Federal Court of Justice (Bundesgerichtshof), StB 60/25

Case no.: StB 60/25; 3 BJs 297/25-2
Decision of 10 December 2025 (order)
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Unofficial English translation of the complete German text supplied. The original paragraph numbers (1–70), statutory references, and cited authorities are retained. BGH = Federal Court of Justice; StGB = German Criminal Code; StPO = German Code of Criminal Procedure; GVG = Courts Constitution Act; GG = Basic Law; VStGB = Code of Crimes against International Law; UNCLOS = United Nations Convention on the Law of the Sea; AP I = Additional Protocol I to the Geneva Conventions. "Rn." in retained German legal citations denotes a paragraph number.

Subject headings: Reported decision (BGHR); "Nord Stream case"; general immunity ratione materiae of State officials; continuation of pretrial detention (appeal against detention; strong suspicion of an offence; risk of flight; proportionality); right of access to the case file during detention pending extradition; causing an explosion by means of explosives; destruction of structures; interference with public utilities (pipelines as public-supply installations).

Provisions cited: § 9(1) StGB; § 20(2), first sentence, GVG; Article 52 of Additional Protocol I to the Geneva Conventions; § 147(2), second sentence, StPO; § 305(1) StGB; § 308(1) StGB; § 316b(1) no. 2 StGB.

Headnotes

1. German criminal jurisdiction extends to the explosive attacks on the Nord Stream pipelines in the Baltic Sea because the result of the offence also occurred on German territory. (BGHR)

2. General immunity ratione materiae of State officials is subject to an exception for intelligence-service-directed acts of violence that affect the sovereignty of another State impacted by the offence. (BGHR)

3. The right of parties to an international armed conflict to inflict damage does not extend to objects serving directly civilian purposes, even when the adversary generates revenue from their use that it employs to finance military activities. (BGHR)

4. The right to inspect the case file under § 147(2), second sentence, StPO does not apply when the accused is held abroad in detention pending extradition. (BGHR)

5. Pipelines may constitute physical installations serving the public supply of energy. Such installations include not only structures directly used to generate electricity, heat, or other energy, or to distribute that energy regionally to end consumers, but also installations used to extract and transport an energy carrier such as gas over long distances and internationally, where that carrier is used in other facilities—for example, power stations or heating plants—to generate electricity, heat, or power for public supply, or is subsequently fed into regional networks supplying end consumers. (Editorial headnote)

Operative part of the decision

The accused's appeal against the arrest warrant issued by the investigating judge of the Federal Court of Justice on 18 August 2025 is dismissed.

The appellant shall bear the costs of his appeal.

Reasons

I.

[1] On 18 August 2025, the investigating judge of the Federal Court of Justice issued an arrest warrant against the accused (1 BGs 1503/25). Pursuant to a European Arrest Warrant issued on that basis, the

accused was arrested in Italy on 21 August 2025 and held there in detention pending extradition until his surrender to Germany on 27 November 2025. He has been held in pretrial detention since then.

[2] The arrest warrant of 18 August 2025 alleges that, between 8 and 26 September 2022, in Lubmin (Mecklenburg-Western Pomerania) and in international waters of the Baltic Sea near the Danish island of Bornholm, the accused, acting jointly with at least six other persons, intentionally caused an installation serving the public supply of light, heat, and power to be rendered completely inoperative within the territorial scope of the German Criminal Code by acts of interference, and thereby intentionally acted in support of efforts directed against the security of the Federal Republic of Germany. By the same conduct, acting jointly with others, he also allegedly (i) intentionally caused an explosion using explosives, in four offences committed in concurrence, thereby intentionally endangering property belonging to another of considerable value, and (ii) unlawfully partially destroyed a structure belonging to another, in two offences committed in concurrence. The arrest warrant proceeds on the basis of strong suspicion of criminal liability under §§ 88(1) no. 3, 305(1), 308(1), 25(2), and 52 StGB.

[3] The accused challenges the arrest warrant by appeal. The Federal Public Prosecutor General has applied for dismissal of the appeal as unfounded; the investigating judge of the Federal Court of Justice declined to grant the requested relief. The defence submitted a response and further arguments. First, it disputes the suspicion of the offence. Second, it contends that functional immunity constitutes a procedural bar. It is obvious, the defence argues, that the act at issue was carried out on behalf of another State or as an exercise of sovereign State authority. Military operations by one State against an adversary's infrastructure also fall, as a general rule, within the scope of combatant privilege. According to the defence, that is likewise true in the present case.

II.

[4] The appeal is available under § 304(5) StPO and is otherwise admissible. It is, however, unsuccessful on the merits. The legal requirements for an arrest warrant are met.

[5] 1. On the present state of the investigation, the following facts must be assumed for purposes of establishing strong suspicion of an offence:

[6] The accused entered Germany from Ukraine via Poland using a Ukrainian passport issued under the false identity S. K. but bearing his photograph. By 8 September 2022 at the latest, he and six accomplices—a skipper, an explosives expert, and four deep-sea divers—boarded the seaworthy sailing yacht *Andromeda* at the port of Wiek on Rügen. An intermediary had previously chartered the yacht for several weeks. The crew sailed the yacht to an area of the Baltic Sea near the Danish island of Bornholm. The accused and the other crew members then, acting according to a division of tasks and conducting dives from the vessel, attached four explosive devices equipped with time fuses to three of the four lines of the Nord Stream 1 and Nord Stream 2 natural-gas pipelines, lying on the seabed at a depth of approximately 70 to 80 metres, in the Danish and Swedish exclusive economic zones to the northeast and southeast, respectively, of Bornholm. Each explosive device weighed at least 14 kilograms and contained a mixture of hexogen (RDX) and octogen (HMX). These are high-performance explosives used in military applications, with enormous destructive force, which can also detonate at great underwater depths.

