



## BACKGROUND \_\_\_\_\_

### **Survivors of Assad's torture system demand justice – Criminal complaint in Austria**

#### **Q & A on the legal basis**

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**On 8 June 2018, it was announced that the Germany Federal Court of Justice (*Bundesgerichtshof* – BGH) had issued an arrest warrant against Jamil Hassan, who until July 2019 was head of the Syrian Air Force Intelligence Service. This measure is a milestone towards justice and accountability for all those affected by Assad's torture system, particularly the 24 Syrian torture survivors and activists whose testimonies contributed to the arrest warrant.**

Since [March 2017](#), they have, together with the lawyers Anwar al-Bunni (Syrian Center for Legal Studies and Research, [SCLSR](#)), Mazen Darwish (Syrian Center for Media and Freedom of Expression, [SCM](#)) and the European Center for Constitutional and Human Rights ([ECCHR](#)), [filed four criminal complaints](#) in Germany based on the principle of universal jurisdiction against high-ranking officials in Assad's government.

#### **The series of criminal complaints in Germany and Austria**

Human rights and humanitarian law have been violated by all parties to the armed conflict in Syria. Since the beginning of the conflict, ECCHR has been investigating which violations have been committed by those involved. Since 2012, ECCHR has been working with victims, activists, lawyers and organizations in Germany and Europe to secure evidence and document testimonies.

The conclusion of this research and legal analysis by ECCHR: the serious violations of human rights and humanitarian law committed by the Bashar al-Assad government qualify as crimes against humanity and war crimes.

On 28 May 2018, ECCHR together with 16 women and men from Syria as well as Syrian lawyers Anwar al-Bunni, Mazen Darwish and the Center for the Enforcement of Human Rights International (CEHRI) submitted a criminal complaint to the prosecutor in Vienna. The criminal complaint addresses torture as a crime against humanity and war crime in detention facilities run by the Syrian Military Intelligence Service, the Air Force Intelligence Service and the General Intelligence Service.

In [March 2017](#), ECCHR and seven torture survivors from Syria as well as al-Bunni and Darwish submitted an initial criminal complaint against six suspects – high-level officials in the Syrian intelligence service – to the German Federal Public Prosecutor. The claimants are individuals who were detained in Syrian intelligence service facilities and who were tortured or witnessed torture.

In September 2017, a group working with “Caesar,” a Syrian defector who obtained thousands of photos of tortured and murdered detainees in Syrian government detention facilities, took legal action by [filing together with ECCHR a criminal complaint](#) to the German Federal Prosecutor. The complaint was directed against senior officials from the Syrian intelligence services and the military police concerning crimes against humanity and war crimes. A representative of the group provided the Federal Prosecutor with a set of high-resolution images and metadata. The “Caesar photos” present a unique insight into the Syrian government’s machinery of torture and killing under Assad.

In November 2017, ECCHR supplemented previous criminal complaints and evidence with two additional complaints directed against high-ranking officials from the [National Security Bureau and Air Force Intelligence](#) as well as the head of the [military police and the Saydnaya military prison](#).

The criminal complaints against Syrian senior intelligence and military officials concerning crimes against humanity and war crimes are part of a series of legal interventions by ECCHR: against the [“architects” of the US torture system](#) set up as part of the “war on terror” (filed in Germany, France and Spain), against those responsible for [torture in Bahrain](#) (filed in Switzerland and Ireland) and against [British soldiers for torture during the Iraq war](#) (submitted to the ICC in The Hague).

ECCHR’s activities are aimed at providing legal support for victims and witnesses of arbitrary arrests, torture and sexual violence. Those responsible for human rights violations – the direct perpetrators and in particular those overseeing systemic abuses – in Syria should face the legal consequences of their actions.

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

Currently there is absolute impunity for such crimes in Syria and for the foreseeable future there is no prospect of prosecutions of perpetrators linked to the Assad government.

The adoption of the [Rome Statute](#) and establishment of the International Criminal Court (ICC) in 2002 made it possible to prosecute certain cases of war crimes, crimes against humanity, and genocide in The Hague. 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 and efforts by the UN Security Council to refer the case to the court are blocked by Russia and China.

However, the Independent International Commission of Inquiry on the Syrian Arab Republic (UN CoI Syria) was established in August 2011 and since then has been gathering evidence against all parties to the conflict. It works in the neighboring countries of Lebanon, Jordan, Iraq and Turkey. The information gathered by the UN Commission is crucial for future legal investigations.

The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM), set up in December 2016, is tasked with collecting, preserving, and consolidating evidence, while also preparing files of evidence that can be used by prosecutors in independent criminal proceedings. IIIM has no power to press charges or issue arrest warrants. Instead it looks to national or international courts to make use of the documented evidence.

