

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



RUMSFELD TORTURE CASES

Between 2004 and 2007 three complaints were filed in Germany and in France against members of the US Government, including former Secretary of Defense Donald Rumsfeld and members of the military forces in connection with war crimes, torture and other criminal acts which took place in the military prisons of Guantanamo and Abu Ghraib.

In all three cases, however, the court authorities in Karlsruhe and Paris, where the cases were filed, refused to initiate investigations and rejected appeals against these decisions. The public was shocked when news broke of the torture and inhuman treatment in the US operated Iraqi prison, Abu Ghraib, and in the military base at Guantanamo Bay, Cuba. Despite the outrage surrounding these incidents, those responsible for overseeing these crimes have to this day not been held accountable. While some lower ranking military personnel have been convicted in military courts for torture committed at Abu Ghraib, their senior officers, the military and political leadership, remain unprosecuted. This is despite the fact that these individuals directly or indirectly ordered and – in the case of top government lawyers – attempted to legitimize these crimes.

The criminal complaints focused on the impunity of leading representatives of the government, the armed forces and the intelligence services. The complaints were based on the principle of universal jurisdiction which has been laid down in the German and French legal systems. Under this principle it is possible to pursue legal action in national courts in cases of so called "core crimes," such as war crimes or crimes against humanity, even if the relevant criminal acts took place on foreign soil. Since in the cases at hand no prosecutions were pursued in the home states of the perpetrators or the victims, nor by any international courts, it was possible to initiate investigations in Germany and France.

2004 Criminal Complaint in Germany

On 29 November 2004, ECCHR General Secretary Wolfgang Kaleck filed a criminal complaint in Germany on behalf of four Iraqi survivors and the Center for Constitutional Rights ([CCR](#)) based in New York. The complaint was directed against, among others, former Secretary of Defense Donald Rumsfeld, former CIA Director George Tenet and a number of high ranking military personnel in relation to breaches of the UN Convention against Torture and the German Code of Crimes against International Law.

The complaint related to the mistreatment of detainees in US-run prisons in Guantanamo Bay, Cuba and in Abu Ghraib, Iraq. The basis of the complaint is the failure of the US authorities to investigate and the resultant legal impunity for the perpetrators. In accordance with international conventions and principles of international law, it is possible for third party states with no direct connection to the aforementioned criminal acts to initiate investigations into egregious abuses such as war crimes, crimes against humanity, torture and enforced disappearances. The complaint against Donald Rumsfeld and other high-ranking military personnel aims to enforce equality before the law and – in

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accordance with international agreements – to prevent further impunity in cases of grave crimes.

On 10 February, 2005, the German prosecution authorities decided against initiating an investigation on the matter. The reason given for the decision was that investigations in Germany are only permitted if the competent state, either the state where the criminal acts took place, the home state of the victim or of the perpetrator's home state, is unwilling or unable to itself carry out an investigation. On behalf of the victims and a number of human rights and civil society organizations, Wolfgang Kaleck lodged an appeal against the decision, which was rejected by the Appeal Court in Stuttgart on September 13, 2005.

2006 Criminal Complaint in Germany

On November 14, 2006, an expanded complaint was filed. Based on new evidence, the claim was directed against Rumsfeld, Tenet as well as other high-ranking government officials, including the government lawyers Gonzales, Haynes, Addington, Yoo and Bybee and other members of the US Armed Forces. In particular, the complaint cited the fact that until November 2006, no investigations have been conducted in either the USA or in Iraq. This complaint was supported by a number of lawyers' associations, human rights and civil society organizations, as well as by the expert opinions of distinguished scholars.

Once again, the German prosecution authorities rejected the request to initiate investigations. This time, the prosecution justified its decision by arguing that the suspects did not reside, or expect to do so, on German soil, thus adding an additional barrier to the initiation of legal proceedings against the US. The appeal, filed by Wolfgang Kaleck, requested the initiation of a legal inquiry, based on the fact that investigations can take place even in the absence of the accused. According to this argument, the findings of the inquiry could be eventually taken into account in future proceedings in other states. On April 21, 2009 the Appeal Court in Stuttgart dismissed the appeal as inadmissible.

2007 Criminal Complaint in France

On 25 October 2007, a French lawyer filed a criminal complaint in France against Donald Rumsfeld on behalf of four human rights organizations: fidh, LDH, CCR, and the ECCHR. Rumsfeld was in France on a private visit at the time. Once again the complaint concerned torture and inhumane treatment in the US military prisons of Guantanamo Bay and Abu Ghraib, and specifically the illegal interrogation techniques applied and approved in the memo, personally signed by Donald Rumsfeld.

In February 2008, the French authorities came to a final decision not to arrest Rumsfeld or initiate an inquiry. They referred in their decision to Rumsfeld's alleged immunity as former Minister of Defense, a position contrary to the modern rules of international law.

Proceedings in other states

There are currently proceedings pending in Spain against six government lawyers (Addington, Bybee, Feith, Gonzales, Haynes and Yoo) relating to the mistreatment of Spanish citizens at the Guantanamo Bay detention center. The decision, which would initiate an inquiry, lies in the hands of an investigation judge and of a court of first instance. Criminal complaints have also been filed in Argentina (2005) and Sweden (2007). No investigations, however, have been launched in these cases.

Developments in the USA

Pressure from US civil rights groups has led to the publication of previously classified government documents which reveal the full extent of detainee mistreatment. The documents can be found [here](#). A Senate Inquiry Committee has questioned government officials on their participation in and responsibility for detainee mistreatment. The [report](#) was published in December 2008. After a prolonged investigation into the government's interrogation program, the Office of Professional Responsibility of the Ministry of Justice and of Detainee Mistreatment submitted a [report](#) to Eric Holder Jr., Minister of Justice. In response to this report, Minister Holder appointed a special investigator to inquire into the treatment by CIA agents of specific detainees in prisons located outside US territory. The special investigator's inquiry ended in August 2012 with the [decision](#) not to initiate criminal investigations, even in two cases in which detainees lost their lives. The incidents of abuse in Guantanamo Bay and Abu Ghraib, which are the subject of legal action in Europe, remain uninvestigated. To date there has been no criminal investigations into the matter in the US and no prospect of prosecutions of the high ranking officials responsible for the US torture program.