

BACKGROUND _____

Survivors of Assad's torture regime demand justice – Criminal complaints in Germany

Q & A to legal basis

Human rights and humanitarian law have been violated by all parties to the armed conflict in Syria. Since the beginning of the conflict, European Center for Constitutional and Human Rights (ECCHR) has been investigating, if, or rather, what violations have been committed by the individual actors. Since 2012, ECCHR has been working with victims, activists, lawyers and organizations in Germany and Europe to secure evidence and document testimonies.

The result of this research and legal analysis by ECCHR implicated serious violations of human rights and humanitarian law committed by the Bashar al-Assad regime which must be qualified as crimes against humanity and war crimes.

On [1 March 2017](#), ECCHR together with seven women and men from Syria as well as Syrian lawyers Anwar al-Bounni [Syrian Center for Legal Researches & Studies](#) and Mazen Darwish [Syrian Center for Media and Freedom of Speech](#) (SCM) submitted the first criminal complaint against six suspected high-level officials of the Syrian Intelligence Service to the German Federal Public Prosecutor. [The Heinrich-Böll-Stiftung](#) has supported the criminal complaint in a special way.

On 21 September 2017, also the [“Caesar-File Support Group”](#) (which has obtained thousands of photos of tortured and murdered detainees in Syrian government detention facilities) for the first time took legal action by filing together with ECCHR a criminal complaint with the German Federal Prosecutor against senior officials from the Syrian intelligence services and the military police concerning crimes against humanity and war crimes. A representative of the Group also provided the Federal Prosecutor with a set of high-resolution images and metadata.

ECCHR's activities are aimed at providing legal support for victims and witnesses of arbitrary arrests, torture and sexual violence. The perpetrators as well as the officials responsible for human rights violations in Syria should be held criminally responsible.

What options does international criminal justice offer to address human rights violations in Syria?

Currently, there is absolute impunity in Syria, and the Assad regime is neither interested in investigating the cases of torture, nor in bringing the perpetrators and the responsible officials before a court.

Through adoption of the [Rome Statute](#) and establishment of the International Criminal Court (ICC) in 2002, international criminal justice was enabled to prosecute war crimes, crimes against humanity, and genocide before the court in Den Haag. However, this option is currently not available for the crimes committed in Syria. The ICC is not authorized to start an investigation into the crimes, as Syria is not a party to the Rome Statute. At the same time, a referral to the court by the UN Security Council is currently blocked by Russia and China.

However, the UN Human Rights Council has established [the Independent International Commission of Inquiry on Syria](#). Its investigators have been gathering evidence against all parties to the conflict for more than five years. They work in the neighboring countries of Lebanon, Jordan, Iraq and Turkey. The information gathered by the UN-Commission is essential for future legal proceedings.

What legal avenues are available in Germany to prosecute the crimes committed in Syria?

Serious crimes concern international society as a whole, and must be responded to. For this reason, it is a duty of the national jurisdictions of third party states, like Germany, to investigate the serious crimes committed in Syria and to prosecute the responsible officials.

The German Code against International Crimes (CCIL), which entered into force in 2002, enables German courts to prosecute international crimes committed in Syria. By adopting the CCIL, Germany adapted its national criminal law to the standards set by International Criminal Law, and in particular by the [Rome Statute of the ICC](#).

The CCIL affirms the principle of universal jurisdiction, which constitutes the legal basis for prosecution of genocide, crimes against humanity, and war crimes by German courts. According to the CCIL, the Federal Public Prosecutor can investigate international crimes, even if they were committed outside of Germany. This means that jurisdiction of the courts is independent from the location of the crime as well as from its victim or perpetrator.

Since 2011, the Federal Public Prosecutor has been conducting several person-related investigations as well as a general investigation (Strukturverfahren), which addresses the overall situation in the country and goes beyond individual cases.

What can be achieved by submitting criminal complaints about the crimes against humanity to the Federal Public prosecutor?

A criminal complaint is often the first step to initiate an investigation by the authorities of a third country. The complaints should make the Public Prosecutor aware of a certain situations or acts which from the perspective of the complainants meet criteria of a criminal offence.

Within the general investigation of the situation in Syria, the Federal Public Prosecutor has already gathered and secured evidence. However, this investigation mostly targeted the perpetrators of lower ranks. The criminal complaint submitted by ECCHR should persuade the Federal Public Prosecutor to target high-level officials of the Syrian Intelligence Service, to investigate their crimes and to issue international arrest warrants against them.

