



# EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

## Executive summary

### Enforced disappearances in the al-Khatib trial

On 22 July 2021, partner lawyers of the European Center for Constitutional and Human Rights filed a motion on the crime of enforced disappearance to the Higher Regional Court in Koblenz. On behalf of 13 survivors who are joint plaintiffs in the al-Khatib trial, ECCHR's partner lawyers requested the court to qualify ten acts of abduction and detention as enforced disappearances under Section 7 (1) No. 7 of the German Code of Crimes against International Law (Völkerstrafgesetzbuch, CCAIL).

### Enforced disappearance must be prosecuted as such

During the proceedings in Koblenz, numerous witnesses have reported their own or their loved ones' disappearance in the al-Khatib Branch. However, the charges against defendant Anwar R do currently not include enforced disappearance. Although German law explicitly specifies this crime as one way of committing a crime against humanity under Section 7 (1) No. 7 CCAIL, R's indictment so far includes the alleged cases of abduction and detention (merely) as a severe deprivation of liberty under Section 7 (1) No. 9 of the CCAIL. With this motion, ECCHR's partner lawyers seek a reassessment of the charges.

The reassessment of the charges is essential as the offence of severe deprivation of liberty, for which Anwar R is currently accused, does not adequately capture the specific harm done to disappeared individuals and their families and community. In cases of enforced disappearance, state officials (or other perpetrators acting with the approval of a State or a political organisation) not only kidnap or detain individuals, but also withhold information about their fate and whereabouts from their family and friends. Thereby, the detained individuals are no longer protected by the law. Enforced disappearances violate a number of fundamental human rights and often serve to cover up further crimes such as torture and extrajudicial killings in detention. Relatives have no way of finding out where their loved ones are or if they are still alive – this uncertainty causes immense suffering.

### Evidence

The motion is mainly based on witness testimonies that the court heard during the proceedings so far. They are supported by evidence provided by the UN International, Impartial and Independent Mechanism on Syria (IIIM), and reports by the UN Commission of Inquiry and Syrian and international NGOs. The evidence reveals that the Syrian regime, operating through its intelligence services, has systematically used the disappearance of (perceived) opponents and other oppressive tools such as torture, extrajudicial killing and sexualized and gender-based violence to punish civil society and suppress dissent. Since the start of the uprising, around 150.000 individuals were disappeared throughout the country.

One of the victims, Malek (name anonymized), was arrested at his workplace in Damascus after having expressed a dissenting political opinion in front of a colleague. After his arrest, his brother and his cousin desperately searched for information about his fate and whereabouts. They contacted numerous intelligence officers, among them Anwar R, but did not receive any



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reliable information about Malek's fate. Some intelligence officers reported that Malek died from a heart attack or a kidney failure – both commonly referred to when the detainees have, in fact, been tortured to death. Another intelligence officer told Malek's brother and cousin that Malek might be still alive. Anwar R told them to collect his body – “or any corpse” – from Harasta or Tishreen Military Hospital. At neither hospital, Malek's corpse was to be found. To this day, Malek's family does not know what happened to Malek during his detention – or if he is alive at all.

Another victim whose testimony before the Norwegian police was read out in court spent about 30 days in the al-Khatib Branch because of his active participation in the uprising. In detention, he was allowed to contact his family or a lawyer. His family was never officially notified about his detention – only by chance, they heard that he had been arrested at all. The witness reported that his family desperately searched for him during his detention. His father contacted various intelligence officers but was denied any information. During the last attempt, intelligence staff told his father to forget his son and not ask for him again.

### **ECCHR's role**

ECCHR supports 29 Syrian torture survivors in the al-Khatib proceedings, 14 of whom are joint plaintiffs. Over the last years, ECCHR has repeatedly brought information on crimes committed by the four Syrian intelligence services to the attention of the relevant prosecution authorities in Germany, Austria, Sweden and Norway. In its seven criminal complaints in four European jurisdictions, ECCHR always requested the crime of enforced disappearance to be investigated and prosecuted.

ECCHR also supported a motion on sexualized and gender-based crimes that its partner lawyers filed to the Koblenz court in November 2020. As in the enforced disappearance motion, the joint plaintiff lawyers argued that sexualized and gender-based crimes in al-Khatib were not adequately charged in the original indictment. As a result of this motion, the court updated the charges against R. Incidents of sexualized violence in the al-Khatib Branch are now prosecuted as crimes against humanity committed as part of a widespread or systematic attack against the civilian population in Syria, not – as before – as mere individual cases under German criminal law.