[7] The accused, who was an officer in a special unit of the Ukrainian armed forces, was responsible for coordinating the activities and leading the team. It is highly probable that he and the other participants were acting on behalf of a foreign State.

[8] After placing the devices on three lines of the two natural-gas pipelines, which were filled with Russian gas, originated in the Russian Federation, and terminated in Lubmin (Mecklenburg-Western Pomerania), the crew returned in the yacht to Rügen. There the accused disembarked and was driven back to Ukraine on 23 September 2022.

[9] The explosive devices detonated on 26 September 2022 at 2:03 a.m. and 7:03 p.m., respectively. Both lines of Nord Stream 1 and one line of Nord Stream 2 were torn open and destroyed over lengths of up to several hundred metres. The explosions caused a drop in pressure in the affected lines and released large quantities of gas into the Baltic Sea. The three pipeline lines affected by the sabotage became inoperable; to

date, they have neither been repaired nor replaced. Since then, it has no longer been possible to import Russian natural gas into the Federal Republic of Germany through them. Before the explosions, Nord Stream 1 carried approximately half of Germany's annual natural-gas requirement for energy generation; accordingly, the pipelines were of central importance to Germany's public energy supply. By seriously damaging the pipelines, the accused and his associates intended permanently to prevent gas deliveries from the Russian Federation to the Federal Republic of Germany.

[10] 2. The strong suspicion of an offence (§ 112(1), first sentence, StPO) is founded on the following considerations:

[11] a) According to the evidence gathered so far, the two Nord Stream 1 and Nord Stream 2 gas pipelines were damaged by the detonation of explosive devices. The damage was established by inspections at the damaged sections using research vessels and underwater robots. Seismological records show that explosions caused the partial destruction of the pipelines, while the damage patterns clearly indicate the detonation of explosives attached to the outside of the pipes. Forensic examinations of metal fragments recovered at the explosion sites revealed deposits of the explosives hexogen and octogen, which are used almost exclusively for military purposes and, in the quantities mentioned, were capable of causing the damage found.

[12] b) Considered together, other investigative findings support the highly probable conclusion that the explosive devices were attached to the pipelines between 8 and 23 September 2022 during diving operations conducted from the sailing yacht *Andromeda*. The following circumstantial evidence is relevant:

[13] aa) According to an expert's findings, the yacht was structurally suitable for transporting the items necessary for the offence, travelling to the scene, and conducting diving operations there. When chartering it, the renters also requested a tender that could be used for diving. According to the lessor, several persons rented the sailing vessel for a period encompassing the dates mentioned above. Witnesses stated that the yacht was handed over to a crew of several men on 7 September 2022 and that up to seven persons were aboard. During the charter period, the vessel was in the waters around Bornholm; witnesses saw it southeast of Karlskrona and in the port of the Danish island of Christiansø. In light of these external circumstances, the crew members were capable of committing the offence.

[14] bb) The yacht's users took steps to conceal their identities and the vessel's route. An intermediary chartered the yacht expressly on the instructions of third parties. He requested that it not have the radio-based Automatic Identification System (AIS), now widespread even in non-commercial shipping and serving, among other things, crew safety, which automatically determines ships' positions and makes vessels and their routes visible to third parties. Contrary to normal sailing practice, the crew kept no logbook. Forged identity documents were presented when the yacht was chartered. When Polish border guards checked crew members during a port call at Kołobrzeg, Poland, they identified themselves with forged Bulgarian identity cards.

[15] cc) Witnesses stated that, after the yacht returned to Wiek, diving suits, air cylinders, and other diving equipment were removed from the vessel. There were unusual circumstances surrounding the return of the yacht: at the agreed return time, an employee of the charter company found nobody on board; the deposit paid when the yacht was rented was not reclaimed.

[16] dd) During a later forensic examination of the yacht in January 2023, investigators found traces of hexogen and octogen below deck. The trace evidence permits the inference that these explosives had been handled, in particular, on a table in the cabin. As the yacht had not been chartered again after the rental at issue here, it is reasonable to infer that explosives of the kind used to blow up the pipelines were handled on board during the relevant period.

[17] c) The findings obtained thus far in the investigation also establish strong suspicion that the accused was a crew member of the yacht and participated in the offence as an on-site coordinator. The following applies:

[18] aa) A witness operating a commercial passenger-transport service stated during questioning that one of his employees picked up several persons and diving equipment from the *Andromeda* in the port of Wiek on 23 September 2022 and, as instructed, drove them in a minibus via Poland to Ukraine. Polish border-

control records show that the vehicle crossed the Polish-Ukrainian border on the evening of 23 September 2022 and that one passenger presented a Ukrainian passport in the name of S. K. bearing a photograph of the person being checked. According to the Polish border guards' records, another driver had driven that person from Ukraine into Poland on 4 September 2022, so that the Polish data likewise indicate that he could have been a crew member during the yacht voyage at issue. The Gdańsk public prosecutor's office sent German law-enforcement authorities a photographic file containing, among other things, a photograph marked S. K., identical to the image in the Ukrainian passport issued in that name. The investigation indicates that this passport was forged, because a passport with that number had in fact been issued to a female Ukrainian national.

[19] bb) The person depicted in the photograph in the passport issued in the name of S. K. and in the photograph bearing that name in the Gdańsk prosecutor's photographic file is, with very high probability, the accused. In 2024, at the border with North Macedonia, and again on entering Poland on 13 August 2025, the accused identified himself using a Ukrainian passport issued in his true name and very probably genuine. Expert reports indicate, with a degree of probability bordering on certainty, that the photograph in the accused's (genuine) Ukrainian passport depicts the same person as the photograph in the (false) Ukrainian passport in the name of S. K. and the corresponding image in the Polish judicial authorities' photographic file. Accordingly, there is strong suspicion that the accused was one of the yacht's crew members on the relevant *Andromeda* voyage.

