

## The al-Khatib trial on state torture in Koblenz, Germany

### Q&A on the legal background

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#### **What are the charges against Anwar R and Eyad A?**

Anwar R was allegedly head of the Investigation Unit in the General Intelligence Service's detention center in Damascus known as Branch 251. He is charged with being a co-perpetrator in 4000 cases of torture, 58 murders, and individual cases of sexual assault and rape. These alleged crimes took place between April 2011 and September 2012, and can be classified as crimes against humanity.

If found guilty of murder or killing as a crime against humanity, Anwar R faces a mandatory life sentence. In that case, German law allows for parole after 15 years of imprisonment. If Anwar R is found guilty of lesser charges, he faces a three to 15-year sentence.

Eyad A was employed in a subdivision that worked with Anwar R's investigative unit. In fall 2011, he allegedly permitted the torture and deprivation of liberty of at least 30 people. He is therefore suspected of aiding and abetting a crime against humanity.

If found guilty of aiding and abetting torture as a crime against humanity, Eyad A faces two to 15 years in prison. If found guilty of lesser charges, he faces between six months and roughly 11 years.

#### **In what context did the alleged crimes take place?**

The Syrian regime has violently suppressed activities critical of the government since at least April 2011. The Syrian secret services (Air Force Intelligence, Military Intelligence, General Intelligence Directorate and Political Security) play an essential role. The government's aim has been to stop the protest movement at the earliest possible stage, and intimidate the population. Anwar R and Eyad A worked for the Syrian General Intelligence Service, specifically Branch 251, which is responsible for the Damascus area.

#### **Why is the trial taking place in Koblenz, Germany?**

The case is being heard before the Koblenz Higher Regional Court because Eyad A was arrested in Rhineland-Palatinate, over which the Koblenz court has jurisdiction. Alternatively, the German Federal Prosecutor's Office could have filed charges at the Higher Regional Court in Berlin, where Anwar R was arrested.

Since 2011, the federal public prosecutor has been investigating several people, as well as conducting a structural investigation (*Strukturermittlungsverfahren*) into the overall situation in Syria and go beyond individual cases. The former investigation led to the al-Khatib trial.

The trial in Koblenz is also the result of a series of criminal complaints regarding torture in Syria, which ECCHR and nearly 100 Syrian torture survivors, relatives, activists and lawyers filed jointly in Germany, Austria, Sweden and Norway beginning in 2016.

## **What is the legal basis for a German trial on state torture in Syria?**

The al-Khatib trial in Koblenz is based on the principle of universal jurisdiction. According to this principle, which was enshrined in the German Code of Crimes against International Law (CCAIL) in 2002, grave crimes like genocide, war crimes and crimes against humanity do not only affect individuals and single countries, but the international community as a whole. If international legal fora are not an option for criminal prosecution, universal jurisdiction offers national proceedings as another path to justice. This allows Germany (and other states that apply the principle) to prosecute international crimes no matter who committed them, where they were committed, or who they were committed against.

## **When can a verdict be expected?**

The length of the trial depends on various factors. Since the main accused, Anwar R, denies all charges, a comprehensive and time-consuming review of the evidence is necessary. Once a verdict is reached, all parties in the trial may appeal the decision before Germany's highest court, the Federal Court of Justice (Bundesgerichtshof). If a party appeals and the Federal Court of Justice overturns the decision, or returns the case to the lower court to reconsider, the proceedings will take longer. It is impossible to accurately estimate how these factors will play out. It is likely that the proceedings will last several years.

## **Why was an indictment before the International Criminal Court not an option?**

Syria is not a state party to the Rome Statute of the International Criminal Court. Therefore, the only way for the ICC to have jurisdiction over Syria is by referral from a UN Security Council resolution. Such a resolution has been vetoed by China and Russia, preventing the ICC or a special tribunal from taking action. This means that for the time being, the only proceedings possible outside of Syria are those that evoke the principle of universal jurisdiction in third states, or where third states can claim jurisdiction because one of their nationals was involved in a crime as a victim or perpetrator.

## **What impact will the al-Khatib trial have?**

This is the first trial worldwide against the Syrian regime for crimes against humanity. Therefore, the al-Khatib trial is of considerable importance worldwide. As the trial will also provide an overall picture of the crimes committed by the Syrian government, it will help collect evidence and knowledge that can then be used by others and in other trials, whether on regional or international level. The trial is thus a key first step on the long road to justice for

victims of state oppression in Syria. At the least, it helps make the crimes and their impact visible.

Apart from that, the criminal proceedings are crucial for survivors involved in the trial. This is the first occasion on which they are speaking out – not only in public, but before a court – about what happened to them and what is still happening in Syria. The trial is also significant for the relatives of those who died in detention or have been “disappeared,” and for everyone still in prison.

## **What is the difference between a witness and joint plaintiff?**

Witnesses testify in court because they have information relevant to the trial, but have not necessarily suffered the charged crimes. In the al-Khatib trial, witnesses have for example been heard who know either of the accused or could report of the general situation of repression in Syria.

A joint plaintiff is a party to the proceedings. Only those who personally suffered from one or more of the crimes charged can request to become a plaintiff. If the court decides to admit them as a plaintiff, they have certain procedural rights. Among others, they have a right to be present in the courtroom, ask questions, give statements and request the introduction of evidence.

## **What role do Syrian torture survivors and witnesses play in the proceedings?**

Survivors and witnesses of human rights violations are crucial in the fight against impunity. It is key that victims’ voices are heard. If legal trials are to positively affect Syrian society and potential future transitional justice process, affected people need to gain a sense of ownership from these proceedings.

In the al-Khatib trial (and potential future trials), witness testimony can provide details about crimes they witnessed or suffered personally, give insights into command structures, identify perpetrators, and assist in establishing individual criminal liability. They can also support other ongoing investigations by providing evidence and naming other witnesses.

Some torture survivors have joined the trial as joint plaintiffs and are therefore party to the proceedings. They have a right to be present in the courtroom, ask questions, give statements and request the introduction of evidence.

## **What is ECCHR’s role in the proceedings?**

ECCHR currently supports 17 torture survivors who gave witness testimony to the German Federal Criminal Police (Bundeskriminalamt) prior to the trial. Seven are joint plaintiffs in the al-Khatib trial, and are represented by our partner lawyers Patrick Kroker and Sebastian Scharmer.

The trial in Koblenz is the result of years of work, including a series of criminal complaints regarding torture in Syria, which ECCHR and nearly 100 Syrian torture survivors, relatives, activists, and lawyers jointly filed beginning in 2016 in Germany, Austria, Sweden and Norway.

## **What impact will the al-Khatib trial have on holding Bashar al-Assad accountable?**

As head of state, Syrian President Bashar al-Assad has immunity and is therefore shielded from prosecution before national courts in third countries. However, as part of investigations that led to the al-Khatib trial, the German federal public prosecutor is gathering evidence on potential crimes Assad himself committed. This information could be used in the future, for instance, when he is no longer president, or if charges are leveled against him by the International Criminal Court or a UN special tribunal.

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