Who is the target of the criminal complaints about the crimes in Syria?

The criminal complaints, submitted by ECCHR and the Syrian complainants, address the policy of systematic torture in prisons of the Syrian Military Intelligence Service. According to the CCIL, systematic torture is to be qualified as a war crime and a crime against humanity.

For example, one criminal complaint targets five officials known by name and further unknown officials of the Syrian Military Intelligence Service and the Syrian Government, who bear the responsibility for the addressed crimes.

What does ECCHR want to achieve by submitting criminal complaints?

The primary goal of submitting criminal complaints is to initiate a person-related investigation, which will legally address the described crimes in a dignified way.

Since 2011, the Federal Public Prosecutor has been investigating the crimes committed in Syria. It was an important first step. Six years later, it is time to take further steps: the German judiciary should not focus on low-rank perpetrators, but must investigate the acts of those officials who bear the actual responsibility for the crimes. Even though those officials are still in Syria, certain steps can be taken, e.g. by issuing international arrest warrants. To take these steps, the Federal Public Prosecutor and the Courts should be given additional resources by the state. There is a growing need for educated investigators and better protection for witnesses.

ECCHR hopes that the investigation concerning this criminal complaint will be followed by charges and international arrest warrants against the responsible officials. These steps would also raise public awareness about the human rights violations in Syria and increase pressure on the international criminal justice to prosecute the crimes.

What information are the criminal complaints based on?

The criminal complaints are based on testimonies of women and men, who were imprisoned in different ‘branches’ (prisons) of the Syrian Military Intelligence Service in Damascus.

For years, these prisons have served as torture centers. The witnesses, who are also co-complainants, have been imprisoned in three of these “branches“(227, 235, 215) at various times between October 2011 and July 2015 and for different periods (several days to several months). Their testimonies shed light on the crimes of torture that prisoners have been constantly exposed to.

In addition to the testimonies of the victims, numerous public documents and reports have been used as sources for this criminal complaint. Many of the crimes committed in Syria,

including the crimes of torture, have been well documented through the years by international and Syrian human rights NGOs.

Testimonies of the survivors and witnesses, official documents as well as pictures of the victims and sites of crime, considered as a whole, demonstrate that the Syrian regime is guilty of crimes against humanity and war crimes.

Why are the criminal complaints limited to the crimes of torture committed by the Assad's Military Intelligence Service?

ECCHR designated the crimes of torture committed in prisons of the Syrian Military Intelligence Service as the focus of the complaints for several reasons. The crimes of torture are well documented and constitute an example of Assad's long-standing policy of systematic and violent repression against the Syrian population. This applies particularly to the brutal crackdown against peaceful protesters which started in 2011. Furthermore, the Federal Public Prosecutor has started a general investigation into the crimes of torture based on the so-called „Caesar-Photographs“.

The criminal complaint focuses on three crime scenes that have been used as prisons by the Military Intelligence Service. The so-called 'branches' (227, 235, 215) are well-known sites of violent oppression against the prisoners.

The choice of the sites of crime should not be seen as a result of assessment of other similar prisons and Intelligence Services in Syria. The choice is solely linked to the necessity of presenting the concerned crimes in a precise manner so that they can be used for a legal evaluation.

What are the next steps?

The Office of the German Federal Prosecutor reacted promptly to the first criminal complaint in relation to systematic Torture in Syria. At beginning of May 2017 the claimants as well as other persons gave their witness testimony in Berlin and Karlsruhe. From the perspective of the torture survivors, this was an important for step to achieve justice.

On the basis of the findings and evidence of the criminal complaints submitted by ECCHR as well as the structural investigation, the Federal Prosecutor can now proceed against the responsible officials of the Syrian Military Intelligence.

ECCHR considers the findings and evidence at hand sufficient in order to identify and investigate those responsible for the grave human rights violation in Syria. They are at risk of having issued international arrest warrants and worldwide investigations against them.

Does ECCHR intend to submit further criminal complaints or undertake other legal steps in this regard?

There is no doubt that further legal interventions should be undertaken to ensure that all systematic and widespread human rights violations in Syria will be addressed in an appropriate way.

ECCHR has already looked into other sites of crime and other possible suspects, and plans to bring further criminal complaints in Germany. These might concern the crimes of torture committed by other bodies of the Syrian Intelligence Service or different crimes and locations, like executions in the Saydnaya-prison.

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