

## The al-Khatib trial in Koblenz, Germany

### Q&A on the legal background

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#### **What is the verdict in the case of Anwar R and Eyad A?**

In January 2022, the Koblenz Higher Regional Court sentenced Anwar R to life in prison for crimes against humanity. R was found guilty of as a co-perpetrator of torture, 27 murders, dangerous bodily harm and sexual violence, among other crimes.

The court already sentenced Eyad A in February 2021 to four years and six months in prison for aiding and abetting torture due to his involvement in a “rapid intervention force in the field” that was deployed to crackdown on demonstrations.

For many of those affected, the fact that Anwar R was pronounced guilty of sexual violence as a crime against humanity was an important milestone. ECCHR partner lawyers successfully petitioned the court to prosecute sexual violence not as individual cases but, rather, as a systematic crime against the Syrian civilian population.

The verdict on Eyad A became final in April 2022, but a decision has not yet been reached regarding the appeal filed by Anwar R against the verdict in his trial.

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

The Syrian regime has violently suppressed opposition 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) played a central role in this. The government’s aim has been to stop the protest movement at the earliest possible stage and intimidate the civilian population. Anwar R and Eyad A worked for the Syrian General Intelligence Service, specifically at Branch 251, which is responsible for the Damascus area.

#### **Why did the trial take place in Koblenz, Germany?**

The case was 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. Due to the close connection between their content, the two cases were linked together.

Since 2011, the Federal Public Prosecutor has been investigating several individuals in connection with crimes committed in Syria, as well as conducting a structural investigation (*Strukturermittlungsverfahren*) to examine the overall situation in Syria and the systematic nature of the crimes committed there. Beginning in 2017, ECCHR, together with nearly 100 Syrian torture survivors, relatives, activists and lawyers in Germany, Austria, Sweden and Norway, submitted a series of criminal complaints concerning torture in Syria that contributed to the investigations.

These preliminary investigations provided the basis of the al-Khatib trial.

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

The al-Khatib trial in Koblenz was 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 specific countries, but the international community as a whole. If states in proximity to the crime or international legal forums are unavailable for criminal prosecution, universal jurisdiction offers an alternative path to prosecution. This allows Germany (and other states where the principle is applied) to prosecute international crimes regardless of who commits them, where they are committed, or who they are committed against.

## **Why couldn't charges be brought before the International Criminal Court?**

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 was 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 invoke 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 did the al-Khatib trial have?**

This was the first trial worldwide on crimes against humanity committed by the Syrian regime and was therefore of considerable international importance. In the proceedings, the Koblenz court also provided an overall picture of the political situation in Syria and the system of interlocking security services that have violently oppressed the population since the rule of former President Hafiz al-Assad. The focus of the trial, however, remained on the crimes of the Syrian regime since the beginning of the revolution, with a particular emphasis on the crimes of the General Intelligence Service within the so-called al-Khatib Branch. For the first time, legal evidence was gathered and presented within a judicial context. In future trials, whether at the national or international level, it will be possible to draw upon this body of evidence.

The trial was thus a crucial first step on the long road to justice in Syria and has helped to make Syrian crimes and their impacts visible.

The trial also provided a chance for Syrian torture survivors to convey their experiences within a courtroom and to actively contribute to the efforts to bring justice to Syria. The proceedings also played an important role for those whose relatives were killed in prison or are still imprisoned within detention facilities.

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

Witnesses testify in court because they have information relevant to the trial, but were not necessarily personally affected by the crimes charged. In the al-Khatib trial, witnesses have been heard who, for example, knew either of the accused individuals or could recount the circumstances of the repression of the protest movement in Syria.

A joint plaintiff is a party to the proceedings. Only those who personally suffered or are still suffering from one or more of the crimes charged can request to become a plaintiff in the trial. In the al-Khatib trial, plaintiffs included not only survivors of torture or sexual violence, but also the relatives of those were killed. If admitted by the court, plaintiffs have certain procedural rights and can, for example, pose questions, give statements and request the admittance of evidence. Several plaintiffs in the trial made use of their rights in the form of closing statements, in which they conveyed their perspectives on the proceedings.

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

Survivors and witnesses of human rights violations are crucial in the fight against impunity. As members of the affected communities, it is key that their voices are heard. If legal trials are to have a positive effect on Syrian society and potential transitional justice proceedings in the future, those affected must be able to have a sense of ownership with regard to such trials.

In the al-Khatib trial, it became clear that in proceedings based on the principle of universal jurisdiction, special attention must be given to the protection of witnesses. At the same time, witness testimony played a critical role: those affected could vividly describe the details of crimes they had personally experienced or observed, as well as provide information on the intelligence system and command structures, describe crime scenes and identify perpetrators.

## **What were the important critiques of the proceedings?**

Although the crimes in question primarily affected the Syrian community, it was initially impossible for most Syrians to follow the trial – the language of the court was German. Only after a constitutional complaint, which ECCHR supported, did accredited media representatives at least receive access to the simultaneous translations of the proceedings in Arabic that had been made available to the accused, as well as to the plaintiffs. However, ultimately most Arabic-speaking journalists continued to be excluded because they had not gone through the necessary accreditation process beforehand. It was a nonetheless a positive development that for both the trial of Eyad A and the trial of Anwar R, the court allowed the pronouncement of the verdict to be simultaneously translated.

Another point of criticism was that, in spite of multiple requests from civil society actors, the court refused to provide audio recordings of the proceedings. These could have furnished an important archive for commemorative, educational and research purposes for future generations.

Although enforced disappearance is one of the most emblematic crimes used by the Syrian regime to oppress the civilian population, it was not included among the charges – despite an urgent request by the joint plaintiffs.

In addition, the fact that both Anwar R and Eyad A had defected after working for the Syrian intelligence service, and had already disassociated themselves from the Assad regime before they were brought to trial in Germany, became a topic of controversial discussion. The court ultimately considered these circumstances as working in the favor of the defendants during the sentencing.

## **What was ECCHR's role in the proceedings?**

ECCHR supported 18 torture survivors, some of whom already gave witness testimony to the German Federal Criminal Police (Bundeskriminalamt) prior to the trial. 14 of them were plaintiffs in the al-Khatib trial and were represented by our partner lawyers Patrick Kroker, René Bahns and Sebastian Scharmer.

In addition, ECCHR initiated and supported requests aimed at increasing the involvement of the Arabic-speaking civil society in the proceedings. The constitutional complaint regarding access to translations of the trial, as well as the request to record the proceedings for future generations were among these interventions.

The trial in Koblenz is based on a series of criminal complaints concerning torture in Syria, which ECCHR and nearly 100 Syrian torture survivors, relatives, activists, and lawyers jointly filed as early as 2016 in Germany, Austria, Sweden and Norway.

## **What are the next steps?**

Germany has taken on pioneering role in addressing international crimes at least since the al-Khatib trial in the Koblenz Higher Regional Court. One week after the verdict in the case of Anwar R was handed down, the Frankfurt Higher Regional Court initiated proceedings in January 2022 against the former Syrian military doctor Alaa M. The reason: strong suspicion of complicity in crimes against humanity committed by the Syrian regime since 2011. While employed as doctor, M allegedly tortured, killed and sexually abused people. The trial, in which an ECCHR partner lawyer is representing a plaintiff, could last several years – and it likely will not be the last trial on Syrian state torture.

## **What impact will the al-Khatib trial have on the impunity of Bashar al-Assad?**

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 has gathered evidence on potential crimes that Assad himself may have committed. This information could be used in

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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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