

A GUIDE TO NATIONAL PROSECUTIONS IN GERMANY

FOR CRIMES COMMITTED IN SYRIA



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PURPOSE OF THIS DOCUMENT

If you experienced a serious violation of your rights in Syria, you might have an option to seek justice in German courts. In this document, you will find the basic information needed to file a complaint in Germany for either criminal charges against the person who perpetrated the crime or a civil action to receive compensation. The German judiciary primarily relies on national laws to settle disputes and has fully implemented European and international standards for international crimes and guarantees of due process and respect for human rights. Fully independent from the legislative and executive powers, German judges oversee trial proceedings and may play an active role throughout the investigation. Germany has many limitations on filing a complaint when the crime happened outside of Germany, so review this document carefully and contact legal counsel in Germany to determine if you are eligible to file a complaint.

In this Guide, You Will Learn

1. Opportunities and limits for submitting a complaint;
2. How to file a complaint;
3. The process from investigation to trial; and
4. The rights of victims and witnesses.

The Syria Justice and Accountability Centre (SJAC) is a Syrian-led, multilaterally supported nonprofit that envisions a Syria defined by justice, respect for human rights, and rule of law. SJAC promotes transitional justice and accountability processes in Syria by collecting and preserving documentation. The purpose of the documentation SJAC collects is to create a record of the conflict and to push for appropriate justice mechanisms that will respond to the needs and interests of Syrians.

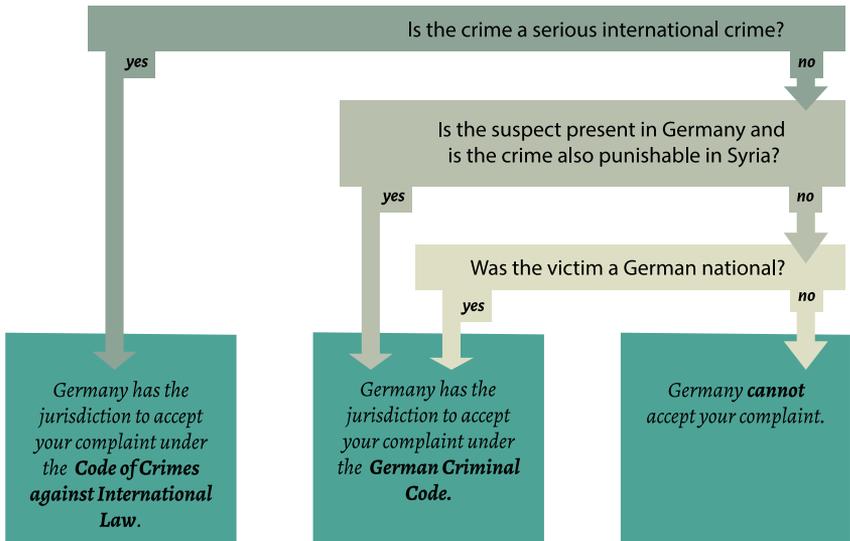
The information in this document is true and complete to the best of SJAC's knowledge. This document is intended to provide helpful information on the German legal system and is not meant to be used, nor should it be used, as a substitute for legal advice. It is highly recommended you contact a licensed lawyer with experience in German law before initiating any proceedings. A frivolous complaint could lead to consequences, such as a defamation lawsuit or fines. Also, please be advised that litigation always carries costs and expenses. SJAC and the authors of this document are not responsible for legal actions taken in Germany and are not liable for any costs or negative consequences incurred by any persons reading or following the information of this document.

1 | DETERMINING JURISDICTION

Does Germany Have Jurisdiction to Hear My Case?

In principle, if a crime is committed within the Federal Republic of Germany, German criminal law is applicable. In addition to this general rule, any other crimes may be subject to German criminal law due to a genuine link (*Anknüpfungspunkt*) to Germany. For example, the German Criminal Code (*Strafgesetzbuch, StGB*) applies if the suspect, who has potentially committed a crime outside of Germany, is arrested within German territory and the potential crime is also punished by law in the country where the crime was committed. German law may also be applicable if a victim was a German national at the time of the crime.

However, in cases of serious international crimes such as genocide, war crimes, and crimes against humanity, the Code of Crimes against International Law (*Völkerstrafgesetzbuch, VStGB*) applies, which allows for the investigation and prosecution of crimes in Germany irrespective of the nationality of the suspect or victim or the place where the crime was committed, otherwise known as universal jurisdiction.



The following are examples of serious international crimes if they took place in the context of an armed conflict or as part of a larger pattern of violations:

- Torture
- Enforced disappearances
- Indiscriminate attacks on civilian areas
- Rape or sexual slavery
- Persecution against an identifiable group, such as an ethnic or religious group

Is There Anyone Germany Will Not Try?

Heads of State are immune from prosecution, but only during the time they hold office. Diplomats, including their family members, and state representatives on official invitation in Germany, including their entourage, are also generally protected from prosecution.

Is There a Time Limit for Filing a Complaint?

