended to include subterranean rooms underneath the garden in order to create additional room for the number of prisoners, which grew rapidly in the period after March 2011. The officers’ offices and interrogation rooms were, by contrast, located in the upper storeys of Branch 251, to which the prisoners were taken from the prison tract. In 2011 and 2012 Branch 251 was headed by Major General Tawfiq Younes. The former Co-Defendant ...[K] was head of Branch 251’s Interrogation (Sub-)Branch until 2012.

Sub-branch 40 was formally assigned and subordinate to Branch 251. It acted as a rapid response unit in the field and was deployed to carry out raids, set up and operate checkpoints, make arrests, conduct house searches and, especially in the further course of 2011, to break up demonstrations critical of the regime (“sweep and thug squad”); its jurisdiction covered the governorates of Damascus and Rif Dimashq. Despite formally being a sub-branch, it enjoyed a certain degree of autonomy as it was headed by Hafez Makhlouf, a maternal cousin of Bashar al-Assad who had especially close ties with the highest decision-making echelons of the Syrian regime. Although it was officially under the command of Branch 251, the sub-branch operated largely independently. It had its own office building in the Jisr al-Abyad district of Damascus and its own detention facility. It provided assistance to Branch 251, primarily by transporting prisoners there. Staff were handpicked; key requirements made of those employed there were physical fitness and loyalty to the regime.

b) When Sub-branch 40 was deployed to deal with demonstrations and other protests, to conduct house searches and at checkpoints, some of those detained were taken to its own premises for a short time, where they were regularly exposed to both interrogation and ill-treatment. After remaining there for a short while (though rarely for more than one day) in transit, as it were, they were then taken to Branch 251, where they faced torture and longer periods of detention. In other cases, those arrested by Sub-branch 40 were taken straight to Branch 251 and left under its control, often after having been abused in the buses used to transport them.

On arrival in Branch 251, the detainees were driven into the courtyard between the two parts of the building and the overwhelming majority of them were forced to run the gauntlet of massive abuse after disembarking; often they were maltreated with baton- and whip-like implements for long periods of up to several hours. Some of them already died at this point. Staff cynically called this introductory treatment a “welcome party”. The abducted were then taken or pushed into the prison cellar, where they were forced to undress and were searched – including rectally – for hidden objects.

The detainees were held in the basement of Branch 251; men and women were housed separately, mainly in communal cells, though from April 2011 onwards these were so overcrowded that those detained there could only sleep in rotation, huddled together and staggered on the floor; sometimes they were forced to stand. Often the only source of fresh air in the cells, which were either not or only entirely insufficiently ventilated, was the gap under the cell door. This meant that detainees were only able to breathe in extremely stifling air or even suffered oxygen deficiency. The cells either had only a single toilet with a water flush which was not partitioned off, or detainees were taken to the toilet by guards at specific predetermined times. Some cells had a skylight up into the courtyard, whilst others only had artificial lighting which was never switched off, meaning that detainees were unable to tell day from night. Since they hardly had any opportunity to wash and change their clothes, the hygiene conditions were catastrophic. Pests such as lice were ever-present in the cells. Prisoners who were already injured when they arrived or who suffered injuries as a result of the torture inflicted received no or only inadequate medical care. Open wounds became infected; injuries and illnesses usually went untreated. Alternatively, detainees were placed in one of the very small single cells which measured only around 1 by 2 metres and into

which two or more prisoners were often crammed together. Detainees were generally not given enough food to eat, which led to their rapidly losing weight and strength. Day and night they were exposed to the cries of pain of the other prisoners who were being tortured in neighbouring interrogation rooms or in open areas. Prisoners who were led out of the communal cell regularly returned with injuries and visible signs of torture. This and the uncertainty about their own fate meant prisoners were under enormous mental strain, which went as far as persistent existential mortal fear.

The fear of being subjected to ill-treatment generally proved well-founded, as, after a waiting period, each new prisoner was taken to at least one interrogation either in the prison area or one of the interrogation officers' offices in the upper storeys of the building, where they were then subjected to torture. In the majority of cases this meant being beaten on the soles of the feet with a belt or cable (known as *fallaqa*), which caused swelling and lacerations as well as extreme pain walking (which detainees were then forced to do by the guards), being hung up by the wrists (known as *shabeh*), electric shocks, burning and scalding, arbitrary beatings with or without implements and being kicked all over the body. Often, the ill-treatment did not end when detainees made (false) confessions or had information extorted from them, either because they did not have the desired information or because the ill-treatment, a form of humiliation and deterrent, was an end in itself. Prison guards also administered beatings without cause or because prisoners broke the rules, for instance if they talked without permission to do so. On some occasions men as well as women were also subjected to sexual violence in the form of rape or touching or beating of their sexual organs; threats of sexual violence against spouses or family members were also issued. Only those prisoners who were deliberately arrested alone, who were well-known celebrities or personally known to staff were, in exceptional cases, spared such direct physical abuse.

Relatives were not notified where family members were being detained. Nor were detainees themselves told how long they would be detained. They were also regularly left in the dark about what charges were actually being brought against them and the reason for their detention.

c) According to their jurisdiction and actual activities, as of the spring of 2011 Branch 251 and Sub-branch 40 were closely involved in suppressing the protest movement. Along with other intelligence services, they formed an integral part of the Syrian regime's violent strategy: They arrested masses of alleged or actual opponents of the regime, disbanded demonstrations, arbitrarily abducted demonstrators and systematically tortured them.

4. Defendant's contribution to the offence

a) Defendant's function within the Syrian intelligence service, conduct prior to the offence

The Defendant joined the Syrian general intelligence service on 10 July 1996, at the age of 20. He first underwent basic training at the training base in Najha, a suburb of Damascus, in the General Intelligence Directorate's Branch 295. Besides undergoing physical training, he was instructed in the fundamentals of basic military operations and the use of various weapons systems, including pistols, sniper rifles and explosives. After one and a half years (i.e. from early 1998) he himself worked as a trainer until February 2010. In 2004 and 2005 he underwent "counterterrorism" training which was supported by Russian military experts, during which he was taught how to storm buildings in big cities, how to construct and combat ambushes, engage in street fighting, kidnap armed and unarmed people, make arrests and provide personal security.

From February 2010 the Defendant was assigned to Branch 251 of the General Intelligence Directorate. He was at least predominantly deployed in the Branch's main site on Baghdad Street in Damascus. He was first employed in the "Religious Branch", where he was responsible for information-gathering in mosques, amongst other things. The objective was to investigate the political attitudes of the imams preaching there and what those attending the mosque said – possibly against the government; these spying activities included collecting other personal information about those attending events there. The Defendant wrote reports about this work which were passed to his superiors for further use. He then spent five months working in one of the sub-branches assigned to the city of Al-Zabadani, in the Rif Dimashq governorate, where he did office work. As this work bored him, he returned, at his own request, to the "Religious Branch"

for two months. After this he was transferred to Sub-branch 40, where he served from July 2011 until he deserted on 5 January 2012. The Defendant belonged to a unit of the sub-branch which was deployed mainly in Douma, at least for a time.

During his many years in the Syrian general intelligence service, when he primarily served in various sub-branches of Branch 251, the Defendant became well-acquainted with the modus operandi of the Syrian intelligence services, especially of Branch 251. The Defendant knew that, even before the start of the Arab Spring in February 2011, the intelligence services were used both as a means to spy on the civilian population and for the purpose of political repression. He was aware of what Branch 251 was tasked with, of the buildings located on Baghdad Street, including the subterranean prison, of the conditions of detention there and the fact that prisoners were tortured to extort information or simply as a means of intimidation. The Defendant also knew that conditions in the branch had drastically deteriorated for its prisoners after March 2011 because extensive arbitrary arrests were being made, a large number of previous prisoners were then being detained in the facility and they were systematically ill-treated there, in particular that they were subjected to the arbitrary behaviour of the violent guards and to torture. Finally, the Defendant was not unaware that, from late April 2011 at the latest, a wide-ranging attack to suppress the Syrian oppositional movement and intimidate the population by violently intervening in demonstrations, with many resulting injured and dead and mass arrests was in train and was being controlled by the leadership of the security authorities. It cannot be ruled out that the Defendant maintained a certain inner distance to all that was going on, but he nevertheless continued in his job in order to earn his living.

b) Contribution to the offence in September/October 2011

In September or October 2011 a demonstration attended by around 3,000 to 6,000 demonstrators was held near the Al-Kabeer Mosque in the city of Douma south of Damascus. The demonstrators were peaceful; they sat on the road or danced. Some 1,000 security forces were deployed to keep them under control, including members of the Ministry of the Interior, the Air Force Intelligence Directorate and various sub-branches of Branch 251. Sub-branch 40 sent some 250 men, including the Defendant, who was equipped with a firearm.

The members of Sub-branch 40 at any rate were ordered to shoot at the demonstrators, to pursue and arrest them. Hafez Makhlouf himself arrived in an off-road vehicle, hurled insults at the demonstrators, told the security staff "If you love the President, you'll shoot these traitors" and then himself started firing his automatic pistol. He hit at least five people, at least three of whom died. Intelligence service staff also began to shoot at the demonstrators. The Defendant did not follow suit, but backed off a little. The demonstrators thereupon attempted to flee. The security forces, including the Defendant, pursued them, combed the streets, arrested many of the demonstrators and put them on buses which were ready and waiting.

A total of 30 demonstrators were then transported from Douma to Branch 251 in Damascus in a convoy of at least two buses; the Defendant accompanied and secured the journey. Many of those arrested were already beaten whilst in the buses; it was not possible to establish whether the Defendant participated in this. Once they arrived in the courtyard of Branch 251, the detainees were forced off the bus and severely beaten on their way into the building; amongst other things, they were beaten with metal pipes by new recruits. The Division was also unable to establish whether the Defendant himself ill-treated the detained demonstrators.

The detainees were held in Branch 251 by force for a minimum of several days; all of them were tortured during their stay there. Besides the violence which they without exception all had to endure immediately on arrival in Branch 251, during their subsequent interment and interrogations the overwhelming majority were subjected to systematic physical violence, that is beatings all over their body and to the soles of their feet with implements, which caused significant pain. The conditions of detention were typical for the branch: The prisoners were all held in the subterranean cells, some of which had no daylight, in extremely cramped conditions, without sufficient food, under catastrophic hygiene conditions in pest-infected rooms, without the means to engage in personal hygiene and with only limited opportunity to relieve themselves. They were all forced to endure listening, at all times of the day and night, to the cries of pain and the entreaties of others who were being tortured in neighbouring interrogation rooms. None of the prisoners was told why they were being detained and for how long. Each of the prisoners was left entirely in the dark as to their future fate, especially when it would be their "turn" to be subjected to brutal mistreatment, the

effects of which they constantly saw in others. None of them knew whether and, if so, when they would leave the prison alive again. Their relatives were not informed of their fate.

Just like their subsequent detention, which lasted at least several days, the demonstrators' arrest was also arbitrary, without individualised grounds and an order which met minimum rule-of-law standards. Neither was the justification for their detention reviewed by an independent body during their imprisonment. The sole basis for these arrests were catch-all instructions issued by the executive (i.e. the security authorities) to break up demonstrations by force and detain those taking part to prevent further oppositional endeavours.

As he was a member of Sub-branch 40, which was tasked with suppressing the opposition movement and was deployed as a rapid response and arrest unit, the Defendant knew that the purpose of the operation against the demonstration was to arbitrarily arrest and abduct those taking part. He was aware that he would be required to take demonstrators to "his" Branch 251. Based on his many years of working in Branch 251 and the building it occupied and what he had become aware was going on there, he knew what awaited the demonstrators there, in particular that they would be subjected to systematic physical abuse, atrocious detention conditions and extreme mental stress, which began with brutal beatings during the customary "welcome party". Finally, the Defendant was also aware that there was no procedure which could even approximately have provided a rule-of-law basis to legitimise the demonstrators' imprisonment. Owing to the political situation and events in Syria, which were generally known, in particular, though, on account of his intelligence service activities, the Defendant knew that this incident was part of a series of attacks being carried out across the country from late April 2011 against civilian demonstrators and alleged or actual members of the opposition. And this notwithstanding the fact that he had begun to tell his relatives that he disassociated himself from the Syrian regime.

In order to be able to continue his work in the intelligence service, which secured his own and his family's living, the Defendant became reconciled to participating in putting down the demonstration and arresting the demonstrators. He was not faced with any subjective dilemma, but freely chose to stay in his job until he deserted several months

after the incident. Notwithstanding this, had he been willing not to participate in the act, the Defendant would have had sufficient opportunity to do so. For instance, he could have feigned illness after receiving orders relating to the operation, or either feigned indisposition or an injury whilst the operation was ongoing. In contrast to, for instance, ordinary soldiers, who were constantly under surveillance during operations against demonstrations, especially by the intelligence services, the Defendant also had the opportunity, on account of his freedom of movement during the demonstration and in the adjoining streets, to make off and turn his back on the intelligence service.

c) Conduct after the fact

The Defendant continued his active service in Sub-branch 40 until he deserted on 5 January 2012. Early one morning around late 2011/early 2012 he escorted an armed convoy of refrigerated trucks transporting around 50 to 60 corpses to a mass grave near Najha in the vicinity of Damascus. After passing checkpoints, the corpses, the majority of which at any rate were people who had died in intelligence service prisons and branches, were thrown into a mass grave which had been excavated by a digger.

B. Evaluation of evidence

I. Statements by the Defendant

At the main hearing the Defendant testified neither as to his person nor as to the substance of the case. He did, however, have his defence counsel submit a statement to the Division which he himself had written. Before the preliminary investigation was instituted, he had made statements – including self-incriminating statements – during his hearing before the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) and during subsequent questioning as a witness by the Federal Criminal Police Office (*Bundeskriminalamt*, BKA). More specifically:

1. Defendant's written statement

During the main hearing on 9 December 2020, the Defendant had his defence counsel submit a three-page handwritten statement he had drafted to the Division. In that statement he detailed the impression which the “Caesar Files” had made on him, that

is photographs (which had previously been inspected in the main hearing) depicting dead people, most of whom had previously been tortured and were emaciated. He also addressed the question of why, in his opinion, it had not been possible to break with the intelligence service at an earlier point in time. The Defendant did not permit any follow-up questions to his statement.

In essence, the Defendant submitted the following in writing:

The Defendant thanked the forensic expert for his remarkable work and detailed description of the physical and mental torture which the prisoners had suffered. He also thanked the Syrian hero given the alias “Caesar” for his involvement in exposing the crimes committed by the Assad regime and his sectarian gangs. The images were upsetting, shocking, painful and extremely frightening, he wrote. They had pained and saddened his heart. During the presentation his whole body had shaken in shock and grief for the victims, the Defendant wrote. Anger and hate towards the criminal Assad regime and all his helpers had filled his head and his heart. Sometimes he had had to avert his gaze. The Defendant gave his assurance that he had never before seen 99% of the images shown in the courtroom; the remaining 1% he had seen on Al Jazeera or other Arab news broadcasters. He wrote that he had to think about those of his relatives who had been detained in the regime’s prisons since the start of the revolution. Seven of his relatives, dozens of his people and hundreds of citizens of his hometown Muhasan had been taken to prison; he was not aware of the fate of any of them since then. The Defendant wrote that he had looked at the images in the courtroom and searched them for his relatives. On his way back to prison from the courthouse he had been overcome with grief and pain, he wrote; he had wept bitterly. The Defendant wrote that he had thought about the detainees, their families and the millions of Syrians who had been expelled merely because they had called for freedom, justice, equality and democracy. Bashar al-Assad and most of the members of his religious denomination, including civilians and mercenary troops from other countries, were the real criminals who were still committing their crimes against innocent Syrians. Like every Syrian, the Defendant, who loved his country and his people, wished that they – first and foremost the dictator Bashar al-Assad and his family – would be held to account by being brought before international courts.

As far as his situation as a member of the Syrian security service was concerned, the Defendant wrote that he was no different from all the other members of the Sunni denomination: They were entirely powerless, especially since the start of the revolution in Syria. It was undisputed that 90% of the revolutionaries were members of the Sunni denomination, to which he also belonged. Since the outbreak of the revolution the regime had regarded them with distrust and as a constant threat, the Defendant wrote. Many “of us”, he wrote, were kept away from important and sensitive posts or were removed from their posts. Many, including himself, had had their personal weapons and security passes taken away. Colleagues of other denominations had been ordered to monitor them at work, had watched their every step, every word, every look and even every breath, he wrote. They had waited for the merest indication that someone was aligned with the revolution “so as to arrest us”. He, and all the others who had been in a similar position, had therefore been left with only one of the following options:

- Openly defy orders given by superiors, as a consequence of which he would have been accused of refusal of duty and collaborating with demonstrators. The result of this course of action would have been imprisonment and, usually, execution.
- Dissociate himself from the regime and immediately flee without regard for his wife and four children. The result of this course of action would have been that his wife and children would have been arrested and tortured until he returned and was executed.
- The right and safest option for him and his family was to hold out for a few months until some regions were no longer under the control of the regime or until it was possible to cross the border into a neighbouring country, then to dissociate himself from the regime and secretly flee with his family.

On 5 January 2012 the Defendant had chosen the latter option, he wrote. He asked whether his love for his wife and his children was a mistake for which he deserved to be punished.

2. Statements made in the asylum procedure

The Defendant had already provided information – including that of a self-incriminatory nature – in the course of his asylum procedure, more specifically at his hearing on 9 May 2018 at the local branch of the Federal Office for Migration and Refugees in ...[t]. This information was provided to the Division by Witness ...[L] and Witness ...[M], who conducted the hearing on behalf of the agency, and – as regards the accuracy of the translation – by Witness ...[N], the interpreter used on that occasion. According to Witness ...[N], there had been no difficulties communicating with the Defendant. The Division therefore has no reason to doubt that the Defendant gave the statements as reported by the witnesses and recorded in the transcript.

a) At his hearing the Defendant had first stated his denomination, his place of origin in Syria, his family circumstances, his school education and his places of residence up until he joined the Syrian intelligence service as set out in section A. I. above (Findings as to the person of the Defendant).

b) From 10 July 1996 until 5 January 2012 he had, as he further stated, been a member of an intelligence service and had ultimately risen to the rank of sergeant major. Sometimes he had lived in intelligence service accommodation. He had undergone two years of training in Najha, a suburb of Damascus. This had included weapons training, military strategy and physical fitness, he stated. He had been trained to use rifles and guns, including Russian “Mikarov” (the Division assumes that the reference here is to Russian “Makarov” pistols), weapons made by Braun (the reference here is possibly to “Browning”), a sniper rifle, various types of bombs and a bazooka. He had undergone training to become a trainer, he stated. This had included three days in the desert after which you either stayed out there or had to walk 120 kilometres without a break.

The Defendant stated that he had then worked as a trainer in Najha up until 2010. Thereafter, that is up until he deserted in early 2012, he had been deployed in the intelligence branch 251 on Baghdad Street in Damascus. He had first worked in the “Religious Branch” there. Over the course of five months he had learned about all the various religions in Syria and had been responsible for the districts of “Mukhain Al-Yarmouk, Palestine Road, Hajar al-Aswad and Al-Kadem” in Damascus. The Defendant stated that he had been responsible for information-gathering in all the

mosques, in particular for finding out what was being taught in the mosques. He had attended Friday prayers to see what was being preached and to find out each imam's orientation ("strategy"), that is whether he was inciting protest against the government, for instance. He had also "recorded data" on people. He had handed over the reports he made about this to his superior in the branch, Lieutenant-Colonel Kamal Al-Ahmad.

The Defendant further stated that he worked for the "Al-Zabadani" Branch for a while. He had wanted to leave the job because "office work isn't really my thing". Lieutenant-Colonel Kamal Al-Ahmad had wanted him to return to his branch, which he had then done for two months. After that he was "moved" to a "dangerous branch", Branch 40. He worked there, in the vicinity of Bashar al-Assad's home, from July 2011 up until 5 January 2012, he stated. The branch was like a Mafia-style grouping; once you were in, you could not leave. It was headed by Hafez Makhoul, a cousin of Assad.

When asked whether he himself had witnessed crimes, attacks or abuse, the Defendant replied that he had seen people being beaten (including on the head) as a result of which some of them had died as a result. That had "also" been done by people in Branch 251. When people had emerged after Friday prayers and had demonstrated, the security forces had come on the scene. Hafez Makhoul had shot and killed five people on one such occasion; that was in Douma in August or September 2011. Also, corpses had been transported away from the prison in "our branch", he reported. It was underground in the "251 building". He himself had not been involved in this. Orders had been given by Brigadier General Tawfiq Younes, the Defendant said.

c) The Defendant stated that he deserted on 5 January 2012. As his motivation for doing so and also as his grounds for seeking asylum, the Defendant stated that he had been ordered by the intelligence service to kill civilians. He was required to arrest demonstrators, in particular to drag the ringleaders of the demonstrations into a car and take them away. In late 2011 he had been ordered to fight civilians who were supposedly against the government and armed. Three of his colleagues had already died doing so. The Defendant stated that he had not wanted to kill any of his compatriots and had decided to go to Deir ez-Zor.

In January 2012, the Defendant stated, he therefore first fled to Muhasan, his home village, where he had gone into hiding for six months, moving house every day or two.

His wife and his children had remained in Damascus; “they” (the reference here is obviously to members of the intelligence service) had made unofficial enquiries with his wife and his brother. The intelligence service had also found out that he, the Defendant, was staying in his home village. One of his brothers and one of his brothers-in-law had then helped his wife leave Damascus and go to “Qudsaya”, where she had gone into hiding in an uncle’s house. Attempts had been made to arrest his wife; she had then used a cousin’s identity card to go to be with the Defendant. He himself had learned from a cousin about threats which had been made by the intelligence service; this had, ultimately, been the reason why he had decided to leave the country. When his parents’ house was to be attacked from the air, he had fled with his family to the village of Abo Hassan. When asked why he had chosen to go back to his home village, which was known to the intelligence services, the Defendant replied that the government had not known that his parents’ house was in Muhasan.

The Defendant stated that after he had left the village, his parents’ house had in fact been shot at, but not been hit. He himself had seen this, he said. When asked, the Defendant stated that he returned to the village after having taken his family to safety because the house in Abo Hassan was too small for all of them.

d) Lastly, the Defendant stated that he left Syria on 12 February 2013. After that he spent three years in the “Haran” refugee camp in Turkey and entered Greece on 20 February 2016. He spent two years, two months and four days in a camp near Thessaloniki without filing an asylum application there, he said. Both his leaving to go to Turkey and his journey from Turkey to Greece had been organised by a people smuggler.

3. Police questioning as a witness

The Defendant was, moreover, questioned as a witness on 16 August 2018 as part of a structural investigation (*Strukturermittlungsverfahren*) conducted by the Federal Public Prosecutor’s Office (*Bundesanwaltschaft*) into unknown offenders on suspicion of a violation of the German Code of Crimes against International Law (*Völkerstrafgesetzbuch*, VStGB) in connection with the civil war in Syria. The circumstances and content of this police questioning, in particular the Defendant’s statement, were relayed to the Division by investigators ...[O] and ...[P], who are witnesses in the present

proceedings, and by the interpreter employed on that occasion, Witness ...[Q]. On that basis, the Division came to the firm conviction that the Defendant testified during his questioning by the police as set out in the following. In particular, according to Witness ...[Q], there were no problems communicating with him. The information which the Defendant provided for the record was translated back for him from German to Arabic; he made some handwritten corrections to the translation.

a) The particulars which the Defendant furnished as regards his childhood and youth were identical to those he had previously furnished during his hearing before the Federal Office for Migration and Refugees. Regarding his relatives he stated that one of his sisters still lives in Damascus.

b) The Defendant stated that he joined the intelligence service on 10 September 1996. He worked in the General Intelligence Directorate, also known as "State Security". The Defendant stated that he was based at Kafr Sousa in Damascus. The Defendant further provided information about his training and deployment up until February 2010 as presented in section A. I. above (Findings as to the person of the Defendant), particularly in relation to his basic training and work as a trainer. The Defendant described himself as a very good trainer. This was the reason why he was allowed to continue working as a trainer for a long time, he stated. He had mainly instructed trainees as part of their "physical training". The Defendant revealed that he had been a tough trainer: "You had to force people to put up with more." But that was not all he had done. He underwent "counterterrorism" training, for which he received an award, he stated. The training was watched over by "Russian experts". He was taught

"how to storm buildings, even multi-storey ones. That included storming buildings in big cities with large populations and out in the countryside. We were trained to identify and combat ambushes, as well as to set them up ourselves. We were trained how to kidnap both armed and unarmed people and to make arrests. We also learned how to protect important people."

Conducting interrogations had not been part of his training, the Defendant stated. That had been the task of the investigation branches, in particular Branch 285.

In February 2010, the Defendant stated, he transferred to Branch 251, also known as the "Internal Branch" or "Al Khatib". It was located on Baghdad Street in the al-Khatib district of Damascus, opposite the Red Crescent Hospital. He had performed his duties

in various sub-branches of Branch 251. He was first deployed in the “Religions” unit, which was based in the building on Baghdad Street. He spent one month working in the sub-branch responsible for Zabadani, possibly in June 2011, he stated. At that point the unrest had already been ongoing for three months. He had not liked working in the branch, which was why he had applied to be transferred back to the “Religions” unit. In July 2011, the Defendant stated, he had then, finally, “moved” to Sub-branch 40. This was in Jisr al-Abyad in Damascus.

The Defendant provided details about Branch 251 in the “al-Khatib” district of Damascus on Baghdad Street, specifically how the buildings were arranged and the location of the subterranean prison in the basement of one of the buildings. He stated that the sub-branch for religions was located in the building opposite. The Defendant described the location of various other sub-branches and the site of an ammunitions depot in the group of buildings. The two buildings were around 8 metres apart; there was a cafeteria situated between them. “Before the war,” the Defendant stated, the buildings were secured by two barriers, and afterwards more extensively. Further, the Defendant provided the names of the heads of some of the branches in January 2012.

c) As regards the overall political situation and the work of the intelligence services, the Defendant stated that “the intelligence services had committed crimes against humanity even before the start of the unrest”. Other religions had been discriminated against in the intelligence services; Sunnis in particular had always been disadvantaged or punished more severely for less serious offences. Road blocks were put up in August 2011, he stated. After the start of the unrest, orders had been issued to shoot and kill civilian demonstrators. The Defendant stated that the regime maintained contacts with Islamist groups such as Jund al-Sham, a militia in Lebanon.

The regime used “tricks”, the Defendant stated. In late 2011, for example, a delegation of the Arab League was supposed to visit the prisons. Upon the orders of the head of the branch, Tawfiq Younes, its inmates had been relocated and the prison had been filled with staff members who were to pretend to be prisoners. Weapons had also been “planted” on demonstrators so as to justify the regime’s actions. Members of the intelligence service were taken to a hospital, the Defendant stated, where bandages were applied to them to make them look like they were injured. The aim was to suggest

that they had been attacked by demonstrators. Media representatives had interviewed the alleged injured in the Al Mujtahid Hospital, he reported.

d) The Defendant stated the following as regards core aspects of the offence as established:

Orders were issued to shoot and kill civilian demonstrators. He was in Sub-branch 40 when he received them, he said. This was in 2011, possibly in September or October. There had been demonstrations by the Al-Kabeer Mosque. The demonstrators had planned not to allow themselves to be dispersed. They sat on the road, although some also danced. They remained peaceful. There had been chants of “Bashar go home” and “The people want to bring down the regime”.

The Defendant had, he stated, seen with his own eyes how the head of his sub-branch, Hafez Makhoul, had pulled up in and got out of his Mercedes off-road vehicle; he had thrown insults at the demonstrators and then shot at them with an automatic pistol, using up an entire round of shots. Five people were hit; three of them had immediately slumped down dead and another two had at any rate been close to death. Others were injured and were able to flee. The dead were taken to the Red Crescent Hospital, the Defendant stated. Hafez Makhoul ordered everyone to use their weapons. He said: “If you love the President, you’ll shoot the traitors.” Six or seven people who were directly subordinate to him had then opened fire.

There had been a total of between 3,000 and 6,000 demonstrators and 1,000 members of the security forces, including around 250 from Sub-branch 40, the Defendant stated. They had been joined by members of other sub-branches, in particular the sub-branch responsible for Douma commanded by Samer Breidi, plus people from the Air Force Intelligence Directorate and the Ministry of the Interior.

The Defendant stated that he had not shot at the demonstrators but had stepped back so that nobody would notice. Together with others (“we”) he had combed the streets when the demonstrators “scarpered”. It was especially those who had wanted to film something on their mobile phone who had been taken away. Lots of demonstrators were arrested and later died, he stated. People who had had nothing to do with the demonstration were also arrested. They were taken to Branch 251 in buses and were

already beaten on their way from the site of the demonstration to the branch's offices, he said. The buses had parked between the two buildings. "Most of the deaths" had occurred in front of the Branch 251 building. New recruits, amongst others, armed with metal pipes were deployed there, and they had beaten those arrested on their way from where the bus was parked into the building. The demonstrators were walked stooped and hooded to the subterranean prison by the recruits. The Defendant stated that he was present at the demonstration and during the demonstrators' transportation and admission and himself saw everything. "When the buses came for the demonstrators the beatings weren't so bad. It wasn't until [they] arrived at Branch 251 that they were severely beaten." It had been the security forces and his colleagues who had beaten the demonstrators on the buses; he had not joined in, he said.

Once the demonstrators had arrived at Branch 251 they were taken into the basement, and most of them had not come out again, the Defendant stated. Some of them were transferred to Branch 285, especially when the prison was overcrowded. Before the start of the conflict, detainees were taken straight to court.

e) Regarding the torture and abuse of prisoners in Branch 251, the Defendant further reported that after the start of the unrest in October 2011 he had himself once been in the prison in Branch 251. People screaming and crying on account of being tortured could be heard in the prison. The Defendant stated the following in this regard: "The torture did not stop until the prisoner passed out." The head of the prison, Abu Ali, was responsible for the torture. The Defendant had not spoken about the torture with his colleague, ...[R], who had shown him around the prison. "It was normality. Even when dead people were brought out of the prison, that was nothing special." When asked, the Defendant stated that he had seen dead bodies being brought out of the prison in Branch 251 both before and after the start of the unrest. For instance, one dead body had been taken out of the prison and another person had been beaten over the head and killed with a metal bar after getting off a bus. This was one or two months before he was deployed at the demonstration in Douma in September or October 2011.

The screams of those being tortured could even be heard in the branch's cafeteria because they were very loud, the Defendant stated. People had been arrested and tortured even before the start of the unrest: "Before the unrest, when someone had

taken part in a demonstration they were taken to the prison and their back was scalded with a water kettle. There were always electrocutions. That's how it was in all the branches." When asked what had changed in the prison after the start of the unrest, the Defendant explained that the punishments had become more severe and the guards had been able to do what they wanted. The prisoners had been tortured in the branch until they were transferred elsewhere. Sometimes the guards had taken prisoners upstairs, where they were meant to shout that they revered the President. After April 2011, prisoners often had their leg broken so that they could not go back to demonstrating, the Defendant stated.

The prison in the basement, which measured between 300 and 400 square metres, was designed to hold 100 prisoners; in actual fact there were 400 or more people in it. The Defendant stated that he had worked this out based on the number of people who arrived there and the number of buses. They had arrived "sometimes (...) on a daily basis, sometimes twice a day". Other people who were arrested were also put in the prison. He had sporadically seen people being released, he said. Between April 2011 and mid-May 2011, those who were arrested on a Friday were already released on Saturday or Sunday. Prisoners were transferred to Branch 285 two or three times a week "when our prison was full".

f) The Defendant stated that he deserted in January 2012. He returned to Deir ez-Zor and stayed with relatives in Muhasan until February 2013. Sometime between 9 and 13 February 2013 he illegally crossed the Syrian–Turkish border and then stayed in a refugee camp near Urfa. On 20 February 2016 he left Turkey and went to Greece, where he stayed until 25 April 2018. He then flew from Athens to Germany. He was given an entry visa because an underage son of his was living in Germany.

4. Admissibility

The Division considers the statements the Defendant made during his hearing before the Federal Office for Migration and Refugees on 9 May 2018 to be fully admissible. In the opinion of the Division, the statements he made during his police questioning as a witness on 16 August 2018 are partly admissible; the Division used the statements up to and including those in the first paragraph on page 13 of the transcript of the interview as the basis for its assessment and has therefore only rendered these in the above.

a) Pursuant to section 8 (3) sentence 1 no. 3 of the Asylum Act (*Asylgesetz*, AsylG), the statements which the Defendant made during his hearing before the Federal Office for Migration and Refugees may on principle be used in the criminal proceedings. There was also no failure to inform the Defendant of his rights which would result in his statements being inadmissible.

The Division considers the statements which the Defendant made during his hearing to be insufficient in and of themselves to establish an initial suspicion which would have made him appear to be accused of concrete offences and which could have meant – that is if the relevant duties to give instructions had applied – that he should have been informed of his rights, in particular as to the charge made against him, his being at liberty to testify and his right to consult defence counsel. The job which he admitted to having done whilst working in Sub-branch 40 of the Syrian General Intelligence Directorate is not sufficient in that regard. Besides, the hearing conducted as part of the asylum procedure does not constitute an examination which can be enforced with means of compulsion pursuant to provisions under the law of criminal procedure, in particular sections 55, 136, 161 and 163a of the Code of Criminal Procedure (*Strafprozeßordnung*, StPO). This is on account of the purpose of such a hearing, which serves to assert the individual rights of a person seeking asylum and thus in principle differs from the purpose of hearings conducted as part of criminal proceedings. It is only to that extent that someone is under the (non-enforceable) obligation to cooperate (see section 15 (2) no. 1, section 25 (1) sentence 1 of the Asylum Act), which does not encompass the obligation to incriminate oneself with facts relevant to criminal law matters. Therefore, even based on a broad, functional definition of what an “examination” is, this does not constitute an examination by the state in the course of which facts which could be detrimental in criminal proceedings could be inadmissible if sufficient instruction was not given (see Decisions of the Federal Court of Justice in Criminal Matters (BGHSt) 36, 328; Bavarian Higher Regional Court *NStZ* 2020, 684; Düsseldorf Higher Regional Court *NStZ* 1992, 349; Hamm Higher Regional Court *NStZ* 1989, 187; Gleß, in: Löwe-Rosenberg, *StPO*, 27th ed., section 136 margin no. 12, with further references).

b) The Division considers the statements which the Defendant made during his police questioning on 16 August 2018, that is up to and including the first paragraph on

page 13 of the transcript, to be admissible, even though the Defendant had up until that point not been instructed about the fact that he could possibly have the status of an accused but was merely questioned as a witness. Up until that point in the police interview, the level of suspicion raised against him had not grown to such an extent that the prosecuting authorities, in particular officers ...[P] and ...[O], who conducted the questioning, would have had to question him as an accused and inform him of his rights. No facts came to light during the main hearing which could justify any other assessment.