### **What legal avenues are available in Austria to prosecute the crimes committed in Syria?**

Certain serious crimes concern the international community as a whole, and cannot go unpunished. This is why it falls in part to the national jurisdictions of third party states, like Austria, to investigate the serious crimes committed in Syria and to pursue prosecutions.

Section 64 of the Austrian Criminal Code (*Strafgesetzbuch*, StGB) makes it possible to apply Austrian criminal law to human rights violations committed in Syria. The principles of protection (*Schutzprinzip*) and universality (*Universalitätsprinzip*) apply.

In accordance with international treaties, the Austrian judiciary also has jurisdiction in cases of torture (Section 321a StGB) and forced disappearances (Section 321b StGB) and in cases of genocide, crimes against humanity and war crimes (Chapter 25 StGB). These crimes were introduced to Austrian law as part of the implementation of the Rome Statute.

The introduction of Section 64 of the Austrian Criminal Code and the implementation of the Rome Statute into national law are aimed at ensuring, in accordance with Austria's obligations under international law, that there are no gaps in the prosecution of serious human rights violations.

### **What are the legal parameters in Germany?**

In Germany the prosecution of international crimes committed in Syria is made possible by the German Code of Crimes against International Law (CCAIL). The CCAIL came into force in 2002 to bring German criminal law in line with the standards of international criminal law, in particular the Rome Statute of the ICC.

The principle of universal jurisdiction enshrined in the CCAIL is the basis for the criminal prosecution of genocide, crimes against humanity and war crimes by German judicial authorities. Under the CCAIL, the German Federal Public Prosecutor may also investigate crimes committed outside of German territory and regardless of the nationality of the perpetrators or victims.

Since 2011, the Office of the German Federal Public Prosecutor, alongside investigations into individual suspects, has also been examining the situation in Syria as part of what is known as structural proceedings, a broader examination looking at the overall situation in the country. German authorities have also been gathering and securing evidence, but to date this has focused mostly on low-ranking perpetrators.

ECCHR's criminal complaints aim to bring about investigations into individuals holding high-level positions within the Syrian military intelligence services and military police and ultimately to obtain international arrest warrants from the German Federal Supreme Court.

In June 2018, it was finally time – at least in Germany: German authorities issued an international arrest warrant for Jamil Hassan, head of the Syrian Air Force Intelligence Service (until July 2019).

### **Why are torture survivors and human rights lawyers addressing Syrian crimes in Austria?**

The grave crimes committed in Syria affect the international community as a whole and cannot go unpunished. It thus falls to the authorities in third states like Austria to pursue investigations and prosecutions.

Given the provisions of Chapter 25 of the Austrian Criminal Code, it is important to create awareness amongst the Austrian authorities of the obligation to prosecute for serious human rights violations in Syria.

The criminal complaint in Austria aims to bring about investigations, arrest warrants and the filing of charges against those responsible for torture in Syria. All this is important in case any of the perpetrators is in Austria – whether just visiting or applying for international protection in the country. Investigations also make it possible to question suspects.

Even if the suspects do not travel to Austria, it is still possible to issue international arrest warrants. In any case the investigations will serve to secure evidence for future prosecutions – by the International Criminal Court or by a court in a third country like Austria. For the Syrian survivors of torture who now live in Austria the investigations represent a first step towards justice. This is an important part of the effort to process the personal and collective trauma suffered.

### **Who is the target of the criminal complaint filed by ECCHR and CEHRI in Austria?**

In the Austrian legal system a criminal complaint is a way of reporting a crime i.e. criminal acts that occurred. The task of determining the relevant suspects then falls to the investigative authorities – namely the police or the public prosecutor. Thanks to the long-term research undertaken by ECCHR, the crimes addressed in the criminal complaint could already be linked to specific suspects.

The criminal complaint submitted by Syrian torture survivors as well as ECCHR and CEHRI addresses the policy of systematic torture in prisons of the Syrian intelligence services and military police. Systematic torture is classified as a crime against humanity and war crime in accordance with Sections 321a and 321b of the Austrian Criminal Code.

The criminal complaint identifies officials known by name and other (unnamed) officials of the Syrian military intelligence service and the Syrian government as those who are likely to bear responsibility for the crimes in question.

### **What impact will the arrest warrant issued in Germany have?**

Arrest warrants against those responsible for systematic repression and torture under Assad would represent an important signal for survivors, relatives of those affected, and those still detained in the prisons of the Assad government.

The fact that authorities in Germany opened investigations focusing on specific suspects and issued an arrest warrant for Jamil Hassan is an important step towards ending impunity in Syria.

