

The case of Luis Kyburg – The prosecution of an Argentine military officer in Germany

Q&A on the legal background

Why was Luis Kyburg only charged with murder and not with crimes against humanity?

Luis Kyburg was charged in Germany with 23 counts of murder under § 211 of the German Criminal Code (StGB). There is no statute of limitations for murder, which makes it possible for him to be charged, even though the crimes in question were committed in the year 1976. Enforced disappearance, on the other hand, is not included in the indictment. In contrast to murder, which falls under the scope of the Criminal Code, enforced disappearance is only included within the German Code of Crimes Against International Law as a crime against humanity. But crimes can only be punished when they have already been legally established as punishable before the crime was committed (§ 1 StGB). Convicting Kyburg of crimes against humanity is therefore not possible, as the German Code of Crimes Against International Law has only existed since 2002. The inclusion of enforced disappearance as an independent criminal offense is currently proposed within a government draft of a law for the further development of international law as a new §234b StGB. This would entail that (new) criminal conduct similar to the conduct referred to in this case could be charged as enforced disappearance.

On what basis were the German authorities conducting their investigation?

The German authorities were investigating a total of 23 cases, which all took place in 1976 at the beginning of the last Argentine military dictatorship (1976 – 1983). Under the pretext of the so-called “fight against subversion,” a military junta established a repressive regime in 1976, in which roughly 30,400 people, whom

the regime considered its political opponents, were imprisoned, tortured, raped, forcibly disappeared or murdered.

The Mar del Plata Naval Base was one of the locations in which these crimes were committed. From February to November 1976, Luis Kyburg was second in command of a special tactical diver unit “Buzos Tácticos.” According to investigations by Argentine judicial authorities, its building was used to set up secret detention and torture facilities.

The Berlin Prosecutor General’s Office (GStA) has been investigating allegations against Kyburg since 2014. In the context of the investigation, the GStA requested that the Argentine authorities submit evidence of crimes that were committed when Kyburg was the lieutenant commander of the special tactical diver unit.

In addition, with the support of ECCHR, a relative of one of the victims filed a criminal complaint against Kyburg with the GStA in 2018. In 2023, two additional affected individuals reached out to the GStA. ECCHR made information and evidentiary materials available to the GStA in order to substantiate Kyburg’s criminal responsibility.

How was ECCHR supporting the relatives of victims?

ECCHR has helped those affected gain access to justice in Germany, in order to shed light on and legally come to terms with crimes of the military dictatorship and to contribute to ending the impunity of the perpetrators. In close collaboration with the lawyers of those affected, ECCHR was supporting the legal representation of joint plaintiffs in the proceedings, for example, in giving witness testimony to the German authorities. In addition, ECCHR was in contact with Argentine human rights organizations, activists, public prosecutors and public institutions that are tasked with coming to terms with the dictatorship and providing psychosocial support for those affected, including relatives of victims and survivors.

Why was Luis Kyburg not being extradited to Argentina to be held accountable there?

The Argentine law enforcement authorities already issued an arrest warrant for Luis Kyburg in 2013 and demanded via an Interpol Red Notice his extradition to Argentina. However, because Kyburg also held German citizenship in addition to his Argentine citizenship, his extradition to Argentina or any other non-EU state was not permitted under Art. 16(2) of the German Basic Law. However, the German authorities could investigate Kyburg themselves, and in 2014, the GStA opened an investigation into Kyburg.

What roles have Germany and German companies historically played in connection with the military dictatorship?

The lack of action on the part of Germany during the Argentine military dictatorship is [heavily criticized](#) today. Although the former German government was well aware of the crimes of the military dictatorship, they failed to make any attempt to protect detained German citizens in Argentina, many of whom were eventually forcibly disappeared or killed, and secure their release. Fernando Hallgarten and [Elisabeth Käsemann](#) are among the German victims of the dictatorship. In both cases, the German Foreign Office failed to adequately protect German citizens.

During the military dictatorship, German companies were also present in Argentina and cooperated with the military junta, including auto manufacturers such as [Mercedes-Benz](#), which were involved in crimes and profited from the actions of the military dictatorship.

The German judiciary has long played a significant role in investigating crimes committed during the military dictatorship. For example, through the efforts of the Coalition Against Impunity, the case of the forcibly disappeared student Elisabeth Käsemann and other Germans was investigated in a Nuremberg court in the early 2000s. This work culminated in the issuing of an arrest warrant against the former dictator Videla.

In the case of Luis Kyburg, he himself as well as Fernando Hallgarten and his family are German citizens. Germany must fulfill its obligation to seek and promote justice for those affected, regardless of their nationalities.

What progress has been made on coming to terms with the military dictatorship in Argentina?

Already during the dictatorship, the Argentine human rights movement was very active in its struggle for truth, memory and justice, including the investigation and prosecution of crimes. Investigations and trials still continue to this day.

Immediately after the end of the dictatorship, the report *Nunca Mas* (Never Again) by the National Commission on the Disappearance of People (CONADEP – Comisión Nacional sobre la Desaparición de Personas) was published in 1984. The report was groundbreaking, as it revealed for the first time the systematic nature of the repression during the dictatorship. With the help of this evidence, the first convictions of members of the military junta were secured in 1985.

In the years that followed, the enactment of new laws blocked further trials against alleged perpetrators, which led to a period of impunity. After these laws were repealed in 2003, investigations and proceedings against former military officers could resume.

According to data from the Argentine authorities, a total of [1189 individuals](#) have been convicted in 324 trials since 2006 (as of 5 September 2023). In connection with crimes committed in Mar del Plata, 49 former officers have already been convicted, including Kyburg's superior and his successor.

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