Crimes against humanity, war crimes, and genocide, as set out in the Code of Crimes against International Law, are not subject to a period of limitations in Germany. Thus, such crimes can be prosecuted at any time, no matter how far in the past the crime actually occurred. The only exception to this is if the crimes relates to a military or civilian superior who has violated their supervisory duties *vis-à-vis* a subordinate person or failed to report a war crime. In such cases, they cannot be prosecuted after five years from the date of the crime.

Does the Perpetrator Have to Be in Germany?

Even if Germany has jurisdiction over a case, German prosecutors hold considerable prosecutorial discretion regarding crimes committed abroad and can refrain from prosecution. If no German national is involved and the suspect is not present within German territory and is not expected to be present in the foreseeable future, German prosecutors have usually exercised their discretion not to pursue the case.

Although the suspect does not have to be present in Germany for the investigation to take place, for a conviction and punishment to be carried out, their attendance at the trial is mandatory except in very limited circumstances.

What is the Legal System in Germany?

In Germany, the legal system is divided into five branches. Criminal courts are part of the ordinary branch. In typical criminal cases, the public prosecutor's office leads on investigations, including whether a case will lead to a court proceeding. Once the prosecutor moves forward with the case, local courts are responsible for the hearing. However, for crimes concerning the Code of Crimes against International Law, the Chief Federal Prosecutor's office leads the investigation, and the higher regional court hears the trial. Appeals are then handled by the Attorneys General's Office.

2 | FILING YOUR COMPLAINT

How Do I Bring a Case before a German Court?

A victim or any witness can initiate the investigation of a crime by reporting an offence (*Strafanzeige*) orally or in writing to the public prosecution office, the police, or to local courts.

What Goes Into the Complaint?

The application should be written in German if possible, since other languages will take longer to process. However, people who cannot speak German may be supported with an interpreter. The application should include contact details, a full version of the facts, and any information available about the suspect.

What Happens After I File?

Once prosecutors obtain notice of a possible crime, they are obliged to begin a preliminary investigation (*Legalitätsprinzip*). There is no requirement that the suspect be present in Germany at this time. If the suspect is not present in Germany, prosecutors will secure all evidence available to determine whether there is enough information for the complaint to be admissible, including whether the facts qualify as a serious violation of international law or if there is a more appropriate jurisdiction available that is able and willing to hear the case.

How will Germany Apprehend the Suspect?

If the prosecutors decide to prosecute and the suspect is in a country with which Germany has a treaty, Germany can apply for extradition of the suspect through mutual assistance procedures (*Rechtshilfe*) after the arrest warrant is issued. Although Syria forbids extradition of its own citizens, if the suspect is in another country that allows extradition, it would be important to notify the prosecutors of this information. As a member of the European Union, Germany can also apply for a European arrest warrant (*Europäischer Haftbefehl*), which will be executed by the European country in which the suspect is seized.

What Can I do If the Prosecutor Does not Take My Case?

If prosecutors decide they will not move forward with your case, you will be notified of their decision and the reason(s) behind it. You can appeal this decision within two weeks to the Chief Prosecutor. If this appeal is denied, you may appeal to the court within one month of being notified of the Chief Prosecutor's decision.

3 | APPEARING BEFORE A GERMAN COURT

What is the Procedure Once the Case is Filed?

There are four phases of procedure once the Federal Prosecutor accepts your complaint:

1. The Investigation;
2. Interrogations/Hearings;
3. The Trial; and
4. Appeals and Revisions.

Each is explained below.

Phase 1: The Investigation

If the public prosecutor determines that an investigation is necessary, investigators will begin examining and searching for incriminating as well as exonerating evidence according to the presumption of innocence. The prosecutor may summon and question witnesses and has the authority to request any information and undertake investigations of any kind (including by involving the police or calling upon experts). The prosecutor may also discuss the status of the proceedings with the victim and the suspect, but usually this will not happen during the period of investigation. The subsequent trial is only likely to take place if the suspect can be found in Germany. To ensure this, the prosecutor can initiate an arrest with the competent court and bring the suspect into custody.

Investigators will rely upon witness statement, documents, visual inspection of the crime scene if possible, a statement from the suspect, videos, and social media (so long as it does not violate a person's reasonable expectation of privacy). Investigators will inspect and authenticate videos from YouTube and other social media sites. Witnesses may provide statements through video conferencing or investigators and judges may travel to take witness statements instead. In rare situations, the witness may be provided monetary support to travel to Germany to provide a statement.

Before the investigation is closed, victims have the status of “witness,” which gives them the right to submit additional evidence or information to authorities.

Phase 2: Interrogations/Hearings

Following the investigation, a preliminary hearing is held to verify the facts that were collected by the prosecutors. Witnesses are obliged to appear for questioning if they receive a summons from the public prosecutor, a judge, or the police. Witnesses have extensive rights, including the right to refuse answering specific questions if they might lead to an accusation of themselves or a relative, or to deny testimony entirely if the suspect is engaged to, married to, or a close relative (i.e. child, parent or sibling) of the witness. Witnesses have the right to be supported during questioning by a lawyer.

