

QUESTIONS & ANSWERS _____

Sexual violence by members of the Russian armed forces: Federal Public Prosecutor must investigate

1. Which crimes are the subject of the criminal complaint?

The criminal complaint accuses the alleged perpetrators of war crimes and crimes against humanity. The crimes committed against the Ukrainian survivor and her family – sexual violence, the murder of her husband and the destruction of her home – amount to severe breaches of international law, namely, war crimes. Furthermore, and crucially, these crimes are at the same time part of a widespread and systematic attack by Russia on the Ukrainian civilian population. Therefore, the complaint is requesting that the German Federal Public Prosecutor prosecute these crimes as crimes against humanity.

2. Which efforts are underway in Ukraine to investigate these crimes?

The Ukrainian authorities have launched investigations into this case. One suspect, who is presumably one of the soldiers that attacked the affected person in her house, was identified shortly after the crime took place. Since summer 2022, a so-called trial in absentia against him has been underway, in which he is accused of the commission of a war crime in the form of murder and rape. Such trials are conducted in the absence of the accused. A second perpetrator is also being investigated. However, as of yet, there are no known efforts to prosecute higher-ranking perpetrators.

3. Why are we filing a criminal complaint when a criminal prosecution is already taking place in Ukraine?

The Ukrainian investigative authorities maintain primary responsibility for the investigation of crimes committed on their territory, and initial verdicts concerning Russian war crimes have already been issued. Nevertheless, full-scale prosecution by Ukrainian authorities is not possible at present, as the ongoing war of aggression is hampering investigations – for example, through power and Internet outages. In addition, the Ukrainian legal system contains gaps that make it impossible to prosecute all perpetrators according to international standards: crimes against humanity are not punishable under Ukrainian law, and Ukrainian law

also does not recognize command responsibility for international crimes committed by foreign troops. The investigations in Germany are intended to close these gaps and work against this partial impunity.

4. Why can't high-ranking perpetrators and crimes against humanity be prosecuted in Ukraine according to international standards?

Ukrainian criminal law recognizes neither command responsibility nor crimes against humanity as a criminal offense. These gaps were supposed to have been closed in 2020, when a comprehensive legislative proposal was introduced into the Ukrainian parliament on the initiative of civil society. The Verkhovna Rada already adopted the bill in May 2021. All that was needed for the law to enter into force was a signature by Ukrainian President Zelenskyy, which he has not provided to date. Instead, a second draft proposal was introduced to parliament in April 2022 and has remained under advisement since then. This new draft fails to live up to the original reform proposal and has therefore been rejected as insufficient by ULAG and other Ukrainian organizations. They criticize the fact that the principle of command responsibility would only be partially implemented. Yet, even if the law were to come into force, another serious gap would still remain. While the law would make crimes against humanity punishable, this provision would likely only apply to crimes committed after the law was passed. All other crimes against humanity committed since the beginning of the Russian war of aggression could therefore not be prosecuted as such –including the crimes perpetrated against the survivor and her family in this case.

5. Why do commanding officers also need to be investigated?

The military is a hierarchically structured power apparatus, which demands soldiers' obedience to the commands of their superiors. It follows from this that those who give orders, and thus possess the most power, carry a greater responsibility that their actions must also be measured against. The principle of command responsibility therefore stipulates that superiors are liable for the crimes of their subordinates in cases where they knew, or should have been able to anticipate, that the perpetration of such acts was imminent and did nothing to prevent them, despite the fact that they were in a position to do so. Commanders who learn of such crimes and fail to immediately report them are also liable to prosecution. Our criminal complaint specifically highlights the responsibility of commanders: instead of only focusing on the perpetrators directly involved in the crimes, we are also calling for investigations into their military superiors.

6. On what basis can Germany take action?

Germany can take action on the basis of the principle of universal jurisdiction. According to this principle, a state can prosecute international crimes – i.e. the gravest crimes such as war crimes, crimes against humanity and genocide – even when they were not committed on its soil or by or against its citizens. The Federal Public Prosecutor already opened structural investigation proceedings at the beginning of March 2022 into suspected war crimes committed in Ukraine, which means that his office is currently securing evidence on crime complexes, perpetrator groups, and structures for the preparation of future trials against specific individuals. Our complaint is intended precisely to trigger such person-specific investigations.

7. How can Germany support the investigation in Ukraine?

To counter this partial impunity arising from the Ukrainian legal system, it is essential for the Federal Public Prosecutor to secure evidence against high-ranking perpetrators and military structures and to document the widespread and systematic attack against the Ukrainian civilian population. Only in this manner is it possible to ensure that the responsibility of superiors is sufficiently taken into account, as well as to reveal patterns of crimes – which is imperative in light of the widely reported use of sexual violence by Russian military personnel. To help prosecute the direct perpetrators, Germany can, among other things, conduct further investigations into their whereabouts and issue arrest warrants to search for suspects internationally.

8. How would the conviction of one of the alleged perpetrators in Ukraine affect the criminal prosecution in Germany?

Even if the Ukrainian court were to find the perpetrator charged in absentia guilty, investigations by German authorities would still be permissible and necessary. On the one hand, our criminal complaint is also directed against the superiors of the direct perpetrators, who have not yet been the focus of Ukrainian prosecution efforts. On the other hand, further investigations would also be possible against the direct perpetrators because the prohibition of double jeopardy does not apply across states between Ukraine and Germany. Although a double execution of sentences in both countries is to be rejected from a human rights perspective, Germany can at least contribute to the apprehension of suspects by issuing its own arrest warrants and putting them on international wanted lists.

9. What is ECCHR doing in general to support the investigation of crimes committed in the war against Ukraine?

In several cases, ECCHR, together with partner organizations in Ukraine and other countries, is supporting survivors of international crimes committed in the context of the Russian war of aggression. In the process, we provide legal expertise and, at the same time, seek to advance digital methods of evidence-gathering through interdisciplinary collaborations. In addition, we organize workshops and events to enhance the understanding of strategic litigation at the civil society level. In our web dossier, we also provide an overview of the current legal situation and analyze options for prosecution. In all of this, it is important to us that sustainable solutions for dealing with international crimes are found – even beyond the context of the Russian war of aggression – that do justice to the universal claims of international criminal law and put the needs of those affected at the forefront.

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