The Division thus follows the principles established by the Federal Court of Justice and their application to this matter (Federal Court of Justice, Order of 6 June 2019 – StB 14/19; Decisions of the Federal Court of Justice in Criminal Matters 64, 89). The Division sees no reason, either in fact or in law, to assume any inadmissibility beyond that. In particular, there were no indications to suggest that either the Federal Public Prosecutor's Office or the Federal Criminal Police Office was intending to prosecute the Defendant, which would have been contrary to his status as a witness, consequently that the investigating officers deliberately deceived the Defendant as to his status as an accused. From an objective point of view, too, there is no evidence that there were any other indications that the Defendant had the status of an accused before the point in time assumed in the aforementioned ruling from which he should have been informed that he was an accused.

The Division heard Witness ...[P] and Witness ...[O] in their capacity as the police investigators leading the Federal Criminal Police Office's investigation in this regard. They reported on the context in which the police questioning was conducted, the course of the investigation and what they knew at various stages. By their own account, up until the start of the interview there had only been unspecific indications and these solely resulted from what the Defendant had said during his hearing before the Federal Office for Migration and Refugees on 9 May 2018. There was no further evidence or proof that the Defendant had committed any concrete offences, they testified. In particular, it had not been possible to deduce any from the intelligence service passes which he had presented in the asylum procedure. Accordingly, as the witnesses stated, the purpose of the police interview had not been to question the Defendant as an offender and to convict him. Rather, the primary objective had been to gather

information about the tasks, structures and responsibilities of Branch 251 and Sub-branch 40 of the General Intelligence Directorate and about the local situation, conditions and procedures applied within Branch 251. It was only in the course of the questioning – about the content and status of which the Federal Public Prosecutor’s representative was informed – that the Defendant had provided more and more details about his involvement in arresting demonstrators and their fate after arriving at Branch 251.

The files confirm the witnesses’ account as regards the state of the investigation. To the Division’s knowledge, objectively speaking, no concrete suspicions which could have led to the assumption that the Defendant had been involved in criminal activities were available before the police questioning began. Based on the evidence available to it, the Division also shares the assessment that the suspicion that the Defendant may have had the status of an accused had only deepened in the course of the police questioning. It assumes this occurred from the point at which the Defendant made the statements as reported in the first paragraph on page 13 of the record of his questioning by the police. It was only based on the information which followed that it become clear, that is in the sense of a concrete and serious suspicion that an offence had been committed, that the Defendant had probably himself been involved in crimes against humanity by dint of his own actions. Accordingly, the Division has in the above only reported these statements which the Defendant made up to that point in his police interview and only uses these to that extent as the basis for its assessment of the accusation made against him.

II. Re the findings as to the general political and social situation in Syria, domestic structure and security services in the period up to 2011

1. General political and social developments in Syria up to 2011

a) The findings as to the general political and social developments in Syria up to the start of the protest movement in the spring of 2011 are in essence based on the expert report rendered to the Division by the ethnologist and expert witness ...[Th], which in turn is based on a large number of verified sources in academic publications, the press (including the Arabic press), from non-governmental organisations (NGOs) and official announcements by the Syrian government. The Division had no reason to doubt the

expert's report, details of which are corroborated by a large amount of other evidence (see b) and c) below).

b) Expert ...[Th]'s insights concur with statements made by several, mainly expert, witnesses and are supplemented by these.

aa) The Division therefore drew on statements made by the following witnesses, which are here presented in summary:

(1) Expert Witness ...[S] is a Syrian lawyer, journalist and human rights activist who was politically active in opposition in Syria before and after the start of the protest movement. He is currently head of a centre for media and freedom of speech which he founded in France in 2004. He is co-author of yearly reports on the human rights situation in Syria. The witness was on several occasions detained in various branches of the Syrian intelligence service, including the Military Intelligence Directorate and, for three and a half years, in the Air Force Intelligence Directorate and the 4th Division. He was subjected to torture in the 4th Division and the Air Force Intelligence Directorate.

The witness first outlined the history of Syria since independence. In the witness's opinion, its lack of democratic structures has its origin in the alliance between Syria and Egypt from 1958 to 1961 to form the United Arab Republic, in consequence of which the independent press and independent political parties were lost. This paved the way for the coup of 1963 and the rise of the Ba'ath Party, the witness stated. The coup had also boosted the importance of the military and thus, indirectly, propelled Hafez al-Assad, then Minister of Defence, to power. The witness further provided details about the declaration of the state of emergency, the introduction, in 1973, of a constitution which conferred wide-ranging presidential powers and about the Ba'ath Party's monopoly as the leading institution in the state and society. In the course of these developments, instruments had been created which conferred wide-ranging de facto powers for controlling society. Ultimately, a security apparatus, which had been given free rein, had replaced governmental institutions. The Hama Massacre, which had directly affected between 16,000 and 60,000 people, was ultimately directed against the whole of Syrian civil society because it had made it clear that the security apparatus no longer knew any bounds when it came to maintaining the political status

quo, the witness stated. Further, violent attacks resulting in many deaths had, in particular, occurred in the period between 1979 and 1989 in the course of the conflict with the Muslim Brotherhood and the breaking up of the trade unions and left-wing movements.

According to the witness, all the other governmental bodies were subordinate to and at the disposal of the security authorities; all independent organisations were broken up. Social control began early on: Children aged between six and 12 years of age joined the “Ba’ath Youth”, after which – from the age of 12 – they joined the “Revolutionary Youth”, a youth organisation which was also part of the Ba’ath Party. The purpose of these organisations was political indoctrination.

When Bashar al-Assad assumed power, he had, ultimately, found a “broken society” with no press and no parliament, the witness said. Civil society was borne by individuals, especially lawyers, although they were only permitted to engage in very limited activities. Bashar al-Assad was installed as his father’s successor because his older brother, who had originally been prepared for this role, had died in an accident. In the witness’s view, even during Hafez al-Assad’s time in power there was no fully-functional state structure, only a “family business” with inherited power.

Moreover, Witness ...[S] testified as to Bashar al-Assad’s attempts to introduce reforms, although these were pursued without any underlying statutory changes. The President had tried to window-dress the continuing policy of repression; it was just that “make-up was applied to the face of tyranny”. The trend had already been reversed in August 2001, the witness stated, when activists were arrested and cultural and political forums were broken up. Hopes that the United States would force through political changes in Syria following the end of the Iraq War were dashed, he said. Foreign policy measures, which ultimately only served to maintain power, included support for jihadist endeavours in Iraq, fanning the flames of an alleged Arab–Kurdish conflict and rapprochement with Iran. On the other hand, the witness stated, there had been unsuccessful attempts to incorporate Syria into the international community, for example through official visits from the European Union.

As far as domestic policy was concerned, the regime had used the security apparatus to take resolute action against the opposition; for example, demonstrations had already

been broken up and demonstrators arrested back in 2004. The intelligence services had taken targeted action against the circle of political activists, which was actually small. Branch 285 of the General Intelligence Directorate was responsible for blocking unwelcome internet portals. Wide-ranging privatisations and corruption had created a shadow economy.

Amongst other things, the witness's knowledgeable explanations, which were based on his personal experience, provide proof of the fact that the historically established and extensive powers of the security organs had already created the structural conditions necessary for massive and widespread action to be taken against the protest movement from April 2011 on.

(2) Expert Witness ...[T], a Syrian lawyer and human rights activist, also described how, in his own experience, which goes as far back as the 1970s, those who were politically unwelcome were subjected to arbitrary chicanery and imprisonment. He himself was imprisoned in various branches of the intelligence services in 1978, 1986, 1989 and 2006 and was, in the intervening periods, summoned to be interrogated on countless occasions. He was accused of fabricated offences such as homicide and theft.

It was especially in 1978 that members of the peaceful opposition had died under torture, the witness testified. Some 3,000 people disappeared in the aftermath of the Hama Massacre in 1982. The aim was to strike at the whole of society. The witness explained that it was normal to move against the peaceful opposition under the pretext of fighting extremists. In the end, though, it was the government which was an extremist organisation and was fighting society, the witness stated.

Alawites held key posts in government and the services, but there had also been many high-ranking Sunnis within the security apparatus, the witness testified. It had been difficult for them to progress as far as head of a branch. In the experience of Witness ...[T], Sunnis in the security services had been more brutal than Alawites because they had had to prove their loyalty, something he himself had experienced whilst he was imprisoned and also learned from former prisoners whom he had represented as a lawyer.

(3) Expert Witness ...[U] is a former Syrian opposition politician and currently a politician-in-exile and businessman. He was elected to the Syrian Parliament in 1994 and was for a long time regarded as the country's most prominent dissident and critic of the Assad governments.

The witness in particular reported on the economic and political situation in the period in which power transferred from Hafez to Bashar al-Assad and on his personal experience of having to assert himself as a member of the opposition and "free entrepreneur" against those families who were protected by the state, like the Makhloufs. He gave the Division an insight into the origins and ultimate failure of the Damascus Spring of 2001, of which he was one of the initiators. They had believed, at the time, that it would be possible to fight corruption and change the economy. The witness stated that he had believed that could be achieved by strengthening civil society, and he had, in vain, used his time as a Member of Parliament to get critical civil-society organisations and gatherings licensed. He had organised numerous gatherings in an open forum to create a national platform for exchange. In the end, the forum had had to be closed on the intervention of the intelligence services. When he had himself continued it without a permit, he was taken to prison on 5 September 2001. He lost all his assets and was sentenced to five years' imprisonment. The charges brought against him were "incitement of the people, violent system change and undermining public opinion". However, as a Member of Parliament he had enjoyed privileges in prison.

In 2006, Witness ...[U] stated, he was again imprisoned in the Al-Khatib Branch for one day. He was also kept under surveillance by the police and intelligence service and had had to report regularly to the Al-Khatib Branch. When attending the intelligence service branches he had also been subjected to physical abuse. Finally, he was again arrested in 2008 and spent two and a half years in the prison in Adra. After serving his sentence, Ali Mamlouk and Tawfiq Younes, high-ranking intelligence service staff had intimated that he should in future refrain from engaging in political activities. A new page was being turned; he would not get away so lightly the next time, he was told. He had then, with a heavy heart, given up his civil-society engagement in Syria.

When asked about relations between Alawites and Sunnis in Syria, Witness ...[U] stated that the Alawites were the “real bosses in Syria, especially in the intelligence service”, but that one also heard that members of other religions were more brutal because they had to outdo the Alawites and get their backing.

(4) Witness ...[V] was employed in the German Embassy in Damascus up until 2012, amongst other things as a translator, and then in the Stiftung Wissenschaft und Politik (SWP) in Berlin. She testified that the Syrian intelligence services had already been using torture back in 2011. She had learned of cases which were described in documents she had translated, that is of maltreatment using a bastinado, blows to the soles of the feet and the “German Chair” method, which involved breaking a person’s spine. People had also died whilst being interrogated, in particular as a result of brutal beatings, she stated.

(5) Expert Witness ...[W], a journalist and Islamic scholar who had studied in Syria, amongst other places, had dealt with political developments in Syria in his publications since the 1990s and conducted on-site research during numerous visits. His knowledge is based on analyses of publications and on numerous conversations with members of civil society and oppositional groups he knew from the past and with whom he was in contact on account of spending time in the country and through Syrians living in exile.

Witness ...[W] explained that even whilst Hafez al-Assad was in power and nearly continuously during the handover of power to Bashar al-Assad abuse inflicted by the security authorities had been part of everyday life in Syria and the intelligence services had played a prominent role, sometimes holding competing powers. In particular, it was common knowledge even before 2011 “that the regime makes arrests, torments and kills. Everyone knew it, it was nothing new”. Even in the late 1970s and in the 1980s there had been uprisings which had been crushed, especially those by the Muslim Brotherhood in Hama. The army had shelled the city and killed 15,000 people. At that time, though, the dissident scene was small and, so the regime thought, harmless. “If no-one takes to the streets, nothing will happen.”

The period before 2011 was, the witness stated, in no way comparable to what happened after that. However, “conditions were already set within the apparatus for

the greatest of cruelty”; before, though, it had not been the case that “people were killed by the dozen”. As far as working for the regime was concerned, in the witness’s opinion, those who had chosen a career path in the government could not do anything other than adapt to the conditions which prevailed in the dictatorship. It had been dominated by Alawites; as a Sunni you had to prove yourself, to cooperate in the repression as required by the state; as a Sunni, you had to be “the first to say that more people have to be arrested”.

(6) Other witnesses whom the Division chiefly examined regarding their experience as former employees or victims of the regime occasionally made reference to how they perceived the Syrian political system.

Witness ...[X], for instance, who was later imprisoned on several occasions in various facilities run by the security apparatus for being an anti-government activist, told of a climate of fear which existed during her childhood and teenage years in the 1980s. She remembered an incident whilst she was in Year Four at primary school when she had told her friends some things her father had said which were critical of the regime. The next day security forces had paid a visit to her school.

A witness who was examined anonymously by the Division on 16 December 2020 (Witness Z 16/12/2020) was imprisoned in Branch 251 in 2012. By her own account, she was a member of the Syrian upper class and an active member of the opposition. She pointed out, as regards the allocation of positions of power amongst religious and population groups, that the Syrian regime was not made up only of Alawites. High-ranking government posts, such as those of prime minister, president of the parliament and vice-president, had been held by Sunnis, she stated. Although Alawites generally held positions of leadership within the security authorities, Sunnis had also held other higher-ranking posts in the administration.

Witness ...[Y], a long-time employee of the General Intelligence Directorate, confirmed this in essence. He testified that Sunnis had also been able to hold executive positions, although a distinction needed to be drawn between normal posts within authorities and sensitive posts within the security apparatus. Although the statements made by this witness, whose testimony chiefly concerned the period after the start of the conflict and his observations as to the conditions in Branch 251 and Sub-branch 40, were

inconsistent (see III. 1. c) bb), p. 78, for details), the Division took this specific part of his statement to be true and used it as the basis for its assessment since, in contrast to the statements he made regarding the situation after the start of the conflict, he consistently testified in the preliminary investigation and before the Division, he gave a nuanced representation of the facts and his observations were consistent with those of Witness Z 16/12/2020.

bb) The individual observations made by the witnesses designated in the above corroborate the assessment that, in the period prior to the internal conflict, Syria had evolved socially and politically into an autocratic one-party state with a president as the dominant leadership personality. The political leadership relied, on the one hand, on a clientelist system in which people and families close to it took on prominent positions in business and in government and, on the other hand, on a widespread and extensive security apparatus whose task it was to surveille and suppress any and all oppositional endeavours. The witnesses gave graphic accounts of how this had included the use of violence towards prisoners, in particular torture and extralegal killings, as well as measures to retain power which were known to the general public. This effectively prevented the establishment of a pluralist civil society. Efforts to open up society, which were partly motivated by foreign policy considerations, did not last long. As regards the excessively violent approach which was later adopted, the coherent picture which emerges is that an organisational infrastructure and know-how was already in place – for example prisons where critics of the regime could be imprisoned and means of inflicting systematic physical abuse – and that all that was needed was for the army and intelligence services to be given the relevant orders for these activities, which they had practised for many years, to be extended qualitatively and quantitatively across the whole protest movement. The political developments as presented by the witnesses demonstrate that the Syrian state leadership had, ultimately, continued the pattern of conflict management which it had rehearsed over many years and had, in the government's opinion, been successful, that is violent repression and confrontation.

The witness statements present a multi-layered overall picture as regards the religious/ethnic balance of power within the Syrian state apparatus. Whilst historically and after the Assad family assumed power the Alawite religious community generally

held a more privileged position and was overrepresented in key government posts (in particular security-related leadership positions), members of other religious communities, Sunnis in particular – who were in the majority in the population – also held executive posts. It appears reasonable to assume that these Sunnis were under pressure because they had to prove that they were especially loyal to the regime. However, it also appears plausible that, in view of the large majority of Sunnis in the population, the regime also appointed them to positions within the extensive security apparatus and had to elevate them to higher-ranking posts in order to keep the peace in society.

c) The Division also relied on circumstantial evidence presented in reports published in November 2011 and March 2012 by an independent international commission of inquiry established by the Human Rights Council of the United Nations on the basis of events in Syria as from March 2011 (see III. 1. e) aa), p. 86, for details). The account of historical and social developments in Syria presented in summary in these reports is consistent with the statements made by the experts and witnesses cited in the above. The reports in particular confirm the autocratic rule of the al-Assad family following the military coup in 1971; the repeal of civil rights under the decades-long state of emergency; the Syrian Ba'ath Party's dominance over and controlling influence on politics and society; human rights violations like the attack by Syrian security forces on the city of Hama in 1982 and reports of an estimated death toll of between 10,000 and 25,000; and state repression in the previous four decades (i.e. prior to 2011) against actual or alleged opponents of the regime who were imprisoned, tortured and sentenced to terms of imprisonment based on unspecific charges. Surveillance and suppression were carried out by an extensive security apparatus; political life and an autonomous civil society were massively restricted as a result.

2. Exercise of power, structure and remit of the Syrian intelligence services

a) In terms of the findings as to the structure, evolution and activities of the Syrian intelligence services and other parts of the Syrian security apparatus in the period before 2011, the Division bases its findings on a statement submitted by the Federal Intelligence Service (*Bundesnachrichtendienst*, BND) dated 16 June 2016 regarding the structure of the Syrian intelligence services, on the report submitted by the expert

...[Th] and on the statements made by Witness ...[Z], who holds a senior position within the Commission for International Justice and Accountability (CIJA), an NGO investigating aspects of the Syrian conflict.

The Division is not aware of the Federal Intelligence Service's sources. The insights provided by the expert ...[Th] are based on an analysis of a wide variety of sources, including specialist publications, press releases and publications by international and human rights organisations. The insights provided by Expert Witness ...[Z] are based on a systematic analysis of anonymised surveys of a large number of victims and members of the Syrian regime which the CIJA has conducted since the start of the internal Syrian conflict. Even though the names of the anonymised witnesses and thus the witnesses themselves were not known even to the Division, Witness ...[Z] gave a detailed description of how the surveys were standardised and how the information provided was documented in relation to the anonymised witnesses and analysed in order to be able to assess the conflict situation and the course of the conflict (see III. 2. a), p. 92, for details). The evidence is consistent with the findings as to the structure, scope and remit of the intelligence services. The Division also gained the impression that the external structure of the intelligence services and their extensive resources were already in place before 2011 and were used as a tool to stabilise the political machinery of power and that the services were drawn on to massively and violently suppress the conflict.

b) A number of Syrian witnesses also testified in detail, consistent with what was reported in the above and, in some cases, based on their own experience regarding the history, structure and activities of the Syrian intelligence services.

aa) For example, Expert Witness ...[S] traced the historical evolution of the intelligence services as follows: The oldest of the intelligence services, the Military Intelligence Directorate, was established back in the 1950s. It was, the expert witness reported, succeeded in the 1960s by the General Intelligence Directorate (known colloquially as "State Security"). The Air Force Intelligence Directorate was the youngest service, and was established in the 1970s. The expert witness reported that the services had always been responsible for suppressing the opposition by means of arbitrary arrests, torture or "disappearances". It was also a well-known fact in Syrian society that the services

engaged in torture. It was especially following the violent events of the 1980s, for instance the crushing of the Muslim Brotherhood movement or of the Communist Workers' Party, that the *modus operandi*, including individual torture methods, had come to light. The regime itself had let the people know it in order to scare them. The witness reported that torture techniques had also been a part of a general culture, as it were. Means of inflicting abuse such as *dulab*, *shabeh* and the "Flying Carpet" were regularly being used even before 2011. People had died in the intelligence service branches even before the conflict began, the witness stated.

bb) Witness ...[T] corroborated this. Back in the 1970s individuals who were out of favour were arrested by the intelligence services and then tortured or simply made to disappear. There had been no court proceedings. The witness himself was imprisoned and tortured in 1978 in Branches 251 and 285 of the Syrian General Intelligence Directorate; in 2006 he was kidnapped in broad daylight and taken to Branch 285. At that time torture had been run of the mill in the branches, as he himself had noted. The witness was also aware of this on account of what imprisoned clients of his had told him (he is a lawyer). According to the witness, the fact that the Syrian security apparatus was using torture was already common knowledge before 2011 and described as especially well-known amongst members of the security authorities.

The witness – who is well-informed as to these matters given that he is a lawyer – also testified that employees of the intelligence services had themselves been protected against any criminal prosecution whatsoever on account of their activities. For instance, it was prohibited by law from bringing charges against security officials, and employees could only be prosecuted with the authorisation of the head of the relevant central branch.

cc) Witness ...[U] described the tasks of the intelligence services such that the system relied on their intelligence and that they served to maintain political control. After 1963, he said, the Syrian system was founded on "absolution, isolation and violence". There was no intelligence service which did not use torture, he stated.

dd) By his own account, the anonymously examined Witness Z 28/07/16 spent 21 years working in the otherwise unspecified "central branch" in the General Intelligence Directorate. The witness outlined how the intelligence services were divided up into

the general intelligence service, the military intelligence service, a “political” intelligence service and the air force intelligence service. The “political” intelligence service was affiliated to the Ministry of the Interior, he reported. The general intelligence service had between 30,000 and 50,000 employees across the whole of Syria. Up until his death in 2012, it had been headed by Ali Mamlouk, then by Dib Zaitoun, the witness stated.

Torture existed in all the intelligence services, the witness testified. In his experience there had been no interrogation during which prisoners had not suffered ill-treatment. The presumption of innocence until proven guilty did not apply, he said. Further, as previously established, the witness testified, in relation to the methods of torture applied, that the intelligence services all used the same techniques. The interrogations had also usually followed the same procedure: Prisoners were shackled and then taken by a guard to be questioned by an interrogator. The interrogator ordered the torture to be inflicted by the guards either verbally or by means of a hand signal. Sometimes the methods to be applied were also ordered in writing using coded wording such as “enhanced investigations”. It had also been customary to smuggle spies into prison cells or to intimidate and “flip” prisoners, especially political opponents, based on fake criminal charges.

c) The report published in November 2011 by the United Nations Human Rights Council (see III. 1. e) aa) (1), p. 86, for details) also describes the structure of the Syrian security authorities and corroborates the aforementioned evidence. Emphasis should be placed on the existence of elite units in the army – in particular the Republican Guard and the 4th Division – which were under the direct command of the President, on a multitude of different intelligence services with overlapping jurisdictions and pro-government militias such as the *shabiha* and those comprising members of the Ba’ath Party. The Division drew on this information as circumstantial evidence.

III. Re the findings as to the start of the conflict and its course as from 2011, the actors and victims

The findings as to the course of the conflict, the involved actors and institutions and the numbers of victims are based on the overall picture which emerges on the basis of the evidence gathered by the Division in that regard. This comprised the expert report

rendered by the expert ...[Th], who was also heard in this regard, the statements made by the expert witnesses ...[V], ...[W], ...[Z], ...[S], ...[T] and ...[U] and several reports published by international and human rights organisations. Information was also provided by Witness Z 28/07/16, a former member of the regime, by witnesses ...[AA] and ...[Y] and a large number of victim witnesses who were imprisoned in Branch 251, many of whom were first arrested by members of Sub-branch 40. The Division attaches particular evidential value to the CCMC documents dating back to April 2011 which were made available to it by the CIJA by way of the Federal Criminal Police Office. The number and condition of the people killed in the course of the conflict, their bureaucratic documentation and eventual burial in mass graves are impressively borne out by the "Caesar Files", by statements made by Witness ...[BB] and Witness Z 30/07/19, who were involved in documenting the burials, and by an analysis of satellite images of mass graves.

More specifically:

1. General course of the conflict as from 2011

a) Expert Witness ...[Th] was also able to set out the general course of the internal Syrian conflict after the “Arab Spring” spilled over into Syria in February 2011; she detailed its chronology and escalation based on an extensive analysis of the source material available in relation to these aspects. The expert was, in particular, able to provide an overview of individual documented incidents which occurred in an escalating sequence between the spring of 2011 and mid-2012. Notwithstanding the overall coherent picture as regards the course of the conflict and the state’s response which she was able to present, the expert did point out that, because of the lack of opportunity to conduct independent surveys and freely engage in her journalistic activities, any numbers, in particular the numbers of victims, are fraught with uncertainty. The Division follows the expert’s explanations, which are confirmed and supplemented by a large amount of other evidence, and took them as the basis for its assessment.

As regards the intelligence services’ involvement in the conflict, the Division likewise relies on the expert report rendered by Expert Witness ...[Th], on the report dated 16 June 2016 submitted by the Federal Intelligence Service and on information provided by Expert Witness ...[Z], which are not only consistent as regards the formal competences of the individual intelligence services and their position within the Syrian state apparatus, but also as regards their actual status and remit during the protest movement and the civil war as from 2011. According to the above, the findings made as to the external structure of the Syrian intelligence services had not changed in 2011. Together with the military and militias, they constituted essential elements of the security apparatus which were used to quash the protest movement.

b) As regards the circumstances and developments as from 2011, the Division also heard the witnesses designated in the following (some of whom have already been listed in the above) who held views and engaged in activities which were critical of the regime. Taken together, their testimonies provide a consistent overall picture of how the security forces responded, from the outset, in a violent, ultimately coordinated and escalating manner, to the protest movement as from February 2011. These statements

consolidate the picture that the Syrian regime had, from the outset, wanted to violently suppress efforts by those critical of the regime and that a significant increase in the use of force, both qualitatively and quantitatively, on the part of the state was discernible from late April 2011 onwards.

aa) On account of his involvement in oppositional activities, Expert Witness ...[S] (see II. 1. b) aa) (1), p. 55, above) was also able to provide details about events as a consequence of the Syrian protest movement and its suppression. He himself sometimes took part in protests and demonstrations; sometimes he was able to systematically collect information within the organisation he headed in order to gain a picture of the political security situation.

The witness described in detail how the Arab Spring, which began in Tunisia and Egypt, spilled over into Syria. At the start, people had expressed their approval and solidarity online, then came a wave of demonstrations. The witness named individual demonstrations at the start of the protest movement, including one in front of the Libyan Embassy during which the security forces cracked down on demonstrators after first filming them, then hitting them with clubs and arresting them. Saturday, 5 February 2011 was proclaimed as the Day of Syrian Rage; sit-ins were held in Damascus und Aleppo. The witness himself and other prominent individuals, for instance Witness ...[T], were subsequently summoned to the Internal State Security Branch and interrogated, he testified. He was questioned by Tawfiq Younes himself, he said. State Security had accused him of inciting demonstrations. Another demonstration was held in front of the Syrian Ministry of the Interior on 6 March 2011; when images of people who had been arrested were held up, the security people had gone on the attack, ripped up the images and struck the demonstrators hard. Blood was shed, the witness reported. Two people had held on to a philosophy lecturer he knew and hit his head against an electricity pylon. On 15 March 2011 a fairly large demonstration was held in Damascus during which a large number of people were arrested; the day after that a sit-in was held in an attempt to get those arrested released. The witness stated that he had taken part in the sit-in and was again arrested. Although these protests were entirely peaceful – described as “standing around peacefully in front of the Ministry of the Interior in Damascus” – a large number of security forces had charged at the protesters and started hitting them. More than 30

people, including women, were arrested. There were also well-known incidents in which children had written graffiti on walls and had then been arrested and tortured.

The security services were, the witness testified, well-prepared to quash the opposition movement; the country was divided up into sectors and each sector was assigned to a specific intelligence service branch. No shots were fired in Damascus in February and March 2011, but firearms were already used in Daraa on 18 March 2011, resulting in the first civilian victims. Although the demonstrators had made civil demands, the security forces' response had been extremely violent. In the witness's assessment, a decision had been taken to use force against demonstrators and not to give in to their demands.

From April 2011 onwards, the witness testified, reports of the use of firearms became commonplace, first in Homs, then in Damascus, then across the whole of the country. Mass arbitrary arrests were made across entire regions, too. The security forces had begun to use force systematically by, for instance, using live ammunition against demonstrators. The witness, who was himself arrested as early as 22 March 2011, recalled hearing reports about a Friday demonstration in Damascus in April 2011 during which demonstrators had died and others had been arrested by the security forces. On 29 April 2011 a large demonstration in Douma was broken up and dozens of people were killed. In June 2011 live ammunition was used to shoot at people who were staging a sit-in; demonstrators were killed on that occasion, too, the witness stated. It was during this period that the city of Daraa was besieged by the military, whereupon there had been demonstrations to express solidarity, which in turn were put down by force. The witness testified that he remembered the dates because they had been recorded in the documentation centre he operated based on reports by those who took part. It had generally been difficult to establish how many victims there had been exactly.

The mostly young people were subjected to systematic torture and humiliation following their arrest. Whilst at the start of the protests those arrested were detained in prison for only a day or a few days, they were later kept in prison for a month. Those who were released told the witness that they would rather die than have to go through anything like that again.

The security forces' modus operandi was consistent with public statements made by the Syrian President, the witness testified. For instance, Bashar al-Assad had said the following, or words to that effect, in a public speech on 30 March 2011: "If you want open war, then so be it." In April 2011 Syria had then got to the point "where it exploded". The witness had tried in the course of his work for a human rights organisation to document human rights violations, until, that is, all the members of the organisation were themselves arrested.

As regards the modus operandi of the Syrian intelligence apparatus, the witness reported that there were several changes compared to the period before the protests began. Although arrests and torture were already omnipresent before the start of the protest movement, the number of people who were imprisoned and who were killed drastically increased in 2011 as the activities of the intelligence services were not directed solely against the smaller oppositional groups as they had been in the period before that. The way in which torture was used also changed, he stated. The witness himself was able to observe the difference, because he was arrested both before and after 2011. Before, torture was used to extort information, he stated. The abuse had ended as soon as the prisoner revealed all the information. From 2011, torture was used more as a punishment, in retaliation and a means of liquidating people or breaking them psychologically. There was torture without interrogations, he stated. During his period in detention with the Air Force Intelligence Directorate the witness had himself seen a prisoner who had been hung up pleading in vain to be let down so that he could confess; the guards had not been interested. Critics of the regime had suffered abuse, as had people who were arrested accidentally, for example as a result of mistaken identity. The aim, the witness stated, was to keep society under control "whatever the cost". The intelligence services had, ultimately, been given free rein. They had been able to do "what they wanted"; no rules applied. The witness himself had been able to observe this on the several occasions when he himself was detained, latterly between April and October 2012 in the 4th Division.

bb) Consistent with this, Expert Witness ...[T] testified, on the basis of his work as a lawyer and his contact with a large number of people who were persecuted by the Syrian authorities, that the security authorities changed their modus operandi after the protests began in 2011. The regime became more and more nervous in the spring of

2011 as the protest movement grew into civil unrest, he stated. Its response became more and more brutal. The witness illustrated this based on protests held from February 2011 onwards which he knew about because they concerned his release, amongst other things, and because members of his family had taken part and demonstrators had been beaten with sticks during the event and arrested. Whilst, previously, the task had been to torture members of the opposition in order to extort information from them, after 2011 the focus had no longer been on information-gathering but on retaliation and deterrence. Clients whom the witness had tried to defend were asked "Do you want freedom?" and then tortured if they answered "Yes". The idea was to exact revenge, the witness stated. The number of people who were arrested had risen to an alarming degree. Whilst before 2011 maybe 3,000 people had been in prison at the same time, and ultimately brought before the State Security court, from 2011 hundreds of people were being arrested every day. The intelligence services' powers also changed, the witness stated. Before 2011 only key branches such as Branch 251 had been given free rein in terms of the conduct of investigations and making of arrests whilst others had only been permitted to act on the orders of the government. From 2011 onwards, though, each intelligence service branch was able to do what it wanted. Torture methods became more brutal. People were, for example, shackled to a chair without a seat and a candle was placed underneath. Such techniques had not been used before 2011, the witness testified.

According to the witness, everyone whom the security apparatus got its hands on was tortured. Beatings were a matter of course even whilst those arrested were being transported to the relevant intelligence service branch; upon arrival, institutionalised "welcome parties" were held. The witness had himself seen them. In the period since 2006 he was imprisoned for a total of five years and spent five days in Branch 285 of the General Intelligence Directorate shortly before being released in May 2011. There was a communal cell there measuring 4 by 5 metres which had been completely overcrowded with 50 to 60 people in it; the people were "glued to each other", he said. By day and night he had heard the screams of those being tortured.

There was never anyone who was taken to prison who was not beaten, the witness stated. At most, it was well-known members of the opposition or media representatives who were spared severe torture for fear that this could lead to further unrest. In such

cases, special orders were issued as to how to deal with these people. There were also occasions when members of the opposition were arrested with the intention of getting them to work as informants for the government; they were not subjected to ill-treatment either.

As regards the situation in prisons operated by the intelligence services in 2011, the witness's clients had told him about cells in which there was hardly any space to stand up ("There was only enough space for your own foot."). Prisoners had broken down, hallucinated and eventually lost their mind. As there was no ventilation, prisoners had serious difficulty breathing. People had died and then been deliberately left in the cells until their bodies began to decompose. It had not been possible to cover up any wounds, the witness stated. Referring to 2011, though without being able to recall the exact time and place, he said that a friend had reported that 17 people had died during the 27 days he spent in prison. The food, that is slices of bread, potatoes, a little jam, had sometimes simply been thrown into the cells. As he was a lawyer, the witness had met the prisoners on their way from the security facilities to court; they were usually injured, barefoot and sometimes only clad in their underwear. He met people who weighed 40 kilogrammes who used to weigh 80 kilogrammes.

Sexual violence against men as well as women was widespread after 2011, although only few of the survivors were willing to speak openly about it. This form of violence was specifically used to humiliate both the prisoners and their relatives. According to incidents reported to the witness, prisoners were raped in front of their relatives. He himself had helped women get an abortion following their release.

cc) Expert Witness ...[W] travelled to Syria as part of his job as a journalist, including in 2011 and 2012. He testified that he had tried to find out how the political opposition and demonstrations were organised and to what extent the government pronouncements that the protest movement was organised by terrorist groups, primarily Islamist terrorist groups, were true. Later on in the conflict he had attempted to conduct research into the mass killings and the "collection points" for corpses which then gradually came to light.

The witness testified that at the start of the protests in February and March 2011 the demonstrations tended to be more like spontaneous flashmobs. The regime had

responded in different ways in different places. Whilst those taking part in Damascus were “only” arrested, firearms were already being used at an early stage in Homs. The witness said he attended one of the demonstrations; young men had stood in the middle of the street and women, children and the elderly had stood on the edges because that made it easier for them to flee. “People know they’re going to a peaceful demo but have to reckon with being shot at.” In February and March 2011 there had been situations “in which people were just beaten, others where they were shot at”. In the latter case, however, the regime had let it be known that it was not the security forces who had opened fire and had presented weapons in the media which had allegedly been used against the security forces. The witness had himself heard shots being fired in Homs in August 2011 and had seen people in hospital with gunshot wounds who themselves said they had been at a demonstration. As early as April or May 2011 there had been 200 arrests following a demonstration in Homs.

The witness himself saw arrests being made, he stated. He testified that on one occasion he was travelling on a coach when one of the other passengers had been singled out at a checkpoint: “A sack was put over his head and he was driven away in van.” Many people had told him about arrests being made in the streets or at demonstrations. He stated that at the start those arrested were beaten and tortured; they had “disappeared for a while”, but most of them were released and told not to take part in demonstrations again.