[20] cc) The highly probable conclusion that the accused participated as a coordinator rests on the absence of investigative findings indicating that he had diver training, nautical knowledge, or expertise in handling explosives of the type used. This distinguishes him from other identified crew members. He was therefore probably neither a diver nor the yacht's skipper nor an explosives expert involved in the operation. It is implausible that a person without an important role in carrying out the operation would have been on board. Moreover, according to the defence lawyer's supplementary appeal submissions of 27 November 2025, the accused was, at the relevant time, an officer in a military special unit of the Ukrainian armed forces and therefore held a position of command responsibility. He thus very probably performed a coordinating role. In any event, the strong-suspicion standard supports the conclusion that, during the voyage, he performed tasks at least as important to the success of the operation as the contributions of the other crew members, such as the divers.

[21] d) The external circumstances of the offence support the conclusion that it was, with high probability, committed on the instructions and under the direction of a foreign State. Relevant considerations include the type of explosives used, the use of authentic identity documents containing false personal details, and the professional manner in which the perpetrators acted, which required considerable expertise and training. The possible motive also points to State direction: the apparent objective was to use sabotage to stop Russian gas deliveries to the Federal Republic of Germany, at least for the long term. It must therefore be assumed that the offence primarily pursued a political objective.

[22] e) The Senate additionally refers to the reasoning establishing strong suspicion in the arrest warrant under appeal.

[23] 3. Contrary to the appeal submissions, the procedural bar of general immunity ratione materiae of State officials does not apply. This functional immunity under customary international law is subject to an exception in the circumstances of the present case. The reasons are as follows:

[24] a) Persons who, on behalf of a foreign State, exercise sovereign authority for that State are in principle entitled, in relation to their sovereign State acts, to immunity from the criminal jurisdiction of other States. This immunity, known as general functional immunity of State officials, derives from State immunity and is recognized under customary international law. It applies whether the person has a permanent employment relationship with the foreign State—for example, as a civil servant or soldier—or acts for that State only in an individual case; the sole decisive factor is whether the activity is functionally an exercise of the sovereign authority of a foreign State (see BGH, orders of 27 August 2024 – StB 54/24, NJW 2024, 3003 para. 23; 20 March 2024 – 3 StR 454/22, BGHSt 68, 225 para. 32; 21 February 2024 – AK 4/24, NJW 2024, 1674 para. 53; judgment of 28 January 2021 – 3 StR 564/19, BGHSt 65, 286 para. 17; MüKoStGB/Ambos, 5th ed., before § 3 para. 114; NK-StGB/Böse, 6th ed., before §§ 3–7 para. 35; LK/Werle/Jeßberger, StGB, 13th ed., before §§ 3 et

seq. para. 390; Kreicker, JR 2015, 298; Schäfer et al., *Festschrift 75 Jahre BGH*, 2025, pp. 239, 242 et seq.; see also BVerfG, order of 10 June 1997 – 2 BvR 1516/96, BVerfGE 96, 68, 85, 91; BGH, judgment of 26 September 1978 – VI ZR 267/76, NJW 1979, 1101).

[25] b) As the appellant correctly submits, there are compelling grounds to assume that the sabotage was initiated and directed by a foreign State. It is consequently highly probable that the accused performed his role on that State's behalf. Accordingly, he is in principle highly likely to enjoy general immunity ratione materiae for his conduct. Under Article 25, first sentence, GG and § 20(2), first sentence, GVG, that immunity constitutes a bar to prosecution which the court must consider of its own motion. This immunity under international law cannot be dismissed as irrelevant at the present stage of proceedings merely because it has not been conclusively established that the offence was committed on State instructions. Where a procedural bar (international-law immunity) probably exists, there is no strong suspicion of a prosecutable criminal offence of the kind required for an arrest warrant (see KK-StPO/Graf, 9th ed., § 112 para. 4; BeckOK-StPO/Krauß, 57th ed., § 112 para. 11; Schmitt/Köhler/Schmitt, StPO, 68th ed., § 112 para. 5; see also Kreicker, *Völkerrechtliche Exemtionen*, vol. 2, 2007, pp. 1315 et seq.).