The defendant always has a right to a lawyer. In some cases, the appointment of a lawyer for the defendant is mandatory and therefore, they would be appointed by the court at public expense.

Phase 3: The Trial

If the preliminary hearing determines that the facts are sufficient and verified, the case will proceed to trial. The relevant court that will hear the case will depend on the severity of the crime and respective sentence. For Crimes against International Law, higher regional courts will hear the case. While trials before the local courts may be held with a single judge, the higher regional courts usually consist of a panel of five judges.

During the trial phase, the judge will play an active role in the proceedings. The trial consists of oral proceedings, during which the judge will question the parties (including witnesses, both those that testified during the investigations phase and new witnesses, and – if applicable – experts) and the parties will exchange arguments. Judges are free to take all evidence into account and will designate weight to the evidence at their discretion. The court can also compel attendance

of witnesses and the production of evidence. In general, a trial may not be interrupted for more than three weeks. If the interruption is longer, the trial has to begin anew, potentially with new judges. The judges who make the ruling must be present during the whole trial. The defendant has the right to have the last word, may question any witness after the judges and the prosecutor, and may also give a statement of defense to highlight his or her version of events.

For certain crimes (e.g. sexual assault, bodily harm, attempted murder, homicide, war crimes, or genocide), victims, or, if the victim has been killed, the victim's relatives, are entitled to join criminal cases as joint plaintiffs (Nebenkläger). Having party status allows a victim to influence the trial by presenting evidence and questioning witnesses and the defendant. Furthermore, the joint plaintiff has the right to be represented by a lawyer and to appeal against a court's decision.

The victim is also entitled to pursue claims for monetary compensation (Adhäsionsverfahren). In general, claims for compensation have to be brought separately (at the same time or after criminal proceedings) to a civil court in Germany. The civil court proceedings are completely separate from the criminal proceedings. While it is better to wait for the criminal judgment, the criminal court's decision is not binding on the civil court.

Phase 4: Appeals and Revisions

Either the defendant or the prosecutor can challenge an unfavorable decision to the next higher court. Victims generally do not have a right to challenge a criminal decision unless they are joint plaintiffs.

There are two possibilities to challenge a ruling: appeal (Berufung), where the court collects evidence afresh (only possible if the first instance court was a local court), and revision (Revision), where the review is limited to the interpretation of matters of law. The court that will hear the appeal depends on the type of appeal and on which court heard the trial.

4 | KNOW YOUR RIGHTS

Victim Rights

Victims, irrespective of whether they have joint plaintiff status, have certain rights, such as:

- the right to request information on whether the suspect is in custody,
- the right to have a lawyer inspect the files or to obtain information from the files,
- the right to appoint a lawyer or to be represented by a lawyer,
- the right to anonymity if the court determines it necessary – removal of the defendant during examination, conducting the trial behind closed doors, partial or full anonymity or audio-visual recording of testimony. Furthermore, as a protective measure, the examination may also take place separately from the other parties to the proceedings. The witness or victim can, for instance, be in a different place, while a simultaneous audio-visual connection transmits the examination to the hearing.
- the right to protection – in rare cases, this can mean inclusion into a witness protection program, such as police presence at the residence of the witness, change of identity for a period of time or change of outer appearance. During a prosecution process, this may depend on the prosecutor's consent.

What Are the Rights of Witnesses?

Witnesses in the investigation and trial also have certain rights, including:

- information from the prosecutor about witness rights and duties,
- for witnesses with young children, child care during questioning,
- the right to be accompanied by a person the witness trusts, as long as the person would not endanger the investigation,
- the right to be represented by legal counsel. Witnesses who cannot access legal counsel but are in need of representation may be assigned a lawyer at public expense.
- the right not to incriminate themselves during questioning.

Interpretation

Although there is no right to an interpretator free of charge during the investigation, during the criminal proceedings, free interpretation will be provided for victims and witnesses to exercise their rights. Victim and witness testimonies provided in Arabic or other languages during questioning will also be translated into German by the relevant institution.

Legal Representation

Witnesses and victims who need assistance to exercise their rights may be assigned a lawyer at public expense. Joint plaintiffs may be assigned a lawyer or apply for legal aid to receive financial assistance for legal representation.

Below is a Germany-based NGO that may be able to assist you, if it has the capacity do so:

European Center for Constitutional and Human Rights (ECCHR)

Zossener Straße 55–58, Ausgang D, D-10961 Berlin

+49 (0)30 – 400 485 90 | info@ecchr.eu



Photo by Lens Youngi Homs

If you are unable or unwilling to file a formal complaint but would like your experiences securely recorded with the **Syria Justice and Accountability Centre (SJAC)**, please contact SJAC at info@syriaaccountability.org. The benefits of participating in a private interview with SJAC are that you:

1. Preserve your personal experience and suffering;
2. Have lodged your personal experience with an organization that can connect you with future justice mechanisms if and when they arise; and
3. Will help build a record that can be used to drive justice and accountability overall for Syria.

Syria Justice and
Accountability Centre