The regime’s response then became increasingly more brutal, the witness testified. In June 2011 “you knew that the intelligence service would come and open fire on those who came”. The sequence of events had been disturbing: “On Fridays there was a demo at which people were shot and killed, on Saturday they were buried and then shots were also fired at the funerals, then things were quiet from Sunday to Thursday, and then on Friday it all started over again. But that didn’t deter people. Quite the opposite, demonstrations were being held in more and more places.” In December 2011 there were shootings at a checkpoint in Homs. From 2012, those who were arrested often did not come back. In December 2011, the witness stated, there were also clusters of snipers from which “shots were fired at anyone who went out into the street”; this was the case in those districts of Homs which were said to be oppositional, for instance. In 2012 and 2013 it was then normal for people to be shot at. The

demonstrators, he said, had begun to arm themselves in order to protect the demonstrations. The witness also testified in detail about the massacre in Houla on 31 May 2012 such that, contrary to statements released by the government stating the opposite and according to his own research, it was down to the excessive use of force on the part of the Syrian security forces. More and more armed units – including the in some cases heavily armed army – had come to the demonstrations, although responsibility for making arrests lay with the intelligence services.

The role of the intelligence services also changed in the course of the conflict, the witness stated. In the past their role had mainly been to gather intelligence, but now they mainly had an executive function. Whilst in the past the different intelligence services had competed against each other, they then engaged in coordinated action. For example, there had been lists of wanted persons which the services shared amongst themselves. It had often been difficult to assign the security forces to individual agencies at checkpoints and when demonstrations were being quashed – “people in uniform wearing sneakers” came along – and these were regularly members of the intelligence services and the army. In the past the services had each had different characteristics, the witness stated. The Air Force Intelligence Directorate and the Military Intelligence Directorate had been the worst and the Political Intelligence Directorate had been regarded as reasonably civil. In the course of the conflict they had then progressively aligned themselves, the witness testified. Sadistic terror had to all intents and purposes been politically stage-managed; according to the witness’s research, Ali Mamlouk, the head of the General Intelligence Directorate, had a central, coordinating role in this.

Finally, the witness also gave testimony about his meetings with, amongst others, former employees of the regime concerning how and why people defected. He stated that defectors could roughly be divided into three groups: “Those who left in 2011 were heroes. Those who left in 2012 didn’t like the brutality of it. Those who left in late 2012 were opportunists, though, because this was regarded as rather late in the day.” The later people defected, the more it was assumed they had only gone so as not to be left on the wrong side when the regime collapsed, as was expected to happen. The first people had already deserted in the summer of 2011.

dd) Witness ...[U], a prominent Syrian opposition politician, testified that he took part in several demonstrations in the spring of 2011. He recalled one of the first rallies to be held in front of the Ministry of the Interior on 15 March 2011 during which participants were beaten by the intelligence services and around 40 of them were arrested. The witness always took part in the Friday demonstrations there, he stated. On 7 May 2011 he himself was attacked and beaten by members of the intelligence service “until blood was drawn”. He was then taken to the prison in Adra, he testified. Hundreds of people were arrested and then also beaten. According to what he himself saw, new groups had been formed within the intelligence services to crush the uprisings and these had been specially recruited to conduct operations directed against the protesters. There had also been – possibly staged – counter-demonstrations by Alawites during which they – armed with axes, large knives and iron bars – had chanted slogans against the demonstrators (“Bashar, don’t worry, there are people who drink blood.”).

In the first six weeks after the start of the protest movement, which the witness estimated to be 15 March 2011, the government had, he believed, not yet issued instructions to violently quash the demonstrations. Afterwards, though, the level of violence had significantly increased. The attack against himself on 7 May 2011 could also have been fatal, he stated, because he had been hit over the head with an iron rod and had barely been able to shield himself using his arm, which was broken during the attack. Based on the witness’s knowledge of the structure of the Syrian machinery of power, this could not have been done without orders issued by a centralised authority.

ee) Witness ...[CC], a cousin of the Defendant and an oppositional publicist, testified that from late February 2011 the security services had been put on a state of alert and reinforced so as to be able to prevent demonstrations happening; the Defendant himself had told him that. The witness gave testimony about a demonstration held in Douma on 25 March 2011. The participants had gathered outside a mosque; a counterdemonstration organised by the regime had been led towards them. There was violence at demonstrations from late April 2011 onwards, the witness stated. Demonstrators taking part in a rally at that time were encircled; soldiers and members of the security authorities got out of vehicles and attacked the demonstrators with

batons, giving them beatings “the like of which he’d never seen in his life before”. Many people were arrested, he stated. The regime had institutionalised violence at such an early stage, as was evident from the rising number of casualties amongst those taking part in the Friday demonstrations (whom the witness called “martyrs”). It was after that that the level of violence had increased. As regards his own detention in the Palestine Branch as from 8 April 2011, the witness reported that he himself was not ill-treated there on account of his position and that he was released after one day. Other prisoners, though, had been kicked and beaten; he had constantly heard people screaming during his time there. He himself was merely insulted, he testified. Sympathy had been shown for the work of intellectuals and members of the opposition, and attempts had been made to recruit him as an informant.

c) The Division also heard former regime staff who likewise testified as to the course of the conflict and the activities of the involved Syrian security forces.

aa) Based on experience gained as a long-time employee of the General Intelligence Directorate, Witness Z 28/07/16, who was examined anonymously, stated that the security forces had free rein after the start of the unrest and were given more and more competences as the popular movement grew. Each branch was, ultimately, able to do what it wanted. A kind of “state of emergency” was imposed, on account of which everyone who opposed the regime was regarded as a traitor. The charges levelled against prisoners were a foregone conclusion; the only thing left to be done was for them to be confirmed and signed by the prisoners. Members of the regime who defied instructions were also regarded as traitors. As the witness experienced for himself, officers were transferred elsewhere or to another service or were interrogated as to their motivation. At any rate, defying orders was dangerous, he stated. Usually, however, those working in the intelligence service did not dare leave, including owing to the advantages they had as members of the intelligence service.

On account of the numerous arrests made at demonstrations, the number of prisoners in the intelligence services’ individual branches grew in the course of the conflict, the witness stated. The interrogation methods changed, they had been “crazy”. He was aware that the General Intelligence Directorate’s Branch 285 was the central agency for the whole of Syria and responsible for interrogations and that people were hung up

from the ceiling there so that the tips of their toes just about touched the floor. Those who were interrogated were maltreated with electric shocks, the witness testified, and had hot water poured over them. Cigarettes were stubbed out on their skin and their head was pushed under water. There were cases, the witness stated, in which prisoners were forced to wear shoes containing nails, or in which male prisoners had their penis tied off with a piece of string, in the worst case they were hung up by the string. After having had their penis tied off, the prisoners were forced to drink water. The witness knew of one case in which a man's penis was cut off with a pair of pliers. Men were brutally raped using a wooden stick. There were cases in which a three-figure number of prisoners were placed in tiny cells measuring 4 by 4 metres, he reported. Prisoners spent many days in the cells without being interrogated, after which they were merely tortured. Such methods were first applied "during the revolution", the witness said, to humiliate the prisoners. When, finally, the order was given to shoot at people in the streets it was no longer important whether people died in their cells either.

Around three months after the start of the movement, instructions came "from above", the witness stated, to put down the demonstrations using all means available, including using firearms. The orders were given "by Assad"; "everything" was to be shot at. This was probably the case as of late May 2011, as the unrest had begun in March. There had, to the witness's knowledge, been no armed groups of opponents of the regime until 2012. It was only then that the people had begun to turn violently against the regime.

The Division sees no reasons not to take the witness's statement to be true, since it concurs with the statement he made in the preliminary investigation, which was detailed and lacked any incriminatory or exonerating tendency.

bb) By his own account, Witness ...[Y] is a former member of the intelligence service who worked in various branches of the Syrian General Intelligence Directorate for 30 years, including 13 years (between 1985 and late 1998) in Branch 251. From 2008 to early 2016 he held a senior post in Information Branch 255 of the General Intelligence Directorate.

(1) The witness stated, with regard to his work at the start of the internal Syrian conflict, that he was responsible for scanning and archiving documents. He said that this

involved some 10,000 pages per day, the content of which he could barely recall. He had compiled statistics, he reported. He handled reports and lists of people who were arrested or wanted. The documents also described how someone was to be arrested and interrogated, for instance “using all methods and means”.

The witness stated that he knew that many branches of the intelligence services brutally tortured detainees. It already started when the arrest was made. For example, in Branch 285 people were hit with rifle butts, batons and iron bars. He himself saw more than 15 people who were killed; they had “bled profusely”, were carried away. That was at the start of the uprising, which, according to the witness, was on 15 March 2011. Instructions had been issued to use force; they were “strict and hard”, although some officers had tried to temper them. Torture had already been inflicted prior to the start of the conflict, but not to the same extent and not in the same way.

Further, the witness testified as to the religious/ethnic division of power in Syria. He provided a nuanced picture of the period up to the outbreak of the conflict (see II. 1. b) aa) (6), p. 60, above). During his police interview the witness had provided a “rank order” of religions which applied in the period after the start of the protest movement; the Alawites ranked first, followed by the Sunnis. He stated during his examination at the main hearing that he had changed his views on the matter and then gave different information. The witness then stated that once the conflict began the Alawites had seized all the power. A low-ranking Alawite had suddenly been able to have command over a Sunni; he was also able to tell a much more higher-ranking Sunni what to do. The Alawites, the witness stated, had no longer trusted any of the other religions. Although high-ranking Sunnis were allowed to continue in post, they were under observation by the Alawites.

The witness also reported that, although he was only an office clerk working at a computer in the Information Branch, he had been called on to help quash demonstrations. He had refused to do so and had had to give reasons. He had undergone in-house questioning. In the end, the witness defected, though he had needed time to prepare his escape, he stated. He had wanted to sell all his worldly possessions and get his family out of Syria first. When his son and his son’s wife fled, he, too, was questioned.

(2) The Division critically assessed the information provided by this witness, who also gave detailed testimony on how the deceased were treated (see 3. b) dd), p. 115, below) and on the internal structure of Branch 251 and Sub-branch 40 (see IV. 1. a) cc), p. 123 and IV. 2. a) cc), p. 149, below).

The witness had already pointed out in the course of his police questioning that he could not remember any details about his past because he was “mentally and socially under a lot of pressure”. His examination at the main hearing was laboured at first; the witness gave evasive answers. At first, the witness’s statement in the main hearing alternated between containing detailed, specific information and general claims and attributions, for instance as regards the relationship between Alawites and Sunnis and the role which Sub-branch 40 played after the conflict broke out. The witness was not initially able to provide any information about the intelligence services’ modus operandi during the conflict. It appeared inconsistent that he remembered certain documents concerning the former Co-Defendant ...[K], which he himself stated he had had his hand on and the general gist of the content of which he was able to relate, although when the Division made general enquiries about whether he had also handled interrogation transcripts he cited a general lack of capacity to remember anything given the large number of documents. Also, his testimony was often strikingly different to what he had said during his questioning by the police in the preliminary investigation. The Division gained the impression that the witness answered questions selectively and tendentiously and that he was possibly attempting to dispel any suspicion of his own involvement, which he feared would be raised. The witness also had a clear tendency to exonerate both of the then co-defendants.

When he was confronted with this behaviour, the witness stated that they had been “difficult times” in Syria which had “broken everything inside him”. Since then he had difficulty remembering things and had “forgotten everything”. In Germany he frequently fell into a state of shock during which he would even forget his own name. Finally, the witness asked his legal counsel to explain that he and his family felt they were in danger on account of his giving testimony. He had found correspondence from the Division in connection with his summons open in his letterbox. His sister was sent a summons in Syria, he stated. It was suggested to her that she should remind him, Witness ...[Y],

that his siblings were still in Syria. "Friends" had also approached him with "advice", which he had in fact regarded as threats.

However, following the Division's intervention, a break and a discussion between the witness and his legal counsel, the witness gave testimony considerably more candidly than had previously been the case, for instance as regards details of the documents he had seen, even though he had not been able to remember any of them earlier. It was then that he gave the testimony as set out in the above regarding torture and instructions issued in the intelligence service branches to carry it out. The Division took these statements the witness made to be truthful, as they were then detailed, concurred with what the witness had stated during the preliminary investigation, were explained when follow-up questions were asked and were, in the Division's assessment, based on his own experience. The Division attaches particular importance to testimony being consistent, since the danger to which the witness referred had not been addressed in the preliminary investigation.

In contrast, the Division is unable to believe the witness's statements regarding the shift in the balance of power which took place between the religious groups in Syria. Although the outcome of the taking of evidence so far also suggests that Alawites played a dominant role, nowhere else has any account been given of a second significant shift in power at the start of the Syrian conflict. In contrast to his description, which was still nuanced in the course of the preliminary investigation, the witness then described developments in a very generalised and drastic manner. He himself is an Ishmaelite and described this religious group as the one which was the most discriminated against. The Division thus has very clear indications that, in order to exonerate himself, the witness presented a view of things which was based on self-interest and did not correspond to the facts; it is thus not able to take into account the witness's statements in this regard.

cc) Witness ...[AA], a guard in Branch 251, stated that there was a marked increase in the number of prisoners arriving in buses from April 2011 on, and that they further increased up until August 2012. Sometimes one vehicle arrived every day, sometimes two or three arrived on several consecutive days. The largest transports were usually made on Fridays because that was the day when the demonstrations were held.

d) It was against the backdrop of their own oppositional activities, their having taken part in demonstrations, being arrested in other contexts or their general observations regarding the escalating conflict after February 2011 that witnesses ...[DD], ...[EE], ...[FF], ...[GG], ...[HH], ...[N], ...[X], ...[JJ], Z 25/11/2020 and ...[KK] – who were all examined by the Division and were detained in Branch 251 and, in some cases, before that in Sub-branch 40, and whose testimony primarily concerned their detention (see IV. 1. d), p. 127, below) – and Witness “Sami” were able to testify. Naturally, their observations only constitute snapshots of overall events, albeit their own; taken together, though, they provide an overall picture of a systematically violent *modus operandi* on the part of the cooperating Syrian security forces, and not only against alleged members of the opposition or those taking part in the protest movement but also against only supposed protesters. The Division had no reason to doubt the truthfulness of the detailed and discernibly experience-based statements made by the witnesses referred to in the following.

- As Witness ...[DD] reported, the number of arrests increased dramatically in 2011. The aim was to intimidate people by making mass arrests and to stop them taking to the streets again. Many peaceful activists were killed, she stated. Nevertheless, the proportion of people who were killed was small compared to those who were arrested. Later, that is from 2012, fewer people were arrested, but many of them were killed.
- Witness ...[EE], a director and documentary filmmaker, had attempted to document the protest movement from the start by “grabbing a camera” and taking to the streets with the demonstrators. At the start, he stated, the demonstrations were organised “on the fly” at different locations in an attempt to evade the security forces. The use of teargas and batons and the firing of shots could be made out on the footage, which was later confiscated. The rallies were infiltrated by the security forces, the witness reported, who pretended to be demonstrators and kidnapped those taking part. By his own account, in addition to being carried off to Branch 251, the witness was detained in the Air Force Intelligence Directorate for three months from late March 2011 on and after that in other intelligence service branches, too. He had suffered considerable injuries through beatings and being maltreated with razorblades. He also saw children in detention in the Air Force Intelligence

Directorate, he stated. During interrogations conducted in August 2011 in connection with the footage he had recorded he was subjected to massive slapping, elbowing and kicking. Following his detention in Branch 251 in September 2011 he was taken to various other branches of the intelligence services, including Branch 285 of the General Intelligence Directorate and a field office in Najha. Like all the other prisoners, he suffered abuse in the form of punches and beatings with rifle butts and cables, he reported.

- Witness ...[FF] reported about demonstrations he took part in from 15 March 2011 on, first in Damascus and then in Harasta. The regime had used force from day one, he testified. Two weeks after first taking part in a demonstration (i.e. in early April 2011), live ammunition began to be used. He was nearly killed himself once when a shot narrowly missed his head. A participant whom he had been talking to about the fear of dying was shot dead shortly after right next to him. The demonstrations remained peaceful, he reported; he had filmed them in order to record the fact that people who were demonstrating peacefully were being shot at. Once, the entire region of Harasta was stormed and its streets were combed. The witness's own detentions were aimed specifically at gathering information about members of the opposition and his own activity as an anti-government blogger and publicist. In reference to the time he spent in Branch 285 of the General Intelligence Directorate from October 2011 subsequent to his detention in Branch 251, the witness testified that massive amounts of torture had occurred there (as well). He was forced to stand up for 24 hours. He was doused with water and then an air-conditioning unit was pointed at him to cool him down. He was made to lie down on the ground, after which guards trampled all over him. The witness reported that he was hit with belts. Other prisoners were hung up by their hands outside in the blazing sun or deliberately hit over the head. Friends told him what it was like in the central prison in Adra, where men were raped using a bottle or stick and had their penis tied off and scalded with hot water.
- Witness ...[GG] reported that he took part in a demonstration in Douma on 25 March 2011 and then regularly in other demonstrations elsewhere. As he was a doctor, he also tried to get medicines delivered to regions which were besieged. There was, he reported, never a rally at which the security forces did not use force. They had

already been shot at by the police at the demonstration on 25 March 2011. At another protest rally (the date of which he could not narrow down more precisely than to sometime in 2011) he had helped a man “get a shot out of his thigh”. Demonstrators were regularly arrested, he stated. Typically, as the witness reported, participants were beaten with sticks and the butts of guns, pushed to the ground, after which they were blindfolded and had their hands tied behind their back with cable ties. They were then shoved into cars with their head down. The witness heard those who were released tell of torture; others who were arrested simply disappeared. The security forces involved in this belonged to the army and the intelligence services. Uniformed officers wearing black boots belonged to the army and security forces wearing trainers (whether in uniform or not) were in the intelligence services or paramilitary forces controlled by the intelligence services. The security forces were normally armed with Kalashnikovs. In August 2011, the witness stated, he was detained by the Palestine Branch for 23 hours. He was beaten but there was no real interrogation. He was again arrested in September/October 2011 and taken to Branches 251 and 285. In Branch 285 he was crammed into a cell measuring 4.5 by 5.5 metres with 85 other prisoners. There were prisoners with open wounds and broken bones who cried out in pain. He himself contracted a bad eye infection which was not treated, he stated.

- Witness ...[HH] reported on his arbitrary arrest in July 2012 at a checkpoint manned by a militia. The only reason he was arrested was that he was from Aleppo. Immediately after his arrest he was taken somewhere unknown to him and was locked up with a lot of people. He and the others were doused with petrol, after which a security officer threatened to light a cigarette. Whilst being relocated he was repeatedly beaten, especially at several checkpoints, he stated. During his subsequent stays in Branches 251 and 285 he was also beaten and kicked.
- Witness ...[N] reported on his arbitrary arrest on 26 August 2011 during a raid in Damascus. He was first taken to a detention facility belonging to the “10th Division”, where he was subjected to brutal beatings which caused extensive wounds on his back, he stated. After a period in the “Al-Khatib Branch” he was then transferred to the military hospital in Harasta on account of his injuries, although he received no treatment there. In fact, that was where “the torture really started”. Like other

prisoners, he was chained to the bed, whipped, and cut and injured with a blade. The ill-treatment lasted three days; he sometimes lost consciousness. The torture was indescribable, he said. Another prisoner, for instance, said that his hand hurt, whereupon it was chopped off. Instructions were issued to dump the witness out in the street, severely injured (“You can toss him. He’s done for.”).

- By her own account, Witness ...[X] was active in an opposition group and detained in various facilities operated by the regime a total of five times between November 2011 and March 2014. She took part in demonstrations from June 2011, all of which had been peaceful, she said. Nevertheless, the security forces had arrested anyone they could get their hands on. Often they had arrested people who only happened to be at the mosque and had only gone there to say their prayers. That was why, she reported, the demonstrations were organised as five-minute “flash demos”. She herself had not seen any live ammunition being used in Damascus, apart from at a funeral, but she had heard that it was being used in the surrounding area. The security forces wore military uniform although they were neither members of the regular police nor of the army. Before her first arrest in November 2011, the witness stated, she had taken part in one of the demonstrations in Damascus which were mainly held on Fridays. After a few minutes, security forces from the Air Force Intelligence Directorate had appeared. As she had seen a 12-year-old boy being beaten, she herself was arrested and abused in a police station along with other women and men. After the Syrian Army shelled Homs, she, in February 2012, helped to collect medicines for those who were injured in the city. Torture existed in each of the facilities in which she was detained, she reported. In February 2012, she also saw dead people in Branch 285 of the General Intelligence Directorate and in the summer of 2012 in the prison run by the Air Force Intelligence Directorate. Other women also told her about the systematic use of rape in the facilities operated by the intelligence services and at checkpoints. Sometimes it was used as a means of humiliation and to exert pressure on the women’s husbands: “Women were raped in front of their husband’s eyes to get the husband to confess.”
- Witness ...[JJ] testified that, in September 2012 following his detention in Branch 251, he was taken to the central office of the General Intelligence Directorate

in Kafr Sousa and, along with the other detainees, subjected to continuous beatings there. It was common knowledge that torture was applied in the branches, he stated.

- Witness Z 25/11/2020, who was examined anonymously on 25 and 26 November 2020, testified that he took part in a demonstration in Douma on 18 March 2011. A large number of security forces from various agencies armed with Kalashnikovs arrived in their vehicles. They broke up the demonstration and used brutal force against the demonstrators. They beat them and dragged them into waiting buses, the witness stated. The same happened at a sit-in in front of the municipal authorities that same day. The security forces had shot dead 11 people that day. The witness himself was arrested a week later for taking part in the demonstration and for being an activist, he stated. After his release he took part in the funeral procession for those who were killed, he reported.
- By his own account, Witness ...[KK] was one of the activists who was involved in organising the demonstrations held in Raqqa in spring 2011. The first demonstration was held there on 25 March 2011, after which demonstrations took place twice a week, he reported. They had printed details on leaflets in a coordination office and then distributed the leaflets. Sometimes the security forces, especially the *shabiha* units, were already waiting at the place where a demonstration was to be held and tried to stop it happening, then they began breaking up the demonstration using batons. The witness had, however, not witnessed anyone dying at a demonstration until 2012. He was working in an NGO because he wanted to promote democratic structures and civil-society engagement. That was why he was wanted and was imprisoned on several occasions: by the military intelligence service in Raqqa in May 2011, by the criminal police in Raqqa in November 2011 and then by the military police in May 2012, after which he was transferred to the al-Khatib and Palestine branches, amongst others.
- The statement which Witness “Sami” made to the police – which is primarily of relevance in relation to the “Caesar Files” – was communicated to the Division through its hearing of the investigating officer. The witness stated that “at the start of the revolution” (which he said was mid-March 2011) he took part in demonstrations in his hometown of Qaboun in the Greater Damascus area. He

himself saw demonstrators being shot dead there. The other demonstrators were not able to recover the dead bodies from the streets, but had to flee. On another occasion he witnessed a demonstrator being shot at, after which she was paralysed. He saw many people arrested during that period, he stated. On one occasion alone around 40 people were arrested in his hometown, he testified. Even taking into account the fact that it was not possible to directly examine the witness, the Division did not doubt the truthfulness of his detailed statement, which according to the officer questioning him was given candidly and without any communication problems.

e) The Division supplementally adduced a number of reports on the course of the conflict which are consistent with the direct evidence supplied by the witnesses and experts to which it gave precedence in its assessment, thereby confirming it circumstantially.

aa) Reports published by an international commission of inquiry set up by a United Nations body describe the course of the conflict in a manner which supports the outcome of the taking of evidence.

(1) In the light of the result of a fact-finding mission in September 2011 and the worsening of the human rights situation in Syria it revealed, the United Nations Human Rights Council set up an independent international commission of inquiry which reported on events in Syria in November 2011. According to the report, it is based on face-to-face interviews with victims of and other witnesses to events after March 2011.

In sum, the report finds that there were a limited number of protests in February 2011 around issues such as poverty, corruption, freedom of speech, democratic participation and the release of political prisoners, which were linked to calls for economic and political reforms. In Daraa they were also held in response to the detention and torture of a group of children, which then spread across the entire country; the report mentions Latakia, Baniyas, Damascus, Deir ez-Zor, Homs, Hama and Idlib. Extensive military-like operations took place in Daraa on 25 April 2011, which soon spread across the whole country and involved increasingly violent conduct on the part of the state security forces. In November 2011 the Office of the United Nations High Commissioner for Human Rights (OHCHR) assumed that at least 3,500 civilians had been killed by

security forces in the period since March 2011. Thousands more had been detained and tortured, with most of the victims being in Homs, Hama and Daraa. The violence had escalated until, in around November 2011, military and security forces had carried out operations in various cities against public assemblies and funeral processions in the course of which tanks had also been deployed and 260 civilians had been killed within a short space of time.

The report goes on to deal in detail with official statements issued by the Syrian government, the founding of the “Free Syrian Army” and the response of foreign countries. In a section headed “Excessive use of force and extrajudicial executions” details are provided of how government forces shot indiscriminately at unarmed demonstrators when quelling the protests, hitting them in the upper body and the head. Defectors reported that they had received orders to shoot at unarmed people without warning. In some instances, demonstrators were ordered to disperse and warnings were given before the shooting began. Joint operations between the military, security forces and militias with “shoot-to-kill” orders and numerous fatalities, including children, were held in Latakia in mid-April 2011. One defector gave details of orders which were issued under the guise of cracking down on “armed conspirators and terrorists”. There had been a peaceful demonstration at which participants had called for freedom and carried olive branches. The demonstrators had been shot at with machine guns and other weapons. There had been dead and injured people on the ground afterwards. Helpers who had tried to take food, water and medicines to people in the city of Daraa on 29 April 2011 had been ambushed and more than 40 people, including women and children, had been killed.

The report goes on to describe the deployment of snipers, the setting up and use of force at checkpoints, the blockading of cities and city districts followed by house raids, and the killing, by security forces posted behind them, of conscripts who had fired into the air instead of shooting at demonstrators. The report also describes the mass arrest of demonstrators and of civilians in large-scale raids, for example in the city of Baniyas on 7 May 2011. These arrests targeted activists and journalists. Detainees were “routinely tortured”. In addition, thousands went missing or disappeared. The report also describes cases of people being abducted and then disappearing. Family

members had never heard from them again and were advised by the state authorities to forget about them.

Another section in the report deals with the use of systematic torture: beatings with sticks and cables; electroshocks; having to endure stress positions for days on end; food, water and sleep deprivation; overcrowded cells; and sexual violence, that is rape and maltreatment of the genital organs. There are reports of torture and killings, including of minors, and of their being taken to intelligence service facilities. Those who tried to leave the country were likewise subjected to lethal force. The report mentions cases of people being shot and killed trying to cross the Syrian border in August and September 2011.

Finally, the report explains that witness testimonies revealed that the security forces' operations were highly coordinated. Various units carried out concerted actions. The operations were carried out on the orders of high-ranking officers (colonels or brigadier generals), including the order to open fire on unarmed demonstrators.

(2) A second report dated February 2012 gives an update on the chronology of events. This report, too, was based on statements made by unnamed witnesses, on publicly accessible sources and government documents. According to the report, the situation had become increasingly violent and polarised. The peaceful protests against the government had continued, as had the security forces' violent response – backed by Bashar al-Assad, according to whom the top priority was still to “restore security and fight terrorism with an iron fist”. At the same time, the Free Syrian Army carried out its first operations against the government forces – although these were initially only defensive in nature. According to the Syrian government, 2,131 civilians were killed in the period from March to December 2011, although according to other sources there were 6,399 civilian deaths and 1,680 deaths of army defectors in the period from March 2011 to February 2012. The report also cites military operations in January and February 2012 carried out in residential areas – citing villages around Idlib, in Homs, Al-Zabadani, Rif Dimashq, Khaldieh and Hama – which included bombardment with heavy weapons leading to large numbers of civilian deaths. “Shoot-to-kill” orders were still being issued against peaceful demonstrators. Arbitrary arrests were still being made on a grand scale, mainly by encircling demonstrations and taking those arrested

away in buses and trucks to the intelligence services' detention facilities. Besides, entire urban districts were sealed off by intelligence services, elite army units and/or *shabiha* militia and raids were conducted in the course of which a large number of people were arrested. Military hospital wings were transformed into torture centres. Doctors and medical staff in the civilian hospitals clandestinely treated the injured and sick and were then likely to be arrested themselves.

Another United Nations report entitled "Out of sight, out of mind: deaths in detention in the Syrian Arab Republic", which was published in February 2016 by a committee set up by the Human Rights Council, describes in detail a pattern which, in the committee's assessment, became established across the country in the period after March 2011, namely of the mass arrest of civilians or their enforced disappearance, their lack of contact with relatives and deaths by torture in government prisons.

(3) The Division is aware that the above-mentioned documents are not able to act as direct evidence of the human rights violations they describe. In particular, the Division was not in a position itself to verify the information provided by the witnesses, whom the report does not name. Given the institutions which compiled the reports and the wide-ranging description of their bases and limitations – emphasis is placed on the fact that the Syrian government denied the authors of the report the opportunity to see the situation on the ground for themselves – the Division nevertheless regards them as circumstantial evidence of the intensifying government response to the largely peaceful protests, which in April 2011 tipped over into systematic, countrywide arbitrary arrests, torture and killings.

bb) The Division similarly drew on reports by the NGOs Human Rights Watch and Amnesty International as circumstantial evidence, which by their own account were based on personal interviews with numerous victim witnesses of the internal Syrian conflict. It was not possible to verify these sources either. The evidence therefore had to be treated with caution.

(1) The report entitled "We've Never Seen Such Horror. Crimes Against Humanity by Syrian Security Forces" traces the sequence of violent responses by the Syrian security forces and cites the number of dead from the start of the protest movement. It focuses on events in the governorate of Daraa in the period between 18 and 22 May

2011. According to its authors, the report is based on 50 interviews with local residents and people who were staying there at the time and on an analysis of generally accessible press releases.

According to the authors of the report, the protest movement was still quite insignificant in February 2011. They regard the start of the protests proper to be the arrest and torture of 15 children and teenagers in Daraa and the protest rallies held in Daraa in response to that as from 18 March 2011. These were attended by several thousand civilians and centred around the Al-Omari Mosque in Daraa. The report lists further protests held between 23 and 25 March 2011 which resulted in the deaths of more than 30 protesters. According to the report, at least 12 people died during protests held in Latakia on 26 March 2011. At first, government representatives were sent to the city to try to calm and pacify the situation, and Bashar al-Assad publicly pledged to enact reforms and promised to establish a committee of inquiry, but the violence had then escalated in April 2011. Starting on Friday, 1 April 2011, thousands of protesters had taken to the streets. Between eight and 15 people died during a demonstration against the government held in Douma. Subsequently, mass demonstrations were held every Friday in bigger towns and cities across the whole of Syria, including in Daraa, Baniyas, Homs, Harasta, Latakia, Idlib and Qamishli. Twenty-five people were killed in Daraa on 8 April 2011 and 34 during protests and funeral processions on 22 and 23 April 2011. Across the country, 22 April 2011 was the most deadly day thus far, with a total of 110 victims. On the one hand, witnesses concurred in their reports of cases in which crowds were shot at with live ammunition and automatic weapons after teargas was first used and shots were fired into the air. On the other hand, though, there were also already reports of cases in which shots were fired without prior warning. The targets had been the demonstrators as well as the helpers who had wanted to help the injured. From late March 2011 onwards, snipers placed on the roofs of government buildings in Daraa had also fired at protesters' heads, throats and upper bodies.

The report goes on to describe in detail how security forces carried out large-scale sweep operations against those cities and villages which were regarded as hotbeds of the protests. On 25 April 2011, for instance, security and military forces had moved into Daraa in armoured personnel carriers, had shelled the city for 16 hours and then set up numerous checkpoints and posted snipers on the roofs of buildings. The

electricity supply and all communications were cut off. The security forces opened fire on anyone who tried to leave the house. Later, hundreds of people were arrested in their homes. The city was then placed under military control and residents experienced shortages of supplies. There were more than 200 deaths, including of residents in neighbouring cities who had, on 29 April 2011, attempted to help the besieged people and then themselves come under fire from the security forces without prior warning. This pattern was repeated in several places: On 25 April 2011 the security forces also surrounded Douma, on 1 May 2011 Al-Zabadani, then on 6 May 2011 Baniyas and various districts of Homs. The report also details military operations in smaller towns and how many demonstrators were killed in May 2011 and where. Mention is also made of people who wanted to provide medical assistance who were prevented from doing so or were shot at.

(2) By its own account, the report entitled “Torture Archipelago”, published in July 2012, is based on 200 interviews conducted by Human Rights Watch staff, including with members of the Syrian security services who defected. The interviewees stated that they had witnessed ill-treatment and conditions in the intelligence service prisons. Based on this, the report lists the individual organisations in the security apparatus (*mukhabarat*) and 27 detention centres assigned to them by name, name of the intelligence service branch office and torture methods applied there. The torture techniques to which the interviewees were subjected or which they observed are presented by means of a detailed description and, in some cases, using key words. The interviewed victims are listed by code name, the date of the interview and the date, branch office and place where they were detained.

(3) The Amnesty International report “‘It breaks the human’. Torture, disease and death in Syria’s prisons” focuses on people who were imprisoned by the Syrian regime in the period 2011 to 2015 and is based on interviews with more than 60 former detainees and staff in a military hospital. The report describes the conditions in detention centres operated by the Syrian intelligence service and in the prison in Saydnaya and the torture techniques used there.

(4) The Division feels there is a sufficient basis for drawing on the research presented in the above reports, at least circumstantially. Even though it was, again, not possible

to verify the cited sources, in view of the detailed descriptions the reports contain – which, in essence, concur with the information the Division obtained from the witnesses and experts it examined – it feels it is out of the question that the reports, taken as a whole, are based on inaccurate findings, even though the reliability of individual observations should be called into question.

2. Central Crisis Management Cell

Witness ...[Z] described in detail the status, tasks, composition and activities of the Central Crisis Management Cell (CCMC), the highest-ranking central coordinating body which was established in the light of the protest movement. His statements are confirmed by witnesses ...[T], ...[S] and Z 28/07/16.

a) Witness ...[Z], an American lawyer who was involved in prosecuting war crimes committed in the former Yugoslavia, holds a senior position within the international NGO Commission for International Justice and Accountability (CIJA), which was established as a foundation under Dutch law in 2012 against the backdrop of the conflict in Syria. According to the witness, the NGO is funded by various countries, including Germany, Canada, the United States of America, the United Kingdom and the Netherlands. They have no influence on the work done by the CIJA. More senior members of staff are recruited from amongst those who have, in the course of working for courts, gained experience in international criminal prosecution, for instance lawyers, former public prosecutors and analysts who conducted investigations in Rwanda, the former Yugoslavia, Cambodia and Sierra Leone. According to the witness, the organisation's founders had already begun collecting witness statements and written documents relating to the internal Syrian conflict back in 2011 so as to be able to make them available to courts at a later date. This work had, the witness stated, essentially involved conducting interviews and documenting a large number of witness statements – from both civilian victims and former members of the regime and other eyewitnesses – most of which were made anonymously. The majority of these people were still in Syria, the witness stated. The witness interviews were all conducted based on a set protocol. Each witness was instructed about the fact that their testimony might possibly become the subject matter of criminal proceedings and that they had to tell the truth. Witnesses were then able to speak freely without being guided by a CIJA

staff member. Dossiers were compiled once all the different statements were systematised. Witness ...[Z] presented examples of transcripts of witness statements to illustrate the procedure followed.