[26] c) Nevertheless, general immunity ratione materiae does not constitute a procedural bar here. It is recognized that this immunity is subject to exceptions under customary international law not only for crimes under international law, including war crimes (see BGH, orders of 20 March 2024 – 3 StR 454/22, BGHSt 68, 225 para. 32; 21 February 2024 – AK 4/24, NJW 2024, 1674 para. 53; judgment of 28 January 2021 – 3 StR 564/19, BGHSt 65, 286 para. 16; Schäfer et al., *Festschrift 75 Jahre BGH*, 2025, pp. 239, 243 et seq.) and acts of espionage (see BGH, order of 27 August 2024 – StB 54/24, NJW 2024, 3003 para. 23), but also for intelligence-service-directed acts of violence that affect the sovereignty of another State impacted by the offence (see BGH, order of 27 August 2024 – StB 54/24, NJW 2024, 3003 para. 23; Schäfer et al., *Festschrift 75 Jahre BGH*, 2025, pp. 239, 249). This accords with State practice (for Germany, see, for example, BGH, order of 7 August 2019 – 3 StR 562/18, BGHSt 64, 170; judgments of 24 June 2004 – 5 StR 306/03, NJW 2004, 3051; 19 October 1962 – 9 StE 4/62, BGHSt 18, 87; for further authorities, see Kreicker, *Völkerrechtliche Exemtionen*, vol. 1, 2007, pp. 256 et seq.) and the prevailing view in the academic literature (see MüKoStGB/Ambos, 5th ed., before § 3 para. 148; NK-StGB/Böse, 6th ed., before §§ 3–7 para. 35; SK-StPO/Frister, 6th ed., before §§ 18–21 GVG para. 20; LK/Werle/Jeßberger, StGB, 13th ed., before §§ 3 et seq. para. 412; Kreicker, *Völkerrechtliche Exemtionen*, vol. 1, 2007, pp. 254 et seq., with n. 84 [also discussing the meaning of the term]; Folz/Soppe, NStZ 1996, 576, 580 et seq.; Kreicker, JR 2015, 298, 299; Sanger, ICLQ 62 [2013], 193, 202 et seq.). Contrary State practice, such as the McLeod case of 1840 invoked in the notice of appeal (on which see Bothe, ZaöRV 31 [1971], 246, 247 et seq.), has been superseded by developments in international law. The offences described by the shorthand expression “intelligence-service acts of violence,” to which immunity does not apply, include not only State-directed abductions and targeted killings abroad, but also covert State sabotage operations abroad, whether or not they cause personal injury, such as the act at issue here (on the sinking of Greenpeace's *Rainbow Warrior* by French agents in Auckland harbour, New Zealand, in 1985, and the 1988 Lockerbie bombing of a passenger aircraft by Libyan agents, see Kreicker, *Völkerrechtliche Exemtionen*, vol. 1, 2007, pp. 257 et seq.; Folz/Soppe, NStZ 1996, 576, 579 et seq.).

[27] d) It is true, as the grounds of appeal correctly point out, that the exception to general immunity ratione materiae for intelligence-service acts of violence is sometimes described with the additional qualification that it concerns acts “on foreign State territory” (see, for example, BGH, order of 27 August 2024 – StB 54/24, NJW 2024, 3003 para. 23; Schäfer et al., *Festschrift 75 Jahre BGH*, 2025, pp. 239, 249). Contrary to the accused's legal position, however, that wording does not mean that the exception ceases to apply to criminal conduct in areas not subject to territorial sovereignty, such as the high seas (Article 86, first sentence, UNCLOS) or the exclusive economic zones of the oceans (Article 55 UNCLOS), so that the present offence would be protected by immunity. Rather, the qualification signifies in substance that the exception encompasses acts involving an infringement of another State's sovereign rights under international law (see Kreicker, JR 2015, 298, 299), as is invariably the case with unauthorized covert State action on foreign sovereign territory. The rationale is that general immunity ratione materiae, as an outgrowth of State immunity, protects State sovereignty by generally removing sovereign State acts from the jurisdiction of foreign States. Such respect for State sovereignty, however, lacks justification where covert State conduct itself disregards another State's sovereign rights under international law.

[28] The act at issue here violated sovereign rights—at least those of the Federal Republic of Germany, which was affected by the offence—in two separate respects:

[29] First, although Nord Stream 1 and Nord Stream 2 were owned by private-law companies, they were constructed and operated also in Germany's national interest and with the (political) support of the Federal Republic; moreover, some of the companies operating Nord Stream 1 were German enterprises (see the opinion of the Research Services of the German Bundestag, *Legal Questions Concerning the Sabotage of Submarine Pipelines in International Waters*, 6 March 2023 – WD 2 – 3000 – 019/23, p. 6). Accordingly, under Articles 58(1), 79(1), 87(1), third sentence, subparagraph (c), and 112(1) UNCLOS, the construction and operation of the pipelines were an exercise of the sovereign right under international law, possessed inter alia by the Federal Republic of Germany as a "pipeline-laying State" (at least in relation to Nord Stream 1), to lay pipelines on the high seas and in exclusive economic zones (on this right see Lagoni, in Graf Vitzthum, *Handbuch des Seerechts*, 2006, ch. 3 paras. 128 et seq.). Regardless of ownership of the pipelines, this gives rise to Germany's sovereign rights and duties in relation to them (see Lagoni, in Graf Vitzthum, *Handbuch des Seerechts*, 2006, ch. 3 para. 136).

[30] Second, the result of the offence—the pipelines' loss of functionality as structures, at least for the long term—also occurred on German territory. Parts of the pipelines are laid in the German territorial sea and German internal waters, that is, within German sovereign territory (see Article 2(1) UNCLOS); furthermore, the pipelines' terminal landing stations are situated in Germany. The conduct therefore also rendered the structural components situated in Germany inoperative. Thus, notwithstanding that the conduct occurred outside the territory of the Federal Republic, the destruction of the gas pipelines affected German sovereign rights. Consequently, the accused would not enjoy general immunity ratione materiae even if the act constituted a sovereign act of a foreign State.

[31] It is therefore immaterial in this context whether the act constitutes, under international law, the war crime of employing prohibited methods of warfare (§ 11 VStGB), so that general immunity ratione materiae would (also) not prevent the prosecution of the accused on that ground.

[32] 4. As a matter of law, there is at present a very high probability that the accused is criminally liable, at a minimum, for causing an explosion by means of explosives (four concurrent offences) under § 308(1) StGB, concurrently with the destruction of structures (two concurrent offences) under § 305(1) StGB, the accused having acted as a joint principal (§ 25(2) StGB). In addition, beyond the legal classification adopted in the arrest warrant, there is a very high probability of concurrent liability for interference with public utilities under § 316b(1) no. 2 StGB. The reasons are as follows:

[33] a) The accused very probably committed four concurrent offences of causing an explosion by means of explosives under §§ 308(1) and 25(2) StGB by acting with the other crew members of the *Andromeda*, in a division of tasks, to place explosive devices fitted with time fuses and containing hexogen (RDX) and octogen (HMX) at four different points on the pipelines. As planned, these devices exploded some time later, thereby not only endangering the pipelines—property belonging to another of considerable value—but also (partially) destroying them, as the perpetrators intended. The intention to expose property to danger required for the offence under § 308(1) StGB is encompassed by the intention to destroy it (see TK-StGB/Bosch, 31st ed., § 308 para. 10; NK-StGB/Kargl, 6th ed., § 308 para. 7).

