



German court exercises universal jurisdiction: Implications for corporate criminal liability under international law

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On 24 February 2021, the Higher Regional Court (*Oberlandesgericht*) of Koblenz sentenced a former Syrian secret police officer to a prison term of four and a half years for aiding and abetting crimes against humanity ([judgment of 24 February 2021, case No 1 StE 3/21](#)). The court found that the accused had committed acts of torture and deprivation of liberty when he arrested and transported protesters to an interrogation centre with a known record of torture. While the defendant, a Syrian national, was arrested in the German city of Koblenz after he had been granted asylum in Germany, the crimes were committed in Syria and all victims and co-perpetrators are Syrian nationals. This notwithstanding, based on the principle of universal jurisdiction, the German court exercised jurisdiction over the case.

The decision of the German court is the first judgment worldwide finding that the acts of the Syrian government constitute crimes against humanity. It serves as a reminder that gross violations of international law may trigger severe sanctions irrespective of where such violations are committed. Given the increasing tendency to expand criminal liability to corporations, this may equally affect companies that fail to ensure compliance of their worldwide business activities with international law.

Universal jurisdiction

The German court's decision is noteworthy beyond the facts of the individual case, as it is based on the **principle of universal jurisdiction**. This widely acknowledged legal concept is followed by numerous states worldwide. It means that a state may investigate and prosecute certain crimes, irrespective of where the crimes were committed and irrespective of the nationality of the accused and victims. Under German law, this principle is enshrined in Section 1 of the Code of Crimes Against International Law (*Völkerstrafgesetzbuch*).

The decision confirms that in cases in which local or international institutions are unable or unwilling to act, **German courts will make use of their powers** under the principle of universal jurisdiction. In the particular case, Syrian courts were unwilling to act, the International Criminal Court (ICC) was unable to act as Syria has not acceded to its statute, and a referral of Syria to the ICC by the United Nations Security Council was blocked by the vetoes of China and Russia. The decision of the Koblenz court further demonstrates that German courts will **take international law obligations seriously** and will not shy away from imposing severe legal sanctions in response to breaches of international law.

Corporate liability for international crimes

While the case before the Koblenz court concerned individual criminal responsibility, breaches of international law may also trigger **corporate criminal liability**. Various jurisdictions across the world already provide for corporate criminal liability in their domestic laws and cases brought under these laws against corporations have included accusations of international crimes. For example, if corporations conduct business activities in conflict regions, any support of the conflicting parties may expose corporations to accusations of complicity in international crimes that are committed in the course of such conflicts.

Germany is currently taking active **steps to significantly expand corporate criminal responsibility**. The German draft bill that is currently under review (*Verbandssanktionengesetz*) is set to introduce fines of up to 10 percent of a company's worldwide turnover for companies with an annual turnover exceeding €100 million.

In addition to potential criminal sanctions imposed in one jurisdiction, evidence collected in such trials can potentially be used in other jurisdictions and proceedings – either at the domestic or international level – potentially triggering an entire **series of follow-on investigations and criminal proceedings**.

Practical considerations

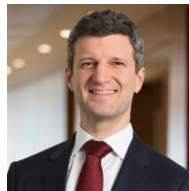
In light of this far-reaching liability risk, it will be increasingly important for any corporation to ensure compliance of its business with international law, including with international criminal law and human rights guarantees. This is particularly important for companies with a presence or business activities in **conflict regions or regions with low human rights standards and compliance**, as such regions are especially prone to the occurrence of severe breaches of international law, including international crimes. Importantly, these considerations extend to the supply chain, as breaches of international law committed along the supply chain may be attributable to the principal company. It is therefore equally important to ensure **compliance with international law across the supply chain**.

As governments and courts increasingly take international law obligations seriously, corporations would be well-advised to make sure that their compliance systems are adept at detecting relevant risks and breaches of international law and to seek counsel early on.

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