According to Witness ...[Z], more than 2,500 witnesses were interviewed; the survey for the most part covered the years 2011 and 2012. Further, more than 800,000 pages from a large number of original documents relating to the military and Syrian intelligence service were “got out” during the subsequent civil war. In practical terms, the work had involved local CIJA staff going into an area as soon as armed groups had left it. They then looked for documents, including on electronic data carriers, in former government buildings and took them to a safe place. The documents were then scanned, archived and barcoded in order to be able to traceably document their origin and content as sources.

Witness ...[Z] stated that reliable information about the establishment, activity and staffing of the Central Crisis Management Cell was secured in this way. As its name already suggested, the body was set up to engage in crisis management, he testified. Its task was to standardise the strategy applied by all the involved government organisations in relation to fighting the conflict. Accordingly, the body was made up of individuals who already held positions of leadership in – from the regime’s perspective – maintaining order. Formally, it was aligned to the Syrian Ba’ath Party. The witness stated that the CCMC comprised the heads of the individual intelligence services, the Minister of the Interior, the Minister of Defence and, on an ad-hoc basis, other ministers. Ultimately, it was the regime’s hard response to the growing protest movement. Its objective was to standardise the security authorities’ escalating operations. According to the witness, the CCMC was chaired by Mohammad Said Bekheitan up until October 2011, then by Hassan Turkmani. Members included Ali Mamlouk (Head of the General Intelligence Directorate), Jamil Hassan (Head of the Air Force Intelligence Directorate), Mohammed Dib Zaitoun (Head of the Political Security Directorate) and Abdel-Fatah Qudsiyeh (Head of the Military Intelligence Directorate). Minister of the Interior Mohammad al-Shaar and Minister of the Defence Dawoud Rajiha also belonged to it.

The ascertained CCMC documents dated April 2011 were taken from a government building in Idlib by a CIJA member of staff in 2015 in the manner described above. The member of staff was a Syrian living in that region, not a member of the government. He had gained access to the office after the Syrian regime staff left Idlib. The ascertained document dated August 2011 was taken from the Military Intelligence Directorate office in Raqqa. It, too, was found by a member of staff after the regime pulled out.

Witness ...[Z] also testified that, according to credible information provided by regime staff, decisions were passed along information chains down to the provinces, including smaller units in the army and security authorities, for implementation. Specifically, all of the intelligence services, army command posts and police stations had been involved in passing on instructions. In support of this the witness presented further documents. In a letter dated 8 August 2011, the sub-branches affiliated to Branch 243 were ordered by the head of branch to conduct daily raids and patrols and to arrest demonstrators and other people they held responsible for the protests. In another letter dated 22 August 2011, which made reference to a circular issued by the Ministry of the Interior on 16 August 2011, the head of the Political Intelligence Service in Raqqa informed the Ministry of the Interior that detailed measures which had been ordered – such as a common approach to certain city districts and the arrest of “incendiaries” and those taking part in demonstrations – had been implemented. Expressions comparable to the ascertained letters written by the CCMC are used in the letter.

b) Some of the documents, which can be attributed to the CCMC by dint of their content, and which were inspected and translated, are direct transcripts of one of the meetings of the CCMC, others relay orders issued by the CCMC. It is also evident that each document was transmitted by fax.

One document dated 20 April 2011 is headed “Circular” and, according to its letterhead, was written by the General Command of the Army and Armed Forces and the Head of Branch 294 of the (most likely Military) Intelligence Directorate. According to other headers, it is “Strictly Confidential” and “Urgent” and addressed to the head of the branch. The document cross-references a letter by a regional commander concerning a meeting of the CCMC. The body had met on 18 April 2011 and taken

various decisions which were subsequently detailed in the document dated 20 April 2011 and are reproduced in the Findings. At the end of the document there are two illegible signatures, one of which is headed “Head of the Intelligence Branch”. A seal at the bottom of the document bears the words “General Army Command” and the – otherwise illegible – label “Intelligence Branch”. Reference is also made to a distribution list which includes the branch offices of the intelligence service branch and the request “Please make all necessary arrangements”.

Another document, also dated 20 April 2011, is headed “An Arab Nation with an Eternal Message”. According to the sender’s address, it was written by the Syrian leadership of the Ba’ath Party. The document is also marked “Strictly Confidential” and “Only to be Kept with the Officer Responsible”. This is followed by the heading “Minutes of the Meeting”. According to the body of the text, the CCMC, “chaired by Comrade General Secretary”, met on 20 April 2011 and “continued its analysis of the security policy situation”. There follows a list of orders and (alleged) facts as reproduced by the Division in the Findings. The document concludes “Please take note and implement in accordance with jurisdiction” and is signed by the Deputy Regional Secretary of the Ba’ath Party.

The last document, dated 6 August 2011, also bears the heading “An Arab Nation with an Eternal Message” and is marked “Strictly Confidential – Urgent”. According to the letterhead, it was also written by the leadership of the Syrian Ba’ath Party and is addressed to “Comrade Head of the Party’s Branch Office in the Governorate of Hama, Rif Dimashq, Deir ez-Zor, Homs, Idlib and Daraa” in his function as “Head of the Security Committee”. It goes on to list the decisions which the CCMC took at its meeting on 5 August 2011 (these are reproduced in summary form in the Division’s Findings). The letter closes with the words “Please implement what is required to bring the crisis to a swift conclusion, to return to safety and security and peace for our citizens”. The signature is followed by the words “Comrade Head of the National Security Bureau”.

c) Further witnesses confirmed the existence and function of the CCMC, as well as, in some cases, the instructions issued to use force.

According to Witness ...[S], the CCMC's objective was to get a coordinated "grip on" the demonstrations. He testified that overarching orders to put down the uprisings were issued to the intelligence services, the police, sometimes even the press. The members of the CCMC included Dib Zaitoun (Head of the National Security Bureau), Jamal Hassan (Head of the Air Force Intelligence Directorate), Ali Mamlouk (Head of the General Intelligence Directorate), the Minister of Defence and the Minister of the Interior. The CCMC was set up in late March or early April 2011, the witness stated. Witness ...[T] confirmed its existence.

Witness Z 28/07/16 testified that the Cell – which he initially described as the "Directorate for Emergencies" and the "Cell for Dealing with Emergencies" but which, when confronted with this testimony, he confirmed was the CCMC – was composed of the leaders of the security services, in particular the heads of the intelligence services Bachtiar (National Security Bureau), Mamlouk (General Intelligence Directorate) and Hassan (Air Force Intelligence Directorate). The Cell was established on the basis of a decree issued by President Assad in order to get the popular movement, which was perceived as a crisis, under control. The witness stated that there were security branches in other places below the level of the Crisis Cell, meaning that every town or city was involved. The CCMC had issued specific instructions. From the start this included instructions to arrest people who were communicating via social media in order to silence them, the witness stated. Another order issued by the Crisis Cell was addressed to the branches in the provinces. They were to put pressure on traders so that they, in turn, would pass it on to the rest of the population. Finally, there had also been coded orders to use force, for instance, to "take the necessary steps" and "blot out the resistance". The witness himself had, some three months after the unrest, seen orders to use targeted force against demonstrators. In his recollection this was in May 2011.

d) Taking the above as a whole, the Division has no doubts as regards the establishment, composition and function of the CCMC. It also takes the documents submitted by Witness ...[Z] to be authentic and uses them as the basis for its assessment. There are no indications which cast doubt on the methods applied by the CIJA as described by Witness ...[Z]. The witness detailed the origin of the information about the course of the conflict which was available to him and about the Syrian

security apparatus, and he backed this up with numerous documents. The documents he presented containing orders issued by the CCMC fit with the hierarchy and power structure in the Syrian state, in particular the function of the Ba'ath Party, which pervades the machinery of power. Especially in view of the fragmentary nature of the recorded decisions, in particular their only being available as forwarded circulars, and their coded wording, the Division also found no indication that these could be – interest-driven – forgeries. It is also easy to bring the CCMC's orders into line chronologically with the course of the conflict as presented directly to the Division by the witnesses and experts.

3. Number, documentation and treatment of those killed; mass graves

That the Syrian regime had large numbers of people killed from April 2011 on at the latest, that it bureaucratically documented this and had the bodies buried in mass graves also follows from the testimony given by former employees of the regime, from satellite images of alleged mass graves and from the origin and analysis of a large number of photographs of corpses (the "Caesar Files"). At the same time, evidence is thereby furnished of the fact that a substantial proportion of those who were killed originated from the branches of the intelligence services, including the General Intelligence Directorate.

a) The documentation of the dead by a Syrian military photographer ("Caesar") as ordered from late spring 2011 on provides key evidence of the systematic and extensive killing of those arrested in the intelligence services' prisons. The 26,938 image files which "Caesar" secretly secured and took out of the country depict the corpses of 6,821 people, who were each photographed more than once; the majority of the people bore signs of emaciation and of injuries caused by torture. The corpses had numbers on them which shed light on their origin. The numbers were either written on the person's skin with a felt-tip pen or on notes on their body.

aa) The Division was not able to directly examine the military photographer known by the alias "Caesar", as he lives abroad at an unknown location. A friend of "Caesar" who also lives abroad under an unknown identity and who is known to the Division only by the alias "Sami" was involved in securing, storing and sending the image files out of Syria; he was not prepared to undergo witness examination. However, the Division

was able to gain a sufficient impression of the origin, content and authenticity of the image files by examining both Witness ...[LL], who was in contact with “Caesar” and “Sami” in 2014 and documented and edited their work, and Witness ...[O], who conducted the police questioning of “Sami” during the preliminary investigation, on the basis of a plausibility report on the image files produced by a foreign forensic expert, by inspecting a part of the photographs taken by “Caesar” and by means of an overall forensic assessment of the photographs conducted by the expert ...[R].

bb) Witness ...[LL], a French journalist and publicist who was examined by the Division, was able to enter into contact with “Sami” in 2014 via intermediaries and, also, through him, with “Caesar” in the course of her work as a journalist, which regularly took her to Arab states, including to Syria in 2012. Based on interviews with both men regarding the origin of the image files and other research she conducted, Witness ...[LL] published a book entitled “Codename Caesar – In the Heart of the Syrian Death Machine”. The witness “Sami” was questioned on 9 November 2017 as part of the structural investigation conducted by the Federal Public Prosecutor’s Office. The content of his statements was relayed to the Division by Witness ...[O], a police investigator.

(1) The Division does not doubt that Witness ...[LL] and Witness ...[O], whom it examined in person, testified truthfully. In particular, Witness ...[LL] testified in detail about how she made contact with the witness “Caesar”. This was done through an editorial assignment, its incorporation into the book project she was working on at the time, gaining the trust of a chain of intermediaries, including “Sami”, “Caesar”’s key confidant. She was able to conduct a detailed interview with “Sami”, she stated, and it was he who, ultimately, helped her establish contact with “Caesar”. After telephoning with “Caesar” via Skype, she had several face-to-face meetings with him. The witness also comprehensibly explained what she understood “Caesar”’s motivation to be for documenting the photographs: Syria was a country of absentees; the photographs provided both an insight into the fate of a large number of people who disappeared and invaluable help to their relatives.

The particulars which Witness ...[LL] and Witness ...[O] provided about the witnesses “Caesar” and “Sami” were detailed, both consistent in themselves and with each other

and plausible. Taken together with the other evidence in this complex of evidence, they form a consistent overall picture. In particular, the expert's analysis of the photographs (see cc) and ee), p. 102 and p. 104, below) proves the accuracy of the information. The mass burials of dead bodies bearing numbers (see b), p. 108, below), which various former employees of the regime described as well, also confirm what "Caesar" and "Sami" reported. Finally, the fact that Witness ...[T] – who, in turn, relies on information given to him by clients as part of his work as a Syrian lawyer and victim representative – confirmed both the tasks of the Syrian military photographers before and after the start of the conflict and the numerical recording of those killed by means of notes stuck on their corpses or written on their skin circumstantially speaks to its truthfulness.

(2) Based on the information provided by "Caesar" and "Sami", as relayed by Witness ...[LL] and Witness ...[O], the Division draws on the following facts in its assessment:

Up until he fled Syria in August 2013, "Caesar" was a senior member of the military photography staff in the Syrian military police. Both the photographic documentation department and the military police were based in the Qaboun district of Damascus. As part of his original job, "Caesar" and his staff were required to document the members of the military who died or were injured as a result of an accident, crime or combat action. He was also responsible for the military hospitals in Mezzeh and Tishreen in and near Damascus, though not for the other military hospital in Harasta.

From spring 2011 the subject matter of this documentation work changed. In March 2011, "Caesar"'s attention was drawn by a staff member to images showing civilians who had been shot and killed. Shortly thereafter he himself was called by the forensic medicine department to go the military hospital in Tishreen, subsequently also to that in Mezzeh, and was commissioned with documenting the corpses lying in the courtyard there, which bore the signs of torture and ill-treatment. He was required to take several photographs of each, that is four to five per corpse. The bodies had already been divided into groups of "martyrs" (which were identified by their real names and of which there were only a few), "detainees" and "terrorists". The corpses categorised as "detainees" and "terrorists" had numbers on them, either written on their skin using a felt-tip pen or on an attached piece of paper. A number or letter identified the

intelligence service branch in which a person had died – for instance “J” for “Jawiyya” (= air) to designate the Air Force Intelligence Directorate. Another number sequence comprised a prisoner number used to identify the person and a report number issued by the military hospitals’ forensic medicine department which was assigned to the corpses in ascending order up to 5,000 after which the numbering started over with the addition of a letter. In a few isolated cases the dead had no numbers on them.

A forensic expert of the rank of colonel who was responsible for the Tishreen and Mezzeh hospitals was routinely required to record the physical characteristics of the corpses and to write a brief postmortem report. A military photographer was called in, too. After assigning a forensic number, the photographer was required to take several photographs (generally between three and five) of each corpse. The forensic medicine department was then required to compile dossiers on the deceased, to which the photographs taken by the military photographers were added.

In the assessment of both “Caesar” and “Sami” there were two reasons why the Syrian authorities compiled these documents: First, it was important, for bureaucratic reasons, to be able to issue a death certificate citing a natural cause of death which could, if required, be passed on to the victim’s relatives. Second, the documents served internal control purposes, in that they ensured that the fate of those detained could be unequivocally verified, that is that they had, in fact, been killed and had not been released, as a result of corruption, for instance.

After “Caesar” first became aware, in March 2011, of civilian deaths, he contacted “Sami”, a friend, and reported that he had received photographs of tortured corpses from his employees (“I’m getting photos that are so terrible.”). In the opinion of both men, the state of the corpses which were laid out in the hospital courtyards did not concur with the medical report which “Caesar” had received from the hospitals’ forensic medicine department. There had in the past already been similar, but – according to “Caesar” – “not such brutal” photographic material. Once “Caesar” had smuggled the image files out of his office on data carriers, he and “Sami” decided that he would continue his work so that both of them could collate photographic material and get it out of the country. “Caesar” and “Sami” wanted to let the public know what was happening to the large numbers of people who were disappearing in Syria at that time

and to secure evidence. They both expected the Syrian regime to fall imminently and those who belonged to it to be prosecuted. Following this organisational phase, from May 2011 “Caesar” and “Sami” cooperated such that “Caesar” secretly stored, on USB sticks and memory cards, the photographs which he had taken or which he obtained from his employees, he smuggled them out of the authority and took them to “Sami”, who then stored them in various file folders on a PC and deleted the files on the storage media, which he passed back to “Caesar”. At the start, i.e. in May 2011, the image files contained pictures of only a few corpses. However, they quickly increased in number to 10 to 20 per day. By 2012, around 50 to 70 corpses were being documented each day by the military photographers in Damascus.

Given the security situation and the fact that the internet was being monitored in Syria, getting the photographic material and files out of the country proved difficult and was the reason why different routes were used and why there were then different versions of the data. In 2012, “Sami” had intermediaries compress the images (down to 250 to 300 KB per image) and upload them to the online platform Google Drive. After fleeing to Lebanon in July 2013, he was also given a hard drive which had been smuggled into Lebanon by the Free Syrian Army and which contained another compressed version of the photographs. Once he was in Jordan, and subsequently in Turkey, “Sami” then put the photographs into chronological order based on the numbers applied to the corpses. He then renamed the files and had intermediaries pass them on to the British law firm Carter-Ruck and Co., who in turn commissioned experts with carrying out a plausibility check. The original, uncompressed files (1 to 1.3 MB per image), in their original order, were first stored on an external hard drive and taken to Syrian territory controlled by the Free Syrian Army and then also uploaded to the Google Drive platform. These files were made available to the law firm, too. A meeting with forensic experts whom the law firm had commissioned was held in Qatar in early 2014. “Caesar”, who fled Syria in late September 2013, smuggled photographic material comprising another 1,500 images taken in July and August 2013 out of the country on a USB stick.

In the light of this sequence of events, which it was not possible to determine any more precisely given that the Division was not able to directly examine the witnesses “Caesar” and “Sami”, it assumes, in terms of chronology and number, that “Caesar”

had for the first time become aware of suspicious – though initially only isolated – corpses in March 2011 which provided an indication of abuse and killings by the Syrian security forces, that image files relating to between 10 and 20 corpses were secured each day as from May 2011 and that the number of photographs taken up until the end of the recording period in August 2013 successively increased. Given the total number of deceased people photographed (6,821), this sequence of events was readily consistent. Based on the statements made by the expert ...[R] as set out in the following, the Division assumes that the people depicted generally died only a few days, up to a maximum of a few weeks, before the photographs were taken.

cc) As Witness ...[LL] confirmed before the Division, the London-based law firm Carter-Ruck and Co. to whom, according to “Caesar” and “Sami”, the image files were passed, commissioned a body of inquiry with conducting a forensic analysis. The body included, as its chairperson, Sir Desmond de Silva (former Chief Prosecutor of the Special Court for Sierra Leone) as well as Prof David Crane (former first Chief Prosecutor of the Special Court for Sierra Leone), Prof Geoffrey Nice (former Lead Prosecutor of the Former President of Yugoslavia at the International Criminal Tribunal for the Former Yugoslavia), Dr Stuart Hamilton (an expert in forensic pathology), Prof Susan Black (Professor of Anatomy and Forensic Anthropology) and Stephen Cole (technical director of a forensics investigation company). According to the investigation report, the experts had the opportunity to interview the witness “Caesar” in January 2014 after which they were able to assess the authenticity of the photographs.

According to their written statements, after analysing a sample of the 5,500 photographs of a total of 835 deceased persons, 3,500 of them in detail, and comparing the statements made by “Caesar” and “Sami” concerning the origin of the images, the experts came to the conclusion that the witnesses’ descriptions were consistent with the injuries as established which were depicted on the images made available. The corpses in the photographs exhibited signs of strangulation, beatings, emaciation and injuries caused by electric shocks. Overall, the picture emerged, the experts concluded, that the deceased had very likely died of unnatural causes, specifically as a result of ill-treatment and torture, even though fatal injuries were, ultimately, only found in a minority of the cases investigated. Making a value-based assessment, the

experts come to the conclusion that the material they analysed constitutes “evidence of the systematic torture and killing of detainees by actors in the Syrian government”.

dd) Witness ...[O], who led the police investigation, explained the origin of the photographs, which were printed out in the course of the present proceedings and were available on data carriers. According to him, they are the uncompressed data sets which were taken out of the country via the internet, supplemented by files which “Caesar” created in July and August 2013 and which were then passed on by “Sami” in September 2017 to the Federal Public Prosecutor General via intermediaries in Liechtenstein. According to Witness ...[O], these data were also made available to the expert ...[R], who had already been commissioned as part of the preliminary investigation.

The Division inspected a selection of the photographs. In its layperson’s assessment, the overwhelming majority of them depict the corpses of naked young men lying on, for instance, either tarpaulins or dusty ground in an outdoor area. The corpses, some of which are severely emaciated, show signs of different kinds of injuries, including open wounds and, in the majority of cases, significant bruising and abrasions, some extensive, some also longitudinal, which could be an indication of beatings or whippings. The eyes of some of the corpses were missing. Further, the Division had access to an example of a form which the witness “Caesar” had photographed and, according to Witness ...[LL], passed on to her. According to its introductory text, the form served to document a death and was “issued on behalf of the military public prosecution service”.

ee) All the photographs were subjected to a forensic examination by the experienced court expert ...[R], who heads a forensic medicine institute in Germany. By way of his vivid and impactful presentation, which was backed up by photographic material taken from the “Caesar Files”, the expert gave his comprehensive expert opinion, which included brief descriptions of the people depicted in the photographs, including their age, sex and prominent features, a translation and a systematic representation of the numbers visible on the corpses, a description of the general condition of those depicted in the photographs, signs of ill-treatment, torture and the use of violence, and the presumed cause of death. The expert drew attention to the limitations of any diagnosis

done on the basis of assessing photographs, which is no substitute for a postmortem, on the basis of only partial views of the bodies being available and the limitations of enlarging the photographic material. He gave examples of case histories based on individual images.

According to the expert, the majority of the photographs depict naked males lying on their back in an outdoor area. There are a total of 26,938 image files showing a total of 6,821 distinguishable individuals. Based on the numbering of the corpses, their origin can be broken down as follows:

<u>(Sub-)Branch</u>	<u>No. of image files</u>	<u>No. of people</u>
215	13,801	3,551
216	1,108	292
220	210	50
227	8,001	2,049
235	482	127
248	206	54
251	446	110
Air Force ("Air")	1,515	352
Military Police	177	46
Unknown	601	116
Miscellaneous	391	74

The photographs showed 6,820 men and one woman, the expert stated. They were judged to include 329 very young people, possibly adolescents, 2,342 people of a young age, 2,178 middle-aged people, 1,215 people of advanced age, 531 old people and 226 people whose age could not be determined. The overwhelming majority of the deceased had been photographed lying on stoney or sandy ground, the expert reported; some of them had blankets or tarpaulins under them. In some cases obvious injuries had been covered with clothing. The majority of the faces were well-documented; where their eyes were missing this was due to them having been eaten by birds or insects following death. A total of 3,912 people were photographed in their underwear, another 1,547 were naked, the rest were fully or partially clothed, although their clothes were dirty and threadbare. One in 20 showed signs of professional

medical treatment such as bandages. In some cases the bodies suggested that the person had died shortly after emergency surgery following ballistic trauma.

According to the expert, the photographs had obviously served less as medical documentation and more the general, rather superficial, “registration” of the bodies. The fact that a systematic approach had been applied when taking the photographs in order to create a typical “set” for each body – an overview, details of the head and neck area and the upper and lower half of the body – tended to suggest that instructions had been issued to that effect or that the same photographer had been used.

The expert explained in detail that, from an expert forensic medical perspective, it was to be assumed that all the photographs did in fact depict dead human bodies, although clear signs of death in the form of livor mortis, rigor mortis, putrefication changes or injuries which were not compatible with life could be identified in only 88.6% of the cases. A large number of the people depicted in the photographs showed signs of the consequences of ill-treatment in the form of mainly blunt injuries, the expert reported, for instance stroke marks (i.e. parallel erythema stripes) together with burst capillary bleeding and haematomas. These could only have been caused by very severe, unbridled blows to the body, which would also have caused severe pain and even meant the person lost consciousness. The expert believed that sticks, pipes, cables and similar items had likely been used for these beatings. Moreover, numerous bodies had large haematomas on the legs and feet, indicating that these areas of the body had been subjected to targeted blows. Besides stick-like implements, flat objects had been used as well. The intensity of the blows suggested systematic ill-treatment through beating or kicking, the expert stated. In some cases the impact marks blended into one another so that it was not possible to count the number of blows to the body. Based on the images of the injuries, the expert stated, it was also plausible that the people had been hit severely and several times whilst physically restrained. Judging by their outward appearance, many of the injuries were explainable by having been inflicted simultaneously. In a few cases it was evident that fingernails or toenails had been removed by mechanical means, in the expert’s assessment an extremely painful process.

In many other cases the expert found indications of suffocation following the application of mechanical pressure to the neck, in particular significant force to the throat, in some cases with extensive haematomas across the entire neck area together with large abrasions, which could have been caused by massive beating and kicking of the neck or else someone standing on the person's neck, he reported. The course of the haemorrhages suggested that cane-like objects had been pushed against the neck, possibly from behind. The expert explained that the massiveness of the ill-treatment could have led to both compression of the trachea and larynx on account of haemorrhaging and swelling and to ligation of the carotid veins. In some cases, whitish foam was visible on and around the mouth, a sign of suffocation or drowning. The expert described the mechanical dislocation of the airways as a manner of death which was accompanied by a massive fear of dying ("a feeling of annihilation").

A little over half of the people depicted in the photographs had such injuries, the expert stated. Apart from these injuries, more than 60% of those depicted were in an at times considerably reduced state in terms of their general, nutritional and health condition. Their bodies showed signs of extensive emaciation and wasting, which, in the expert's assessment, was most likely a consequence of food deprivation. Numerous bodies also had very severe signs of malnutrition together with severe weight loss owing to the body using up body fat and to muscle atrophy. It was in some cases obvious, the expert explained, that the people had starved to death. This was specifically to be assumed on the basis of the pronounced emaciation of the body which caused the skeleton to protrude and generalised muscle atrophy. The expert described starving to death as a lengthy process with a considerable amount of painful paraesthesia. Many bodies also had signs of extensive skin diseases, such as were caused by a lengthy and extensive lack of hygiene in combination with injuries, malnutrition and parasite infestation. It was obvious, the expert reported, that many of the people depicted in the photographs had needed urgent medical care and treatment but had not received it. The expert also drew attention to the multitude of signs of shackling on their wrists, plus strap-like injuries and evidence of blindfolds.

Some of the bodies had no or only minimal externally visible injuries or diminution, the expert reported. Since the majority were young and middle-aged men, who also showed no signs of any fatal illness, then, in view of the context in which the

photographs had been taken, they could have suffered asphyxiation, for example owing to a lack of oxygen in the air or interventions involving gas, poison, drowning or suffocation by gently covering the respiratory organs. A few of the bodies showed signs of ballistic trauma following gunshot wounds or wounds caused by an explosion; in a few cases numerous bullet wounds in one region of the body or signs of close-range gunshots could also be considered to have been caused by execution. A few corpses (52) showed signs of (electro-)thermic impacts. None of the bodies could be regarded as having suffered a natural cause of death.

As regards time of death, the expert explained that storing the corpses outside and the absence of any green discolouration in the area around the lower abdomen, which already occurs at an outdoor temperature of 21 degrees, was either an indication that the corpses had first been kept in cold storage or that death had occurred just before the photographs were taken.

The Division follows the expert's findings and uses them as the basis for its assessment. These findings, for each of which the expert gave detailed oral explanations and which were evidently based on his experience and expertise, were the result of a meticulous investigation and comprehensive explanation of the photographic material – some of which the Division inspected whilst the expert report was being rendered – and are consistent with it.

ff) In the light of the above, the Division has no doubts as to the authenticity and origin of the photographs as presented by the witnesses ...[LL] and ...[O] and indirectly by the witnesses "Caesar" und "Sami". In its assessment, the photographs prove that, from May 2011, a large number of deaths occurred in the Syrian regime's various intelligence service branches on account of detainees being tortured to death, being killed by food deprivation or suffocation, or being executed there.

b) Numerous witnesses corroborate the large number, documentation and treatment of the corpses of the victims of the regime.

aa) Expert Witness ...[W] testified that he had met two witnesses in the course of his research who reported that there was a "handling facility for corpses" in Homs. They had, he stated, explained that the corpses had numbers on them, were photographed

and registered. This was in early 2012; the witnesses were interviewed in April 2012. One of them was young and was deployed as a conscript; he gave the impression of being very distressed. He had, the Expert Witness reported, described having to pack body parts into plastic bags in a military hospital. From early March 2012 on, corpses had been brought in on an ongoing basis and formed metres-high piles in a courtyard. He was required to photograph the corpses, attach numbers to them and then pack them up. A doctor who defected had described the collection point in a similar manner, the witness stated. The dead originated from a district of Homs, which had declared its independence, from checkpoints and a large number came from prisons, especially those operated by the Military Intelligence Directorate and the Air Force Intelligence Directorate. Between 30 and 400 corpses were delivered every day, sometimes in a truck. The hospitals in Tishreen and Harasta were also well-known in that regard. Another person the Expert Witness talked to reported being allowed to search for his brother's corpse. Because he was a person with influence he was assigned several security personnel so that he could spend hours looking through the corpses. According to Expert Witness ...[W], the person he talked to was unable to provide any further proof, though.

The Division regards this statement as evidence of a system which was applied across the country and which was geared to recording a large number of people who died at the hands of the security authorities.

bb) By his own account, Witness Z 30/07/19, who was already examined anonymously in the course of the preliminary investigation, was a member of the administrative staff in the cemeteries department in Damascus. He testified that he was recruited by senior officers in the security services in May or June 2011 and that he and 10 to 15 employees he had to nominate were tasked with assisting in the burial of corpses in mass graves. He himself had had to document the corpses which were delivered. He had done this job from 2011 until 2017, he said.

(1) The witness stated that, when he first began this job in May or June 2011, he and a group of employees from his agency were sent to the military hospitals in Tishreen and Harasta, where refrigerated trucks were waiting to transport corpses. The trucks were driven to a place he did not at first recognise. During a second phase of his job

he then received lists several times a week, was picked up from his place of work by a patrol and taken to mass graves. Large trenches up to 6 metres deep had been dug there into which the corpses were tipped. Eventually, he drove himself and his staff members there in a minivan which they were provided with; they were required to check the lists they were handed by the drivers of the trucks in which the corpses were delivered. He and his staff were given a vehicle which belonged to the intelligence service (a Nissan Sunny) so that they would not be stopped at checkpoints. The witness stated that this work, which did not change over the next few years, had begun four to five months after he took on the original job, that is between September and November 2011.

The witness stated that the regular transports from the military hospitals in Harasta and Tishreen had arrived at the mass graves around twice a week. That was where the corpses which originated from the branches accumulated. Corpses came in from all the branches. The witness named "State Security", which he said included an "Administration" he did not designate any more precisely, the "Al-Khatib Branch" and Sub-branch 40, the Palestine Branch, branches in the regions, Branch 215 and patrol branches belonging to the Air Force Intelligence Directorate. The corpses had numbers written on their forehead or chest, he testified. They then drove to the mass graves which were in Najha (around 14 kilometres south of the centre of Damascus out towards the airport) and al-Quteifa (alternative spelling "Al-Qutayfah") around 40 kilometres north-east of the city centre on the motorway heading towards Homs. He had heard from a digger operator that there was another mass grave near Mezzeh Military Airport for which the Air Force Intelligence Directorate was responsible and about a cemetery operated by the 4th Division; the digger operator had excavated pits there, amongst other places. The burials which the witness was part of took place at night. They left around 4:00 or 5:00 hrs, he stated, and returned between 8:00 and 9:00 hrs.

The cemeteries were depots which were not accessible to civilians and which were enclosed – in al-Quteifa by a mound of earth around 2 to 3 metres high and in Najha by a wall around 7 to 8 metres in height. The witness stated that they had had to pass two checkpoints. There were armed security service patrols on the sites of the cemeteries. He himself had stayed away from the actual graves. However, he had

spoken to digger operators who had talked of excavated areas which were up to 6 metres deep. The drivers of the refrigerated trucks and his other staff members had also talked about the trenches which were dug and which he himself had also seen. The refrigerated trucks were bigger than a freight container, the witness stated, and approximately 11 metres long. They had each held between 700 to 750 corpses, which were stacked up inside. The trenches were between 100 and 200 metres long and between 2 and 3 metres wide; some were only 50 metres long. Each of the trenches was big enough for between 20 and 50 truckloads. When a truck arrived, the doors were opened, the corpses were pulled out and thrown into the trenches haphazardly. The stench was abominable, the witness reported. Those of his staff members who had had to handle the corpses had usually worn a gown and a mask, but the work had still made them ill. His staff reported that the corpses, which were all naked, were covered in blue impact marks and bloody wounds. They had seen the signs of torture, such as wounds resulting from electroshocks and extracted fingernails, sometimes strangulation marks, presumably from execution by hanging. Some corpses were handcuffed and shackled using cable ties. The penis of one male corpse had been cut off. There were also corpses of women and children. The witness himself had once seen a dead woman who was holding a dead child. He had nearly broken down at the sight of it.

The staff tasked with unloading the corpses also reported that some of the bodies were already decomposed and that their faces were no longer recognisable, the witness testified. This was due to chemicals having been applied to the faces, amongst other things. Some of the bodies were “burst open”; the staff saw “floods of blood and maggots” when they emptied the trucks. The witness said he could smell the stench from 100 metres away. The first time he was unable to eat anything for several days. It was only the corpses from the hospital which had smelled so badly, not those from the prison in Saydnaya, because they had been executed the same night, as an escort officer had told him. There had, the witness stated, also been cases in which the people executed were still alive and an officer had given the order to run them over with an earthmover.

The witness’s task had been to “add corpses to the lists”. He was given the lists by the officers who escorted the vehicles delivering them and the refrigerated trucks. At the

burial site the witness then entered in the documents the date, the origin of the individual corpses (i.e. the intelligence service branch) and the total number of dead as told to him. For example, he was told "Palestine Branch, put down 150!" or "Sub-branch 40, put down 100!". His staff told him that the corpses also bore a number, that is the number of the branch. He had to hand the completed lists over to an officer following the burial. Before that he made a copy which was to be passed on to his supervisor. According to the numbers attached to the corpses and the documents he was given, the corpses had arrived from all sorts of intelligence service branches, including the Al-Khatib Branch. Such deliveries of dead bodies were usually made twice a month in 2011 and 2012, the witness stated, sometimes once a month, though, or not at all.

The witness was not able to provide more precise figures for the number of victims. According to what he reported during his police questioning, between 3,500 and 5,000 corpses were delivered from the Al-Khatib Branch and Sub-branch 40 between June and December 2011. At the main hearing the witness, emphasising that he was unable to provide any exact figures, estimated that the figure was between 3,000 and 5,000 dead throughout the whole of 2011. During the preliminary investigation he had put the total number of those buried in the period between 2011 and 2017 at between 1 and 1.7 million. At the main hearing he stated that on an unknown date an officer had quoted a figure of one million dead. Based on what his staff reported, though, the witness himself considered that between two and three million was also possible.

The witness was not able to provide accurate information as to how often per week he was deployed to do this work. There were at least two regular deliveries per week from the military hospitals, he stated. Then there were also the special transports of those executed in the prison in Saydnaya and special transports after which the burials had been supervised by high-ranking officers. It was the staff he had to bring along to carry out these tasks who had to take the corpses out of the trucks, the witness stated. They were all civilian administrative staff, he reported, and were forced to work there.

(2) Owing to his still vivid memories of events, the witness was visibly moved whilst making his statement before the Division and stated that he still had nightmares about them. Because it put a noticeable psychological strain on him, the examination had to

be interrupted and continued on the next day of the main hearing. In the Division's assessment, even though the witness evidenced understandable uncertainties as regards the number of transported corpses and deceased persons and their administrative/technical documentation, this in no way affects the credibility of what he said, which is, otherwise consistent with the outcome of the investigation. The witness made discernible efforts to recall memories from years ago. His testimony before the Division was initially rather jumbled, fragmentary and generalised. However, when asked follow-up questions he was always able to provide more concrete, structured information which formed a logical picture and was consistent with what the witness had stated in the preliminary investigation. Occasional inconsistencies – for instance when the witness first stated that he was collected and driven to the mass graves and then later corrected himself and said that a vehicle had been made available to them – were of minor relevance and easily explained by the many years he spent doing his job and his changing workflows.