[34] b) There is also strong suspicion of the accused's criminal liability for the destruction of structures under §§ 305(1) and 25(2) StGB, in two concurrent offences. The two pipelines constituted two structures belonging to persons other than the perpetrators. The explosions at least partially destroyed those structures, because the destruction of both lines of Nord Stream 1 and one line of Nord Stream 2 completely eliminated the functionality of Nord Stream 1 and partially eliminated that of Nord Stream 2. Whether the damaged pipes could be repaired by inserting new sections at the damaged sites is immaterial. Loss of usability, even partial, over a considerable period is sufficient (see BGH, judgment of 5 April 2018 – 3 StR 13/18, NJW 2019, 90 para. 18; order of 20 October 2011 – 4 StR 344/11, BGHSt 57, 50 para. 7).

[35] c) In addition to the offences mentioned above, which are also cited in the arrest warrant, there is strong suspicion of further concurrent criminal liability for interference with public utilities under § 316b(1) no. 2 StGB.

[36] aa) The pipelines were (physical) installations serving the public supply of energy, exemplified in the statute by "light, heat or power." Such installations include not only structures directly used to generate electricity, heat, or other energy or to distribute it regionally to end consumers, but also structures used to extract and transport an energy carrier such as gas over long distances and internationally, where the carrier is subsequently used in other facilities—for example, power stations or heating plants—to generate electricity, heat, or power for public supply, or is later introduced into networks distributing it regionally to end consumers (see NK-StGB/Zieschang, 6th ed., § 316b para. 19; on characterizing such installations as enterprises vital to supplying the population, LK/König, StPO, 13th ed., § 316b para. 21; MüKoStGB/Wieck-Noodt, 4th ed., § 316b para. 16; contra, regarding § 88(1) no. 3 StGB, advocating limitation of the public-utility-installation variant to facilities directly supplying end consumers in a particular area, MüKoStGB/Anstötz, 5th ed., § 88 para. 11).

[37] bb) The explosion of three of the four pipeline lines—an act of interference within the meaning of § 316b(1) StGB—resulted in the complete (Nord Stream 1) or partial (Nord Stream 2) destruction of the pipelines, taking them out of operation and preventing their use for their intended purpose of transporting gas from Russia to Germany. This constitutes preventing or disrupting the operation of the installations within the meaning of § 316b(1) no. 2 StGB. It makes no difference that, at the time of the offence, Nord Stream 2 had been completed and filled with gas but had not yet commenced deliveries, and the flow of gas through Nord Stream 1 had been suspended for maintenance. Both pipelines were technically operational. By eliminating their functionality and the possibility of transmitting gas through them at any time, the explosions prevented their operation.

[38] d) Strong suspicion of the offences identified above is by itself sufficient to justify the arrest warrant and the enforcement of pretrial detention. It can therefore be left undecided for the present whether, as stated in the arrest warrant's legal classification, there is in addition a very high probability of the accused's liability for anti-constitutional sabotage under § 88(1) no. 3 StGB, in further concurrence with the other offences.

[39] In this connection, much suggests that the accused, as the ringleader or behind-the-scenes organizer of a group, intentionally caused installations serving the public supply of water, light, heat, or power to be rendered completely or partially inoperative and deprived of their intended use by acts of interference within the territorial scope of the Criminal Code, within the meaning of § 88(1) no. 3 StGB.

[40] It is immaterial that the accused and his accomplices acted in international waters outside Germany, since § 91a StGB does not apply to § 88 StGB (see MüKoStGB/Anstötz, 5th ed., § 88 para. 3; LK/Steinsiek, StGB, 13th ed., § 88 para. 11; TK-StGB/Sternberg-Lieben/Weißer, 31st ed., § 88 para. 15; SK-StGB/Zöller, 9th ed., § 88 para. 2). The offence can be committed as a distance offence, with conduct and result in different places (LK/Steinsiek, StGB, 13th ed., § 88 para. 11; NK-StGB/Paeffgen/Klesczewski, 6th ed., § 88 para. 14).

[41] It is doubtful, however, whether the accused, by blowing up the pipelines, intentionally acted in support of efforts directed against the (internal) security of the Federal Republic of Germany (see § 92(3) no. 2 StGB).

[42] It is true that the act affected Germany's (internal) security (on the concept of internal security, see MüKoStGB/Anstötz, 5th ed., § 92 para. 12).

[43] The interruption of substantial gas deliveries resulted in a (temporary) shortage of this energy carrier, which is essential both to the economy and to private households. Significant price rises and adverse effects on Germany's economic performance and on the basic supply of sufficient heat and electricity to the population were to be feared. Closely connected with this was the danger of undermining the population's confidence that it is protected in the Federal Republic against the consequences of violent acts—in this case against infrastructure directly connected to Germany and the energy supply of its inhabitants.

