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# State-run Torture in Syria: the First Trial Worldwide on International Crimes by the Assad Regime Opens before German Courts

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The first criminal trial worldwide on State-run torture in Syria started in Koblenz, Germany, on 23 April 2020. The defendants are two former high officials of the Syrian General Intelligence Service of President Bashar al-Assad and face charges for international crimes committed in the Al-Khatib prison of Damascus. The trial marks a historical achievement in international criminal justice; in fact, it is the first trial based on the principle of universal jurisdiction against Syrian State officials. Moreover, the Al-Kathib trial, together with other proceedings held in a few other European States, is currently the only way to ensure accountability for the grave crimes committed within the Syrian conflict

**1. On 23 April 2020 two former officials of President Bashar al-Assad's security apparatus stood trial before the German Higher Regional Court (*Oberlandesgericht*) of Koblenz with charges of crimes against humanity for the torture and other atrocities committed in the detention center Al-Khatib in Damascus.[1]**

This event marks an historical achievement in international criminal justice, being the first trial worldwide on State-run torture in Syria. The Al-Khatib trial presents various aspects that are worth exploring, such as the successful enforcement of the principle of universal jurisdiction in Germany and the cooperation of State and civil society actors which made possible to bring the defendants to court. Both defendants were former members of the Syrian General Intelligence Service. Anwar R. is accused to have acted as military superior of the "Department 251" in the General Intelligence Al-Khatib Branch in Damascus, leading interrogations aimed at obtaining confessions and information on the Syrian opposition movement through countless killings, torture and abuse (both physical and psychological). He faces counts of participation in the torture of at least 4000 people between 2011 and 2012, resulting in the death of 58 people and including acts of sexual violence. Eyad A. is accused of having arrested and brought protesters into the department in order to torture them. He has been charged for aiding and abetting torture in at least thirty cases.

Since its beginning in 2011, the Syrian conflict has been characterised by abuses and violent attacks against the civilian population, with widespread violation of fundamental human rights by virtually all parties to the conflict, including by the State. In fact, the regime of President Bashar al-Assad immediately put in place a system of control and harsh repression of any protest or opposition, banning the right of assembly and the freedom of speech. Through its military intelligence and security services, Assad has arbitrarily detained activists and political opponents in civil and military facilities and prisons, where they have been tortured and, in many cases, even disappeared.[2] According to conservative estimates, between March 2011 and December 2015 at least 17.723 people have been killed while in State custody.[3]

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2. As Germany has become one of the main destinations for Syrian refugees within the last decade, it has been possible for both NGOs and German investigators/prosecutors to obtain a wide amount of first-hand evidence; German judicial authorities have collected 2.800 statements on international crimes committed in Syria, of which more than 300 were providing specific information on suspects. In May 2017 around 200 witnesses have been heard during the investigations, which resulted in 22 proceedings against 28 accused; four of these cases have been already closed with the conviction of the defendants[4].

In March 2017 seven survivors of the Syrian torture regime have sought justice and accountability taking action against six high-ranking officials of the Assad's regime, with the help of lawyers Anwar al-Bunni of the Syrian Center for Legal Studies and Research, Mazen Darwish of the Syrian Center for Media and Freedom of Expression, and the European Center for Constitutional and Human Rights (ECCHR). Six months later, the 'Ceasar Files Group'[5] filed a second criminal complaint with ECCHR against senior officials of the Syrian intelligence services and military police concerning acts of torture and murders documented by the thousands of photos slipped outside the Syrian state-run detention facilities. In November 2017 ECCHR filed other two new complaints 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[6]. These complaints resulted in the warrant of arrest against Jamil Hassan, who was the head of the Syrian Air Force Intelligence until July 2019, issued by the German Federal Court of Justice (*Bundesgerichtshof*) in June 2018.[7] These proceedings are of key importance, as they do not target perpetrators of lower ranks, but are rather directed to high-level officials of the Syrian Intelligence Service.[8]

Then, in February 2018 the German Federal Supreme Court issued arrest warrants against Anwar R. and Eyad A.; they were recognized by the Syrian lawyer Al-Bunni while he was in a German refugee accommodation. Both the defendants voluntarily turned to the police, fearing to be surveilled by Syrian or Russian intelligence services. The Commission for International Justice and Accountability (CIJA), a private foundation run by former employees of the ICC and the United Nations, provided a full dossier on Anwar R., including statements by witnesses and insiders, contextual evidence and signed documents. Anwar R. and Eyad A. are the first high-ranking officials of Assad's government to face trial. In the course of the investigation on the Al-Khatib case, the German Federal Prosecutor General (*Generalbundesanwalt*) and the Federal Criminal Police Office heard testimonies from sixteen witnesses, nine of whom are now joint plaintiffs in the case, as the German law allows victims to participate on the side of prosecution in criminal proceedings with extensive procedural rights, such as the right to question the accused.