The witness's statement forcefully demonstrates the industrialised "processing", as it were, of people killed by the Syrian security services the longer the conflict went on in the form of their continuous collection, registration and, ultimately, disposal in mass graves which were dug over many years at considerable, machine-assisted effort. Consistent with what the witness stated, and also in view of the outcome of the taking of evidence in the "Caesar" complex (which is consistent with the processes described by the witness), the Division concludes, as regards the chronology of events, that the witness and other staff in his authority were recruited as early as May or June 2011 and that the number of corpses continually grew after that until it plateaued at a high level in the second half of 2011. It is not possible to put a concrete figure on the number of victims of the regime who were buried in mass graves. In view of the frequency of the transports which the witness reported and their capacity, however, it can be assumed that from mid-2011 there were at least 5,000 deaths per month and that the numbers likely increased after that.

cc) Witness ...[BB], a trained computer scientist and member of the intelligence service of the rank of lieutenant, worked for the Syrian general intelligence service between November 2010 and early 2012. By his own account, he initially worked in the

“Information Branch” and then, from 15 November 2010 to late 2012, in the “mailroom” in Branch 295 in the Najha field office south of Damascus.

(1) The witness testified that, from some point in the second half of 2011 which he was not able to specify more precisely, he had in the course of his work in the mailroom in Branch 295 regularly received papers listing deceased persons which were used to announce the transports of corpses. These lists were passed on to him from hospitals, for instance the Harasta Hospital or Hospital No. 601. They included the number of dead and, for each dead person, an identification number, a number to indicate the intelligence service branch they originated from and a date. The papers, the witness stated, bore the stamp of one of the forensic experts employed in the military hospitals. The names of the dead were not included. The numbers of the branches cited were mainly 215, 235, 251, 285 and 293; the numbers referred to the intelligence service branches from which the deceased originated. The lists were intended for the head of Branch 295, although the witness had also been able to read them. The lists, the structure of which the witness provided a sketch of during the main hearing, served the preparation of the burials, he stated.

The witness stated that Branch 295 was responsible for the whole region and thus also for the graves. The lists were not received on a daily basis but cumulatively for 50 to 100 people, sometimes considerably more. They were assigned to the refrigerated trucks and checked against their content. The numbers on the corpses had to be kept distinct from the numbers which were given out to those relatives who wanted to find out what had happened to the deceased, the witness stated. These numbers were chosen at random and communicated in pretence only. They were just as fake as the information which was given to the families that the victims had died a natural death. The witness also stated that the corpses transported to the mass graves had come exclusively from Damascus and its surrounding area. Most of them had come from the intelligence service branches. But corpses were also delivered straight from the Mezzeh, Tishreen and Harasta military hospitals.

Between 50 and 300 corpses were taken early in the morning (around 4:00 hrs) in refrigerated trucks to preprepared mass graves excavated by diggers near Najha, which the witness identified on a satellite map. Between April 2011 and January 2012

the lists to which he had access had included more than 8,400 dead. There were two mass graves, he stated. One was primarily for people who had been executed and for fallen soldiers. Another was reserved for those who died in the intelligence service prisons. The witness stated that he had not had direct access to the mass graves. However, he was able to watch the diggers excavating them from an elevated position in the cemetery. The area was cordoned off and separately guarded "by Iranians". The drivers of the trucks transporting the corpses had special authorisation to pass through checkpoints.

(2) The Division considers this witness, too, to be credible and his statements to be believable. The witness reported openly about his career within the intelligence service, including that he had wanted to study to become an officer but had not been accepted. By his own account, the witness was reticent to testify on account of pressure being exerted on his family. However, when he was asked follow-up questions he was, although sometimes laboriously, then repeatedly able to provide detailed information which was consistent in itself and concurred with the outcome of the taking of evidence as to the fate of those killed and their documentation. The witness was able to pinpoint the exact location of the mass graves on aerial photographs. The local conditions are consistent with the analysis of satellite images conducted by the Federal Criminal Police Office. Further, at the main hearing the witness was able clearly to explain the sketches he had already made during his police questioning relating to the location of Branch 295 and the mass graves. Besides, in contrast to what he stated regarding his acquaintanceship and meeting with the Defendant (see V. 1. c) below), there were otherwise no substantial discrepancies compared to what he stated during his questioning by the police.

However, the discrepancies as to the Defendant himself do not undermine the credibility of the witness's testimony, since the Division gained the certain impression that he had kept other facts concerning the Defendant a secret for fear of what would happen to his relatives given the targeted threats made by members of the Defendant's family, which he described in detail (see VI. 1. c), p. 161, for details). Further, based on the totality of information provided by the witness, the Division takes as its basis that in addition to his office job in a mailroom he was also responsible for receiving reports about the delivered corpses for further administrative processing.

(3) The information provided by this witness, too, confirms the picture that the corpses of killed detainees from the intelligence service branches were amassed at central locations, in particular the military hospitals, where they were recorded before they were loaded onto refrigerated trucks or other vehicles, driven to mass graves and buried there. The lists of the dead to which the witness testified and which obviously originated from a forensic expert or his office fit with the photographic record provided by the “Caesar Files” and the bureaucratic documentation of those killed which it likewise evidences.

dd) Witness ...[Y], a former employee of the Syrian General Intelligence Directorate who worked in a documentation office in Kafr Sousa operated by intelligence headquarters in 2011 and 2012, stated that numerous people died in the intelligence service prisons. He knew that to be the case in Branch 285 in particular. He had seen corpses in the Branch’s courtyard. There were refrigerated trucks in which corpses were transported, he stated. The bodies came from the intelligence service field offices, were collected there and taken to an “administrative centre”. The witness learned this from talking to colleagues, he said. Besides, a register of deaths was kept which was only intended for the administration. The witness stated that the dead had been treated in this way “since the start of the uprising”, which he said was March 2011. He also saw corpses in the military hospital in Harasta. They were just lying around on the floor, exposed to the sun, he said. One of the corpses had visible signs of torture. Relatives were usually not informed when someone had died, the witness reported. Enquiries were either ignored or answered to the effect that the person had never been detained. Relatives were also sometimes falsely informed that prisoners had died of a natural cause.

As already presented in the above (see III. 1. c) bb), p. 78), the Division critically assessed the testimony given by Witness ...[Y] on account of his possibly being influenced by others and his tendentious self-exculpatory statements. Nevertheless, the aforementioned particulars are consistent with what he stated in the preliminary investigation. They are detailed and in keeping with what he was able to learn in the course of carrying out his duties. The Division therefore takes them to be true and uses them as its basis.

ee) Finally, Witness Z 28/07/16, a former employee in the General Intelligence Directorate, also stated that people who died in the intelligence service branches were taken to hospitals and stored in refrigerated trucks there. When they ran out of space, the bodies were simply thrown onto the ground. Certificates were issued stating that the people had died of an illness. Lists were drawn up, the corpses were each marked with a number, photographed and then taken to mass graves. Hardly any of the corpses were ever handed over to their families, the witness testified.

c) The analysis of aerial photographs of the region around Damascus which was done by the Federal Criminal Police Office is consistent with the aforementioned witnesses' statements and with the large number of dead to be buried which also follows from the "Caesar" complex.

According to Witness ...[MM], who was involved in the investigation, after Witness Z 30/07/19 gave testimony aerial photographs were inspected for signs of the mass graves which the witness had said were in al-Quteifa. The witness had indicated to the Federal Criminal Police Office its location on a section of a map, at the coordinates 33.756887 and 36.603874. Satellite and aerial photographs of the area in question which are available on Google Maps and Apple's image service were then secured; an area which had been worked on was visible on these photographs. Some of the area, which was enclosed by earth deposits, had been levelled and some of it had mounds of earth on it. On the right-hand (eastern) side of the higher resolution images provided by the Apple service it was possible to make out what was likely a digger and a long, narrow pit which, according to the indicated scale, was around 100 metres long. The Division convinced itself of this fact by inspecting the images, to which reference is hereby made pursuant to section 267 (1) sentence 3 of the Code of Criminal Procedure (case files Vol. III. 5, p. 483–485 regarding images 1 to 6).

The Division is conscious of the fact that the evidential value of these images is diminished because, as Witness ...[MM] also testified, it is not possible to establish when they were taken. The witness, however, also testified that the Federal Criminal Police Office had commissioned the German Aerospace Centre (*Deutsches Zentrum für Luft- und Raumfahrt*) with conducting a time series analysis. The analysis included a photograph dated January 2016 which was almost identical to the secured images,

meaning that it could be assumed that the photographs were taken around the turn of 2015/16. The time series study also showed that pits which had been dug over the years had again and again been filled in, others had been dug and a wall had finally been erected around the area. The pits were up to 120 metres long and between 3 and 5 metres wide. It also emerged that the worked area increased in size from 19,000 square metres in 2014 to 40,000 square metres in August 2019.

The Division is convinced that these are the mass graves which the witnesses described. The photographs provide proof of their existence at least from 2014 on and circumstantially confirm the information provided by the witnesses relating to the period before that. To the extent that no structural changes could be determined in the area in the period before 2014, this does not contradict what the witnesses stated, especially since, according to Witness ...[MM], there was a second, considerably larger, area close by which had not yet been investigated.

d) The Division evaluates the outcome of the taking of evidence presented in a) to c) above to mean that the Syrian regime was responsible for the deaths of a growing number of people who were killed during protests and in prisons and intelligence service branches in the period after April/May 2011 and that it wanted to “dispose of” them in secret on a massive scale, thereby disregarding the peace and honour of the dead and the individuality of the deceased. Documenting those killed did not serve their individualisation but was merely a bureaucratic means of controlling the implemented procedures and of preventing rescue measures enabled by corruption. This ties in with the fact that relatives were prevented from searching for people who had disappeared by being given arbitrarily assigned numbers. The evidence fits seamlessly into the chronological sequence of the conflict’s escalation. It proves that, in line with the instructions which the leadership handed down to the security authorities and which were implemented by them, from late April 2011 at the latest violent action was taken against protests by the civilian population, leading to a rapidly growing number of fatalities.

4. Military hospitals

Proof that the military hospitals in Harasta, Tishreen and Mezzeh were also involved in the ill-treatment of those who were detained and that they at the same time served

as collection and documentation points for those who were murdered in various intelligence service branches is provided in Expert Witness ...[Th]'s presentation, in particular, though, by the outcome of the taking of evidence presented in the above regarding the origin and subject of the "Caesar Files". Further, Witness ...[N] described his own torture and the ill-treatment of other prisoners who were taken to Harasta Military Hospital. Witness Z 30/07/19, who was present when those who were murdered were buried in mass graves in the vicinity of Damascus and who added the dead to lists, described the military hospitals as the origin of the corpses. Witness ...[T] testified that prisoners who survived had reported that detainees who were sick were taken to military hospitals, tortured and murdered there. It depended on the geographical location, the witness stated. As Branches 215 and 248 were close to the military hospital in Mezzeh, injured and sick people as well as corpses were taken there. Branches 251, 227 and 235 were closer to the hospitals in Harasta and Tishreen, which was why they had then been responsible for them.

IV. Re the findings as to Branch 251 and Sub-branch 40 of the Syrian General Intelligence Directorate

1. Branch 251

The Division used the statement provided by the Federal Intelligence Service dated 16 June 2016 as the basis for its assessment as to how Branch 251 fit within the organisational structure of the Syrian General Intelligence Directorate. As regards the Branch's remit, its real estate properties, the prevailing conditions of detention and the treatment of prisoners in the course of the conflict in 2011 and 2012, the Division drew on the information provided by former employees of the regime and statements made by expert witnesses who worked as publicists or were members of the opposition. It was on the basis of either their work within the Syrian intelligence service or the Branch itself or based on knowledge acquired by other means in the course of their many years of political or media activities that these witnesses were able to provide detailed information on the modus operandi of Branch 251 and the conditions which prevailed there. Further, the Division used the statements, already presented in the above, made by the Defendant during his police questioning as a witness concerning the observations he made relating to the Branch as the basis for its assessment.

The information provided by a large number of witnesses detained in Branch 251 was of key importance over and above that. Based on their own observations, these witnesses were able to give the Division a powerful, often devastating, insight into the conditions which prevailed in the Branch and how those detained there were treated.

a) In sum, former employees of the regime testified as follows before the Division:

aa) By his own account, Witness Z 28/07/16, who was examined anonymously, worked in an unspecified office of the General Intelligence Directorate for 21 years. He provided comprehensive details concerning Branch 251's organisational structure and remit.

(1) According to the witness, Branch 251 was one of the General Intelligence Directorate's central branches responsible for the province of Damascus. Besides its branch number, it was also referred to informally as the "Al-Khatib Branch" and "Internal Branch". It was a security branch responsible for Damascus and Rif Dimashq. The branch had diverse other responsibilities beyond that, too, the witness stated: There were various sub-branches, such as those responsible for interrogations, students, workers, political parties, weapons, religions; an economic sub-branch; a sub-branch responsible for the security of ministries; and Sub-branch 40, which was responsible for patrols. Further, the witnesses stated, there was also an external sub-branch and field offices across the regions. Essentially, its objective was to monitor political parties and groups, including by means of infiltration, and to engage in preventative work so that they were unable to harm the government. Whilst the other branches of the General Intelligence Directorate were housed in a single complex of buildings in Kafr Sousa in Damascus, Branch 251 was the only one to be based elsewhere, the witness reported. It was close to the Red Crescent Hospital. Historically, it had been under the leadership of Major General Mohammed Nasif. According to the witness, he was succeeded by Lieutenant General Tawfiq Younes, who he believed was still in charge today. Branch 251 operated independently, the witness stated, although formally it was part of the central branch of the General Intelligence Directorate. The witness drew up an organisational chart of Branch 251 to which he added the names of the respective senior officers.

Branch 251, including its field offices, had between 2,500 and 3,000 employees, the witness further stated. It employed around 50 interrogators who worked in shifts. Interrogations were carried out continuously throughout the day and night. The Branch had various prisons, the witness reported. A distinction had to be drawn between the central prison in the basement of the branch and prisons located elsewhere. The latter were assigned to the sub-branches, which were responsible for arresting people who were then eventually taken to the Branch. Branch 251 had the worst reputation in the whole of Syria. That had always been the case, even before “the start of events”, and was still the case.

According to the witness, suspects were specifically taken to Branch 251 so that they could be interrogated there. Its role was similar to that of Branch 285, the central interrogation branch for the whole of Syria. It was where the investigative work done by all the cities and governorates in Syria was collated and then shared with the head of the intelligence service, Ali Mamlouk. Accordingly, prisoners were sometimes transferred from Branch 251 to the central branch so that investigations could continue there.

The hierarchy within a branch was such that there was a head of branch, a deputy head of branch and a head of the interrogation sub-branch; interrogators were lower down in the hierarchy. Torture was ordered by the respective head of the interrogation sub-branch, who was in turn given orders by the head of branch. According to the witness, where this was done in writing, coded wording was used, such as “rigorous interrogation methods”. At the end of the interrogation a decision was taken about what was to be done with a prisoner, that is whether he was to be taken to a prison or whether further investigations were necessary. The interrogator submitted a suggestion to the head of branch.

The prisoners detained in the prisons belonging to Branch 251 were treated in a similar way to those held in other intelligence service prisons. A “welcome party” was held when they arrived, the witness stated. This meant that whoever was arrested was beaten and kicked by every member of staff from when they were arrested until they arrived in their cell. The means of torture applied in Branch 251 were similar to those used in other facilities, the witness stated. Syria did not apply the principle of innocent

until proven guilty; everyone was guilty from the outset. If an interrogator did not like an answer, then torture was inflicted. You could say that there was not a single interrogation of a detained person either in Branch 251 or in Branch 285 which did not involve torture. The outcome was a foregone conclusion, the witness stated, which was merely supposed to be confirmed by the interrogation. Prisoners had no civil rights whilst they were in the branch. They were, for instance, only allowed to use the toilet if a guard gave them permission to do so. Prisoners often soiled themselves as a result. Sick or injured prisoners were not treated, the witness reported. They were left lying until they died.

(2) The Division largely uses the witness's testimony as the basis for its assessment. Owing to the danger he was in, the witness was permitted not to provide any details which could reveal his identity, and he thus made general reference to his knowledge being based on his many years of working for the intelligence service and to the fact that he himself had observed the conditions of detention which prevailed in the branch and certain orders issued by decision-makers. In view of the comprehensive and detailed information he provided, the Division is nevertheless not concerned that the witness gave false testimony, specifically that he may have played down or artificially dramatised the conditions. As regards the witness's report of the appalling conditions in the intelligence service branches, he provided additional details which were confirmed by many other witnesses, both those close to the regime and those critical of the regime. The Division only treated with caution the evaluative statements which the witness made, for instance when he described Branch 251 as the "most terrible" in the Syrian intelligence service, especially since such ascriptions conflicted with other things he said, for instance that the intelligence services' *modi operandi* had become aligned over the course of the conflict.

bb) By his own account, Witness ...[AA] was an officer in Branch 251's guard units and thus responsible for some of the guards deployed there. He worked there in 2011 and 2012 until he deserted on 5 August 2012. His task was to guard the outside of the branch. In the course of his work he had got to know officers working inside the branch. He had also seen the prisoners being brought there.

(1) According to the witness, Branch 251 is the general intelligence service's security branch which is responsible for Harasta and Douma, amongst other cities. The witness provided precise details as to where the branch was located on Baghdad Street in Damascus near the Red Crescent Hospital. The property was enclosed by a wall; there was a checkpoint and a barrier at the entrance, he stated. As the witness explained using a sketch, the branch covered a large area which included parking for staff and an inner area comprising two multi-storey buildings and a courtyard. The buildings housed the sub-branches. Those in charge of the interrogation sub-branch had offices above the prison, which was in the basement. The witness also provided details about those who were in charge of the branch and sub-branches.

After the start of the unrest, the number of employees, which the witness put at between 80 and 100, doubled. The witness initially stated that this was in late 2011, but after further consideration said it was March 2011 and that the number of prisoners taken there increased in April 2011. From that point on, between one and three vehicles had arrived daily, he stated. From the start of the unrest prisoners who were arrested at demonstrations and taken to the branch in buses were subjected to beatings on the square in front of the branch for between half an hour and up to four hours. Instruments such as batons and tasers were used, he reported. When the latter were used, prisoners simply fell to the ground. The detentions and admissions did not stop throughout the entire period of unrest.

The witness stated that when he was on duty and he crossed the courtyard to go to the canteen or to a dormitory he heard cries of pain through the cellar windows in the underground prison and those who were being tortured pleading for the ill-treatment to stop ("For pity's sake, I didn't go anything"). On occasion he also saw a blindfolded prisoner walking across the square with a guard. A friend had told him about the conditions in the prison, which he had himself never been in. The witness himself had not seen the torture which was taking place in the offices or in the basement, he stated. However, he had heard told that the prisoners were beaten and treated badly in other ways too. They were in a catastrophic state when they were released. He also once witnessed a lifeless person being taken away during the night.

Prisoners had arrived from Douma, too, almost on a daily basis. The witness remembered one occasion in particular when arrested demonstrators came in from Douma in buses which seated 15 to 20 people. There were also times when up to 40 people were crammed into a bus on arrival.

(2) The Division also largely based its assessment on the information provided by this witness. To the extent that it was based on what he himself experienced, the witness vividly described things and at the same time plausibly justified why he – a guard deployed outside, though in a senior function – was not able to provide any extensive particulars. His statement thus to a large extent corresponded with the information which he had already given during his hearing before the Federal Office for Migration and Refugees – as relayed by Witness ...[NN] – and during his questioning by the Federal Criminal Police Office – as relayed by witnesses ...[OO] and ...[P]. The Division was not able to accept the witness's estimate as to how many people were working in the branch. This is already hardly compatible with the size of the building and the number of sub-branches housed in it and also stands in contradiction to the more plausible information provided by Witness Z 28/07/16.

cc) Witness ...[Y] is a former member of the intelligence service with 30 years of experience working in the Syrian general intelligence service, including 13 years between 1985 and late 1998 in Branch 251 (see III. 1. c) bb) above). He stated that Branch 251, which he described as the “internal branch”, was headed by Major General Tawfiq Younes in 2011 and 2012. The former Co-Defendant ...[K] was head of the interrogation sub-branch. According to the witness, the Branch had property which comprised two building complexes in the centre of Damascus on Baghdad Street near a hospital. The prison was extended in 2011. The witness described in detail the multi-storey building complex and the allocation of the offices belonging to the sub-branches there. In the course of his archiving work he had seen the minutes of meetings held in Branch 251 containing proposals regarding the arrest and treatment of detainees. Sometimes the “continuation of detention” was proposed, sometimes the coded wording “expand the interrogation” was used. Occasionally an order was given to release a detainee. The witness also explained a sketch which he had drawn in the preliminary investigation and used to recount a typical report drawn up in Branch 251. A report included the following, for instance: “It was determined that [name] participated

in demonstrations.” This was followed by a summary of the outcome of the investigation across several pages which was to be passed on to the head of the branch. It concluded with the proposal that detention or imprisonment continue. There was no explicit written instruction to apply torture, only to gather information “by whatever means”. Torture was undoubtedly used in Branch 251, the witness stated. He also recalled two deaths.

The Division held the witness’s aforementioned statement to be true despite the specifics already described in the above (see III. 1. c) bb)) and drew on it for its assessment. For example, the witness had initially given contradictory testimony and was, on the one hand, able to recall certain documents concerning the former Co-Defendant ...[K] – which by his own account had passed through his hands and the content of which he was able to recount – but, on the other hand, when asked generalised follow-up questions by the Division as to whether interrogation records had also passed through his hands, he had claimed a general lack of ability to recall such things on account of the large number of documents. However, after discussing the reasons for this behaviour, the witness was prepared to provide further particulars and testified as to details contained in documents relating to Branch 251 which he had initially allegedly not been able to remember but which he was then able to present in detail, consistent with what he had stated in the preliminary investigation, and was able to further explain when asked follow-up questions. The Division thus assessed the information provided as based in fact. It also regarded the detailed description of the site, its structural features and the organisational structure of Branch 251, which the witness described, as based on his own observations, since it was provided in as much detail as and consistent with statements made by other witnesses.

b) In sum, other witnesses who also acquired expert knowledge based on their work and experience testified as follows:

aa) Expert Witness ...[S] also testified as regards the “Al-Khatib” Branch. He stated that the branch was one of Syria’s most important intelligence service branches and to all intents and purposes had its fingers in every pie. The head of the branch was one of the President’s key confidants. The witness sought to prove this using an example, namely original documents in which an official in the branch had banned a sizeable

cultural event shortly before it was to start although it had already been authorised. The witness had been issued with a travel ban by the branch. Employees in the branch had also prevented him from being re-admitted to practise as a lawyer. The branch was tasked with guaranteeing political security by broadly controlling all areas of life, he stated, for instance by having sub-branches which were responsible for political parties and students. Employees in the branch were already being deployed to deal with sit-ins and demonstrations in February and March 2011, the witness reported. Torture was used continuously in the branch. The witness cited the *dulab* method (being forced into a tyre and beaten) as an example.

bb) Expert Witness ...[T] testified that Branch 251 had executive functions and was responsible for arrests and interrogations. It was a branch of the state security with 10 sub-branches in the provinces and other sub-branches which were responsible specifically for Damascus and Rif Dimashq. The expert witness stated that the branch was the intelligence services' internal administration and had a coordinating role. Tawfiq Younes, a loyal leader, was its head, he stated. Branch 251 and its sub-branches were responsible for most of the arrests made.

By contrast, Branch 285 was the central interrogation branch, the witness stated. That was where most of the prisoners were transferred from Branch 251. As he, the witness, had himself been detained in Branch 285 for a while, he had noted the terrible condition the prisoners were in when they came from Branch 251. Clients had told him, in 2011, about the terrible conditions there and about the fact that a large number of prisoners were taken to Branch 251, sometimes 500 a day. He in particular recalled one report, according to which a group of imprisoned women were humiliated by having to sit naked in an area where they were visible to everyone. The witness was also able to describe the location and structure of the branch on account of himself being detained there on several occasions in 1978, 2005 and 2006.

cc) By his own account, Witness ...[U] was himself kept under observation and arrested by Branch 251. The "Al-Khatib Branch" was, he said, the branch responsible for internal matters. Its task had been to keep an eye on the activities of important people, in particular business people, and to stop those who were out of favour engaging in political activities. This was something he himself had experienced. The branch was

originally established by Mohammed Nasif, who was close to Hafez al-Assad, and had been used to exercise control and obtain information by infiltrating government ministries. The branch had also been responsible for monitoring the chambers of trade and industry.

It was, the witness stated, a well-known fact that torture existed in the branch, as it was in the other intelligence service branches. When he was himself detained there in February 2006, the witness had seen implements of torture such as sticks, whips and equipment used to hang people up. He himself had been taken to a room in which people had suffered torture. This had been a tacit warning to him. The witness also described the location of the branch on Baghdad Street in Damascus and said that it was very well known amongst people living in the city. At the start of the protest movement in spring 2011 he had himself witnessed the head of the branch, Tawfiq Younes, drive up to a rally in front of the Ministry of the Interior and address him.

dd) Expert Witness ...[W] reported that Branch 251 was well-known in Syria and that the people he had talked to as part of his research had been afraid of ending up there. It was also a well-known fact that the branch was not designed for prisoners to stay there for a long time but that it was only supposed to serve as a way station.

c) As an interim conclusion, the Division assesses the above statements as follows:

According to the details provided by the aforementioned witnesses, which are in essence consistent, Branch 251 had a special status within the overall organisational structure of the Syrian General Intelligence Directorate. This was already outwardly visible on account of its size and the fact that it was located on a separate property and not together with the other branches of the general intelligence service based in the Kafr Sousa district of Damascus, and not least that it was well-known amongst the Syrian public, as is consistently reported. Whilst the entire general intelligence service was established to uphold the existing power structure, Branch 251, with its executive functions and investigative and coordinating tasks, had wide-ranging competences when it came to monitoring society as a whole. Its core task was the surveillance and suppression of anti-government endeavours across the whole of society. Accordingly, the branch played a key role when it came to crushing the Syrian protest movement. The branch was, at least in Damascus and Rif Dimashq, involved in receiving and

interrogating those arrested, then passing them on to other agencies, in particular to Branch 285 at the General Intelligence Directorate's headquarters.

It can already be assumed, based on the consistent statements made by the above-mentioned witnesses, that systematic torture was applied in the branch using the available equipment and based on well-practised cooperation across all levels in the hierarchy, and that those who participated in demonstrations who were taken there were regularly subjected to ill-treatment, sometimes over long periods, when they arrived in the courtyard. The individual statements paint a picture which is consistent with the outcome of the taking of evidence as to the general evolution of the conflict, namely that prisoners were subjected to deliberate humiliation and ill-treatment in the branch in order to deter them from ever taking part in protests again. The multitude of admissions which the witnesses described are consistent with the increase in the number of arrests following the suppression of the protest movement from March 2011 on and permit the conclusion that the cells in the branch were massively overcrowded. Taken together with the outcome of the taking of evidence as to the general course of the conflict and the violent quashing of the protests which was coordinated by the upper echelons of the Syrian machinery of power, the branch, a prominent institution within the Syrian security authorities, fit into processes which were directed against the civilian population. Based on the branch's central importance and its involvement in the conflict, the Division is also convinced that the decisions taken by the coordinating office, the CCMC, reached the branch and were implemented by it.

d) The witnesses ...[EE], ...[FF], ...[PP], ...[DD], ...[GG], ...[N], Z 25/11/2020, ...[QQ], ...[RR], ...[SS] and Z 13/01/2021, who were all detained in Branch 251, specifically gave detailed testimony relating to the prevailing conditions and the use of torture there, as well as to the layout of the branch, with its prison in the basement.

aa) The Division saw no reason to doubt the truthfulness of the statements made by any of the witnesses examined at the main hearing. All the witnesses, some of whom had to deal with the serious consequences of their traumatising detention and ill-treatment, gave detailed testimony regarding their abduction and the conditions in Branch 251, and their testimonies are to a large extent consistent with what they stated in the preliminary investigation. Any uncertainties which arose in relation to details of

the witnesses' usually long period of detention (e.g. the order of the cells) can be explained by the passage of nearly 10 years since then and by the things the witnesses experienced and had to process. These uncertainties did not give cause to doubt any of the witnesses' recollections, since what they recalled essentially did not change and was consistent with the testimonies of the other witnesses. Where the witnesses were not able to specify when and in which facility they made certain observations, then given that they were arrested on several occasions or successively placed in different detention facilities, the Division did not ascribe the relevant part of the statement to Branch 251. The majority of their descriptions were characterised by an astounding level of objectivity and were based on no vindictive motivation. By the same token, the majority of the witnesses were visibly moved when they recalled the life-changing experiences they had in detention. In some instances the main hearing had to be interrupted so that the witness under examination could collect themselves and continue giving their testimony.

The Division is certain that each of the witnesses was in fact detained in Branch 251, since when they were asked about this they were able to back up why they were able to identify it, that is either based on their own knowledge of the site in the centre of Damascus or on account of information given to them by other prisoners during their detention. Also, all the witnesses drew sketches of the extensive underground prison in Branch 251, with its row of individual cells, several fairly large communal cells, interrogation rooms and an open, central area. The Division was able to examine and the witnesses were able to explain these sketches. Both the male and female witnesses stated that women and men were housed separately in the branch. The witnesses also all concurred in testifying that relatives were not informed about their whereabouts. Those witnesses who were examined anonymously did so because those of their relatives who are still in the government-controlled part of Syria had been threatened with repressive measures if the witnesses gave testimony in the present proceedings. Other witnesses, too, who were not examined anonymously reported that they had cause for such concerns.

bb) More specifically, the witnesses testified as follows, in sum:

(1) Witness ...[EE], a Syrian director and documentary filmmaker, was arrested in August 2011 after having earlier been detained with the Air Force Intelligence Directorate. After various stopovers, he was detained in Branch 251. Although the witness had, in the course of his police questioning, stated that he had been detained in October 2011, he later corrected himself when he remembered that he had spent his birthday in the branch, which was on 20 September. He was arrested on account of statements he made which were critical of the regime and documentary films he had made about the military and intelligence services using force against the civilian population. After he was arrested at the airport in Damascus shortly before planning to flee the country following a tip-off, he spent time in transit in various other intelligence service branches before finally being taken to the “Al-Khatib Branch”.

The witness stated that he spent some of August and the whole of September 2011 in the branch, that is around two months in total. When he arrived as part of a collective transport he was abused by being punched and hit with rifle butts in the courtyard of the branch during a “welcome party”. Amongst other things, someone held on to his head whilst he was punched in the face. After that he was detained in the prison in the basement. There was an area there for torture from where there had been constant screams “that weren’t normal”, he testified. He himself was beaten with bare hands and batons (“my whole body was bruised”) and then taken to an overcrowded communal cell measuring an estimated 30 square metres in which there were 200 to 300 people. The witness stated that he spent two to three days there; the rest of the time he spent in isolation in a small single cell. He recalled fellow inmates who had serious injuries, for instance a very old man who had been beaten up (“blood everywhere, his body swollen”) and a 14-year-old boy who was taken away and then brought back with his feet bleeding. Other prisoners suffered even more severe injuries to their feet and back, and their faces were swollen, too, the witness testified. There were people who were sick but were not given any medical treatment and who were no longer able to move. His fellow inmates had tried to stop the bleeding as best they could once people were brought back after being tortured. Most of his fellow inmates in the communal cell had injuries, he stated; you could see the consequences of the torture all over their faces. Some suffered broken bones. Detainees also had breathing difficulties on account of the stuffy air, the witness stated. Some people were half-dead.

There were prisoners lying motionless on the floor in the corridors. The witness had constantly heard the screams of those being tortured, including women and adolescents.

The witness was, he stated, taken away for questioning on the second day and was able to see, through the thin blindfold he was made to wear, that there were people lying on the floor who were being beaten up and that some of them were no longer moving. He was interrogated in the basement, where he was made to kneel and keep his head down. He was asked about the films he had made which were critical of the regime. He was not yet beaten, but threatened with being beaten, he stated. Also, he had heard the screams of other people being tortured coming from “all sides” of the open interrogation area. Immediately after this interrogation he was beaten up, the witness testified, then shackled and tortured nearly every day. During his second interrogation, when he was no longer asked any specific questions, his back and feet were beaten with a cable. On another occasion he was hung up high enough so that only the tips of his toes touched the ground. He was beaten whilst in this position and eventually lost consciousness. The witness stated that he still had problems with his legs on account of this ill-treatment. Other prisoners told him that they had suffered similar things. They reported about the *dulab* (tyre) method, too. Once, when he was lying on the floor, a stick was thrust into his anus. This caused significant damage and he subsequently had to undergo surgery. The choice and sequence of torture methods was arbitrary: “Blows to the legs, thighs and lower legs, blows with cables to the hands, back, legs. Blows to the feet with a baton, kicks.” Once he had been jumped up and down on. Cable ties were tied so tightly round his wrists that he later started having problems using his hands, the witness stated. Although he was hardly able to walk on account of suffering blows to the soles of his feet, the guards had forced him to do so. The only clothing he had had on during his period in prison were his underpants. The witness thought that the staff there were given broad leeway to do what they wanted with the prisoners.

As regards the general detention conditions, Witness ...[EE] testified that the prisoners were given far too little food and that some of it was rotten. They were given olives, potatoes and bread, which was often mouldy. Everyone in the communal cell had to sleep sitting up. As there was not enough space, some of the prisoners fell asleep

standing up and then fell over. They were only allowed to go to the toilet at specific times, the witness testified. The rest of the time they had to hold it in. When the witness had once knocked because he needed to relieve himself he was beaten. The supply of water came from the toilet, he stated. The guards counted and then you had to decide whether you wanted to use the water out of a hose to wash or whether to drink it. The air in the cells was very bad, the witness testified. It stank of blood and mould. There was no medical care, and the prisoners had to improvise to help each other out. There was no daylight in the communal cell; only the single cell had a small window. The witness testified that he constantly thought he would be executed and that his time in prison caused him mental health problems.

(2) Witness ...[FF], a blogger critical of the regime who was active in Syria up until 2011, was arrested on 24 October 2011 and, following a stopover in Sub-branch 40, was taken to Branch 251, where he spent between 10 and 15 days until he was transferred to Branch 285. He was not, he stated, beaten whilst being admitted (alone) to Branch 251. The cell in the basement which he was detained in measured 2.5 by 3 metres. There were initially 12 to 20 people in it, later 25 people. The cell was so overcrowded, the witness stated, that you had to “dovetail” so as to be able to sleep. Later it was only possible to sleep lying on one’s side. The prisoners drank the water in the toilet, he said. They were given food twice a day, though only very meagre portions. The food they were given for 15 people was only enough for five people at most. They were given rice, olives and small quantities of jam, all of bad quality. As there was no daylight in the cell, only artificial lighting which was kept on at all times, it was impossible to tell day from night. The first thing the other prisoners asked him when he arrived was what time it was.