[44] There is, however, reason to doubt whether there were efforts by third parties—as the "persons or entities pursuing" such efforts within the meaning of § 92(3) no. 2 StGB—to produce those consequences (on whether such a third party, acting in addition to the perpetrator, is required, compare, on one side, BeckOK StGB/Ellbogen, 67th ed., § 92 para. 9; LK/Engelstätter, StGB, 13th ed., § 92 para. 10; NK-StGB/Paeffgen/Klesczewski, 6th ed., § 92 para. 10; TK-StGB/Sternberg-Lieben/Weißer, 31st ed., § 92 para. 13; and, on the other, MüKoStGB/Anstötz, 5th ed., § 92 para. 10), and whether the accused acted for them or

on their instructions while knowing of that objective. This remains so notwithstanding that it is irrelevant whether the accused himself sought to impair Germany's security (see LK/Engelstätter, StGB, 13th ed., § 92 para. 11; TK-StGB/Sternberg-Lieben/Weißer, 31st ed., § 88 para. 17, § 92 para. 13). The circumstances do not make it implausible that adverse effects on the Federal Republic and its internal security were not intended but merely accepted as an additional consequence of the explosions. That would not suffice for criminal liability under § 88(1) StGB.

[45] e) Nor is it necessary at this juncture to determine whether there is also (strong) suspicion of war crimes involving prohibited methods of warfare (§ 11 VStGB), for example a war crime under § 11(1), first sentence, no. 2 VStGB (see also Article 52(1) and (2) AP I), or under § 11(3) VStGB in its former version, read in conjunction with § 11(1), first sentence, no. 8 VStGB, on the basis that the blowing up of the pipelines, as an act of warfare, violated international humanitarian law (discussed further below).

[46] f) In view of the arguments advanced on appeal, the following should be noted:

[47] Contrary to those arguments, assuming that the sabotage was initiated and directed by Ukrainian State authorities, the current state of the investigation does not support its justification under international law as a lawful act of destruction by Ukraine in the international armed conflict between Ukraine and the Russian Federation.

[48] It is true that States party to an international armed conflict are permitted, within the limits of international law, to damage or destroy infrastructure installations belonging to the opposing State; this also applies to enemy installations in areas not subject to territorial sovereignty, such as the exclusive economic zones of States not party to the conflict (see Frau, in von Kielmansegg et al. [eds.], *Handbuch Recht der Streitkräfte*, 2025, § 20 para. 113). As regards the criminal responsibility of persons engaging in such conduct, participation in an act of destruction lawful under international law constitutes a justification, directly applicable in domestic law under Article 25 GG or Article 59(2), first sentence, GG, that excludes criminal liability. Contrary to the appellant's position, notwithstanding the widespread shorthand term “combatant immunity” (see, for example, MüKoStGB/Ambos, 4th ed., before § 8 VStGB para. 38; Frau, in von Kielmansegg et al. [eds.], *Handbuch Recht der Streitkräfte*, 2025, § 20 paras. 125 et seq.; Ipsen/Heintschel von Heinegg, *Völkerrecht*, 8th ed., § 63 para. 1), it does not merely create a procedural bar to prosecution analogous to immunity (see Bundestag Printed Paper 14/8524, p. 13; Bäuerle, in von Kielmansegg et al. [eds.], *Handbuch Recht der Streitkräfte*, 2025, § 22 para. 110; NK-StGB/Neumann, 6th ed., before § 211 para. 5; TK-StGB/Sternberg-Lieben, 31st ed., before §§ 32 et seq. para. 143; Kreicker, in Eser/Kreicker [eds.], *Nationale Strafverfolgung völkerrechtlicher Verbrechen*, vol. 1, 2003, p. 399; Lenk, JuS 2022, 1089, 1090; Werle/Nerlich, HuVI 2002, 124, 129; Zimmermann, ZRP 2002, 97, 100). However, on the evidence currently available, even if the explosive attack on Nord Stream 1 and Nord Stream 2 was a sovereign act of Ukraine connected with the international armed conflict with Russia, it was not an act of destruction permitted, and thus justified, by international law, for at least two reasons:

[49] aa) On that assumption, the perpetrators very probably acted covertly, as part of an intelligence operation or commando operation, without being distinguishable from civilians. They therefore lacked combatant status, which is a prerequisite for entitlement under the law of armed conflict to carry out acts of destruction. This is so even if they were members of the Ukrainian armed forces. Under Article 1 of the Hague Regulations Respecting the Laws and Customs of War on Land and Article 4(A)(1) and (2) of Geneva Convention III, combatant status is accorded to active members of regular armed forces and other organized armed formations, groups, and units of a State (in an international armed conflict) only if they have a fixed distinctive sign recognizable at a distance—usually, though not necessarily, by wearing uniforms—and carry their arms openly, so that they can be distinguished outwardly from civilians (see MüKoStGB/Ambos, 4th ed., before § 8 VStGB para. 37; Ipsen/Heintschel von Heinegg, *Völkerrecht*, 8th ed., § 63 paras. 5 et seq.).

[50] bb) At least on the present state of the evidence, the pipelines were not legitimate objects of attack in the international armed conflict between Ukraine and the Russian Federation. Their ownership and operation are irrelevant for this purpose. Even if the pipelines are classified as Russian, they were not military objects of the opposing party but civilian infrastructure installations. Unlike military objectives, civilian objects may not be attacked under Article 52(1), first sentence, AP I, which reflects customary international law (see MüKoStGB/Dörmann, 4th ed., § 11 VStGB para. 46; Frau, in von Kielmansegg et al.

[eds.], *Handbuch Recht der Streitkräfte*, 2025, § 20 para. 177; LK/Hiéramente/Gebhard, StGB, 13th ed., § 11 VStGB para. 31; Ipsen/Heintschel von Heinegg, *Völkerrecht*, 8th ed., § 64 para. 35, § 65 para. 27). The distinction between civilian objects and military objectives follows from Article 52(2) AP I, which reflects customary international law (see MüKoStGB/Dörmann, 4th ed., § 11 VStGB paras. 46 et seq.) and provides: "Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." The Nord Stream 1 and Nord Stream 2 pipelines were used to deliver Russian natural gas to Germany and other Western European States for civilian purposes. Their nature, function, and actual use therefore did not directly contribute to Russian military action against Ukraine, and their destruction did not yield any direct military advantage.