3. Notably, the trial which just opened in Koblenz is the result of several criminal complaints filed by nearly 50 Syrian torture survivors who are present since 2016 in Germany and are assisted by ECCHR.[9]

The criminal complaints filed by Syrian survivors are based on the **principle of universal jurisdiction** embodied in **paragraph 1 of the German Code of Crimes Against International Law** (*Völkerstrafgesetzbuch*, VStGB) of 2002, which is the outcome of the advanced implementation of the Rome Statute of the International Criminal Court (ICC) by the German legislator into the domestic legal system. Contrary to the narrow interpretation given by most other countries, the German legislator decided to adopt a wider application of the principle of universal jurisdiction, thus allowing the investigation and prosecution of international crimes[10] even if committed abroad without any connection to Germany, so that neither the active or passive personality, nor the territorial criteria are required. The principle is balanced by a wide prosecutorial discretion not to proceed with the case if the suspect is not present on the German territory, according to paragraph 153f of the Code of Criminal

Procedure (*Strafprozessordnung*)

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State-run Torture in Syria: the First Trial Worldwide on International Crimes by the Assad Regime Opens before German Courts crimes against humanity and war crimes of torture, degrading treatment, rape, severe bodily injury and illegal abduction. Swedish authorities have not yet issued arrest warrants, but since April 2019 the War Crimes Unit of the Swedish prosecution office has already heard four of the witnesses.[14]

Moreover, French judicial authorities are also dealing with investigations and preliminary examinations on crimes against humanity committed in the Syrian conflict, addressing former members of both the regime and various Syrian armed groups. [15] As of today, however, none of the French procedures have yet resulted in a referral to a court. Similar to Germany, proceedings on international crimes are managed by *ad hoc* offices, through the implementation of a pole within the National Antiterrorist Prosecutor's Office (*Parquet national antiterroriste*, Pnat) and a cell composed of four specialised investigators. These offices are working on some Syrian cases in a joint team with German authorities. Also in France, the decision to prosecute international crimes committed within the Syrian conflict is triggered by the large number of asylum seekers from Syria in France.

At the same time, some international mechanisms have also been established: The Independent International Commission of Inquiry on Syria (so-called UN CoI Syria) and 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 (so-called IIIM). The UN CoI Syria is tasked with gathering evidence against all parties to the conflict working in Syria and in its neighbouring countries of Lebanon, Jordan, Iraq and Turkey for more than six years[16]. The IIIM is collecting, preserving, and consolidating evidence in order to prepare evidentiary files for prosecutors of criminal proceedings[17]. This information could be essential for future legal proceedings not only before international courts, but also in front of national tribunals according to the principle of universal jurisdiction, especially in light of the difficulties described below. In fact, in cases like Syria, where we face all the limits, weaknesses and obstacles inherent in the international justice system, and most notably in the ICC, the cooperation of international bodies, national judicial authorities and private actors, as NGOs, appears as the only hope to enable the legitimate search for justice of the victims. The Koblenz trial is crucial exactly for this reason, as it could become a sort of blueprint for future similar cases, in Germany or other countries prosecuting international crimes through the principle of universal jurisdiction.

[1] For further details on the case see, E. Baier, *A puzzle coming together. The henchmen of Assad's torture regime on trial in Germany*, in *Völkerrechtsblog*, 23 April 2020.

[2] *Torture Archipelago: Arbitrary Arrests, Torture and Enforced Disappearances in Syria's Underground Prisons in March 2011*, Human Rights Watch, 2012; *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, UN Doc. A/HRC/31/CRP.1, 2016; *'It breaks the Human': Torture, Disease and Death in Syria's Prisons*, Amnesty International, 2016; *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, Human Rights Council, 2018, A/HRC/39/65.

[3] M. Price, A. Gohdes and P. Ball, *Technical Memo for Amnesty International Report on Deaths in Detention*, Human Rights Data Analysis Group, 2016.