The witness stated that he had to kneel with his eyes blindfolded throughout his six interrogations in total. Whenever the interrogator was not satisfied with an answer he gave he received blows to the soles of his feet and to his back, either with a belt or a four-wire cable. On one occasion he was beaten in this way before the interrogation as a form of intimidation. He was interrogated about his job; several of the interrogations had taken place in a corridor in the basement, though twice also in a separate room in the presence of an officer. On one such occasion the officer had said to the guard: “Either you get the names out of him or you’ll go in his place.” After being

beaten, his feet had swollen up and were extremely painful for a long time. He was unable to walk, the witness stated. Once he was taken to a torture room without a blindfold. There was a table and military bed inside and “dozens of torture instruments, military belts and batons”. An interrogator had entered the room holding a pair of pliers. The witness said he knew from his fellow inmates that they were used to pull out people’s fingernails. But that had not happened to him, the witness stated. He was no longer able to say whether – as he had testified during his police questioning in October 2018 – he had seen the rings used to hang people up in Branch 251 or in other detention centres. There had also, the witness testified, been arbitrary group punishments, for instance if someone in the cell talked without permission. The guard had then come in and ordered everyone to turn to face the wall; he then proceeded to beat the prisoners, especially on their feet.

The other prisoners were treated in the same way as he was, some of them worse, though. Some of them had bleeding feet. The witness himself saw a prisoner being ill-treated for quite a long time out in the corridor, he stated. Prisoners were made to kneel for days on end, were doused with water and beaten in passing. That was something he had observed through an air vent in the door. As a result, the prisoners’ knees became infected. The wounds on one fellow inmate’s knees were so bad that you could see his bones sticking out. Cables with exposed copper wires at the end were deliberately used to hit people, causing flesh to be ripped out of their bodies. There was no medical treatment, the witness stated. There was only someone who had come by and handed out paracetamol, sometimes an antibiotic. The witness stated that his fellow inmates were aged between 16 and 70. He had also heard female voices in other rooms.

The witness testified that he was transferred when the subject of the interrogations became more complicated, when it concerned his acquaintances with other members of the opposition, for instance. He was taken to Branch 285, the main interrogation centre. He was tortured there, too. In the end, he was transferred to the prison in Adra.

(3) Witness ...[PP] was detained on several occasions in different security authority facilities, including twice in Branch 251. The first time, which was sometime in August

2011, he was kept in the branch for several days, though he was not able to say exactly when that was.

The witness stated that he was a civil servant in an administrative branch and also ran a shop in the town of Al-Zabadani. He was arrested at a roadblock there under false pretences, that is for smuggling Israelis into the country and being on the run. He was first taken to the State Security sub-branch in Al-Zabadani, where there was a small prison, then to the 4th Division, on arrival at which he was made to walk between two rows of soldiers, who hit him and kicked him. Finally, he and other prisoners were taken in buses to the Al-Khatib Branch. Whilst being interrogated there he was initially shackled and made to kneel down with his eyes blindfolded. Owing to his being a civil servant he had, however, then been allowed to take off both the shackles and the blindfold. Because the interrogator recognised him, he was released shortly afterwards, the witness stated. During his period in detention he was aware of other prisoners being interrogated and beaten; you could tell when they returned to the cell. They were hardly able to walk and had wounds on their back. The *dulab* (tyre) method was used as a means of torture, too, he testified.

The witness was no longer able to say exactly when he was detained the second time in Branch 251, only that he remembered being released in early 2013. He had been in an extremely bad state afterwards, unable even to remember his own name. The witness, who appeared very anxious during his examination by the Division, felt unable to continue answering questions. They were “like riddles” to him. The witness stated that he feared for his family, who had stayed in Syria.

(4) Witness ...[DD] was detained in Branch 251 from 2 to 16 May 2011 and from 12 to 19 April 2012. During her first period in detention she was repeatedly beaten, she stated. This was “normal” there even though no specific orders had been given to that effect. She was beaten with bare hands; on one occasion a taser was used on her, she said. The witness stated that she was interrogated about the organisers of a demonstration she had taken part in and that she was beaten from behind during the interrogation if they did not like the answer she gave. She was detained in the basement in a tiny single cell measuring 60 by 170 to 190 centimetres (“as big as a grave”). It was impossible to tell night from day; artificial lighting was kept on all the

time. She had constantly heard the screams of prisoners being tortured (“terrible voices, and the whip striking the body”). She had heard one person say “I’ll tell you everything”. Shortly afterwards, though, the person had again been hit. On another occasion someone had been carried out of an interrogation room. The witness herself was shackled and interrogated in the basement of the branch with her eyes blindfolded on several occasions. She was only permitted to go to the toilet once a day, and was insulted and beaten whilst doing so, she testified. On one such occasion she also saw men being beaten with iron bars. Female inmates had talked about being sexually harassed, she stated.

They had been given bread and olives to eat, though much too little. The witness stated that she was unable to eat any of it. She vividly described how one lived in a constant state of fear: “You’re in a grave, can’t see anything, have no contact with the world outside, you only hear the screams of people being beaten.” Sometimes the other prisoners were no longer able to handle it all and broke down. Fellow prisoners had told of their torture using the *shabeh* (hanging up) and *dulab* (tyres) methods and electric shocks. Cigarettes were stubbed out on one prisoner’s knee, the witness testified. One of her acquaintances was still unable to walk six months after spending time in detention there. The hygiene conditions had been atrocious. There were insects everywhere, the witness testified, and the detainees had developed skin conditions; there was no soap. The witness said that she had to use her socks as sanitary protection.

Following her second arrest the witness was slapped across the face on arrival in the courtyard in the branch. She was threatened, saw a room which stank terribly and in which she saw instruments of torture such as cables and sticks and traces of blood on the floor and walls. Later, the loudest screams were heard coming from that room, she stated. She had herself witnessed a woman who was detained with her having to watch her (adult) children being tortured. She herself was interrogated by the former Co-Defendant ...[K] on the top floor of the building, she testified. The conditions of detention and torture had essentially been the same as during her first period of detention.

(5) By his own account, Witness ...[GG], a doctor and musical artist, had been an anti-government activist since March 2011, and was, he stated, arrested in Douma on 30 September 2011 together with other people whilst looking for a demonstration which did not take place owing to the strong military presence. They were picked up by members of the army, he stated, beaten whilst still out in the street and then taken by bus straight to the Al-Khatib Branch. The witness stated that he remained there for five days and was then taken to Branch 285, from where he was taken to court on 16 October 2011 and subsequently released.

The beating he received in the street was already so severe that one of his ribs had cracked, the witness testified. Those arrested were made to lie down whilst being transported to the prison. Their hair was set on fire and then put out by being urinated on. On arrival at the branch, they were made to undress in a large hall in which there were several tables and officers standing behind them and had to do a squat as a “security measure” so that their anus and genital area could be searched for concealed items.

The witness stated that he was placed in a cell measuring between 2 by 3 metres and 4 by 3 metres. There were between eight and 10 prisoners in it. He had been in a great deal of pain on account of his broken rib and had had a cough and breathing difficulties, too. He also had open wounds on his back and was unable to lie down because of the pain they caused. He was given no medical treatment, he stated. Daylight fell into the cell through a small skylight. The detention conditions were characterised by a lack of food – a potato and a quarter of a slice of bread per day – as a result of which he lost 17 kilogrammes during the short period he spent in detention. The witness stated that he was interrogated a total of three times on the same floor on which his cell was located. His eyes were blindfolded. During his first interrogation he had tried to only give away information about people he knew were already “toast”: “To avoid the blows, you try to give information that can do as little harm as possible to others.” He was made to lie on his stomach with his feet facing up into the air. Then he was beaten on the soles of his feet, his lower legs and thighs, always in the same place so that it hurt all the more. He was beaten with a belt, cable or hose, the witness testified. The implements with which he was beaten caused different kinds of wounds. Each interrogation lasted 30 to 45 minutes, he stated. When the interrogator gave a signal,

the guard hit him 10 to 12 times. This seemed to him to be a systematic process. His feet had swollen up so that it was very hard for him to walk; it was extremely painful. Other prisoners had told him that they had been tortured using the *shabeh* method (hanging up by the wrists).

The witness stated that he was not aware of what exactly he was accused of. It seemed to him that the aim of the torture was not to get any information but to systematically intimidate demonstrators and the population. The subsequent court proceedings had been a farce, he said. He was asked why he had been looking for a demonstration, had said nothing and was simply released.

(6) Witness ...[N], who ran a car wash in Damascus, was arrested there on 26 August 2011 during a large-scale raid. He was first taken to the “10th Division”, where he was beaten severely against the legs and back. He had suffered deep wounds, mainly on his back, which bled profusely. After a few days he was then shackled and – gagged with an aubergine stuffed in his mouth – taken in a bus with other prisoners to the Al-Khatib Branch. He remained there for four to five days, he stated.

On arrival at the branch he and the other prisoners were made to sit on the floor in a row. Then they were struck with blows. This lasted two hours, he testified. When forced to undress in the prison cellar he was given one beating for each item of clothing he took off. The detention room was overcrowded; it had 400 people in it. It was already impossible to sit down, the witness stated. As it was below ground level, it had been impossible to tell day from night. The air was stifling. There was one toilet which had a vent. People went there just to get some air, he said.

During a later interrogation he was confronted with an entirely fabricated accusation (“Why did you blow up the convoy in Homs?”), was accused of lying, dragged out of the interrogation room on the orders of the interrogator (“Take him out and educate him.”) and then beaten outside the room. The interrogator then continued to question him and, after the interrogation was over, ordered the guard to clean the floor, because it had been soiled by the witness’s bleeding wounds. Whilst waiting he was beaten in passing, he stated. Next to the interrogation room was a kitchen which was used as a waiting room. Through the window in the kitchen he was able to see more prisoners arriving at the branch. Other prisoners in the cell were taken aback by his wounds,

which bled profusely, smelled bad and oozed black blood, he stated. They had laid him down in a corner and not touched him because he was in a lot of pain. He had received no medical care. He had only been allowed out once to get some fresh air, during which he was laid down in the courtyard of the branch. During another interrogation the interrogator was unable to stand the smell of him, he testified. During his detention in the “Al-Khatib Branch” he had constantly heard loud screaming. However, that had already been the case during his stay in the 10th Division and then again in the military hospital.

Finally, the witness stated, he was taken to the military hospital in Harasta on account of his injuries. However, he was not treated there, but subjected to further and worse abuse. He was put in a vehicle and thrown out of it onto the street, where he was left, unable to move (“There were flies on my body. I no longer had the strength to shoo them away. I wished I was six feet under.”). It was only by chance that he was rescued by a taxi driver, the witness stated. He underwent several operations in Jordan to treat the extensive, deep wounds on his back. The Division was able to get an impression of the extent of the wounds by inspecting a photograph.

(7) Witness Z 25/11/2020, who was examined anonymously on 25 and 26 November 2020, was detained in the Al-Khatib Branch from 25 March 2011 to 1 April 2011 and again from 5 April 2012 to 10 June 2012. After being arrested on 25 March 2011 he and others who were arrested with him were beaten and then taken to the branch in buses. A welcome party was held there, which involved brutal beatings, the witness testified. They were made to walk along a corridor of security forces beating down on them. He himself was struck 10 times in the face with a stick, which damaged one of his eyes so that he was unable to see through it for six months. Some of his teeth were also broken, he stated. He was subsequently kicked so hard by one of the security officials in the branch that two of his ribs broke. After that he had great difficulty breathing, he said. He was taken to Al Mujtahid Hospital in Damascus for a medical examination – shackled in a wheelchair and constantly subjected to the insults of and spitting by the Branch 251 staff who accompanied him. There he was simply told that his eye was “finished”. The prescriptions he was given were ripped up in front of his eyes by the security officials who escorted him. He was detained in a room with 70 other prisoners which measured around 70 square metres. The interrogators’ rooms

were opposite it, he stated. He had constantly heard screams coming from them and from one specific torture room. The people were all gaunt, he said. “The food was bad, the people had wounds, it was hell.”

The methods of torture applied were blows with sticks and belts, and victims were also restrained in tyres, the witness stated. The *fallaqa* method involved a person’s feet being restrained by a guard using a wooden device and a strip of cloth so that another guard could hit them with a belt. The witness had noticed a fellow inmate’s fingers bleeding, no doubt because his fingernails had been pulled out. The witness himself was also ill-treated during his interrogations. Interrogations were held in those storeys in the branch which were above ground, in one of the officers’ offices, where the witness was beaten and kicked in the stomach. “When you feel the fresh air you know you’re in one of the officers’ offices.” Other interrogations were conducted in the basement, where the *fallaqa* method was applied in a room whose walls were full of blood. There the employee who beat him also asked the questions. The witness was made to sign papers before his release in which he pledged, amongst other things, to no longer take part in any demonstrations.

When he was again arrested on 5 April 2012, the witness stated, he was placed in a large, overcrowded room with around 350 people and later in a smaller, dark cell with some 50 prisoners, which was also overcrowded. One of the detention cells was underneath what used to be a garden, which he had been able to see through a skylight. He was beaten there, too, he said. The witness stated that he saw a seriously injured person with wounds on their stomach and infected feet teeming with maggots. The person was not moving and was carried out. He heard that the person had died. Another person had gone mad after being made to stand up for four days. The witness further stated that the “Al-Khatib” branch in Damascus was widely known and infamous.

(8) Witness ...[SS], a doctor in a hospital, was arrested on 21 August 2011 after being informed on and was then taken to the Al-Khatib Branch. During his numerous interrogations – during which he was made to kneel, was bound and blindfolded – he was accused of speaking ill of the government, of having arranged to take part in demonstrations and of having been in contact with Mossad, the Israeli secret service.

He had in fact taken part in demonstrations, the witness testified, and he and a friend had wanted to help the population of the city of Daraa, which had been surrounded by security forces. Both the interrogators and the guards hit him, the witness stated, to extract information. He was, for instance, made to lie down during the interrogation and the soles of his feet were whipped with cables. He was also slapped across the face. Instructions were issued about how he was to be tortured (“We’re not getting anywhere with the cable, fetch some wood.”). The witness stated that he overheard friends of his being ill-treated and interrogated at the same time; presumably that had been the interrogators’ intention.

The witness was first kept in a single cell measuring 180 by 80 centimetres (“It feels like a tomb, you have no contact with anyone.”). Later he was transferred to a communal cell in which most of the prisoners were from Harasta and Douma. This cell measured 3 to 3.5 by 3 metres, he stated. The number of fellow prisoners in the cell varied; sometimes there were between 30 and 50 of them. One night so many new prisoners were brought in that they were not all able to sleep lying on their back. He did not know how often this happened (“You’re really scared, it’s hard to remember exactly, maybe seven to 10 times.”). Other prisoners were also ill-treated, he stated. The witness recalled a prisoner with a mental illness who was treated particularly brutally. New prisoners were beaten out in the square in front of the cells during “welcome parties”, he reported. When a ventilator had short-circuited all the prisoners in the cell had been punished collectively by being beaten for at least an hour. You could hear people who were being tortured screaming, the witness stated. They were not given enough food and it was of bad quality; the blankets were full of lice. Prisoners had to use the toilet quickly, at fixed times, the witness stated. The medical care was very bad. A diabetic, for instance, was given insulin, whilst another prisoner who had severe toothache was only given a glass of salt water. People were mentally broken, lived in fear and uncertainty (“You never know in Syria how long you’ll be in prison.”). After spending 77 days in the Al-Khatib Branch he was taken to another branch in Kafr Sousa. Later he was given a document, which was submitted to the Division, stating that the witness was accused of “harming the state through misinformation, undermining the nation’s morale, as well as involvement and participation in demonstrations”.

(9) By his own account, a witness who was examined anonymously on 13 January 2021 (Witness Z 13/01/2021), a former opposition activist in Syria, was arrested along with other people at a demonstration on 8 December 2011, after which they were taken to Branch 251 in buses via a stopover in Sub-branch 40. The witness described how he was already beaten up and ill-treated with electric shocks to the foot whilst in the Sub-branch 40 building. On the way to the Al-Khatib Branch and after arriving there the prisoners were also subjected to arbitrary beatings, the witness stated. A 16-year-old boy had a screw pushed into his back on the journey there. Even the member of staff in the branch who removed the cable ties used to bind them hit him, the witness said, with the cutters. The witness said that he was shoved into the cell, hit the floor and lost consciousness. During his interrogations his back was whipped.

The conditions of detention were bad, the witness stated. Some of the new arrivals were covered in blood and had to be carried into the cell. No-one had looked after a man living with epilepsy. The food consisted of a few olives and a little bread and jam. Sometimes arguments broke out over the food, he said. He himself had lost a lot of weight during his time in detention. Screaming could constantly be heard. The witness stated that he remained in the branch for seven days. The fear was the worst, he said. He had kept wondering when his life would be over ("They could always call my name and then I won't come back.").

The witness stated that he was arrested once more on 5 April 2012 and again taken to the Al-Khatib Branch after another stopover in Sub-branch 40, where he was ill-treated using the *fallaqa* method, for example. He was first put in a huge cell there with 200 prisoners, later in a smaller one with 65 people which measured 4 by 5 metres. All the cells were overcrowded, the witness stated. They appeared to him to be a converted canteen and a former interrogation room. Sometimes the prisoners had to sleep standing up. Some fellow inmates had lost their mind and hallucinated owing to the lack of sleep. There was also a 14-year-old in the cell who was regularly tortured by having the soles of his feet beaten. Again, the medical care available had been inadequate. The witness himself had a high fever and was given an injection to treat it, he stated.

(10) The statements made to the police by Witness ...[QQ] and Witness ...[RR], who live abroad and were not available for examination in person, were relayed to the Division by Witness ...[O] and Witness ...[TT], both police investigators. They described the context in which the questioning and interpretation took place, based on which the Division does not doubt that the witnesses made the statements during their police questioning as recounted and recorded by the investigators. Given the memorable details which both witness statements included and the fact that they are otherwise consistent with the outcome of the taking of evidence, the Division also found the following particulars as to the substance of the case to be accurate and used them as the basis for its assessment:

According to the statement he made to the police, Witness ...[QQ] was a member of an oppositional political movement and co-organiser of the first demonstrations held in February 2011. He was then arrested on 19 February 2011 and taken to the Al-Khatib Branch. He spent a total of eight months and 20 days in detention. He spent around two months of that time in a single cell in the branch's cellar prison. Because his cell was kept in constant darkness, he was unable to tell one day from the next. His interrogations had revolved around his role in the opposition movement, his social media posts and the names of other members of his organisation. As he failed to cooperate, he was ill-treated as from his second interrogation, he reported. His back and legs were beaten with a cable, and his feet were also beaten with a spiked iron rod. The witness stated that he was forced into a tyre and beaten whilst immobilised in it. Afterwards he was made to stand facing the wall out in a corridor. Everyone who passed him hit him. The blows to the soles of his feet meant he was unable to tread on them. He was also hung up by his wrists, as a result of which his arms had swollen up, and his arm was also burned during this procedure. The witness stated that he lost consciousness whilst this torture was being inflicted. He was also aware of fellow prisoners being tortured, for example an Iraqi man who was doused with water and then tormented with electric shocks. After around one month in detention, the atmosphere in the branch had become more agitated because more and more people kept arriving there. At that time the screams of those being tortured had very often been heard, the witness said. In the end, he was taken to Branch 285.

According to the statement he made to the police, Witness ...[RR] spent several days in the Al-Khatib Branch in May 2011. He was placed in a cell there which measured 2 by 1 to 1.5 metres. A large rat had entered the cell through a slit in the door, he said. During his interrogations – which were based on his being accused of participating in demonstrations, news he posted online and contacts with members of the opposition and abroad – he was beaten using the *fallaqa* method, for instance. He was also tortured after his interrogations. He was then forced to lie down and was kicked and beaten. The witness stated that he heard men screaming in the torture rooms and, coming from the opposite direction, the screams of women. In the end, he was taken to Kafr Sousa and released there.

(11) By their own accounts, witnesses ...[HH], ...[UU], ...[X], ...[JJ], ...[KK] and Witness Z 16/12/2020, who was examined anonymously on 16 December 2020, were detained in Branch 251 at different times in the course of 2012. Their statements concerning the detention conditions and ill-treatment of prisoners – which are of only subordinate relevance given the time of the commission of the offence as established – do not give rise to any significant discrepancies in relation to what the witnesses who were already detained in 2011 observed. The witnesses at any rate testified consistently when it came to their descriptions of the conditions in the branch and especially its location in Damascus and the layout of the underground prison, which they based on sketches they had drawn.

For instance, Witness ...[HH], who was imprisoned in July 2012, reported having his toes beaten with a cable during his interrogations and arbitrary punishments being meted out against other prisoners. It was only possible to sleep in a sitting position in the overcrowded, stinking and damp communal cell, which had more than 300 people in it, he stated. The food had by no means been sufficient to feed everyone. He had lost 15 kilogrammes in weight. Screaming could constantly be heard, he testified.

Witness Z 16/12/2020, who was arrested in May 2012, reported that she was crammed into a single cell measuring 2 by 1 metres for 21 days together with a woman who was eight months pregnant. The sounds of torture being inflicted could be heard. She had observed the welcome beatings which the newly arrived prisoners received, she stated. Women had traces of torture, too. The guards had gone into the men's

communal cell at night and beaten up the prisoners. She herself had lost 8 kilogrammes in weight during her 35 days in detention on account of the small amounts of food they were given and the quality of the food (e.g. mouldy bread). They were allowed to go to the toilet at the guards' discretion, she testified. After a large number of women were arrested she was taken with them to a communal cell, which was in an extremely bad condition ("dirt, no air, bad smell"), infested with lice, cockroaches, rats and moths and so overcrowded that it was not possible for everyone to sleep at the same time. She was temporarily transferred to Branch 285 for a few days. During her interrogations, the witness testified, a guard who was known amongst the prisoners for being particularly brutal (*Abu Ghadab* = "Father of Wrath") had threatened her by striking the floor next to her with a whip. The witness ascribed the fact that she was given preferential treatment and was not herself beaten to her special social status. She did not go in to any further detail in that regard because otherwise her anonymity would have been jeopardised.

By his own account, Witness ...[UU] was arbitrarily arrested, together with many others, by members of the military during a raid in the village of Al Abbadeh in Rif Dimashq on 4 February 2012. Even the mayor and imam were amongst those arrested. After being taken to the Al-Khatib Branch, he and numerous other people were first hit with fists, hoses and whips on arrival and then again and again inside the branch. There were communal punishments if anyone talked in the cell, the witness testified. You constantly heard prisoners who were being tortured shouting and pleading, he said. The light was kept on all the time; it was impossible to tell day from night. Again and again people were put into the cell, some of them with horrible traces of torture, he said. A boy aged between 10 and 15 years old who had a gunshot wound to his leg was also brought in and was nevertheless beaten. A man who was over 70 years old was also beaten. During his own interrogation the witness was told to confess, after which the interrogator had beaten his legs. He suffered a fractured leg as a result, the witness stated, and the ensuing wound had immediately become infected. He then said things that were not true and signed a blank sheet of paper. People slept on top of each other in the cell, he testified. The food had been "just about enough to stay alive". The witness stated that the worst thing about his time in prison was the uncertainty as to what was going to happen to them. After spending between

10 and 15 days in the branch and a short period in another prison, he was brought before a judge, had his hand stamped and was allowed to leave.

Witness ...[X] testified that she was arrested on the night of 4 February 2012, taken to the Al-Khatib Branch and detained there for three days. The reason was her work as an activist. She and others had collected medicines to help those who were injured during a bombardment of Homs. She was interrogated every day about her political activities, she testified. She was beaten immediately following her arrest and whilst being taken to be interrogated in the branch. There was a place near her cell in the basement where the imprisoned men were abused. Their screams could be heard all the time, the witness stated. A man who had had to endure particularly brutal torture had suddenly gone mute. Usually at least two people were tortured at the same time, the witness said. The staff were more violent towards the men than towards the women, she testified. She herself was also verbally harassed and threatened with sexual violence, and one guard had deliberately touched her breast. She was placed in a small single cell with two other people; it measured 1.80 by 1 metre. Even when the witness had her period there was no means for her to practice feminine hygiene, she stated.

According to his statement, Witness ...[JJ] was arrested on 4 September 2012 at a checkpoint in the immediate vicinity of the Al-Khatib Branch. The witness told of a completely overcrowded cell with more than 200 people in it and not enough space for everyone to sit or lie down, with artificial lighting permanently on, without enough to drink and eat, stifling air and not enough opportunities to relieve themselves. According to the witness, it was an underground cell which had subsequently been added to the prison. He was interrogated several times, during which he was shackled and had to kneel blindfolded in front of the interrogating officer. During the interrogations his legs were sometimes physically restrained, and on each occasion he was hit with a belt or a cable for a long time and immeasurably painfully on the soles of his feet. One of his feet became infected afterwards, he stated. Fellow inmates had injuries, open wounds, some of them had been shot at during demonstrations. Many also had skin conditions, he testified.

By his own account, Witness ...[KK] was arrested in Raqqa in early May 2012 and, following stopovers in Deir ez-Zor, Homs and at the military police in Al Qaboun, he was taken to the Al-Khatib Branch, where he was detained for three to four days. On arrival, he stated, they were all made to turn to face the wall and were beaten. The cells were overcrowded. The prisoners had rashes and allergies, their clothes were covered in pests, the witness said. The air was very humid on account of the overcrowding; there was no ventilation. All day they had heard the “really loud” screams of those being tortured. His fellow prisoners told him about electric shocks and the *shabeh* method. Most of the people in his cell exhibited signs of torture, he stated. Some had broken bones, swellings from the blows to the body, traces on their wrists after being hung up. The witness himself was interrogated and beaten on several occasions, he testified – including all over his body with an object like a fan belt. The interrogations were conducted in one of the upper storeys in the building, where the stench had not been quite so bad. When he gave an answer they did not like, the witness stated, he was slapped across the face, kicked and beaten. He was repeatedly made to crouch down and then severely beaten whilst in that position.

cc) In synopsis, the Division’s evaluation of the statements presented in the above is as follows:

The witnesses’ individual observations together create the overall picture that the processes and treatment of prisoners on arrival in Branch 251 differed quite considerably, for example as regards the length of detention in the branch, which was between a few days and up to months and years – though in some cases the latter was only based on hearsay. The type of detention ranged from (very) small single cells to communal cells the size of rooms or big halls whose occupancy was described as full to so overcrowded that it was impossible to lie down and even difficult to breath. Cells were described as having no daylight or as having daylight, though in the latter case only through small openings. The choice of torture methods also followed no discernible pattern, with the exception of *fallaqa*, the preferred method during interrogations. For the rest, the type of ill-treatment applied in individual cases also varied and ranged from “standardised” torture techniques to sadistic excesses; in organisational terms, Branch 251 was geared to inflicting torture given its specially equipped “torture rooms”, instruments for tormenting people and established

procedures, for example involving the interrogator and the employee carrying out the ill-treatment. The frequency and objective of the interrogations and the waiting periods between them, which were agonising for prisoners, also differed considerably from one prisoner to the next.

The lack of a verifiable, targeted procedure within the otherwise bureaucratised Syrian state structure, including within its security apparatus, is an indication that when the protest movement began the security authorities were faced with having to “process” a large number of prisoners without regard to a specific charge in each individual case and that their facilities were not equipped to deal with them and they therefore sometimes had to improvise when it came to the ill-treatment of detainees. The different types of abuse suggest that the guards exacting it were given free rein; sometimes they were driven by sadistic ingenuity. Justifications for the detentions were concocted through forced confessions. This is consistent with the approach adopted by the security authorities as described by other witness in relation to the general course of the conflict, namely that it served the purpose of collective punishment and deterrence.

The variations in the treatment of those who were abducted to Branch 251 and exposed to the prevailing conditions there, who were consciously left in the dark about the reason for their imprisonment and their future fate, paint a picture of arbitrariness. However, regardless of all these differences, the witness statements powerfully showed that the branch was characterised by the inhumane treatment of all those who were detained there and by a climate of massive violence and fear. It was especially the prisoners who were detained in the subterranean prison area who were exposed to random treatment by the guards in charge of it. Almost without exception attempts were made to extort testimonies from the prisoners by means of torture. On the other hand, though, in some cases there was no recognisable link between the brutal ill-treatment and any information-gathering purposes. This led to violent excesses with life-threatening consequences for the victims, including on account of the lack of medical treatment.

Overall, the witness statements allow the safe conclusion to be drawn that those who were abducted to Branch 251, at least from April 2011 on, were exposed to systematic

and brutal physical and sexual violence, to inhumane conditions of detention as a result of massive overcrowding, a lack of hygiene, not being allowed to go to the toilet often enough, insufficient food and drink, and massive mental pressure, amongst other things on account of constantly hearing the screams of their fellow prisoners who were being tortured and seeing the, in some cases, seriously injured tortured fellow prisoners in their own cell.

The treatment the witnesses described is also consistent with the objective pursued by the Syrian apparatus of power, namely to use unspecific, broadly diversified violence against the civilian population for the purpose of intimidation and deterrence. The Division assumes that the aforementioned conditions, in particular the use of torture, were at any rate intended for all those who were detained arbitrarily at demonstrations and rallies and during raids. The Division found that exceptions – that is when no direct physical violence was used – were only made in the case of individuals who were specifically detained, had gained a certain degree of prominence or in the case of prisoners who turned out to be acquainted with an employee.

Finally, the Division takes from the statements made by Witness ...[Y], Witness ...[AA] and Witness Z 25/11/2020 that the subterranean prison in the branch was extended before April 2012 to house additional detention rooms underneath an outdoor area. This appears to have been a consequence of the rapid growth in the number of prisoners in the branch after the start of the protest movement which the majority of the witnesses noted.

2. Sub-branch 40

Taking the statements of various witnesses together, the Division was also able to gain a picture of the activities which Sub-branch 40 engaged in.

a) The information provided by the following witnesses was important in that regard:

aa) Witness Z 28/07/16, a former long-standing employee of the general intelligence service, testified that Sub-branch 40 was part of Branch 251 and was called the “Patrol Branch” or “Counterterrorism Branch”. After Hafez Makhoul took charge of it, Sub-

Branch 40 gained a very bad reputation. According to the witness, Makhoul had lots of people arrested and, as he was a cousin of Bashar al-Assad, had had free rein.

Sub-branch 40 was responsible, the witnesses reported, for patrolling Damascus. When Branch 251 was looking for a specific person, Sub-branch 40 was responsible for arresting that person and taking them to Branch 251. However, it had often overstepped its competence. For example, those arrested were also interrogated in Sub-branch 40 and not always taken to Branch 251 but, based on a decision given by Hafez Makhoul, were instead taken straight to Branch 285, for instance. Sub-branch 40 had around 100 to 200 members of staff, the witness stated; its head had an office in Branch 251. The witness stated that he had heard that people had died at the hands of Sub-branch 40.

bb) Witness ...[AA], a senior officer in the guards in Branch 251, testified that the staff in Sub-branch 40 were responsible for making arrests on behalf of Branch 251. The unit carried out additional patrols and manned checkpoints, he stated. The only time they had anything to do with Branch 251 was when they took prisoners there. The witness stated that once during his training he had become aware that staff were being recruited for the sub-branch. Certain physical attributes were required, he stated. Besides, applicants' curriculum vitae had to be flawless in terms of evidencing a clear loyalty to the regime. It was always volunteers who were recruited, not conscripts. The branch was also particularly important on account of its head, Hafez Makhoul, being the son of one of Bashar al-Assad's aunts, the witness stated.

cc) Witness ...[Y], a former long-standing employee in the general intelligence service, described Sub-branch 40 as being part of Branch 251's interrogation sub-branch. However, he also described the opposite as being the case, that is that the interrogation sub-branch was part of Sub-branch 40. At any rate, the person actually making the decisions was Hafez Makhoul, who was responsible for issuing orders to the heads of interrogation in Branch 251, the witness stated. Ultimately, Makhoul was the de facto head of the entire general intelligence service. Its formal head, Major General Ali Mamlouk, had come down from his office to receive Makhoul. Makhoul had issued instructions relating to the arrest of demonstrators and the length of their

detention. The witness was there when Makhoulf issued the order to arrest all of the 1,000 people attending a rally next to a mosque.

As detailed in the above (see III. 1. c) bb), p. 78), the Division had reservations about unreservedly accepting Witness ...[Y]'s statement. Besides the general inconsistencies in the witness's statements, it was striking that, in regard to his testimony concerning Sub-branch 40, he claimed to know specifics about the internal power structure within Branch 251 and Sub-branch 40 even though he left the branch in 1998 and then worked in the General Intelligence Directorate's headquarters, which was located elsewhere; his job was also limited to archiving documents. When asked follow-up questions, the witness was also unable to provide any concrete information about what concrete facts his assessment was based on and on which occasion he had supposedly made his observations. That, however, is the basis which would have been necessary to be able to make the assumption that the commander of a subunit with hundreds of staff across two hierarchical levels was the de facto head of what was – according to statements made by other witnesses – the most important Syrian intelligence service. The head of the General Intelligence Directorate receiving the head of Sub-branch 40 is not sufficient to prove that. Moreover, the outcome of the taking of evidence does not support the witness's claim either. It only proves that Hafez Makhoulf acted on his own authority when managing the sub-branch under his control and that this went unchallenged owing to his close ties with the head of the regime.

dd) Expert Witness ...[T] also assigned Sub-branch 40 to Branch 251 and described it as being responsible for Douma. Sub-branch 40 took its instructions from Branch 251, he stated. People were arrested by the sub-branch and taken to Branch 251, some of them after being interrogated. Sub-branch 40 did not have its own large prison, which was why the majority of the prisoners were handed straight over to Branch 251. Hafez Makhoulf, a cousin of the President, was head of the sub-branch, he stated. He was very influential, but subordinate to Branch 251, which was much bigger. The witness stated that in Branch 251 the interrogations were carried out by its staff.

ee) Expert Witness ...[S] also testified that Sub-branch 40 was subordinate to Branch 251 and that it carried out specific functions for the branch. Several of his colleagues were arrested by the branch, he stated. Hafez Makhoulf, a cousin of Bashar

al-Assad, was its head, which was why the branch was of particular importance within the security services. The sub-branch was responsible for the Damascus region, the witness stated, but had got involved in matters beyond its remit on account of its head's status.

ff) Witness ...[A] testified that Sub-branch 40 had a reputation for being particularly brutal under Hafez Makhoul's leadership. The witness described it as an instrument of power whose purpose was to crush demonstrations and torture prisoners. This was common knowledge, he stated.

gg) Expert Witness ...[Z] (see III. 2. a), p. 92, above) testified that, as far as he was aware, Sub-branch 40 was part of Branch 251. The sub-branch was known as the "City Branch" and the "Jisr al-Abyad" Branch. It was referred to as especially powerful and infamous. What was notable was that news from Sub-branch 40 was addressed directly to other branches and not, as was customary, sent via the head of Branch 251. Branch 251's letterhead was always used in such cases, the witness reported.

hh) The majority of the victims of the regime already referred to in the above who were abducted to Branch 251 and ill-treated there testified that they had first been arrested by Sub-branch 40 and briefly detained in premises which belonged to this unit.