[51] Russia obtained a benefit from the pipelines that was ultimately relevant to the armed conflict only indirectly, insofar as the sale of the natural gas carried through them generated revenue that could be used to finance military activities. Contrary to the appellant's legal position, such a merely indirect benefit derived from the economic use of civilian installations ("war-sustaining effort") does not suffice to turn the object concerned into a lawful military target. The right of parties to an international armed conflict to inflict damage does not extend to objects serving directly civilian purposes, even if the adversary generates funds from their use that it employs for military activities. That position also accords with the prevailing academic view (see MüKoStGB/Dörmann, 4th ed., § 11 VStGB para. 53 with n. 108, para. 55; Frau, in von Kielmansegg et al. [eds.], *Handbuch Recht der Streitkräfte*, 2025, § 20 para. 182; LK/Hiéramente/Gebhard, StGB, 13th ed., § 11 VStGB para. 40; Ipsen/Heintschel von Heinegg, *Völkerrecht*, 8th ed., § 65 para. 29) and with legal scholarship specifically addressing the attacks on the Nord Stream pipelines at issue here (see Boothby, *Attacking a Pipeline: Legal Issues for Consideration*, https://lieber.westpoint.edu/attackingpipelinelegalissuesconsideration, 2024, pp. 6 et seq.; Lott, *The Protection of Critical Undersea Infrastructure within and beyond the Limits of the Territorial Sea*, in Lott [ed.], *Maritime Security Law in Hybrid Warfare*, 2024, pp. 125, 147 et seq.; Lott, *Did an Alleged Ukrainian Attack against the Nord Stream Pipelines Violate the Law of Armed Conflict?*, https://hdl.handle.net/10037/32451, 2023, pp. 2 et seq.; and the opinion of the Research Services of the German Bundestag, *Prosecutability of the Attacks on the Nord Stream Pipelines before the ICC*, 25 April 2025 – WD 2 – 3000 – 019/25, p. 12).

[52] This view is also supported by the rule of customary international law of naval warfare requiring parties to an international armed conflict to take care not to damage pipelines laid on the seabed that do not serve the belligerents exclusively (see paragraph 37 of the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*; Boothby, *Attacking a Pipeline: Legal Issues for Consideration*, https://lieber.westpoint.edu/attackingpipelinelegalissuesconsideration, 2024, p. 4; opinion of the Research Services of the German Bundestag, *Prosecutability of the Attacks on the Nord Stream Pipelines before the ICC*, 25 April 2025 – WD 2 – 3000 – 019/25, pp. 11 et seq.). The pipelines served not only the Russian Federation, as supplier of the gas transported, but also the Federal Republic of Germany and other Western European States as purchasers.

[53] g) The offence falls within German criminal jurisdiction for all potentially applicable offences, although the sites where the explosive devices were attached and detonated were not in the Federal Republic of Germany but in the exclusive economic zones of Denmark and Sweden, that is, in international waters. The pipelines are two structures extending geographically from Russian territory across the Baltic Sea into the territory of the Federal Republic of Germany. As already explained, parts of the structures are on German territory: the pipeline sections crossing the German territorial sea (Article 2(1) UNCLOS) and German internal waters (Article 8(1) UNCLOS), as well as the terminal landing stations on German land near Lubmin. The partial destruction of the Nord Stream 1 and Nord Stream 2 structures affects each of them as a whole; the sabotage rendered each structure as a whole inoperative, at least in part. The portions built on German territory were also rendered useless by the acts and have remained without function ever since. The legally relevant result of each offence identified above thus occurred in Germany as well, establishing German criminal jurisdiction under § 3 StGB in conjunction with § 9(1) StGB. In addition, German criminal law applies to the suspected offence of causing an explosion by means of explosives under § 308(1) StGB by virtue of the universality principle in § 6 no. 2 StGB.

[54] If the act proves to be a war crime under § 11 VStGB, German criminal jurisdiction would also be established under § 1 VStGB, including with respect to concurrent offences under the Criminal Code (see BGH, order of 6 June 2019 – StB 14/19, BGHSt 64, 89 para. 71).

[55] 5. The Federal Public Prosecutor General has prosecutorial jurisdiction, and consequently the investigating judge of the Federal Court of Justice had jurisdiction to issue the arrest warrant under appeal.

[56] a) At the present stage of the investigation, the Federal Public Prosecutor General's prosecutorial jurisdiction follows, at a minimum, from § 142a(1), first sentence, and § 120(2), first sentence, no. 3(a), GVG. The reasons are as follows:

[57] aa) There is strong suspicion of an offence under § 308(1) StGB, and thus of an offence listed in § 120(2), first sentence, no. 3 GVG.

[58] bb) In light of its substantial adverse effects on Germany's energy supply, the act was, in the circumstances, capable of impairing the internal security of the Federal Republic (regarding the applicable standard of assessment, see BGH, judgment of 22 December 2000 – 3 StR 378/00, BGHSt 46, 238, 249 et seq.; KK-StPO/Feilcke, 9th ed., § 120 GVG para. 16; MüKoStPO/Oğlakcıoğlu/Bock, 2nd ed., § 120 GVG para. 26). Reference is made in this connection to the discussion above of the suspicion of criminal liability under § 88(1) StGB.