Like Jamil Hassan, most of the high-ranking officials responsible for torture and other human rights violations in Syria still live in the country. But if they were subject to an international arrest warrant and travelled outside Syria, they could be arrested and extradited. Germany or Austria could then file charges and open criminal proceedings.

The case of the Chilean dictator Augusto Pinochet shows that international arrest warrants against high-profile politicians and military figures are possible and effective. In 1998, the Spanish investigative judge Baltasar Garzón issued an international arrest warrant against Pinochet for genocide and other crimes. While Pinochet was visiting London, he was arrested by Scotland Yard and his extradition to Spain was approved by the then Home Secretary Jack Straw. While the Chilean government negotiated that he be released on humanitarian grounds, Pinochet's arrest in London ultimately triggered a broader process of legal reckoning with the crimes of the dictatorship in Chile.

### **Why has ECCHR not yet filed any criminal complaints against President Bashar al-Assad for human rights violations?**

As president and commander-in-chief of the armed forces of the Syrian Arab Republic, Bashar al-Assad is at the top of the military chain of command. He has ultimate command over the actions of all security and military institutions, including the four Syrian intelligence services, the Ministry of Defense, and the National Security Bureau. President Assad thus undoubtedly bears responsibility for their crimes.

As a sitting head of state, however, Assad is shielded from prosecution in third-party countries. In Germany he is protected by the international law concept of immunity *ratione personae* as set out in Section 20(2) of the Courts Constitution Act (GVG) and Section 25 of the German Basic Law (GG). This means that no criminal proceedings can be undertaken against him at this time. However, as part of its investigations, the German Federal Public Prosecutor is gathering evidence on potential crimes by Assad. This information could be used in the future, for instance when he is no longer president, or if he faces charges by the International Criminal Court (ICC) or a special tribunal.

Immunity as provided for in international law also applies to Assad in Austria. Under international law, heads of states, heads of governments and foreign ministers are assigned

special privileges, including total immunity in criminal proceedings while in office as well as functional immunity afterwards.

When it comes to the core crimes against international law, both functional and personal immunity are limited. This, however, only applies in the case of prosecution by the ICC. This means that prosecution of certain individuals by the Austrian judiciary is not possible. Nonetheless investigations should also look into Assad's individual criminal liability. The results of investigations into core crimes could then be made available should the Syrian conflict be the subject of investigation by a special tribunal or by the ICC.

### **What do ECCHR and CEHRI want to achieve by submitting criminal complaints?**

The primary goal of submitting criminal complaints is to initiate further person-specific investigation (i.e. looking into specific suspects) and to ensure the crimes are subject to legal scrutiny in a dignified manner.

Since 2011, the German Federal Public Prosecutor has been investigating the crimes committed in Syria. It was an important first step. Seven years later, it is time to take the next steps: the German judiciary should not focus on low-ranking perpetrators, but should instead investigate the acts of those officials who bear the overall 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 provided with additional resources by the state. There is a growing need for trained investigators and improved protection for witnesses.

The criminal complaint filed in Austria is aimed at initiating preliminary proceedings in the case as well as securing evidence, especially to collect and secure witness statements given by torture survivors currently living in Austria. The survivors and witnesses who live in Austria should receive appropriate legal support and the chance to see some measure of justice.

ECCHR and CEHRI hope that the investigation into the crimes detailed in the various criminal complaints will lead to the issuing of charges and international arrest warrants against the relevant officials. This would raise public awareness about the human rights violations in Syria and increase pressure to prosecute the crimes through international criminal justice mechanisms.

### **What information is the criminal complaint in Austria based on?**

The criminal complaint is based on testimonies of women and men who were imprisoned in different 'branches' (detention facilities) of the Syrian intelligence service and the military police, as well as on photographic evidence and the associate metadata that was provided by the group around the former Syrian military police employee, "Caesar".

For years, prisons run by the Syrian intelligence service and the Syrian military police have served as torture centers. The claimants' testimonies shed light on the crimes of torture that prisoners have been and continue to be subjected to.

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 groups. Testimonies

from survivors and witnesses, official documents, as well as pictures of the victims and crime scenes, considered as a whole, demonstrate that the Syrian government is responsible for crimes against humanity and war crimes.

### **What happens now?**

After the arrest warrant issued in Germany ECCHR and CEHRI hope for a similar reaction in Austria and the opening of comprehensive investigations.

On the basis of the findings and evidence submitted in ECCHR's criminal complaints and information from the structural investigation in Germany, the prosecutor in Vienna can now proceed to take action against the relevant officials within the Syrian military intelligence. ECCHR considers the available evidence (concerning the facts of the case and the command structure in Syria) sufficient in order to identify and investigate those responsible for the grave human rights violation in Syria. These individuals may face international arrest warrants also in Austria and be sought around the world.

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European Center for Constitutional and Human Rights (ECCHR)

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