Witness ...[DD] was arrested on 2 May 2011 by members of Sub-branch 40 at a demonstration by women in Douma, was abducted to premises belonging to the sub-branch and then taken from there to Branch 251. She reported that Sub-branch 40 was also known as "Hafez Makhoul". The men who had taken her away had beaten her and "touched" her "in sensitive places". She spent two hours in Sub-branch 40, she stated, without being interrogated there. After her second arrest on 12 April 2012 at a sit-in in front of the Syrian parliament as part of the "Stop the Killing" campaign, she was also first taken to Sub-branch 40, the witness stated. The security forces were ready and waiting and knew they were coming. They had immediately started arresting the women at the demonstration. Whilst in Sub-branch 40 she was subjected to "brutish blows" with cudgels, the witness testified. She and the others who were taken there with her were beaten, spat at and insulted for an hour. After a stopover in Sub-branch 40, she was then taken in a van to Branch 251. The witness described the location of Sub-branch 40 as being on a road called "White Bridge" (= "Jisr al-Abyad").

It had a big iron gate, an open courtyard and was surrounded by residential buildings, she said.

Before being taken on to Branch 251, Witness ...[FF] was also, by his own account, arrested by alleged members of Sub-branch 40 on 24 October 2011 and spent two to three hours in its premises. Upon being arrested his laptop had been taken off him. Whilst in the sub-branch, the witness stated, he was briefly asked about his Facebook account. It was a well-known fact that the branch was headed by Hafez Makhoul, a brother of the influential businessman Rami Makhoul and a cousin of Bashar al-Assad. It was also a well-known fact that the sub-branch was responsible for making arrests and storming buildings “on behalf of Branch 251”.

According to her testimony, Witness Z 16/12/2020 was arrested on 4 May 2012 in Damascus together with others and taken to Sub-branch 40. Plainclothes security forces had stormed into her office at gunpoint, had searched it, checked identity cards and blindfolded the men or pulled their t-shirt over their head. The men who were arrested with her were beaten once they arrived in the sub-branch, she reported. She was taken to see an acquaintance being tortured (he was being beaten and tormented with electric shocks) in order to force her to reveal her email and Facebook access details. She spent one night in Sub-branch 40, she testified, and was then driven to Branch 251 and beaten on the way there.

Witness Z 25/11/2020 testified that he was arrested on 4 May 2012 by Sub-branch 40 staff and taken to the sub-branch’s building in the Jisr al-Abyad district of Damascus. He was greeted with blows and spent a day there before being taken to Branch 251, he stated.

According to the statement he made to the police, which was relayed to the Division by the police investigator, Witness ...[RR] was summoned to Sub-branch 40 in the Jisr al-Abyad district of Damascus in May 2011 and questioned there about Facebook posts which were critical of the regime. After the witness pointed out that he was in contact with the President’s media spokesperson, he was released. He was told to come back the next day, was shackled and taken to the Al-Khatib Branch.

b) The overall picture which emerges from the particulars presented in the above confirms the picture that Sub-branch 40 primarily had executive functions and was responsible for making arrests, carrying out searches and raids and crushing demonstrations and that it passed those arrested on to Branch 251, where their further fate was decided. Sub-branch 40 also had its own premises with a small detention facility in the Jisr al-Abyad district of Damascus. Sub-branch 40 already conducted preliminary investigatory acts there, such as examining seized objects and questioning those arrested. It was not possible to establish whether this was based on any formal or appropriated competence.

According to the concurring statements of all the witnesses, Sub-branch 40 had a special status on account of its remit, but especially on account of its head being well-known and his close ties with the government. Based on the particulars provided by the witnesses, it can be concluded that Sub-branch 40 was used as a flexible tool for rapidly and effectively combating the protest movement, at any rate in the Greater Damascus area. Witness ...[AA]'s description of the special requirements made as to the physical fitness and loyalty to the regime of those working in the sub-branch can already be brought into line with the tasks assigned to it. The Division also takes as the basis for its assessment the fact that the head of Sub-branch 40, Hafez Makhoul, used his special status on account of being a relation of President Bashar al-Assad to act on his own authority, which can easily be reconciled with the fact that the structure of the Syrian state was founded on close personal ties and loyalties. The Division also holds it to be true that, like the other heads of the sub-branches, the head of Sub-branch 40 had his own office in Branch 251, as Witness Z 28/05/16 testified. By contrast, it was not possible to confirm on the basis of the statements made by the witnesses, that, as Witness ...[Y] claims, Hafez Makhoul held a dominant position within Branch 251 or even within the general intelligence service as a whole. This would, rather, contrast with the fact that Sub-branch 40 was housed in separate premises and that, according to all the other witnesses' statements, its role was only to provide support (by arresting and delivering alleged critics of the regime) and that Branch 251 operated autonomously, as former members of the regime and witnesses detained in Branch 251 consistently explained.

Finally, in accordance with the witnesses' statements, the Division was also able to use as the basis for its assessment the fact that Sub-branch 40, like all the other branches and sub-branches of the intelligence services involved in handling prisoners, treated detainees in a manner which was characterised by violence.

V. Re the findings as to the person of the Defendant

1. The findings as to the Defendant's family circumstances and his career are essentially based on the statements he himself made during his hearing before the Federal Office for Migration and Refugees on 9 May 2018 and during his subsequent police questioning as a witness on 16 August 2018. On both occasions the Defendant outlined his family background and training in a mutually consistent manner. Witness ...[CC], a cousin of the Defendant, confirmed this information to the extent that he himself had knowledge thereof. In particular, he testified that the Defendant grew up in the village of Muhasan (alternative spelling: Mouhassan) and that he later attended secondary school. The witness learned that the Defendant had deserted in early January 2012 from the latter's older brother. The Defendant had also been officially reported as missing, he stated.

Details concerning the Defendant's family circumstances, especially the number and age of his children and his marriage, are based on excerpts from the Defendant's family booklet (containing extracts from the Syrian civil registry records), which was handed over to the Federal Office for Migration and Refugees by the Defendant and then added to his Foreigner's File (*Ausländerakte*).

2. The Division was able to make only very few determinations regarding the period between the Defendant's defecting in January 2012 and his entering Germany.

It is just as difficult to establish with any certainty where the Defendant stayed and for how long in each case prior to his entering Germany as it is to establish when and where the Defendant's family rejoined him. It is, in particular, still unclear when the Defendant left Syria for Turkey and whether and, if so, when he met his family again in Syria and whether he left the country together with his family. Here, too, the available information was mainly provided by the Defendant himself. During his hearing before the Federal Office for Migration and Refugees the Defendant described in detail how

he had first gone on his own to his home village after deserting on 5 January 2012 whilst his family had initially stayed on in Damascus, but then joined him. However, his statements regarding his moving between various villages, alleged targeted attacks against his home village and his parents' house and his witnessing of such attacks, despite having previously left the village, are rather inconclusive. It also seems implausible that the Defendant's parents' house would have been the target of shelling in response to his defection. The Defendant provided no information about where his family was staying, whom he claims very generally to have "got to safety". He only used singular pronouns when describing subsequent events, especially his leaving to go to Turkey, i.e. that "he" left. The Defendant also provided little information during his police questioning as a witness and only regarding himself, but not regarding the fate of his family after his defection.

It is also striking that after arriving in Germany the Defendant presented excerpts from his family booklet which were dated 4 February 2016 and had been issued by the Syrian Ministry of the Interior, "Directorate General for Civil Matters", each with a German translation done by a translation agency in Damascus on 12 April 2016. This could be an indication that the Defendant's family, or some family members, were still in Damascus in April 2016 and were preparing to flee to Germany, or that they were at least able to obtain the documents and have them translated with the help of intermediaries. More generally, it appears problematic that the Defendant, who had been reported missing, claimed that he was actually able to get documents on his civil status issued by the Syrian authorities. Above all, though, the fact that the Syrian civil status documents the Defendant was carrying with him cite 1 January 2014 and 1 January 2015 respectively as the dates of birth of two of his children and Deir ez-Zor as their place of birth indicates that the Defendant and his family stayed in Syria for longer. Should this be true, the Defendant would most likely still have been in Syria in 2014.

In the light of the above, the Division is not in a position to take at face value the date of his leaving to go to Turkey, which the Defendant narrowed down both during his hearing before the Federal Office for Migration and Refugees and during his police questioning as a witness very precisely to having been between mid-February 2012 and 12 February 2012 in the case of the latter and between 9 and 13 February 2012

in the case of the former. The same applies to the date on which he crossed the Turkish border into Greece, which he consistently stated on both occasions was on 20 February 2016.

3. The date of the Defendant's entry into Germany and information about his living circumstances here are based on the Foreigner's File kept by the foreigners authority in ...[c] on the Defendant, the content of which was relayed by Witness ...[VV], and, as regards the asylum procedure, on statements provided by Witness ...[L] and Witness ...[M], who work in the Federal Office for Migration and Refugees. This in particular concerns the course and status of the asylum procedure, the circumstances of the Defendant's entry into Germany, his family's assignment to a reception centre and their final allocation of an apartment in ...[c].

The findings as to the Defendant's previous conviction are based on an extract from the Federal Central Criminal Register (*Bundeszentralregister*) pertaining to him and the summary penalty order issued to him by ...[a] Local Court on 24 July 2018. Findings concerning enforcement of the aforementioned order are based on information relating to payments made by the Defendant which is on file. According to the final order made by ...[t] Public Prosecution Office, the Defendant's fine has been paid in full and the case is closed. Other proceedings based on the charge that the Defendant "injured two Afghan nationals living in a neighbouring property by punching them" on 7 July 2018 were terminated. The dates and circumstances of the Defendant's arrest, release from prison and renewed arrest were submitted to the Division by police officers ...[P] and ...[S], who were involved in the case. According to their statements, the Defendant's imprisonment, and especially his second arrest, came as a complete surprise to him. During his first arrest the Defendant believed there must be some misunderstanding, and during the second he complained about heart and breathing problems, which were possibly psychosomatic.

VI. Re the findings as to the Defendant's concrete contribution to the offence

1. Defendant's career in the Syrian intelligence service

The findings made regarding the Defendant's joining the Syrian intelligence service, the work he did there, the branches he worked for and his service grade are largely

based on information he himself gave during his hearing before the Federal Office for Migration and Refugees and during his questioning as a witness before the Federal Criminal Police Office. They are also based on several pieces of evidence and circumstantial evidence which corroborate the information about the work the Defendant did.

a) The Division does not doubt the truthfulness of the information which the Defendant himself gave. It already appears credible in and of itself. The information was detailed and coherent, consistent on both occasions on which the Defendant made a statement, even though the focus of each varied, and, in the light of the fact that he willingly and with unconcealed pride reported about his successful work as a “tough” trainer, for instance, it also appears to be based on his own experience. The Defendant discernibly did not attempt to window-dress the function of the intelligence service and the work he did in it, especially since the reason for his ultimately deserting and seeking asylum related to that work. In view of the depth of detail he provided in relation to his training and his office and operative work, in particular the act itself, the Division also rules out the possibility that the Defendant may have exaggerated his career history and the work he did. One possible explanation for why he might falsely incriminate himself would be an attempt to establish a reason for claiming asylum. However, the circumstances of his desertion and subsequent persecution would have already been sufficient for this. Besides, the Defendant provided further details during his questioning as a witness by the Federal Criminal Police Office which did not promise to give him any advantage in relation to his asylum application or otherwise.

Finally, the Defendant also explicitly confirmed that he worked for the Syrian security forces in the written statement which was submitted to the Division, in which he wrote, in general terms, that he had had no alternative but to continue his work for the time being, though he did not provide any further details about what that work entailed.

b) The work the Defendant did and the date of his desertion are confirmed by the statement made by Witness ...[CC], a cousin of the Defendant, that is the son of one of the Defendant's father's sisters.

aa) The witness first reported on his own political attitude to the situation at the time in Syria. By his own account, he had already been politically active during the Damascus

Spring, had attended meetings and discussions organised by the opposition and had subsequently written political articles. In March 2011, the witness stated, he had taken part in demonstrations and seen the security forces in action. On 8 April 2011 he himself was first arrested for one day by the intelligence service (the so-called Palestine Branch) during a demonstration in the Kafr Sousa district of Damascus and then interrogated. Following a personal meeting with the head of branch, he was released without suffering any ill-treatment. He was described as an educated person and treated better than other prisoners, who were insulted and called terrorists and beaten. The witness was forced to reveal his Facebook access data and email passwords and was warned not to engage in any more anti-government activities. At the same time he was offered the opportunity to cooperate by spying on the opposition.

As regards the Defendant, the witness testified that, after attending secondary school, he had joined the security forces or the Ministry of the Interior as a volunteer. He had, ultimately, progressed to the rank of staff sergeant or sergeant major. The Defendant worked for the "State Security", the witness stated, though he, the witness, did not know exactly what it belonged to. At any rate, his work involved monitoring people and various political groups. The organisation served the preservation of power, the witness stated.

The Defendant first underwent six months of basic training, the witness testified. After graduating from university in 2001, the witness had opened a dental practice in Al Dachadile, south of Damascus. During this time he had from time to time met with the Defendant, who was also living in that area and whose family members had come to him for dental treatment. At that time the Defendant was a sports trainer in the State Security in Najha. Later, the Defendant told the witness that he had transferred to the "Branch for Religious Affairs", where he was responsible for monitoring Friday sermons and the preachers. The Defendant had told the witness that in political terms he was definitely "for the revolution". When the Defendant came to the witness's practice in early February or early March 2011, they had talked about the situation in the security forces. The Defendant reported that they were on the highest alert and knew that the revolution was coming. He, the witness, had heard that the Defendant had warned a person called "Atassi", who was meant to be arrested. He heard this from one of the Defendant's brothers and then again shortly before his examination in the main

hearing. The witness did not have the impression that the Defendant had wanted to harm anyone, otherwise he would have broken off contact with him. Many employees in the security services had come to him for treatment, the witness stated. You could tell people apart.

The Defendant did not tell the witness much about his other activities. Nevertheless, it was clear that the security people “always went out on Fridays” and kept those places where the demonstrations were expected to take place under surveillance. From 2011, the Defendant’s job, by his own account, no longer followed the same old routine. The regime had mobilised all its forces to fight the revolution. The Defendant had once told him about an incident involving a bus full of detainees, he stated. One of the Defendant’s colleagues had taken a stick so that he could join in the “welcome party”. The Defendant had been “angry” about that, because “something like that” was not “his thing”. The Defendant had repeatedly mentioned the name Hafez Makhlouf and his rigorousness and brutality. Makhlouf had used firearms, too. One time, Hafez Makhlouf had got out of his jeep, put his foot on its running board and started to shoot at the demonstrators. That was what the Defendant had told him.

The witness testified that he was not exactly sure whether the Defendant had worked in Sub-branch 40. The Defendant or one of his brothers might possibly have told him that. At any rate, the Defendant himself had talked a lot about Hafez Makhlouf. For example, that he expected his employees to be loyal. It was public knowledge that Makhlouf was head of Sub-branch 40, the witness stated. When asked what reputation the sub-branch had, the witness replied that such sub-branches were a “kind of butcher’s shop for slaughtering humans”, that people were beaten and tortured there and that a sub-branch headed by Hafez Makhlouf must have been “hell”. The Defendant had also told the witness that there had been a lot of distrust within the sub-branch. The staff, especially the Sunnis, had their service weapons taken off them and were only re-issued them when there were demonstrations.

The Defendant had already spoken of a possible “dissociation” (i.e. desertion) in August or September 2011, the witness testified. But he had first wanted to take care of his family, he said. On 5 January 2012 the witness had been told personally by the Defendant’s eldest brother that he had deserted. A “communiqué” had also been

published that the Defendant was missing. According to the witness, that was standard procedure in the authorities.

bb) The Division believes the witness. No indications came to light that he may not have spoken the truth about his own political activities and detention. The information he obtained from the Defendant about his career and work also appears credible.

It was apparent that the witness was trying to remember the encounters he had had with the Defendant, some of which were a long time ago, and what the Defendant had said on those occasions; he openly admitted to gaps in his memory and uncertainties, but was, on the other hand, also able to provide details regarding specific circumstances. He had also indicated that he dissociated himself from the security forces, whom he, based on his own experience, described in general terms as “butcher’s shops”. The Division naturally saw occasion to doubt the witness’s attitude towards the Defendant, which sometimes seemed quite uncritical, given the witness’s own work in the opposition, his own experience of being in detention and the, in his own words, brutal reputation of the sub-branch of which Hafez Makhlouf was head. When asked about this, the witness responded that he did not see any contradiction in that. The Defendant had again and again signalled that he clearly supported the revolution. The witness had believed him when he assured him that he rejected the regime. When confronted with the charges brought, the witness stated that he was simply unaware of such details, especially since he had not met the Defendant on a regular basis. When asked whether his own lenient treatment following his arrest on 8 April 2011 could have been down to the Defendant having interceded for him, the witness vehemently denied this and explained that his arrest had been reported on social media.

Even though certain exculpatory tendencies were discernible in his statement, especially in terms of the witness being unable to provide any tangible indications that the Defendant was critical of the regime, as he had reported, this does not, in the opinion of the Division, call what was stated into question. It is, first, obvious that the Defendant, knowing that his cousin was critical of the regime and involved in oppositional work, had glossed over his own work and presented himself as being inclined towards the “revolution”. The Division therefore assumes that the Defendant

did in fact tell the witness those things which the latter described. The same goes for the talk the witness testified to having had with the Defendant back in mid-2011 about his deserting. Second, Witness ...[CC]'s favourable attitude towards the Defendant fits seamlessly into the statements made by a number of witnesses – even though some of them had themselves been victims of the most serious attacks – who called for a more nuanced approach to be taken to former employees of the regime, especially those who deserted. It is, furthermore, understandable that the witness found himself in a conflict of loyalties between his oppositional work on the one hand and his kinship with the Defendant on the other, and that he wanted to believe what the Defendant said. The Division does not, therefore, assume that the witness deliberately wanted to exonerate the Defendant on account of their close family relationship, but that he simply recounted the Defendant's explanations truthfully without, though, being able to verify them himself.

cc) Overall, the witness's account confirms the career within the Syrian intelligence service which the Defendant himself described, sometimes including details regarding his various deployments. In view of what the Defendant told Witness ...[CC], the Division cannot rule out that the Defendant took a critical view of events as from 2011, even though this was not revealed in any ascertainable action on the part of the Defendant. Nevertheless, the alleged "warning" issued to an individual before their upcoming arrest, which Witness ...[CC] reported, is too vague for the Division to be able to use it as an establishable fact in its assessment. The witness was only able to relate key words in regard to that which he, in turn, had heard from third parties, in particular one of the Defendant's brothers.

c) Witness ...[BB]'s testimony also confirms the Defendant's active operative work in the Syrian intelligence service up to the end of 2011 and the fact that before that he had worked as a trainer.

aa) By his own account, Witness ...[BB] was employed in Information Branch 255 of the Syrian General Intelligence Directorate in the period between November 2010 and early 2012. He had also worked in Training Branch 295 of the General Intelligence Directorate, in the field office in Najha, south of Damascus. As already set out in the above (see III. 3. b) cc), p. 113), the witness did administrative work in relation to the

transports of corpses to mass graves in the southern environs of Damascus. On the occasion of one such transport the witness had recognised the Defendant as a member of the escort team of guards.

During his examination by the Division, the witness described Branch 295 of the Syrian General Intelligence Directorate as a training branch and thus confirmed what the Defendant had said regarding the start of his career in the intelligence service. He was able to indicate the location of the branch in Najha, south of Damascus, on a map, including training grounds and accommodation for trainees. The witness also stated that he came from the same region as the Defendant, i.e. Muhasan. In contrast to what he had stated during his police questioning, the witness stated that he did not know the Defendant from when he was in Branch 295. However, he met the Defendant at a crossroads when the Defendant was escorting a refrigerated truck together with a total of 10 intelligence service staff in a pickup. There had been around 50 to 60 corpses in the truck, the witness testified. The Defendant and the others had been armed with guns. The witness was not able to say whether they were machine guns, as he had stated during his police interview, "also because of the pressure he was under". When asked how he knew the Defendant, the witness responded that one of his colleagues had mentioned the Defendant's name. He also knew from colleagues that the Defendant had worked for the State Security. The witness recognised the Defendant at the main hearing.

In his police interviews on 24 July and 14 August 2019, which were relayed to the Division by witnesses ...[P] and ...[MM], Witness ...[BB] testified extensively, although some of what he said contradicted the testimony he gave in the main hearing. In the light of the back translation which was done of his interviews, the signatures on each page of the transcript and handwritten corrections made by the witness, the Division rules out any communication issues. The witness also himself testified at the main hearing that he had been able to make himself understood. In the matter itself, Witness ...[BB] stated during his police questioning that he knew the Defendant. He stated that he met him for the first time in Branch 295 when he, the Defendant, was deployed in the State Security in Douma. The Defendant was there for a training course. As a member of the field office in Douma, the Defendant was responsible for crushing the

demonstrations held there, according to the witness's recollection in a position of leadership.

The witness also provided details during his police interview regarding the time when he met the Defendant again and his work in relation to the transports of corpses. The Defendant's name was indicated on the written notice of a transport of corpses, for instance. The witness had received from his unit a file with a list of the dead transported to the mass graves, he stated. He had also been informed by telephone of the vehicles which would be used and their registration numbers. He and the Defendant met at a crossroads near Branch 295, at 5:00 hrs, when a refrigerated truck and two pickups with mounted machine guns had pulled up. He recognised the Defendant as a former acquaintance. He, the witness, had merely greeted him. After they had exchanged a password, he had waved the transport through. The encounter lasted around 15 minutes. The convoy then drove towards a mass grave which was being guarded by "Iranians". As the witness recalled, this was in 2012.

bb) The Division uses as the basis for its assessment the statements which the witness made during the main hearing (see III. 3. b) cc) above) and, in addition, those he made during his police questioning.

It was evident at the main hearing that the witness had not wanted to confirm various statements he had made during his police questioning, even though they were true, because he was afraid. He refused to provide further details regarding his acquaintance with the Defendant, citing the stereotypical reason that he was unable to remember. It was not possible to get any further explanations as to the gaps in his memory out of the witness, even when he was confronted with what he had said during his police questioning. At the same time, the witness admitted at the main hearing that his family, who were still in Syria, had been threatened by distant members of the Defendant's family. According to statements made by the police investigator (Witness ...[P]), Witness ...[BB] had already approached the Federal Criminal Police Office after his questioning by the police because his family was being threatened and he no longer wished to provide any more information.

The witness's testimony in the main hearing regarding his acquaintance with the Defendant was not plausible, lacked detail and was manifestly given as a pretext. For

instance, the claim that he had seen the Defendant only once, fleetingly, and had picked him out amongst a large number of escorts when a conveyance passed by, appears hardly compatible with having a concrete memory of the Defendant after 10 years. The witness not only recognised him physically at the main hearing: During his questioning by the police he had already spontaneously identified him in a photo line-up and reasonably explained that he knew him from when they had both previously worked in Branch 295. According to the police investigators – Witness ...[P] and Witness ...[MM] – Witness ...[BB] had shown willing to provide information during his police questioning on 24 July and 14 August 2019 and had given detailed information about the properties which belonged to Branch 295, the two mass graves, his own work, the content of the lists of dead people which he took receipt of and the delivery of corpses, amongst other things. He had also explained, when asked various follow-up questions, where he had got to know the Defendant and what tasks his job involved. The witness merely evidenced uncertainty when it came to assigning the numbers of the branches and assigning the individual branches to the different Syrian intelligence services. As already stated in the above, the witness, who was correctly informed of his rights, had the statements he made at his police interviews translated back to him. He signed these translations and made a few handwritten corrections. The witness was asked during the main hearing whether there had been any communication difficulties, which he claimed was not the case.

All the above speaks to the fact that the witness deliberately sought to distance himself from providing detailed information relating to the Defendant in the main hearing although he had given it correctly during the preliminary investigation. As to the testimony the witness gave at the main hearing that he was no longer able to recall any details of what he had previously observed, the Division therefore based its assessment on the statements he made during his questioning by the police.

cc) As a result, the witness's statement first confirms the work the Defendant did in a branch of the General Intelligence Directorate which was responsible for Douma, whose remit included quashing demonstrations in the city. As Witness ...[BB] himself left the intelligence service in early 2012 and the encounter with the Defendant was in 2012, the witness statement proves that the Defendant was still working for the Syrian intelligence service, evidently Sub-branch 40, at the turn of the year 2011/12.

d) The Division further concludes from several documents that the Defendant worked for Branch 251 of the Syrian General Intelligence Directorate. An old official pass which the Defendant brought with him to Germany and which was added to his Foreigner's File was issued by the "general military and armed forces leadership" in 1997. It describes him as a "sergeant" and the nature of his service as "volunteer".

Another official pass issued to the Defendant as an employee of the Syrian General Intelligence Directorate derives from an analysis of the Defendant's mobile phone on which photographs of the document were stored, as the Division was told by Witness ...[P], who conducted the analysis. The words "Syrian Arab Republic" are written on the front of the pass, and it is signed "General Intelligence Service" in Latin and Arabic letters. There is also a photograph of the Defendant, below which is written in Arabic script "Head of the Directorate of the General Intelligence Service". The word "Security" is also written in block capitals on the front of the pass, which also bears a pass number and a stylised eagle with the Syrian flag. The Defendant's name, an abbreviation of his service rank of "non-commissioned officer" is written on the back of the pass, as is "Branch 251"; there is also a section which refers to the type of weapon he was issued, which has been left blank, a pass number and the date of issue, that is March 2010. Further, the pass bears the request to authorities to render assistance to the holder of the pass.

2. Concrete participation in the offence, conduct after the fact

The findings as to the Defendant's concrete participation in the offence as established are likewise primarily based on the information he gave during his hearing before the Federal Office for Migration and Refugees on 9 May 2018 and during his police questioning as a witness on 16 August 2018, insofar as it is not inadmissible. The particulars which the Defendant gave on both occasions were relayed at the main hearing by witnesses ...[L], ...[M], ...[P] and ...[O], who also gave testimony regarding the context in which the hearing and the questioning were conducted.

a) The events which the Defendant described during his police questioning as a witness and his own involvement in putting down the demonstration in Douma in September or October 2011 are consistent and sufficiently detailed. No inconsistencies or other particularities emerged which could support the assumption that the Defendant

wrongfully incriminated himself. This also applies in view of the fact that although the Defendant had reported the incident, though without stating that he himself was directly involved, he had already reported about the demonstration and the firing of shots by Hafez Makhoul during his hearing before the Federal Office for Migration and Refugees. There is no indication that the Defendant may have given further incorrect specific details about the incident at the hearing before the Federal Criminal Police Office because he thought it would be to his advantage, for instance.

The putting down of the demonstration in Douma in September or October 2011 as described by the Defendant fits seamlessly into the picture which emerged concerning the course and escalation of events in Syria in 2011, namely that the violent approach to countering demonstrations using impact weapons and firearms and the arbitrary arrest of demonstrators and their transfer to detention facilities operated by the security authorities was one of the methods which was regularly used by the Syrian regime from April 2011 at the latest in an attempt to crush the protest movement by force. The taking of arrested people to Branch 251 in buses and their reception there – an orgy of violence cynically called a “welcome party” – is confirmed by Witness Z 28/07/16, Witness ...[AA] and several victim witnesses. This, too, indicates that the Defendant's testimony is based on his own experience.

Likewise, as already presented in the above (see III. 2.), it is certain that Sub-branch 40 acted as a “snatch and thug squad” in the field on behalf of Branch 251, possibly also for other branches of the Syrian general intelligence service, and that it was called to crush demonstrations, make arrests and take those arrested to the Branch, meaning that the incident also falls within the remit and actual tasks of this intelligence unit. Witness ...[AA] confirmed that Sub-branch 40 was specifically responsible for Douma. The fact that those arrested were taken straight to the Branch, that is without a stopover in the Sub-branch, also does not represent a special case given what the witnesses giving testimony about its activities reported.

Finally, the incident is backed up by the statement made by Witness ...[CC] (see VI. 1. b), p. 157). According to that witness, the Defendant, who was still in Syria at the time, told him about an incident involving at least one bus carrying detainees and a “welcome party” which one of the Defendant's colleagues was involved in. The witness

stated that the Defendant also mentioned Hafez Makhoul's involvement in this incident, that is that he had got out of his jeep and shot at the demonstrators. In view of this original detail, the Division does not doubt that what the Defendant reported to the witness refers to the incident which is the subject of the act, namely the putting down of the demonstration in Douma.

b) As regards the number of demonstrators who were arrested with the Defendant's assistance and taken to Branch 251, the Division assumes, in the Defendant's favour, that there were (only) 30 people.

The Defendant quoted a precise number of people neither during his hearing before the Federal Office for Migration and Refugees nor during his questioning as a witness, that is to the extent that they were admissible. He did, however, state that those arrested were taken in "buses" to the branch. The Division thus assumes, in the Defendant's favour, a minimum of two vehicles.

Witness ...[AA], a guard in Branch 251, reported that those arrested, especially in Douma, regularly arrived at Branch 251 in buses. According to him, the smaller buses could take 15 to 20 people. Sometimes, though, as far as he could see they were overcrowded. Based on this, the Division assumes, in the Defendant's favour, that the number of prisoners transported in each bus was 15, which adds up to a total of 30 people.

c) The Division takes as its basis that, given the standard treatment meted out to people who were arrested and taken to Branch 251, all the demonstrators who were taken there with the Defendant's assistance were also subjected to the severest physical and psychological ill-treatment in Branch 251 and exposed to the conditions which prevailed there at the time of the commission of the act and that they were detained there for at least several days. There were no indications that individual people who were arrested were, by way of exception, given preferential treatment. Such indications are also implausible because those who were taken to Branch 251 were arbitrarily arrested protesters and not deliberately arrested known critics of the regime. It is, though, only the latter who may, with a certain degree of probability, have been privileged, whilst people who were subjected to mass arbitrary arrest could expect deterrent, violent treatment in line with the security authorities' objective. By contrast,

it is not possible to establish that any of these 30 specific demonstrators who were taken to Branch 251 died whilst they were there as a result of the ill-treatment or detention conditions, or that they were subjected to sexual assault.

d) As regards the subjective part of the offence, the Division takes as its basis that the Defendant knew both about what tasks were assigned to Sub-branch 40 and about the escalation of events happening out in the streets, including the growing intensity of the attacks by the security forces. He also knew about the purpose of the specific operation against the demonstrators in Douma and knew that the arrested demonstrators were to be taken to Branch 251. He was aware both of the nature of the ill-treatment and detention conditions which awaited them there and of the fact that their arbitrary arrest lacked any rule-of-law basis. The Division concludes this from the following:

In September 2011 the Defendant had already been working in Sub-branch 40 for three months. For that reason, its remit and actual operations were already known to him, including on account of his previous experience over many years of working in the intelligence service. As the sub-branch's only task was to act as a "snatch squad" by controlling the streets, carrying out searches and arrests, breaking up rallies and taking those arrested to detention facilities, including one in Sub-branch 40, it is simply not conceivable that he could have remained unaware of its function, even though the Division was not able to establish that the Defendant himself engaged in any other concrete actions. This is especially true given that the majority of the witnesses, both those critical of and those close to the regime, were able to provide information about the sub-branch based on their general knowledge about the prevailing situation within the Syrian security apparatus. The fact that the Defendant was already well informed before he transferred to the sub-branch can be derived circumstantially from the chronological description of his work in the intelligence service which he gave the Federal Office for Migration and Refugees: he described it in general terms as "dangerous". Witnesses who worked within the intelligence service whom the Division examined – Witness ...[AA], Witness ...[BB], Witness ...[Y] and Witness Z 28/07/19 – were also able to explain, even though they were of lower rank, the structure of the intelligence services and the tasks and competences of at least their own branch.

The Defendant was likewise well aware of the general situation in Syria over the course of 2011 up until the operation which is the subject of the act. Incidents which occurred from February 2011 onwards in the aftermath of the Arab Spring, the spreading demonstrations and their violent suppression by the security authorities were common knowledge in Syria. According to the statements made by the expert witnesses ...[S] and ...[T], the Syrian population was, in particular, well aware that the Syrian government was already availing itself of the services of the intelligence apparatus and other security forces even when Hafez al-Assad was still in power in order to intimidate oppositional forces by making arrests and using force and to deter them from engaging in their activities. Apart from brief periods during which conditions were relaxed, nothing changed under Bashar al-Assad's rule. The events in Douma and subsequently across the whole of the country from February 2011 had drastic consequences and, even though the Syrian regime made efforts not to have them reported in the press, reports of them were disseminated on social media and foreign websites. There is no reason to assume that the Defendant was unaware of what was common knowledge in Syria. Above all, on account of his work within the Syrian intelligence apparatus, which was specifically involved in suppressing the burgeoning civil movement, the Defendant had an insider's view of the extent of the efforts undertaken in that regard. His training and the tasks assigned to him – ranging from his military-style training to his own work as a trainer, which was oriented to responding violently to opponents of the regime, to spying on mosques, responsibility for the surveillance of a specific district of Damascus and to his transfer to Sub-branch 40, which was in particular responsible for the direct use of force on the streets – were geared to identifying and suppressing oppositional efforts. The fact that he knew about the general situation in Syria also results from the statement made by Witness ...[CC], who reported about meetings either in February or March 2011 in which the Defendant had indicated his sympathy for the opposition movement.

Even against this backdrop it is extremely likely that the Defendant knew from the outset what the purpose was of operations such as the one established here against the demonstration in Douma. In addition, the Defendant explicitly stated during his police questioning as a witness that, since “the start of the unrest”, orders had been issued to kill demonstrators and, when asked a follow-up question, he made specific

reference to the demonstration in Douma which is the subject of the act. The wording the Defendant used to describe how he had received such orders in relation to the demonstration, including information about the demonstrators' planned behaviour ("They will sit there and not be moved."), permits the conclusion that the Defendant was already informed ahead of the demonstration about the operation and its purpose. In the light of the scope of the operation and required coordination – the Defendant explained that 250 people belonging to Sub-branch 40 alone were involved – it is also to be assumed that instructions were given ahead of the demonstration about the precise remit and what was expected of him. This especially since the Defendant, a higher-ranking non-commissioned officer ranked higher than the enlisted personnel. Accordingly, the Defendant was also aware that the people arrested at the demonstration were to be taken to Branch 251.

Finally, the Defendant also knew that, after being taken to Branch 251, those arrested would be subjected to the ill-treatment, torture and inhumane detention conditions established in the above. Taking together all the statements made by all the Syrian witnesses who were examined, the conditions in, tasks of and procedures applied in the detention facilities operated by the Syrian intelligence service were common knowledge amongst the general public in Syria. Witnesses ...[BB], ...[AA] and Z 28/07/16, who were employed in the intelligence services, were able to provide detailed insights in that regard. Especially since the Defendant was a sergeant major, and thus not of a low rank, it can be ruled out that these circumstances were unknown to him. This is especially true since various witnesses, including Witness ...[DD] and Witness ...[FF], had already reported about the ill-treatment of detainees in stopover facilities belonging to Sub-branch 40 in Damascus. The Division therefore takes as the basis for its assessment that the Defendant was well informed about the conditions in the branch both based on his own observations and what his colleagues told him. He had already spent time working in Branch 251 from February 2010 on, had thus been in and out of the premises belonging to the branch and had heard the screams of those being tortured, which, according to the testimony he gave during his police questioning, could even be heard in the cafeteria there. By his own account, the Defendant visited the prison in the branch, although it cannot be ruled out that this was after the incident which is the subject of the act. He was also able to report about the methods of torture

used. According to his own testimony, the Defendant not only knew that torture existed in Branch 251 even before the unrest, i.e. before March 2011, he was even able to state during his police questioning what had changed after the unrest: "The punishments increased and the guards were able to do what they wanted."