[59] cc) Moreover, the case is of special significance within the meaning of § 120(2), first sentence, no. 3 GVG (on the applicable standard of assessment, see BGH, orders of 15 January 2020 – AK 62/19, juris para. 19; 22 September 2016 – AK 47/16, juris para. 23; 10 November 2016 – StB 33/16, juris para. 25; 13 January 2009 – AK 20/08, BGHSt 53, 128 paras. 33 et seq.; Schmitt/Köhler/Schmitt, StPO, 68th ed., § 120 para. 3a). This is because the act, very probably committed covertly in the exercise of foreign State authority, appears to have been directed toward permanently preventing the delivery of Russian natural gas to the Federal Republic through Nord Stream 1 and Nord Stream 2 for political reasons. It was thus capable of influencing the Federal Government's policy of securing energy supplies for Germany as a whole. The act consequently affected the Federal Republic as a State in its entirety. Given the quantity of natural gas imported through it at the relevant time, Nord Stream 1 was an essential infrastructure installation for Germany's energy supply. The sabotage endangered the basic energy supply of the German population and affected the Federal Republic's internal security (see BGH, order of 20 December 2007 – StB 12/07, NStZ 2008, 146 para. 9). In addition, the offence has significant international dimensions, necessitating special investigations abroad that require particular expertise. This too makes prosecution by the Federal Public Prosecutor General appropriate (see BGH, order of 13 January 2009 – AK 20/08, BGHSt 53, 128 para. 37).

[60] b) It is unnecessary to determine whether the Federal Public Prosecutor General also has prosecutorial jurisdiction under § 120(1) no. 8 GVG or § 120(2), first sentence, no. 1, read in conjunction with § 74a(1) no. 2 GVG. At this stage, sufficient factual indications of the accused's criminal liability for a war crime under § 11 VStGB or for anti-constitutional sabotage under § 88(1) no. 3 StGB would suffice under § 142a(1), second sentence, GVG for that additional basis of jurisdiction (see MüKoStPO/Brocke, 2nd ed., § 142a GVG para. 5; KK-StPO/Mayer, 9th ed., § 142a GVG para. 2).

[61] 6. Contrary to the appeal submissions, there is no reason to doubt that the investigating judge with responsibility for this case under the Federal Court of Justice's allocation-of-business plan issued the arrest warrant under appeal. The warrant of 18 August 2025 was issued by the judge of the Federal Court of Justice to whom the Court's Presidium, by resolution of 10 April 2025 effective from 1 June 2025, assigned the duties of Investigating Judge I; under the Court's allocation-of-business plan, Investigating Judge I is responsible for decisions in this category of offences.

[62] 7. Contrary to the defence's view, there has been no breach of the accused's defence counsel's right of access to the case file (§ 147(2), second sentence, StPO) and thus of his right to be heard (Article 103(1) GG), which might in some circumstances preclude the continued validity of the arrest warrant (see BGH, order of 3 April 2019 – StB 5/19, NJW 2019, 2105 para. 35).

[63] a) The defence complains that, until shortly before the accused's extradition to Germany, including while he was held in Italy in detention pending extradition, the Federal Public Prosecutor General, relying on § 147(2), first sentence, StPO, granted access to the case file only to the extent required by § 147(3) StPO.

The defence submits that, already during that period, it should have been given access under § 147(2), second sentence, StPO, to the extent provided for there, because the accused was being held in Italy pursuant to a German European Arrest Warrant.

[64] That legal view is incorrect. As a comparison with the wording of § 147(5), second sentence, StPO in particular shows, § 147(2), second sentence, StPO does not apply whenever an accused is not at liberty. Rather, it applies only when the accused is being held in pretrial detention or has been provisionally arrested and an application for an arrest warrant has been made. Section 147(2), second sentence, StPO does not encompass detention pending extradition (see BGH, orders of 10 March 2021 – 2 BGs 751/20, NStZ 2022, 564 paras. 31 et seq.; 26 January 2011 – 4 BGs 1/11, NStZ-RR 2012, 16, 17; on compatibility with EU law, Court of Justice of the European Union, judgment of 28 January 2021 – C-649/19, juris paras. 62, 80).

[65] There is no objection to the Federal Public Prosecutor General's decision, until extradition, to deny access beyond the extent governed by § 147(3) StPO on the ground that doing so might endanger the purpose of the investigation. In this regard, the Senate adopts the correct reasoning in the investigating judge's order of 18 September 2025 dismissing the accused's application for a judicial decision under § 147(5), second sentence, StPO (BGH, order of 18 September 2025 – 1 BGs 1543/25).

[66] b) On 24 November 2025, the Federal Public Prosecutor General transmitted the complete case file to the accused's defence counsel, thereby granting comprehensive access. Since that time, the defence has been able to make submissions with knowledge of the entire case material, including in the present appeal proceedings.

[67] 8. The ground for detention consisting of a risk of flight is established (§ 112(2) no. 2 StPO). On an overall assessment, it is more likely that, if released, the accused would evade the criminal proceedings than that he would submit to them.

[68] If convicted, the accused faces a lengthy prison sentence in view of the applicable sentencing range under § 308(1) StGB (imprisonment from one to fifteen years), the exceptionally extensive damage caused by the offence, and the substantial criminal determination demonstrated by its professional execution. There are no countervailing factors discouraging flight that would offset the strong incentive to abscond arising from the likely sentence. The accused, who according to the current investigation is a Ukrainian national, has no ties to Germany. He resides permanently abroad, presumably in Ukraine. Because he very probably committed the offence on behalf of a foreign State, it is to be assumed that that State would assist him if he fled and went into hiding, or would afford him protection within its territory, not least against extradition to Germany. The risk of flight is further supported by his ability to use forged identity documents.

[69] In the circumstances, the purpose of pretrial detention cannot be achieved by less restrictive measures within the meaning of § 116(1) StPO.

[70] 9. In view of the potential sentence and the focused investigations evident from the case file, which comply with the requirement of expeditious proceedings, pretrial detention is proportionate (§ 120 StPO).