[4] On 24 September 2018, Ibrahim al-F, former member of Ghoraba as-Sham operating under the armed opposition group Free Syrian Army (FSA), was sentenced to life imprisonment for torture and killing persons protected under international humanitarian law, murder, extortionist kidnapping and the commission of war crimes (conviction upheld on appeal on 6

State-run Torture in Syria: the First Trial Worldwide on International Crimes by the Assad Regime Opens before German Courts (August 2019). On 4 April 2019, Mohamad K., former member of the FSA, was sentenced to four years and six months' imprisonment for two counts of war crimes, for the torture of two prisoners belonging to a pro-government militia with a cable. On 26 July 2019, Ahmad Zaheer D. was found guilty for the war crime of inflicting grievous bodily harm, coercion and attempted coercion, and he was sentenced to two years' probation. On 13 January 2020, Abdul Jawad A. K. was sentenced to life imprisonment for double homicide and as an accessory in 17 counts of murder committed as an Islamist militant in northern Syria. Three other defendants (Abdoulfatah A, Abdulrahman A.A. and Abdalfatah H. A.) were also convicted to prison sentences from three to eight years. For further details on cases based on universal jurisdiction in Germany and other European countries see J. Rikhof, *Extra-Territorial Jurisdiction Update – Jurisprudence (2020)*, 4 PKI Global Justice Journal 15.

[5]The 'Caesar files' are photos that were smuggled out of the country through a Syrian military police defector called 'Caesar'. They show the bodies of people tortured and killed in Syrian government detention facilities between May 2011 and August 2013. On 21 September 2017, the 'Caesar Files Group' filed with ECCHR a criminal complaint with the German Federal Prosecutor in Karlsruhe against Jamil Hassan and other senior officials from the Syrian intelligence services and the military police concerning crimes against humanity and war crimes which led in June 2018, to the German Federal Court of Justice issuing an international warrant of arrest against Jamil Hassan.

[6] The Saydnaya military prison holds between 10,000 and 20,000 detainees and has been used as an instrument of exerting power, with mass executions and physical and psychological torture of the regime's opponents. On 6 November 2017, a criminal complaint was filed with the German Federal Public Prosecutor concerning crimes against humanity and war crimes – including intentional killing, persecution, torture and prosecution without due process – committed against detainees at the Saydnaya military prison between December 2011 and June 2014. The criminal complaint is directed against seven high-ranking Syrian military officials including the Defense Minister Lieutenant General, the Military Prosecutor Brigadier General and the head of the military police and the Saydnaya military prison; for more details see <https://www.ecchr.eu/en/case/saydnaya-military-prison-objective-is-to-physically-and-psychologically-break-detainees/>

[7] M. Crippa, *Germania e Francia emettono diversi mandati di arresto nei confronti di alti ufficiali del regime siriano: nuovi scenari per il principio della giurisdizione universale in Europa*, in *Diritto Penale Contemporaneo*, 15 November 2018.

[8] W. Kaleck e P. Kroker, *Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?*, in *Journal of International Criminal Justice*, volume 16-1, 2018, p. 165–191.

[9] *Survivors of Assad's torture regime demand justice – German authorities issue first international arrest warrant*, ECCHR, 2018; *Dossier – Human Rights Violations in Syria Part I: Torture Under Assad – Criminal Complaints In Germany Against High-Profile Members Of Syrian Intelligence Services*, ECCHR, 2018.

[10] Crimes under international law, or international crimes, for these purposes include genocide, crimes against humanity, war crimes and aggression, the so-called 'core crimes'.

[11] The very recent Universal Jurisdiction Annual Review 2020 prizes Germany as one of the countries with the highest activity, from structural investigations, arrests and custody of suspects to indictments and trials, see *Universal Jurisdiction Annual Review 2020 – Terrorism and international crimes: prosecuting atrocities for what they are*, #UJA, TRIAL International, European Center for Constitutional and Human Rights, International Federation for Human Rights, REDRESS,

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[12] For more information on Austria, see: <https://www.ecchr.eu/en/case/the-path-to-justice-leads-through-europe-eg-austria/>

[13] For more information on Norway, see: <https://www.ecchr.eu/en/case/norway-syrian-torture-survivors-file-criminal-complaint-against-assads-senior-intelligence-officer/>

[14] For more information on Sweden, see: <https://www.ecchr.eu/en/case/sweden-criminal-complaint-against-assads-intelligence-officials>.

[15] H. Sergent, *Crimes contre l'humanité: Après l'Allemagne, la France pourrait bientôt juger d'anciens membres du régime syrien*, in 20 Minutes, 28 April 2020.

[16] The UN CoI Syria was established on 22 August 2011 by the Human Rights Council through resolution S-17/1 with a mandate to investigate all the alleged violations of international human rights law since March 2011 in the Syrian Arab Republic, to establish the crimes perpetrated and, where possible, to identify those responsible.

[17] The IIIM was established by the UN General Assembly through resolution 71/248 of 21 December 2016, with the mandate to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011.