It was not possible to establish with any certainty what the Defendant's motives were for ultimately defecting. The Division assumes, in the Defendant's favour, that, as he had already asserted during his hearing before the Federal Office for Migration and Refugees, he ultimately turned his back on his work for the regime because he resented the fact that he was increasingly being required to use force against demonstrators. It would seem natural that the fact that the clashes with demonstrators and other opponents of the regime had become more extensive and more brutal also played a role in this, and that, owing to the foreseeable militarisation of the conflict, continuing in his job in the intelligence service would have had considerable risks for the Defendant. As established in the above, on account of his involvement in the transportation of corpses the Defendant was also aware that the crushing of the protest movement led to large numbers of victims.

e) By contrast, the Division is unable to establish that at the time of the incident which is the subject of the act the Defendant found himself in a predicament which would have prevented him stepping back from the act on account of a present threat to his own life or limb or on account of relevant threats to his close relatives, and that that was the only reason or one of the reasons why he committed the act.

aa) The Division already cannot identify any will on the part of the Defendant to commit the act to avoid serious disadvantages for himself or third parties close to him. Rather, it assumes, based on various circumstantial facts, that the Defendant participated willingly and without any inner conflict in putting down the demonstration and transporting demonstrators to Branch 251.

(1) After having worked in the intelligence service for many years, the Defendant was already aware of the methods applied by the security services against opposition movements in the period before February 2011. From the general media, in particular though on account of his being part of Branch 251, he also knew that it was primarily the intelligence services which were deployed to put down the anti-government

protests, preferentially Sub-branch 40, which acted as a rapid response unit. Sub-branch 40 was, therefore, involved as from February 2011, consequently before the incident which is the subject of the act. Even though the Defendant was not initially employed in Sub-branch 40 and it is not possible to establish that he subsequently took part in such operations – with the exception of his contribution to the offence as established – it can be ruled out that he was unaware of them, especially given his status as a high-ranking non-commissioned officer. In the light of the fact that instructions which were issued on the basis of decisions taken by the CCMC from April 2011 onwards were being passed down to the intelligence services, that is to begin systematically using – even lethal – force, the Defendant was also aware, from May 2011 onwards, that the security situation was escalating. When he joined Sub-branch 40 in July 2011 he was, therefore, aware of what awaited him there.

Even though it is not possible to establish that the Defendant's original transfer to Sub-branch 40 was primarily down to his own efforts, according to the statement given by Witness ...[AA], his deployment did presuppose the relevant aptitude and especial loyalty to the regime. It is thus to be ruled out that this occurred against the Defendant's declared will, especially since he had a dislike of mere office work and had himself been successful in his efforts to be allowed to return to the "operative business" of the intelligence service, as is evident from the statement he made during his hearing before the Federal Office for Migration and Refugees. In particular, given what he knew about the work of the sub-branch, the Defendant could have opposed his transfer. There is just as little evidence of this as there is of any specific efforts on his part to leave the sub-branch again or, if need be, to desert in the months following his transfer in which, in view of the intensification of the protests on the one hand and the more brutal response of the security forces on the other, the Defendant had quickly got an idea of what his new job entailed. Nor does the Defendant assert any such thing in the written statement he submitted to the Division.

(2) It cannot be assumed that it would not have been possible for the Defendant to leave the service before the start of 2012.

Based on the outcome of the taking of evidence, the Division cannot initially take as its basis that, as he claims in his written statement, the Defendant was subject to wide-

ranging monitoring merely on account of his Sunni denomination and that this had massively restricted his options. According to the consistent statements made by Expert Witness ...[Th] and several other witnesses (some of them expert witnesses), Alawites held the highest leadership positions, especially within the security authorities. However, there is no evidence to suggest that this predominance also pertained to the ranks of non-commissioned officers and enlisted personnel. Rather, the same evidence indicates that Syrians of the Sunni faith were also employed in the Syrian authorities, including in the security forces, and that, given that Sunnis make up the overwhelming majority of the Syrian population, it stands to reason that they were in the majority. There are no factual indications to suggest that Sunnis were subjected to monitoring merely on account of the protest movement, especially since such monitoring was de facto hardly implementable. The fact that, by his own account, the Defendant, a Sunni, was selected as late as July 2011 to do work in the sub-branch which, in the eyes of the regime, was especially important and sensitive and that he was able to remain in post despite the conflict escalating is not consistent with a particular mistrust of Sunnis in Sub-branch 40 in general and of the Defendant in particular. Rather, shortly before he deserted, the Defendant was entrusted with the armed escort of a transport of corpses, which was subject to especial secrecy.

Other concrete obstacles to his deserting at an earlier point in time are not apparent. It is to be assumed that the financial circumstances of the Defendant, a higher-ranking non-commissioned officer, had been stable for quite some time and that this would have permitted him to leave his service, if necessary also to defect and to use the financial means available to him to organise his smuggling out of the country. The possibility of fleeing to his home village, which would have proved a risk for him after deserting the intelligence service on account of having to pass through both opposition-held and government-held regions, would have already and equally been open to him in mid-2011. By his own account, after he did in fact leave in early 2012 his family initially continued to live in Damascus largely without any repercussions, meaning that the assumption that deserting before the offence would have put them in considerable danger is also without basis in fact. Seen overall, it is not apparent what prevented the Defendant from fleeing to his village at an earlier point in time in order to possibly begin planning his efforts to leave the country from there.

(3) From all the above the Division concludes that at the time of the offence the Defendant was in fact not yet willing to defect. Rather, his continuing to work in Sub-branch 40, which also secured his livelihood and that of his family, indicates that the Defendant had at least reconciled himself to his new tasks and performed his duties voluntarily, at any rate up until the end of 2011. In his written statement, too, the Defendant describes that he did not finally decide to desert until January 2012. The Division therefore takes that as the basis for its assessment.

bb) It is, further, not apparent that the Defendant would not, objectively speaking, simply have had any reasonable opportunities not to take part in the concrete offence. The Division does not fail to recognise that openly refusing to carry out orders would have had serious negative consequences for the Defendant, which could possibly have gone as far as his own arrest and placement in one of the intelligence service's prisons. During each phase of the operation – that is when it was announced prior to the journey to the site of deployment, during that journey and whilst in the field – the Defendant would, however, have been able to stop taking part by feigning acute symptoms of illness or an injury. In view of the turmoil out in the field, as he himself described it, the fact that numerous units and branches were deployed and demonstrators were pursued through the streets of Douma, the Defendant could also have taken advantage of the situation and absconded. In view of the severity of the offence (i.e. arresting and transporting innocent people to a prison where torture was enforced), it would also have been within reason to expect him to accept the risk of subjecting himself to the suspicion that he had turned his back on the regime which that entailed, as well as the organisational and financial challenges linked to defecting so abruptly.

The assertion the Defendant made in his written statement regarding the fact that he had first wanted to wait until (unspecified) regions fell into the hands of the opposition so that he could then flee does not alter this fact. The route which a former member of the intelligence service had to take to get to the Turkish border – through opposition-held areas – was no less dangerous than that which took him through a government-held area, which he would have had to pass through first anyway. Witnesses “Samir” and “Caesar” made statements which were passed to the Division by witnesses ...[LL] and ...[O] to the effect that “Caesar” had to pass through a rebel-held area on his way

to work and was often subjected to checks, and that working for the Syrian regime had proved to be extremely dangerous.

C. Legal assessment

The Defendant is criminally liable for the established act of aiding a crime against humanity in the form of torture and severe deprivation of liberty.

I. Re the conditions of section 7 of the Code of Crimes against International Law

1. Widespread and systematic attack directed against a civilian population

In the Division's assessment, the events in Syria from late April 2011 onwards constitute both a widespread and a systematic attack directed against a civilian population within the meaning of the attributes set out in section 7 (1) of the Code of Crimes against International Law (CCAIL).

a) Following the legal definition in Article 7 para. (2) point (a) of the Rome Statute of the International Criminal Court (Rome Statute), "an attack directed against any civilian population" means a course of conduct involving the multiple commission, in the context of an overall act, of the alternatives listed in section 7 (1) nos. 1 to 10 of the CCAIL. The attack must be carried out by a collective, though not necessarily a state one. A "civilian population" is defined as a larger group of people who share distinguishing features – for instance living in the same geographical area or having a shared political will – on account of which they come under attack. A state's own civilian population can be a relevant object of such an offence, too. The defining feature is that the measures are not directed primarily against individual victims of the act, as individual personalities, but against them as members of a group. The attack need not be directed against an entire population living in a particular area. Rather, it is sufficient for the attack to be directed against a significant number of individuals (see Decisions of the Federal Court of Justice in Criminal Matters 64, 10, margin no. 164; Federal Court of Justice, Order of 3 February 2021 – AK 50/20, margin no. 32; Werle, in: *Münchener Kommentar, StGB*, 3rd ed., section 7 of the CCAIL, margin no. 15, 21, with further references).

A “widespread attack” is defined as a course of action applied on a large scale with a large number of victims. An attack is “systematic” if the use of violence is organised and executed according to plan in the sense of consistent actions (Decisions of the Federal Court of Justice in Criminal Matters 55, 137, margin no. 27; Federal Court of Justice, Order of 3 February 2021 – AK 50/20, margin no. 32, with further references).

b) Judged on this basis, the actions of the Syrian regime from late April 2011 onwards meet the conditions of the attributes set out in section 7 (1) of the CCAIL in relation to the act. According to the findings as established, the security forces already used violence against peaceful demonstrators and other, including alleged, members of the opposition as of March 2011. Whilst initially only a few individual protests were affected by the at first only isolated signs that the Arab Spring had crossed over into Syria and by the subsequent response to certain measures undertaken by the Syrian regime, the more the peaceful civilian movement grew the more violent the Syrian authorities responded, particularly the army and the intelligence services, which took action against the movement by means of organised and numerous arrests, long periods of detention, torture and also the killing of actual or alleged opponents of the regime.

The massive force which the Syrian government and its subordinate authorities used against those taking part in the protest movement, against supposed or actual members of the opposition and civil society activists and against civilians who were entirely uninvolved served the politically motivated suppression of the protests by directly breaking them up and intimidating the population and thus also ensuring that the government under Bashar al-Assad retained power. The Division thus regards the collective entity acting and leading the attack to be the Syrian state leadership and those within the security authorities responsible for giving and implementing instructions, in particular the state intelligence services. The object of the attack was the broad majority of civilians who had actually or were even only suspected of having joined the protest movement or of being critical of the Syrian government. They were subjected to increasingly planned and generally arbitrary state violence as from March 2011. This at least fulfils the elements of the offence under section 7 (1) nos. 1, 5, 6 and 9 of the CCAIL.

From late April 2011 onwards the attack also was to be assessed as widespread and systematic. The fact that, from that point in time, the violent course of action adopted by the security forces was controlled centrally by those with the highest political and military responsibility in the President's circle within an executive body set up to that end establishes the systematic nature of the attack. The large number (i.e. thousands per month) of civilian victims – considered by the Division as both those who were killed directly by the security forces at demonstrations, checkpoints or elsewhere and those who were abducted to the state-run detention facilities and ill-treated there – and the persistent use of violence, which continued to escalate in the following months, and the countrywide approach, in particular in bigger towns and cities such as Greater Damascus, Douma, Daraa and Homs, evidence a multitude of acts of violence which meet the elements of the offence and constitute a widespread attack.

2. Main offence: torture and severe deprivation of liberty

Within the context of the overall act directed against the civilian population, all the demonstrators who were arrested with the Defendant's assistance and taken to Branch 251 were subjected to torture within the meaning of section 7 (1) no. 5 of the CCAIL by those employed in the branch and were severely deprived of their liberty within the meaning of section 7 (1) no. 9 of the CCAIL.

a) Anyone who, in the context of an overall act, tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions which are compatible with international law commits the elements of the alternative set out in section 7 (1) no. 5 of the CCAIL. To be "substantial", that harm or suffering requires a sufficiently large degree of impairment caused by the act and is to be assessed taking account of all the facts and circumstances of the case, in particular the nature of the act and its context. Lasting damage to health or extreme pain are, however, not necessary, nor is a degree of severity comparable to that required under section 226 of the Criminal Code (*Strafgesetzbuch*, StGB) (Decisions of the Federal Court of Justice in Criminal Matters 64, 89, margin no. 63; Federal Court of Justice, Order of 5 September 2019 – AK 47/19, margin no. 38, Order of 25 September 2018 – StB 40/18, margin no. 22, and Order of 17 November 2016 – AK 54/16, margin

no. 27). Massive psychological impairment can also lead to an act being classed as torture (see Federal Court of Justice, Order of 6 June 2019 – StB 14/19, margin no. 64; see also Article 1 (1) of the UN Convention Against Torture; European Court of Human Rights *NJW* 2010, 3145, 3146).

In the present case the Division was not able to establish in what specific manner the demonstrators, whose individual identities are not known, were treated in Branch 251. However, it was possible to establish that all the demonstrators were subjected to severe beatings as soon as they arrived there and that they were subsequently exposed to further physical abuse whilst inside the branch, at the very least that they were beaten. Taking this together with the inhumane conditions of detention as established, the fact that the detainees constantly heard loud cries of pain coming from their fellow inmates and the terrifying, gruelling uncertainty about their own impending treatment, the Division considers that the suffering of each victim significantly exceeded the threshold of “substantial”.

b) At the same time, the imprisonment of the demonstrators who were arrested with the Defendant’s assistance constitutes severe deprivation of physical liberty in contravention of a general rule of international law within the meaning of section 7 (1) no. 9 of the CCAIL. Following Article 7 para. (1) point (e) of the Rome Statute, this is assumed to be the case where a victim is prevented, without a legal basis which is recognisable under international law, from leaving the place where they are being held. “Severe” requires that all the facts and circumstances of the case be considered, in particular including the length and circumstances of the deprivation of liberty (see Bundestag Printed Papers 14/8524, p. 22; Werle, loc. cit., section 7 of the CCAIL, margin no. 103 ff.).

The Division considers the deprivation of liberty which each of those detained in Branch 251 unquestionably endured to be severe. It was in each case executed without basis in law, nor was an individual order issued which even remotely followed the rule of law. Those who were arrested were not told the reason therefor. They were neither instructed about the legal remedies available to them nor granted legal counsel. Relatives were not notified and those concerned were not told how long they would be spending in detention, which for them was thus an unforeseeable length of time. The

circumstances of detention were characterised by excessive violence and inhumane general conditions of detention. Also, their detention lasted a not inconsiderable time. Even though it cannot be ruled out that some of the 30 people who were arrested may only have been detained in Branch 251 for the comparatively short space of time of a few days, the deprivation of liberty weighs heavily in view of the other serious circumstances which made spending even a short period in the branch intolerable.

c) The fact that the individual acts committed against those who were arrested functionally fit seamlessly into the overall offence of a widespread and systematic attack directed against the civilian population (which was already ongoing in the period in which the acts were committed) and are linked to it requires no further elaboration. The main offenders who ordered and carried out the individual instances of torture and deprivations of liberty in Branch 251 are responsible only for one act in the legal sense. If (as is the case here) individual acts are factually, temporally and spatially linked, then their functional link to the same overall offence within the meaning of section 7 (1) of the CCAIL means they constitute a single entity for the purpose of the legal assessment (Decisions of the Federal Court of Justice in Criminal Matters 64, 89, margin no. 53; Werle, loc. cit., section 7 of the CCAIL, margin no. 141).

II. Defendant's aiding of the offence

The Defendant aided the main offence within the meaning of section 27 of the Criminal Code by committing an individual act against the 30 individuals who were arrested. He promoted the main offence by contributing, by means of a unitary act, to the victims being arrested and taken to Branch 251. This enabled the elements of the offence set out in section 7 (1) nos. 5 and 9 of the CCAIL to be realised in the first place. It cannot, by contrast, be assumed, in the absence of the provision of any concrete support, that the Defendant provided even mental support to the other acts committed as part of the attack directed against the civilian population, even though these were committed in the intelligence service branches to which he belonged (see Decisions of the Federal Court of Justice in Criminal Matters 64, 89).

III. Justification and culpability

The Defendant also acted unlawfully and culpably. To the extent that he invokes necessity as defence, which precludes culpability, within the meaning of section 35 of the Criminal Code in the matter, the conditions of that provision are not met. As has been established, the Division does not consider there to have been a subjective state of necessity in the sense of a predicament which the Defendant would have wished to evade. Furthermore, it was, objectively speaking, not unreasonable to expect him to act in a rule-based manner. It is not apparent that it would have been impossible, or at any rate possible only at unjustifiable risk, for the Defendant not to commit the act. In view of the severity of the offence, the Division considers that greater expectations are to be placed on the Defendant when it comes to conscientiously examining how to avoid committing the act and doing all that is in his power in that regard – including accepting risks and personal constraints. This also applies because the Defendant, a long-standing employee of the intelligence service, was aware of the tasks assigned to Sub-branch 40, and there are no indications that he had previously made any provision to avoid participating in crimes under international criminal law.

However, no such scrutiny and endeavours to avoid involvement in the act are discernible. Rather, as established, even in the situation itself alternatives were available to the Defendant, and it is not plausible why he had to postpone fleeing, which he did without his family, until January 2012.

IV. Obstacles to prosecution

There are no obstacles to prosecution. In particular, the Defendant cannot rely on his immunity as a functionary (in the widest sense of the word) of another state (see Federal Court of Justice *NJW* 2021, 1326).

D. Sentencing

I. Overview

At the sentencing stage the Division was first required to determine the range of punishment. Taking, as its point of departure, the standard range of punishment under section 7 (1) of the CCAIL, it was required to assess whether in consideration of all the relevant criteria regardless of the types of mitigating circumstances established by law

– in the present case the Defendant's status as an aider pursuant to section 27 (2) sentence 2 and section 49 (1) of the Criminal Code and possible contribution to discovery (*Aufklärungshilfe*) pursuant to section 46b and section 49 (1) of the Criminal Code – or taking them into account (section 50 of the Criminal Code) it could assume a less serious case pursuant to section 7 (2) of the CCAIL. It concluded that, taking account of the mitigating circumstance under section 27 (2) of the Criminal Code, this did constitute a less serious case pursuant to section 7 (2) of the CCAIL and it (again) mitigated the resulting range of punishment pursuant to section 46b of the Criminal Code. On the basis of this range of punishment, the Division weighed up the facts and circumstances which spoke for and those which spoke against the Defendant and set the individual sentence of imprisonment as set out in the operative part of this judgment. More specifically:

II. Range of punishment

1. Section 7 (1) of the Code of Crimes against International Law

Section 7 (1) of the CCAIL provides for a term of imprisonment of not less than five years for cases of torture pursuant to section 7 (1) no. 5 of the CCAIL; it provides for a term of imprisonment of not less than two years for severe deprivation of liberty pursuant to section 7 (1) no. 9 of the CCAIL. Since the main offence which the Defendant aided also falls within the scope of section 7 (1) no. 5 of the CCAIL, a (standard) range of punishment of between five and 15 years was first to be taken as a basis (section 52 (2) sentence 1, section 38 (2) of the Criminal Code).

2. Section 7 (2) of the Code of Crimes against International Law, section 27 (2) of the Criminal Code

The Division then considered whether a less serious case was to be assumed pursuant to section 7 (2) of the CCAIL, that is a range of punishment of between two and 15 years. A less serious case exists where the overall offence, including all the subjective aspects and the offender's personality, deviates to such a significant degree from the average of normal cases that it appears necessary to apply the exceptional range of punishment, whereby an overall assessment of all the key exonerating and incriminating facts and circumstances must be conducted regardless of whether they are part of the act itself, whether they accompany, precede or succeed it. If, the individual exonerating sentencing criteria are not sufficient to assume that there is a less serious case, then account is also to be taken of those facts and circumstances which, taken on their own, already constitute one of the types of mitigating circumstances established by law.

A key factor which the Division had to take into account, in the Defendant's favour, was the fact that he incriminated himself during both his hearing before the Federal Office for Migration and Refugees and during his subsequent questioning by the police as a witness and that his conviction to a decisive extent relies on the statements which he himself made. Even though the Defendant did not plead to the charge at the main hearing, the written statement he submitted to the Division constitutes a partial confession which also counts in his favour given that in it he admitted that he worked

for the Syrian intelligence service. Another exonerating fact is that, at the time of his contributing to the offence, the Defendant was part of a military-like command structure and was, in consequence, under a certain amount of pressure to act. Finally, the Division had to take account, in his favour, of the fact that, measured in terms of the course of the internal Syrian conflict, he voluntarily turned his back on his job in the intelligence service at a comparatively early point in time, that is in early 2012, and that he fled, thereby accepting risks to himself and his family. The Division further assumes, in the Defendant's favour, that he had – even before he deserted – already distanced himself inwardly from his work for the regime and the attacks directed against the civilian population carried out by the Syrian security authorities, which increased both in terms of their extent and brutality in the course of 2011. Besides, at the time of the act the Defendant had no criminal record. The act was committed nine and a half years ago. In view of the fine of 20 daily rates which was imposed by ...[a] Local Court – and which could, in principle, form part of a cumulative sentence but has already been fully enforced – there was no reason, in view of the nature of this penalty, to make a hardship allowance (see Federal Court of Justice *NStZ-RR* 2008, 370; *StV* 2020, 838; Order of 5 May 2021 – 6 StR 15/21).

As regards what counts against him, the Division took account of the large number of people whom the Defendant handed over to the prison in Branch 251. In that prison the detainees were exposed to treatment which, in view of the intolerable conditions of detention and systematic torture inflicted, could hardly be surpassed in terms of its inhumanity and therefore weighs heavily, even when measured against the elements of the offence in section 7 (1) no. 5 of the CCAIL – as the Defendant was well aware even though he did not himself abuse the victims. The fact that the Defendant aided an offence which simultaneously meets two of the conditions under section 7 (1) of the CCAIL constitutes an aggravating circumstance. Further, account had to be taken of the fact that the attack directed against the civilian population, in the context of which the Defendant committed this offence, already at the point when he contributed to the act (as the Defendant knew) which already cumulatively fulfilled the attributes listed in section 7 (1) of the CCAIL in terms of its ruthlessness and brutality and on account of the attack being widespread across the entire state and encompassing the civilian population as a whole, and that as a result it had reached a level which went beyond

the average case. Finally, the Defendant must take responsibility for the fact that, knowing that, even then, opponents of the regime were being treated brutally and extralegally by the intelligence apparatus, he had many years before the offence made himself available to the regime, and that his own work was not limited to office work but was extended, at his own request, to include operative spying activities and that, ultimately, he worked for a period of six months in a sub-branch which was involved in the Syrian regime's repressive measures on a continuous basis, in which crimes pursuant to section 7 of the CCAIL were committed on an ongoing basis, in that opponents of the regime were arrested, abused and admitted, and which was well-known and infamous on that account.

Considering these facts and circumstances alone the Division does not find the general mitigating circumstances to predominate to such a degree that this aspect in and of itself would justify applying the range of punishment set out in section 7 (2) of the CCAIL. The decisive factor in this regard is the high degree of unlawfulness of the act. This can only be mitigated if account is further taken of the fact that the Defendant is not accused of having committed the act but merely of aiding it; on these grounds alone, the range of punishment must be shifted pursuant to section 27 (2) and section 49 (1) of the Criminal Code. Taking account of this circumstance together with the other aforementioned aspects which exonerate and incriminate the Defendant, the Division considers the act to constitute a less serious case and took as the basis for its assessment such a less serious case rather than shifting the range of punishment pursuant to section 49 of the Criminal Code, which there would otherwise have been occasion to do. It was no longer necessary to incorporate the contribution to discovery (see 3. below) for this to be the case. In assuming a less serious case, the Division is aware that, applying section 49 of the Criminal Code as opposed to section 7 (2) of the CCAIL would lower the maximum penalty to 11 years and three months, although the lower threshold is the same in each case. On an overall assessment and in view of the fact that the penalty to be imposed will not be drawn from the upper part of the range of punishment, and in view of the further mitigation pursuant to sections 46b and 49 of the Criminal Code, which is still to be undertaken, the Division nevertheless considers that assuming a less serious case takes appropriate account of the act, the

Defendant's self-incrimination, his turning his back on the regime and the other aforementioned aspects.

3. Section 46b of the Criminal Code

In view of the statements which the Defendant made in the preliminary investigation, the Division saw occasion to examine whether a further shift in the range of punishment pursuant to sections 46b and 49 of the Criminal Code was necessary, and concluded that this was the case.

a) The contribution to discovery relates to the former Co-Defendant ...[K], whose case was separated from the Defendant's in February 2021 and is being continued separately after the main hearing was conducted jointly up to that point. As regards the question of the penalty to be imposed, the Division thus makes additional determinations which were not used in relation to the finding of guilt but are presented in the following; they are based on the Defendant's questioning as a witness by the Federal Criminal Police Office on 16 August 2018. During that questioning the Defendant gave further testimony which significantly incriminates the former Co-Defendant ...[K] as the allegedly co-responsible executive officer in Branch 251 and which was included in the admitted indictment against the Co-Defendant. The Division does not believe that it is prohibited from using this testimony, even beyond the point in time which is relevant for its admissibility in terms of the verdict of guilty, since the Defendant's contribution to discovery could otherwise possibly not be taken into account owing to a failure to inform him of his rights as an accused and a ban on using the statement which serves the purpose of his protection.

As the Defendant's investigating officers at the time – witnesses ...[O] and ...[P] – testified, the Defendant provided detailed information about Branch 251 of the Syrian General Intelligence Directorate during his police questioning on 16 August 2018. He testified as to which districts of the city the branch was responsible for after the start of the unrest (Douma and Harasta). The branch also operated checkpoints, he stated, at which arrests were regularly made. Further, the Defendant gave the names of senior officers, including the former Co-Defendant ...[K]. The orders relevant to operations carried out by Sub-branch 40 came from Branch 251, he reported. It was in particular those arrested people who had allegedly had "information" who were taken to

Branch 251. The “investigators” were responsible for them there, that is in the sub-branch for investigations headed by ...[K]. The Defendant further provided information about the former Co-Defendant’s tasks. He was responsible for information-gathering, he stated. The Defendant cited typical examples of questions which the investigators put to the demonstrators, such as “Who’s supporting you?”, “Who’s funding you?” and “Who’s organising these demonstrations?”. The information had been got out of the demonstrators “using blows, *shabeh*, *dulab*, the Flying Carpet and the German Chair”, by making the prisoners stand up for a long time (by binding them) and by depriving them of food. Such torture methods were applied in the basement of Branch 251, the Defendant stated. He also sketched the former Co-Defendant ...[K]’s office, the distance between the office and the prison, and cross-sections and floorplans of the branch. He also stated how many staff were subordinate to ...[K]. According to the Defendant, the prison in Branch 251 was also part of the former Co-Defendant’s interrogation branch; the Defendant described him as a “very experienced investigator”. The Defendant also stated that, on an occasion of which he otherwise had no specific recollection, the former Co-Defendant ...[K] had refused to beat demonstrators after their arrest.

As regards the number of prisoners who were taken to Branch 251, the Defendant stated that since the start of the conflict buses carrying prisoners had arrived on a daily basis, sometimes twice a day. The prison, which was designed to house around 100 prisoners, had been completely overcrowded with 400 prisoners, he stated. Prisoners had constantly had to be transferred to Branch 285.

As regards deaths in Branch 251, the Defendant testified that he had on one occasion seen a prisoner being hit over the head with a metal rod by a guard after getting out of the bus on arrival at Branch 251 and dying as a result. He also stated that people had often died “during the investigation work” in Branch 251. They had then been taken out of the cellar prison at night wrapped in blankets and taken away, either to a cemetery in Najha or a hospital. Between May and June 2011 he had observed 10 dead bodies being taken out of the cellar.

b) The police investigators, witnesses ...[O] and ...[P], testified in relation to their taking account of the statements which the Defendant made at the time of the preliminary

investigation against the then Co-Defendant ...[K]. The Defendant's statements were used in the preliminary investigation against the former Co-Defendant ...[K]. On the basis of the Federal Public Prosecutor General's indictment of 18 October 2019, which the Division admitted, the Co-Defendant ...[K] is charged with, amongst other things, having both killed 58 people out of base motives and tortured at least 4,000 people in the context of a widespread and systematic attack directed against a civilian population. As regards the attribution of these offences, the indictment most importantly refers to the prominent position which the former Co-Defendant ...[K] held as head of investigations in Branch 251 of the Syrian General Intelligence Directorate. As regards the killings with which he has been charged, accusations of acts to the detriment of 11 victims are based solely on the Defendant's statement.

The information regarding the structure of and tasks assigned to Branch 251 and regarding the former Co-Defendant ...[K] himself is also of considerable relevance when it comes to assessing the charges against the Co-Defendant – even beyond the contribution to the act with which the Defendant is charged. As was already apparent to the Division in the context of the joint taking of evidence against both defendants, knowledge of the internal organisational structures and competences could only be obtained by taking as a whole generally accessible sources, expert analyses, revealing individual observations by victim witnesses and the statements of former employees of the regime, which were particularly important, with more wide-ranging and immediate observations from their vantage point within their area of work. Naturally, those witnesses who at least sometimes worked in the same area and at the same time are of particular relevance. Besides the Defendant, only Witness ...[AA] (who was deployed as a guard and was thus, given this function, limited as to the observations he could make) and Witness ...[Y] (the quality of whose statement, however, varied considerably) were available from Branch 251.

The Defendant's statements are not inadmissible in the ongoing proceedings against the Co-Defendant ...[K].

c) The Division considers the Defendant's statements to contribute to discovery within the meaning of section 46b (1) sentence 1 no. 1 of the Criminal Code. The act of which the former Co-Defendant is accused is one pursuant to section 100a (2) no. 10 (b) of

the Code of Criminal Procedure. Although, on account of his contribution to the offence, the Defendant is also a participant in the crime under international criminal law of which the Co-Defendant is accused, his contribution to discovery goes significantly beyond his own contribution to the act, which is limited to one act of arresting and delivering prisoners (section 46b (1) sentence 3 of the Criminal Code). On account of how they are intertwined in the context of a unitary attack directed against a civilian population and their spatial and situational overlapping within the same branch of the intelligence service, there is also a sufficient link between the offence of which the Defendant is accused and the offence of which the former Co-Defendant is accused. This is the case because the knowledge thereof was ultimately revealed before the main proceedings were opened against the Defendant. The fact that the Defendant made no further statements in the main hearing does not preclude the assumption of a contribution to discovery within the meaning of section 46b of the Criminal Code (Federal Court of Justice *NStZ* 2009, 394; Order of 2 June 1988 – 2 StR 248/88; Maier, in: *Münchener Kommentar, StGB*, 4th ed., section 46b margin no. 30). In the same way, it cannot be assumed that the Defendant did not act voluntarily within the meaning of section 46b (1) sentence 1 no. 1 of the Criminal Code as a consequence of his obligation to testify as a witness in criminal proceedings (see Decisions of the Federal Court of Justice in Criminal Matters 55, 153, 155), especially since, as an accused, he would have been able, at least in part, to refuse to testify.

d) When conducting the overall assessment begun on this basis (see Decisions of the Federal Court of Justice in Criminal Matters 55, 153) as to whether the Defendant should benefit from the mitigation of sentence pursuant to section 46b of the Criminal Code, the Division took particular account of the circumstances listed in section 46b (2) of the Criminal Code. The nature and extent of the facts disclosed are to be regarded as particularly important. As presented in the above, other evidence regarding the structure of the Syrian intelligence service and its remit in the burgeoning internal Syrian conflict as from February 2011 was already available in the preliminary investigation against the former Co-Defendant ...[K], including, specifically, the expert reports rendered by the German Federal Intelligence Service and by Expert ...[Th] and the statements made by former employees of the Syrian regime, that is witnesses Z 28/07/16, ...[Y], ...[N] and ...[BB]. However, the only witnesses who were from

Branch 251 and were able to provide information – albeit insufficient information – about the former Co-Defendant ...[K], were Witness ...[Y] and Witness ...[AA]. The Defendant's nuanced statements as to the Co-Defendant's tasks and person were thus of great significance.

In the Division's assessment, however, what weighs even more heavily is the fact that the Defendant was able to give testimony regarding killings in the branch, which – insofar as the former Co-Defendant ...[K] is charged with their commission – are based only on his testimony and might possibly only be provable by him. Notwithstanding the fact that the killings form part of a unitary overall act pursuant to section 7 (1) of the CCAIL, they constitute a violation of the highest individual rights. The severity of the offence and the significance of the contribution to discovery are therefore to be regarded as very great. In addition, this is a significantly more serious wrong than the Defendant's own contribution to the act, since the Defendant cannot be proven to have aided the killing of any person, for instance. The Defendant provided all the information willingly during his police questioning, despite his evidently incriminating himself; he also gave testimony about other members of the regime and their work, in relation to which preliminary investigations are not yet pending. Insofar as the Defendant was unable to cooperate further with the investigating authorities and did not repeat his incriminations at the main hearing, then in view of the special nature of the information, some of which cannot be used, and the considerable amount of self-incrimination which is inevitably linked to such a wide-ranging revelation, this does not constitute a decisive factor which speaks against assuming that the range of punishment should be shifted.

4. As a result, the Division thus assumed the range of punishment in section 7 (2) of the CCAIL as mitigated pursuant to section 49 (1) of the Criminal Code. It was consequently required to draw the term of imprisonment to be imposed from a range of punishment of imprisonment of between six months and 11 years and three months.

III. Sentencing in the narrower sense

When determining the term of imprisonment to be imposed, the Division considered and weighed up anew all the previously mentioned sentencing criteria. The Division again took account of the Defendant's contribution to discovery, which in itself leads to a shift in the range of punishment, and the mitigating circumstances drawn upon in making the assumption that this constituted a less serious case, in particular the reduced unlawfulness of merely aiding rather than committing the act. However, it attached less importance to these two aspects in its assessment. Particular emphasis again deserves to be placed on the fact that if the Defendant had not made his own statements prior to the preliminary investigation then no charges would have been brought and no conviction made, and on the Defendant's voluntary and comparatively early renunciation of his work in the intelligence service in Syria. What is particularly incriminating is the number of victims of the act, whose torture and deprivation of liberty the Defendant aided.

After weighing up all the aforementioned reasons, the Division imposes a term of imprisonment of

four years and six months

as a penalty which is appropriate to the act and the Defendant's guilt.

E. Costs, negotiated agreement

The decision as to costs is based on section 465 of the Code of Criminal Procedure.

This judgment was not preceded by a negotiated agreement (section 257c of the Code of Criminal Procedure).

Dr Kerber

Wiedner

Jeserich

Kapischke

Lenz